Government and privatised enterprises in kenya

Since the 1990s a wave of privatization of state-owned enterprises has taken place throughout the world. Nevertheless, there are still many companies in government hands. What should the proper corporate governance guidelines for these companies be? And for privatized companies already in private hands? The proper cooperate governance guidelines (CGG) for state owned enterprises (SOE) and the privatized companies should not be different from the other enterprises. SOE’s and the privatized once have an advantage because of their connection with the government.

These enterprises should begin with the OECD principles for cooperate governance and build upon them with their specific CGG so as to guard against having unethical added advantage over the other enterprises. The principles of governance are flexible in nature as they have room for adaptation to the context. The flexibility should be considered carefully so as not to be adapted in a way that would infringe the stakeholders’ rights. This paper lists the guidelines for SOE’s and those which have been privatized.

At the beginning there should be legal and regulatory framework that ensures a level playing field in markets where state owned and private sector companies compete to avoid market distortions. The framework should complement OECD principles of cooperate governance. Among the aspects identified by OECD include distinguishing between state ownership function and other state function, applying general laws and regulations SOE’s and offering competitive conditions regarding finances.

The next guideline is on ownership. OECD directs that the state should act as informed and active owner and establish a clear consistent ownership policy ensuring that the governance of SOE’s is carried out in a transparent and accountable manner, with the necessary degree of professionalism and effectiveness. As a state there should be some level of autonomy in the enterprise administration. Many enterprises in Kenya were run down under the authoritarian government, within 24 years all the SOE’s were either closed or performing poorly.

Some of the reasons for the outcome were state interference, lack of transparency and accountability. Moreover there were issues of unprofessionalism as some elements within the state opened rival private enterprises with unfair competition to the state owned enterprises. This brings up guidelines for the privatized state companies. The directors should not be drawn from the state and neither should they be members of the board in the SOE’s as such a situation will bring up conflicts of interest.

The SOE’s or privatized ones are not exempt from equitable treatment of shareholder directs recognition of the stakeholders right according to the OECD principles of cooperate governance. The state should take a responsible position in the ownership but there should be equitable treatment to all enterprises irrespective of their affiliation to the state. OECD’s (2004) directs the state ownership policy to fully recognize the SOE’s responsibilities towards stakeholders including reporting the relations. The responsibility towards stakeholder should take account of their rights.

Most of the stakeholders being the country citizens there may be tendency to assume their existence. There should be a clear policy that outlines the stakeholders expectation form the enterprise. Most SOE’s in Kenya have developed those policies and shared them with the shareholders enlightening them on how should be treated. The reporting part is missing as

SOE’s do not document how they treat their stakeholders such information is not disclosed to the stakeholder hence denying them of their right. There is a difference between developing a policy and reporting on how it is implemented.

SOE’s should have both. SOE’s are not exempt on OECD principles of cooperate governance on transparency and disclosure. There enterprises are run on tax payer’s money transparency and disclosures will allow public audit so as to track how the public funds are invested. The public are stakeholders and they deserve to be informed. Most of the SOE’s that were run down in Kenya ended that way because it was discovered very late on how they were performing. Information was very discrete and what was shared was usually doctored.

The boards of state owned enterprises should have the necessary authority, competencies and objective to carry out the function of strategic guidance and monitoring of management. They should act with integrity and be held accountable for the action. The board should be professional and empowered. There has been situation where the boards are toothless. This saw the government imposed CEO’s where powerful and the boards could not control them. More over some well-connected officers are appointed in several boards of competing SOE’s. This might led to unprofessional practice among the SOE’s.

This guideline corresponds to the 6th principle on the governance guidelinewhich recommends ensure effective monitoring which track the professional conduct of the boards. Empowerment and tracking of the professional conduct would ensure the SOE’s are run ethically by the board.

The state owned enterprises and the one which have been privatized enjoy a good connection with the government. The state has an influence on the success of an enterprise in their location. The added advantage of these enterprises might have undue advantage over other enterprises.

The review of the guideline indicates that these enterprises cannot have specialized guideline but should build on the principle guidelines of governance. The building upon should explore adaptation to the context without compromising the rights of the stakeholders. As the adaptation is considered there should be an audit of the government itself. An authoritarian government might adapt the guidelines to its advantage and infringe the stakeholder’s right. The baseline should be to consider the baseline rights as core than move up the guidelines contextualization