

## Reconnecting Accountability Chains to Reform State-Owned Enterprises (SOEs)

By **Timothy Choy** (*Visiting Researcher, Public Policy Practice*)

### Executive Summary

- State-Owned Enterprises (SOEs) contribute significantly to Malaysia's GDP, employment and market capitalisation.
- However, SOEs continue to experience repeated instances of mismanagement despite the introduction of governance reforms by successive administrations.
- This is largely due to fractured accountability which can be observed through two pathways:
  - (i) Dissociative accountability. This is where accountability is delegated to multiple governance layers, moving further along the chain to the extent that a Minister is, in practice, not fully aware of what he is accountable for.
  - (ii) Disaggregated accountability. This is where crucial operational levers of an SOE are fragmented across multiple parties, making it impossible to clearly assign accountability for outcomes.
- Mere rhetoric and additional guidelines are insufficient to mend deeply fractured accountability. Instead, concrete structural changes are needed. SOE boards should for example be granted sufficient autonomy in exchange for direct accountability, while Ministers retain their steering and oversight authority through a professionally managed ownership entity that enables the government to act as an active and informed owner of the SOEs.
- Five policy instruments aimed at structural changes are recommended, in line with international best practices:
  - (i) Establish a specific category for SOEs as an administrative classification for government agencies
  - (ii) Institute an Ownership Entity model to exercise active and informed SOE ownership
  - (iii) Formalise a Statement of Expectation
  - (iv) Preserve the autonomy of SOE boards
  - (v) Enable public accountability through parliamentary select committee reviews and mandatory disclosure



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## A Familiar Story of SOE Mismanagement

Recent high-profile cases of mismanagement and governance failures by government agencies such as excessive bonuses, unauthorized expenditures, and significant financial losses have raised concerns regarding the integrity and effectiveness of state-owned enterprises (SOEs). Notable incidents include the disbursement of bonuses and overseas travel at Pelaburan Hartanah Bhd despite suboptimal performance<sup>1</sup>; property management losses at Mara Inc amounting to RM286.3 million<sup>2</sup>; and the shocking misallocation of RM3.77 billion in levy collections by HRD Corp<sup>3</sup>.

Despite these failures, SOEs remain integral to the public sector landscape. SOEs are recognized for their growing contribution to GDP, employment and market capitalisation. Unlike other government agencies, SOEs are primarily commercial entities and operate with considerable autonomy outside the traditional public administration structures. Consequently, the scale and proliferation of SOEs are significant so much so that it is unclear how many SOEs pose a fiscal risk to government budgets, and to what extent.<sup>4</sup>

In response to persistent governance issues, the MADANI administration has initiated a series of reforms aimed at strengthening oversight and accountability. Key measures include amendments to the Audit Act 1957, which broaden the Auditor-General's remit and empower the National Audit Department to audit up to 2,000 government-linked companies (GLCs) from 2025 onwards. Additional reforms encompass new administrative guidelines such as the 2024 *Guideline on Management and Governance of Federal Statutory Bodies* issued by the Prime Minister's Department, and targeted directives requiring ministerial approval for executive remuneration and benefits,<sup>5</sup> as well as enhanced vetting of board appointments by relevant regulatory and enforcement agencies<sup>6</sup>.

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<sup>1</sup> <https://www.nst.com.my/news/crime-courts/2024/11/1129834/after-khazanah-and-pnb-now-phb-under-scrutiny-ceos-rm210000-bonus>

<sup>2</sup> <https://theedgemaalaysia.com/node/717898>

<sup>3</sup> <https://themalaysianreserve.com/2024/07/15/calls-for-overhaul-of-hrd-corp-after-a-gs-report-of-suspicious-activity/>

<sup>4</sup> <https://www.bfm.my/content/podcast/corruption-incorporated-the-political-glc-complex-in-malaysia>

<sup>5</sup> <https://www.malaymail.com/news/malaysia/2024/11/07/want-bonus-company-trip-get-ministerial-approval-first-dpm-fadilla-h-tells-glics-glics/156086>

<sup>6</sup> <https://www.nst.com.my/news/nation/2024/10/1123503/appointments-glc-and-glic-boards-go-through-strict-process-anwar>

To be sure, governance reforms of SOEs have been persistent across the different administration. The GLC Transformation Programme introduced in 2004 under then-Prime Minister Abdullah Badawi established a suite of governance standards – colloquially known as “coloured books” – that have since become the de facto standard for the National Audit Department. In 2019, then-Prime Minister Mahathir Mohamed announced the preparation of guidelines on remuneration for directors and key senior management in GLCs, promising that “rewards will be based on performance”. Subsequently in 2021, then-Prime Minister Muhyiddin Yassin launched the *Government Linked Company Strengthening Program* which saw the publication of the *Principles on Good Governance for Government Linked Investment Companies* by the Ministry of Finance.

