

GERMANY RESPONSE

INTOSAI WORKING GROUP ON THE AUDIT OF PRIVATISATION

THE ROLE OF THE STATE AS MINORITY SHAREHOLDER IN PRIVATE BUSINESSES

QUESTIONNAIRE

INTRODUCTION

The purpose of this questionnaire is to gather information from Members of the Group about the issues the state needs to address where it is a minority shareholder in private businesses, the challenges faced by the SAI in examining how the state addresses these responsibilities, and the impact of the SAI's work.

BACKGROUND

The topic 'The Role and Responsibility of the State as Minority Shareholder in Privatised Businesses' was discussed at the sixth meeting of the INTOSAI Working Group on the Audit of Privatisation (Warsaw, October 1999).

The discussion examined both the role of the state and key issues that SAIs are likely to have to address in examining how effectively that role is carried out. It was agreed that this subject merited further examination by the group.

Issues Affecting the State

- The state needs to protect the taxpayer's interests, even though it is not in control of the business.
- The state will have objectives in being a minority shareholder, and it needs to ensure these objectives can be met.
- The state may have taken special powers (e.g. a golden share). Such powers are however usually not general, but closely defined e.g. the right to approve changes in ownership of the business. As regards the general running of the business, such special powers are unlikely to afford the state any greater protection than that enjoyed by any other minority shareholder.
- Unlike a private minority shareholder, the state may not in practice be able to dispose of its investment if it is dissatisfied with the way the business is being run by those in control. For example, where the state's minority shareholding is retained for strategic economic reasons the state may be in double jeopardy: the actions of others could create additional obligations for the state, going beyond its original investments and the concept of limited liability, resulting in the moral hazard of implicit guarantees.
- The state may not have access to sufficient market-focused skills necessary to

understand the nature of the business, and the risks to which the state is exposed. And even if it is able to monitor the business's performance intelligently, it may not be able to influence those in control.

- Has the state been able, in practice, to protect its interests as a minority shareholder?

Issues Affecting the SAI

- The SAI is likely to be the auditor of the government body which holds the minority stake.
- Does the SAI also have audit access to the private business for the purpose of monitoring how the government body responsible for the state's shareholding is exercising its rights and responsibilities?
- If the SAI does not have audit access to the business, how can it effectively examine these arrangements?
- Does the SAI have access to the market-focussed skills necessary to check whether the state is doing all it can to protect the taxpayer's interests in relation to the minority shareholdings?
- Has the work of the SAI assisted the state in protecting the taxpayer's interests?

The questionnaire is divided into two parts

Part 1: The Role of the State

Part 2: The Role of the SAI

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Part 1: The Role of the State

General Information

1 Is the state a minority shareholder in any private business established in your country?

Yes (go to Q2)

No (no further responses necessary)

Any additional comments?

state shareholding may be on different levels:

- *Federal State*

- *Länder (regional state)*

- *municipality*

2 What proportion of your country's Gross Domestic Product (GDP) is represented by such businesses?

0 - 5 per cent)*

over 5 per cent

Any additional comments?

)* *only federal state*

3 How are the state's minority shareholdings defined?

percentage of shares owned (all types of share)

percentage of voting rights owned

other (please detail below)

Any additional comments?

no special status shareholdings, i.e. no 'golden share'

4 In approximately how many companies does the state have minority shareholdings (including minority holdings which enjoy special status, e.g. with a 'golden share')?

72 companies minority shareholding))***

Any additional comments?

the Federal State owns shares via the direct shareholdings of 295 other companies, some as well minority shareholdings

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)* federal state only

)**direct shareholdings

5 Are the minority shares held in (tick all that apply):

- stock exchange companies?
- unquoted companies?
- other e.g. partnerships (please detail below)

Any additional comments?

mainly unquoted companies (no exact statistics available)

6 Does the state maintain a register listing the details of all the state holdings in privatised businesses?

- Yes
- No

Any additional comments?

annual report on state shareholdings „Beteiligungsbericht“, issued by Ministry of Finance

Rights as a minority shareholder

7 What are the rights of a general minority shareholder under the laws of your country? (Tick all that apply, but do not include any rights which are specific to the state, as special state rights are addressed in subsequent questions.)

- powers to veto decisions (e.g. a 75% (or 2/3) majority may be needed to pass certain resolutions, so a minority shareholding greater than 25% (or 1/3) can be used to block these resolutions)
- any powers to require that the company should be wound-up (likely to need support from a majority of the shareholders e.g. 2/3)
- any powers to block a share redemption by the majority shareholder (such blockage might need only minority support e.g. 1/10)
- powers to request certain types of shareholder meeting
- other (please detail below)

liquidation of the company

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8 Does the state have the same rights for its minority shareholdings as those detailed in Question 7 above?

- Yes, it has the same rights (go to Q10)
- No, it has fewer rights (please detail below and go to Q10)
- No, it has more rights (please detail below and go to Q9)

Objectives of the minority shareholding(s)

10 Has the state become a minority shareholder as a part of a process of (tick all that apply):

- acquiring private sector businesses or shareholdings in them?
- privatising formerly state owned businesses?
- setting up joint ventures with private businesses?
- other (please detail below)?
due to mergers and acquisitions of its direct shareholding / indirect shareholdings

11 Has the state set any specific objectives with regard to its minority shareholdings e.g. to (tick all that apply):

- protect the taxpayer's investments?
- ensure the business is soundly run on a commercial basis?
- pursue strategic economic goals?
- promote growth in employment?
- increase international investment?
- obtain taxes and dividends from the efficiency of the private sector?
- promote shareholding by the general public?
- raise money for the state through the sale of shares?
- other (please detail below)?
 - *safeguard certain services*
 - *safeguard service/quality levels*

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12 Has the state sold any of its minority shareholdings?

