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Corporate Governance In Russian State-Owned Enterprises: Real Or Surreal?

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(First published online 5 April 2022)

Abstract

The narrative that defines privatisation, corporatisation, and the separation of ownership and regulatory functions as the key prerequisites for a successful state-owned enterprises' (SOE) governance structure represents the literature's leading approach. This approach has been embedded in national laws and policies across many countries. Nonetheless, some legal scholars have scrutinised and questioned this single-minded perspective, emphasising the impact of existing institutional conditions and calling for an alternative understanding of corporate governance dynamics in different SOEs. Notwithstanding a vigorous debate on SOEs, it almost exclusively focuses on China, while Russia, being another large state-driven economy, has been missing. This article fills this gap and offers a comparative and critical perspective on the state ownership system in Russia. The analysis of Russian SOEs reveals classic governance and incentive problems attributable to state ownership. However, the question is how despite close affiliation to the State and high transaction costs caused by state interference, Russian SOEs have gained a substantial international market presence. This article answers this paradox.

State-owned enterprises (SOEs) and how they are governed are widely discussed in contemporary law and economics literature.¹ The narrative that defines privatisation, corporatisation, and the separation of ownership and regulatory functions as the key prerequisites for a successful SOE

*LLM (Cornell), JSD (Cornell). Nazarbayev University, Kazakhstan. I want to express my gratitude to Associate Professor Dan W Puchniak and Associate Professor Umakanth Varottil for their insightful comments on early drafts. I also want to share my appreciation to all participants of the Asian Law Junior Faculty Workshop organised by the Centre for Asian Legal Studies (CALs) and Asian Law Institute (ALI) at the National University of Singapore Faculty of Law for their helpful feedback. In particular, I want to thank my commentators Associate Professor Lan Luh Luh and Professor Wang Jiangyu for their valuable suggestions. Last but not least, I want to thank my anonymous reviewer for insightful comments. This study was possible with financial support from CALs.

¹See eg, Curtis J Milhaupt & Mariana Pargendler, 'Governance challenges of listed state-owned enterprises around the world: national experiences and a framework for reform' (2017) 50 Cornell International Law Journal 473; Ines Willems, 'Disciplines on state-owned enterprises in international economic law: Are we moving in the right direction?' (2016) 19 Journal of International Economic Law 657; David Robinett, 'Held by the visible hand: the challenge of state-owned enterprise corporate governance for emerging markets' (The World Bank Papers No 37711, 2006); Toru Yoshikawa, Hongjin Zhu & Pengji Wang, 'National governance system, corporate ownership, and roles of outside directors: A corporate governance bundle perspective' (2014) 22 Corporate Governance: An International Review 252; Joseph Heath & Wayne Norman, 'Stakeholder theory, corporate governance and public management: what can the history of state-run enterprises teach us in the post-Enron era?' (2004) 53 Journal of Business Ethics 247; Garry D Bruton et al, 'State-owned enterprises around the world as hybrid organizations' (2015) 29 Academy of Management Perspectives 92; Varouj A Aivazian, Ying Ge & Jiaping Qiu, 'Can corporatization improve the performance of state-owned enterprises even without privatization?' (2005) 11 Journal of Corporate Finance 791; Taye Mengistae & Lixin Colin Xu, 'Agency theory and executive compensation: The case of Chinese state-owned enterprises' (2004) 22 Journal of

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governance structure represents the literature's leading approach. This approach has been embedded in national laws and policies across many countries. It is the core principle of the Organisation for Economic Co-operation and Development (OECD) Guidelines that explain the overall objectives of a solid SOE framework and strongly advise countries on how to manage their SOEs effectively.² The dominant concept prescribes the single corporate regime, and almost entirely focuses on corporate SOEs run on a commercial, for-profit basis.³ Nonetheless, some legal scholars have scrutinised and questioned this single-minded perspective, emphasising the impact of existing institutional conditions and calling for an alternative understanding of corporate governance dynamics in different SOEs.⁴ Despite a vigorous debate on SOE governance, it almost exclusively focuses on China,⁵ while Russia, being another large state-driven economy, has been overlooked.⁶

This article fills this gap and contributes to the literature by offering a comparative and critical perspective on the state ownership system in Russia. In 2019, Russia was among the top twenty economies by foreign direct investment outflows.⁷ Russia's SOEs represent one of Moscow's main channels of political and economic influence,⁸ and are among the world's most powerful companies in the extractive sector primarily.⁹ The analysis of Russian SOEs reveals classic governance

Labor Economics 615; Saul Estrin et al, 'Home country institutions and the internationalization of state owned enterprises: A cross-country analysis' (2016) 51 *Journal of World Business* 294.