Despite successive reform efforts, governance failures persist, indicating that existing initiatives may be insufficient or misaligned with the underlying issues. This analysis posits that the overlooked principal cause of ongoing governance deficiencies is the fragmentation of accountability mechanisms.

### **Fractured Accountability Chain: Dissociated and Disaggregated**

Accountability in public administration comprises four core dimensions: (i) who is accountable to whom; (ii) accountability for what – specification of delegated responsibilities; (iii) how is accountability expressed – the method of giving an account; and (iv) consequences for performance or non-performance (Papadopoulos, 2023).

However, for accountability to be effective, it is not enough to clarify these dimensions; two operational conditions must also be met. The account-holder must have both the capacity and willingness to monitor, while the account-giver must possess adequate resources and autonomy to fulfill their assigned responsibilities. Genuine accountability, therefore, requires both the fulfillment of these four dimensions and of the operational conditions. Failure in one will result in the breaking down of the whole, reducing the process of accountability into mere performative rituals.

In representative democracies, the process of accountability begins with citizens delegating authority to elected officials, who are ultimately answerable through elections. Legislatures enact laws, delegating policy implementation to the executive (cabinet), which is in turn subject to parliamentary oversight. The executive further delegates operational responsibilities to the public administration, which is held accountable through performance management systems and administrative regulations. In Malaysia, this vertical chain of accountability is mirrored at the subnational (state) level.

While the principal-agent relationship between citizens and elected officials is direct, the accountability relationship within the public administration is more complex, given that the bureaucracy is a natural extension of the cabinet in the chain of delegation. The doctrine of individual

ministerial responsibility underpins this system, establishing that the bureaucracy is accountable to Ministers, who are themselves accountable to parliament for all actions and omissions within their portfolios (House of Lords, 2012).

Specifically in the context of SOEs, this chain of accountability is easily fractured. SOEs introduce an additional layer of accountability through their board of directors, particularly the chairperson, as stipulated in their founding legislation – whether public or private law.<sup>7</sup> This raises the question: who should parliament – and the public more generally – hold accountable for the failures of an SOE? For statutory bodies, the answer is often specified in their establishing act, indicating that ultimate accountability lies with the Minister. In contrast, SOEs established under private law, such as the Companies Act 2016, place ultimate accountability of the organisation on the chairperson or equivalent. Even if ministerial accountability can be established, the situation becomes more complicated with SOE subsidiaries and their further subsidiaries. This complexity is compounded by the common practice of Ministers overseeing numerous SOEs.

The question naturally arises if there is a limit to the span of SOEs that a Minister can be reasonably accountable for; both in its number and layers. The Minister for Science, Technology and Innovation for example has at least 15 SOE Boards under his purview with the likes of Cradle Fund Sdn Bhd and MIMOS Berhad having their own subsidiaries, and others with subsidiaries of subsidiaries. In such cases, Ministers may find themselves in a state of dissociative accountability. In this situation, accountability is delegated to multiple boards, further and further along the chain so much so that a Minister is in practice not fully aware of what he is accountable for. This is further exacerbated by the lack of information flow through established institutional processes that apply to the core of government, given SOEs' operational autonomy. It is therefore unsurprising that even basic questions such as “how many GLCs are there?”, cannot be answered. From an accountability perspective, the operational requirement for the account-holder to effectively monitor SOEs quickly breaks down.

A second challenge is the frequent fragmentation of responsibility within SOEs, resulting in disaggregated accountability. In such cases, responsibility for outcomes is spread across multiple processes, sub-functions, and parties. The case of Mara Inc is illustrative. The Public Accounts Committee found that investment and debt repayment decisions require endorsement from six different parties, including Mara Inc Board of Directors, MARA Corp – Mara Inc's parent entity –, MARA Investment Committee, MARA Council, the Ministry of Rural and Regional Development, and finally, the Ministry of Finance (MoF), which must approve the proposal (PAC, 2024). This raises the question of who is ultimately accountable when an approved investment fails. While the MoF may be seen as responsible due to its approving authority, the other five parties also play a role. Conversely, if the MoF rejects a proposal that would have benefited the SOE, is it then accountable for the latter's poorer performance, or does responsibility fall onto the Board of Directors?

