

HUNGARY 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.

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- 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)

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

0 - 5 per cent

over 5 per cent

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)

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')?

87 (31.12.1999.)

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

stock exchange companies?

unquoted companies?

other e.g. partnerships (please detail below)

Ltd

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

Yes

No

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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)
- ordering audit on the management of the company in the last two years and the annual report of last year;
 - initiating a legal dispute between a member excluded from or one that earlier left the company and the company or between the members of the company on the Memorandum of Company and the functioning.

Any additional comments?

Other rights and convening the general assembly refers only to the qualified minority (10%)

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)

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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)?

Protection of the interest of other minority shareholders.

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)?

12 Has the state sold any of its minority shareholdings?

- Yes
- No

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

- Yes, all of them
- Yes, some of them
- No
- Don't know

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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)

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

- Yes, on all
- Yes, on some
- No

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

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)

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)

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

- complaints by industry
- unexpectedly high or low share prices
- newspaper reports
- other (please detail below)

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

No

Yes (please detail below)

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

There is no example available since the state has not established a policy for handling minority shareholdings.

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
- occasionally
- 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.

Sale of shares on the stock exchange (MATÁV, MOL) in a way that the prices approach the exchange rate from below within a certain period.

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)

27 If yes, what form does this access take?

full external auditor

access to people and papers at the businesses for the purpose of monitoring the state's discharge of its responsibilities as a shareholder

other (please detail below)

Law assures the right to the audit but the SAO has not exercised its right so far.

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Section C - Outcome of the SAI's Work

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

Yes

No

34 To whom does the SAI report?

Government

Parliament

other (please specify)

35 Is the report published?

Yes

No

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.

Not available since we have not examined yet.

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

The same as above.