Yes

No

Any additional comments?

if market allows and public involvement is no longer necessary / justified

13 Is the state likely to sell its remaining minority shareholdings?

Yes, all of them

Yes, some of them

No

Don't know

Any additional comments?

annual programme of privatisation published by Ministry of Finance, information for parliament

Responsibility for the minority shareholding(s)

14 Who is responsible for looking after the state's rights as minority shareholder?

government ministry

privatisation agency

other (please detail below)

Ministry of Finance has co-ordinating role, supervision by different gov. departments

15 Does the responsible body (Q14) have representation on the Boards of the private companies?

Yes, on all

Yes, on some

No

Any additional comments?

as far as possible, due to nomination procedures for private companies and election in shareholder assembly

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16 Does this body have access to the expertise it needs to monitor the shareholdings and the achievement of the state's objectives?

Yes

No

Any additional comments?

may even ask / pay for external advice and specialized consultants

17 Has the state introduced any measures in relation to its exposure as a minority shareholder, to reduce the moral hazard it faces (implicit guarantees or additional obligations for the state going beyond its original investment and the concept of limited liability) e.g. distancing the state by use of a holding company?

No

Yes (please detail below)

Any additional comments?

normal commercial law applies - no specific protection or rights for state shareholdings

Competition Issues

18 Are there any indications that minority shareholdings by the state in privatised companies are distorting competition?

Yes (go to Q19)

No (go to Q20)

19 What are the indications (tick all that apply)?

complaints by industry

unexpectedly high or low share prices

newspaper reports

other (please detail below)

Any additional comments?

- complaints about unfair competition

- sometimes better credit conditions with state as major shareholder

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20 Has the state taken any measures to reduce the risk of such distortions of competition?

No

Yes (please detail below)

complaints are followed, privatisations of full share-stock sometimes decided

21 Please give one or two examples of the impact of the state's defence or neglect of its responsibilities as minority shareholder.

defence: state is asked to replace capital in case of losses; to give guarantees; to buy shares of other shareholders in commercially difficult position of a company; to merge state shareholdings.

neglect: state may be obliged by public opinion to act as described above, if he has not actively tried to avoid difficult economic situation of a state shareholding.

Part 2: The Role of the SAI

This part of the questionnaire is in three sections:

Section A: the SAI's audit access to the government body which is responsible for the state's minority shareholding, and to the business in which the shares are held

Section B: the issues addressed by the SAI in examining the government body and/or the business

Section C: the outcome of the SAI's work

Section A - Audit Access

22 Is the shareholder (ministry, agency etc) audited or reviewed by the SAI as regards this shareholder role?

annually (standard reporting process; art. 69 budget code)

occasionally (decision of SAI)

never

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23 Does this audit access extend to an examination of the prices for state sales or acquisitions of minority shareholdings?

Yes (go to Q24)

No (go to Q26)

24 If yes, please give one or two firm examples.

- *Landeswohnungsbau- und Siedlungsgesellschaft Bayern (LWS - state housing and settlement company)*

- *Tank und Rast GmbH (motorway service areas company)*

- *Wohnungsbaugesellschaften Bundeseisenbahnvermögen (housing companies of the Federal Railway Trust)*

25 If yes, when is this review carried out?

prior to the sale

subsequent to the sale

both

26 Does the SAI have audit access to any of the businesses in which the state is a minority shareholder?

Yes (go to Q27)

No (go to Q31)

31 Where the SAI does not have audit access rights to the private business, does the SAI nevertheless attempt to establish how far the state has been able to protect/promote its interests as minority shareholder?

No

Yes (please detail below)

reviewing all files kept in the gov. department about management of the shareholdings

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Section B - Issues Addressed by the SAI

32 What areas does the SAI examine in relation to (a) how effectively the government body has discharged its responsibilities as a minority shareholder and (b) the operations of the business in which the shares are held?

(a) The government body responsible for the state's minority shareholding (tick all that apply)

- action to protect the taxpayer's interests
- achievement of objectives in relation to the shareholding
- reasonableness of the state's investment return, measured by:
 - dividend yield
 - return on capital employed
 - the performance of similar companies?
 - other (please detail below)?
- other (please detail below)
attempts to sell / privatize state shareholdings

(b) The business (tick all that apply)

- compliance with general company law and regulations
- compliance with specific government regulations
- compliance with relevant audit and accounting standards
- achievement of the business plan
- any conflicts of interest vis a vis the state
- other (please detail below)
respecting the specific interest of the state in the activities of the company

Section C - Outcome of the SAI's Work

33 Does the SAI's examination result in a report?

- Yes
- No

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34 To whom does the SAI report?

- Government
- Parliament
- other (please specify)

35 Is the report published?

Yes

- No - specific commercial law confidentiality applies!

36 Please provide one or two examples of the impacts of SAI's audit work, in particular where these have led to measurable improvements in the way in which the state's interest in the company is protected, or ways in which the company is run.

- *business plan / medium + long term planning developed*
- *sale of state shareholdings - privatization*
- *merger with another state shareholding*

37 Please provide one or two examples of audit methodology good practice which you have developed in the process.

Government (Ministry of Finance) has developed with advice / support of SAI inter-governmental procedures for management of state shareholdings, i.e. nomination for Board membership, reporting, review of shareholding, privatization.