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<sup>7</sup> The term board of director and chairman is used loosely here to capture the meaning of the highest body and associated position of governance for any organization. This can take other forms like a commission and board of trustee in the place of board of directors, and chief commissioner, director general and the like.

Beyond investment decisions, SOEs are also subject to a range of rules and directives that further fragment their responsibilities. For example, SOEs established as statutory bodies require approval from the Public Service's Department (JPA) to create new or convert existing positions which can hinder organisational agility. In terms of corporate strategy, SOEs may be directed to prioritise specific agendas such as domestic investment or bumiputera development, sometimes at the expense of efficient resource allocation. Collectively, these rules and directives can so constrain an SOE's operational levers that it becomes impossible to clearly assign accountability for outcomes – whether to senior management, the Board, the parent company, or the Minister. This environment allows individuals and entities to deflect blame, even in the face of clear failures. From an accountability perspective, the requirement for the account-giver to have sufficient resources and autonomy to perform as expected is significantly often unmet.

As organisations grow more complex and governments evolve into interdependent, polycentric networks, the two operational conditions for accountability must be reconsidered. More rhetoric and additional guidelines are insufficient, as experience has shown. Instead, concrete structural changes are needed. While it may be unrealistic for account-holders to have perfect knowledge of everything for which they are responsible, they should at least have timely access to material information both before and after decisions are made. Similarly, while perfect autonomy for account-givers is unattainable, a sufficient degree of autonomy should be expected, with adequate resources provided to compensate for any limitations. Ultimately, the principle of individual ministerial responsibility must be upheld: a Minister is accountable for all SOEs under their purview.

## **Recommendation of Policy Instruments**

### *1. Establish a specific category for SOEs as an administrative classification for government agencies*

SOEs are referred to by various terms, including government-linked companies (GLC), public corporations, and government-linked investment companies (GLIC). Additionally, SOEs may take the form of statutory bodies or private companies. Absent of a formal classification, accountability for SOEs often becomes fragmented, as different SOEs may operate under distinct governance structures, each with its own oversight and accountability mechanisms. This lack of standardisation can result in gaps and inconsistencies in the application of accountability frameworks.

As a category of government agency, SOEs are characterised by an expected degree of autonomy from direct ministerial control. This is intended to mitigate risks associated with corruption, exploitation for political finance, patronage or related-party enrichment. However, this poses a unique accountability challenge: while SOEs are expected to operate with significant independence from their respective Ministers, Ministers nonetheless retain ultimate responsibility for the activities and

performance of these enterprises. Furthermore, SOEs frequently assume public service obligations by virtue of state ownership, necessitating the retention of ministerial powers to issue directives, even as SOEs are expected to exercise operational autonomy.

While multiple definitions of SOEs exist, the OECD provides a comprehensive and widely accepted definition. According to the OECD, SOEs are *“any undertaking recognised by national law as an enterprise, and in which the state exercises ownership or control ... This includes joint stock companies, limited liability companies and partnerships limited by shares. Moreover, statutory corporations, with their legal personality established through specific legislation, should be considered as SOEs if their purpose and activities, or large parts of their activities, are of an economic nature.”* The OECD further clarifies that economic activities are those *“that involves offering goods or services in a given market and which could, at least in principle, be carried out by a private operator in order to make profits ... Mandatory user fees imposed by the government should normally not be considered as a sale of goods and services in the marketplace.”* (OECD, 2024)

Once established as a formal category, SOEs can be governed more systematically through a range of administrative or legislative mechanisms, ensuring that the scope and applicability of governance and accountability frameworks are clearly defined.

## *2. Institute an Ownership Entity (OE) model to exercise active and informed SOE ownership*

In its 2024 Guidelines on Corporate Governance of State-Owned Enterprises, the OECD describes an Ownership Entity as one that *“exercises the power, responsibility, or steering ability to appoint board of directors; set and monitor objectives; and/or vote on the company shares on behalf of the government”* (OECD, 2024).