²OECD, 'OECD Guidelines on Corporate Governance of State-Owned Enterprises' (19 Nov 2015) <<https://www.oecd.org/corporate/guidelines-corporate-governance-soes.htm>> accessed 3 Oct 2020.

³*ibid.*

⁴See Curtis J Milhaupt & Wentong Zheng, 'Beyond ownership: State capitalism and the Chinese firm' (2014) 103 *Georgetown Law Journal* 665; Donald C Clarke, 'Law without order in Chinese corporate governance institutions' (2010) 30 *Northwestern Journal International Law & Business* 131; Jiangyu Wang, 'The political logic of corporate governance in China's state-owned enterprises' (2014) 47 *Cornell International Law Journal* 631; Cheng-Han Tan, Dan W Puchniak & Umakanth Varottil, 'State-Owned Enterprises in Singapore: Historical Insights into a Potential Model for Reform' (2015) 28 *Columbia Journal of Asian Law* 61; Lauren Yu-Hsin Lin & Curtis Milhaupt, 'Party Building or Noisy Signaling? The Contours of Political Conformity in Chinese Corporate Governance' (2021) 50 *Journal of Legal Studies* 187.

⁵See Benjamin L Liebman & Curtis J. Milhaupt (eds), *Regulating the visible hand?: The institutional implications of Chinese state capitalism* (Oxford University Press 2015); Donald C Clarke, 'Law without order in Chinese corporate governance institutions' (2010) 30 *Northwestern Journal International Law & Business* 131; David A Ralston et al, 'Today's state-owned enterprises of China: are they dying dinosaurs or dynamic dynamos?' (2006) 27 *Strategic Management Journal* 825; Weiying Zhang, 'China's SOE reform: A corporate governance perspective' (2006) 3 *Corporate Ownership and Control* 132; Cindy A Schipani & Junhai Liu, 'Corporate governance in China: then and now' (2002) 1 *Columbia Business Law Review* 1; Jinyang J Hua, Paul Miesing & Mingfang Li, 'An empirical taxonomy of SOE governance in transitional China' (2006) 10 *Journal of Management & Governance* 401; Fuxiu Jiang & Kenneth Kim, 'Corporate governance in China: A modern perspective' (2015) 32 *Journal of Corporate Finance* 190.

⁶The 2015 Forbes Global-2000 ranking of companies placed Russia as the fifth country accounted for the world's largest SOEs. See *State-Owned Enterprises as Global Competitors: A Challenge or an Opportunity?* (OECD Publishing 2016) <<https://doi.org/10.1787/9789264262096-en>> accessed 25 Sep 2020.

⁷Foreign Direct Investment E-Handbook of Statistics' (UNCTAD, 7 Dec 2020) <<https://stats.unctad.org/handbook/EconomicTrends/Fdi.html>> accessed 13 Nov 2020.

⁸The relationships between the European Union and Russia – and particularly Russian SOEs – are critically important. The share of the Russian giant *Gazprom* in the European gas market was 36.7% in 2018, which is 2% higher than in the previous year. Vladimir Solsatkin, 'Gazprom grabs record share of Europe gas market despite challenges' (Reuters, 26 Feb 2019) <<https://www.reuters.com/article/us-russia-gazprom-europe/gazprom-grabs-record-share-of-europe-gas-market-despite-challenges-idUSKCN1QF067>> accessed 3 Oct 2020.

⁹This is primarily the case for oil and gas sector. Two out of ten world largest oil and gas companies by market capitalisation are Russian SOEs. See Statista, 'Leading oil and gas companies worldwide based on market capitalization as of April 2021' (Statista, Apr 2021) <<https://www.statista.com/statistics/272709/top-10-oil-and-gas-companies-worldwide-based-on-market-value/>> accessed 22 Jul 2021. Another example is Russia's ALROSA, which operates in the Yakutia region of Siberia, accounts for 25% of the world's diamonds in circulation. See NS Energy Staff Writer, 'Profiling the top five largest diamond mining companies in the world' (NS Energy, 7 Jan 2021) <<https://www.nsenerybusiness.com/news/what-are-the-top-five-diamond-mining-companies-of-the-world/>> accessed 22 Jul 2021. Finally, the Forbes List 2021: Global 2000 includes 24 Russian companies, out of which 10 companies are owned by the State. It is worth mentioning, however, that some companies on the list such as Norilsk Nickel, Novatek, and Surgutneftegaz have no state-owned shares at this point, but used to be

and incentive problems attributable to state ownership. The question is how despite close affiliation to the State and high agency costs caused by state interference, Russian SOEs have gained a substantial international market presence. This article answers this paradox by offering several new insights: first, reasons for the existence of the current state ownership system. Second, the evolution of this system. Third, the rationale behind the system that appears costly but gives rise to the world's largest companies. And fourth, the extent to which the system relevant to other models and particularly China, which is the well-studied example of a politically managed state-driven model.