From an accountability perspective, the Ownership Entity model confers two principal benefits. First, it clarifies the locus of ownership and, by extension, accountability for SOE performance or non-performance within government. As it stands today, SOEs may be legally owned by one Ministry while operational responsibility is assigned to another. For example, the Malaysia Digital Economy Corporation (MDEC) is owned by the Ministry of Finance (MoF) through the Minister of Finance (Incorporated) [MOF Inc.] but falls under the responsibility of the Minister of Digital, as stipulated in the Ministers of the Federal Government Order (2023). The OE model would align ownership and responsibility, ensuring that the Minister overseeing the ownership function is also held accountable for SOE's outcomes.

Secondly, the OE model addresses the account-holder's operational requirements for accountability. By centralising ownership and oversight functions, the Minister-in-charge is institutionally empowered to monitor and supervise SOEs at scale. For an OE to be effective, it must possess both

administrative authority, i.e. formal powers to oversee SOEs, and ownership authority, i.e. legal standing for SOE ownership.<sup>8</sup> The Government Investment Companies Division (GIC) within the Ministry of Finance, which oversees all SOEs owned by MOF Inc., exemplifies this model. However, this arrangement is currently limited to the Ministry of Finance, while other Ministries lack comparable mechanisms to exercise effective oversight over SOEs within their respective sectors.

This raises the question of whether each Ministry should establish its own GIC-MOF Inc.-type structure. However, the fundamental rationale for the OE model is the centralization of the ownership function to enhance the government's capacity as an active and informed owner. Having multiple OEs across Ministries would risk fragmenting ownership and undermining the coherence and effectiveness of state ownership policy. Therefore, it is preferable to consolidate SOE ownership within a single OE, such as the GIC-MOF Inc. model. To balance this centralisation, appropriate mechanisms need to be established to enable Ministers with sectoral portfolios to exercise policy direction over SOEs operating within their domains. (See recommendation 3 below).

### *3. Formalise a Statement of Expectation*

A Statement of Expectation (Statement) is a formal instrument employed by the SOE owner to articulate the overarching mandate and specific expectations for the SOE to its board. This Statement should align with the SOE's founding mandate, be regularly updated to reflect current government priorities, and be translated into clear, measurable performance targets. The SOE's performance is subsequently assessed against the Statement.

While establishing a clear line of accountability for SOEs is essential, it is also recognised that the increasing complexity of public administration and the evolution of government into a polycentric network necessitate the participation and input of a diverse array of stakeholders (Choy, 2024). In this context, SOEs play a pivotal role in advancing policy objectives across various ministerial portfolios. For instance, the Minister of Transport should possess mechanisms to provide direction to transport-related SOEs, even if legal ownership remains with the Minister of Finance.

However, this arrangement can obscure the chain of accountability. It is not uncommon for SOEs to receive directives from multiple line Ministries, often without corresponding accountability for the resources required nor outcomes of such interventions. The principal challenge from an accountability perspective is to ensure that the delegation of authority is matched by a commensurate allocation of responsibility.

The formalisation of a Statement of Expectations provides a structured mechanism for clarifying accountability between the SOE owner and the SOE board, while also enabling the integration of legitimate demands from relevant ministerial portfolios during the negotiation of the Statement. In

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<sup>8</sup> Ownership authority implies that the Ownership Entity can legally own an SOE. This means that the OE should have a legal personality to be a shareholder of SOE established by private law. Additionally, the OE should have legal standing to own another statutory body, in the case of SOEs established by public law.

this regard, the Statement is conceived as a consultative process involving distributed account-holders and the SOE board, led by the ultimate account-holder; the SOE owner. Within this framework, both the SOE owner and the board are incentivised to negotiate for additional resources commensurate with the demands placed upon the SOE by related ministerial portfolios. Simultaneously, it ensures that other account-holders assume responsibility for the implications of their policy directives, thereby reinforcing a balanced and transparent accountability structure.

#### *4. Preserve the autonomy of SOE boards*

The Malaysian Code of Corporate Governance asserts that “*every company is headed by a board, which assumes responsibility for the company’s leadership and is collectively responsible for meeting the objectives and goals of the company*” (Securities Commission, 2021). This underscores the board’s dual role as the ultimate decision-making authority and the principal body accountable for corporate outcomes, requiring both autonomy and accountability. For SOEs to align with this standard, particular attention must be paid to the autonomy of their boards, given the distinctive dual character of SOEs as both commercial entities and instruments of government policy. In this context, board autonomy encompasses both decision-making authority and independence from undue political influence.

It is frequently observed that SOE boards operate with constrained autonomy over critical operational levers. In contrast to their private sector counterparts, SOE boards are often subject to external approvals for key decisions related to human resources, financial procedures and corporate strategy. This is especially prevalent among SOEs established as statutory bodies, but also affects those established under private law, where institutional isomorphism leads to the adoption of public sector norms and practices (Bruton et al., 2015).

The consequence is an organisational environment characterised by conflicting imperatives: SOEs are expected to match the performance of private sector firms while simultaneously adhering to public sector bureaucratic procedures – often resulting in suboptimal outcomes. Enhancing board autonomy in this context requires the restoration of decision-making authority over critical operational levers. The status of *Badan Berkanun Diasingkan Saraan Sepenuhnya* (BBDS) is instructive in this regard. As BBDS entities, statutory bodies are exempted from Public Service Department (JPA) regulations, with these powers devolved to the board. This approach should be extended to other operational domains to ensure that SOE boards possess sufficient autonomy to fulfill their assigned responsibilities effectively.

Another critical dimension of board autonomy is independence from undue political influence. A prevalent challenge is the appointment of political figures or Ministry representatives as (de facto) board members, which can compromise the objectivity and effectiveness of board oversight. To safeguard board autonomy, it is recommended that SOE boards comprise a majority of independent directors, including an independent chairperson.

It is important to recognise, however, that independence from political influence does not mean operating in a policy vacuum. SOEs – and by extension, their boards – are state-owned and thus bear a public policy mandate that must remain responsive to evolving government priorities. This policy-steering function is best maintained through the formalisation of a Statement of Expectations, as previously described. Such an instrument enables the responsible Minister to exercise steering authority through the ownership entity, while preserving the operational independence of the board.

#### *5. Enable public accountability through parliamentary select committee reviews and mandatory disclosure*

As established in preceding sections, the principle of individual ministerial responsibility remains a cornerstone of parliamentary accountability frameworks. Ministers are ultimately accountable to the parliament, and by extension, to the public, for the conduct and performance of all SOEs within their portfolio. However, the application of this principle requires adaptation in the context of SOEs.

The operational autonomy afforded to SOE boards, designed to insulate them from undue political interference, necessarily limits the Minister's ex ante knowledge and direct involvement in operational decisions. In practice, Ministers will rely on a professionally managed Ownership Entity, which acts as the government's representative shareholder, and exercises the state's ownership rights. Consequently, it is neither reasonable nor effective to hold Ministers accountable for operational decisions of which they had no prior knowledge or could not reasonably have prevented. For SOEs then, accountability thus extends beyond traditional political responsibility – where Ministers set broad policy directions – to encompass administrative responsibility, wherein the Ownership Entity and SOE boards are held to account for both performance and non-performance.

This evolution in accountability necessitates a recalibration of parliamentary oversight mechanisms. The role of parliament shifts from holding Ministers individually responsible for all SOE actions to directly scrutinise the performance and governance of SOE boards and executive management. This is most effectively operationalised through mandatory reviews conducted by parliamentary select committees. Such committees provide a structured forum for parliament to undertake hearings and investigations into SOE activities, with a focus on both financial and non-financial performance. In this regard, select committees should be vested with the authority to summon SOE board members and senior executives, require the production of relevant documents and records, and issue recommendations aimed at enhancing governance and performance.

While select committees do not possess direct enforcement powers, their effectiveness is underpinned by robust public accountability mechanisms. In this context, transparency is not just beneficial, but essential. The routine publication of key documents including annual reports, audited financial statements and Statements of Expectations should be made mandatory, serving both parliamentary scrutiny and public discourse. Enhanced transparency empowers select committees to perform their

oversight responsibilities more effectively, and enables citizens to hold both SOEs and public officials to account, in exchange for operational autonomy.

## Conclusion

The ongoing challenges in SOE governance and accountability are underscored by repeated instances of mismanagement and a fractured line of accountability. Effective accountability requires not only clear frameworks but also the operational capacity and commitment of both those holding and giving account, which is often undermined by the proliferation of SOEs and overlapping authorities.

The recommended policy instruments may seem intuitive – even obvious – but they require significant structural reforms to be put in place. Fundamentally, the path of accountability must be reconnected. SOE boards should be granted sufficient autonomy in exchange for accountability while ministers retain their steering and oversight authority through a professionally managed ownership entity. Only then can all dimensions of the accountability framework be clarified and operational conditions met. In this context, the SOE board is accountable to the Minister, who in turn is accountable to the parliament and by extension, the public. As an account-holder, an Ownership Entity ensures that a Minister will have the ability to oversee all SOEs under their purview.

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