Since the late 1990s to early 2000s, when Bernard Black and Reinier Kraakman studied Russian institutional reforms, there had been no comprehensive analysis of the dynamics of corporate law and corporate governance in Russian companies and specifically SOEs.¹⁰ Most international experts and academics who studied Russia at the dawn of its reforms previously assumed that the presence of the State in Russia's economy had a temporary effect that would decrease or even disappear as soon as the market opened up and the formal institutional environment improved.¹¹ Today, Russia has been demonstrating the opposite tendency of the 'reverse' transition, establishing formal institutions that reinforce the State's growing influence.

The analysis of the most recent forms of Russian SOEs reveals a distinctive and sometimes controversial legal regime. In contrast to many other state-driven economies, including China, Russia's policymakers seem to pay less attention to corporatisation and the separation of ownership and regulatory functions.¹² The new forms of SOEs are non-commercial and non-corporate entities that are subjected to many statutory restrictions and close oversight from the State. Their governance structure includes supervisory boards, but they are not equivalent to corporate boards since their directors have no real fiduciary duties to the SOE. Directors and top managers are state appointees whose role is to fulfil the goals and targets established by state strategic policies. The State and the Federal Government acting on its behalf are positioned as the ultimate owner, not a shareholder.

The remainder of this article will proceed as follows. It begins with an overview of the contemporary SOE governance literature. The course of legal and corporate governance reforms in Russia are then examined. The article provides the context behind Russia's institutional and economic changes. Next, it analyses different forms of SOEs and scrutinises Russia's state ownership system, its management, and performance. The article grasps the rationale behind the existing system and its relevance to other models, particularly China's. It explores numerous Russian sources that have mostly remained unfamiliar to the international academic community but provided their own scholarly perspective on this topic of global consequence. The article concludes with the call for additional studies.

state-owned and then privatised. Their current leadership acquired control as the result of privatisation and is often referred to as Russia's oligarchs who have close ties with Kremlin. Andrea Murphy et al, 'GLOBAL 2000. How The World's Biggest Public Companies Endured The Pandemic' (Forbes, 13 May 2021) <<https://www.forbes.com/lists/global2000/#70ddb2f5ac0>> accessed 22 Jul 2021.

¹⁰Bernard Black & Reinier Kraakman, 'A self-enforcing model of corporate law' (1996) 109 *Harvard Law Review* 1911; Bernard Black, Reinier H Kraakman & Anna Tarassova, 'Russian Privatization and Corporate Governance: What Went Wrong?' (2000) 52 *Stanford Law Review* 1731.

¹¹See Roman Frydman, Cheryl W Gray & Andrzej Rapaczynski, *Corporate Governance in Central Europe and Russia* (Central European University Press 1996); Bernard Black & Reinier Kraakman, 'A self-enforcing model of corporate law' (1996) 109 *Harvard Law Review* 1911; Bernard Black, 'The corporate governance behavior and market value of Russian firms' (2001) 2 *Emerging Markets Review* 89; William Q Judge, Irina Naoumova & Nadejda Koutzevov, 'Corporate governance and firm performance in Russia: An empirical study' (2003) 38 *Journal of World Business* 385.

¹²See Mary M Shirley, 'Bureaucrats in business: The roles of privatization versus corporatization in state-owned enterprise reform' (1999) 27 *World Development* 115; Varouj A Aivazian, Ying Ge & Jiaping Qiu, 'Can corporatization improve the performance of state-owned enterprises even without privatization?' (2005) 11 *Journal of Corporate Finance* 791; Le-Yin Zhang, 'The roles of corporatization and stock market listing in reforming China's state industry' (2004) 32 *World Development* 2031.

Theoretical Narrative

SOEs are important actors that often shape the institutional landscape and implement regulatory regimes in their home countries and beyond, giving rise to debates on an alternative approach to development.¹³ However, state ownership causes several major challenges, including political considerations, multiple objectives, and the absence of an effective owner.¹⁴ These challenges raise concerns about limited autonomy, politicised decision-making, weak profit incentives, and inefficient performance management.¹⁵

As an institutional response, the mainstream approach recommends a sound legal framework that typically means bringing SOEs under a country's company law. The main idea is to expose SOEs to transparent market competition that demands an explicit separation between ownership and management, ownership, and regulation. This approach gives SOEs a higher degree of operational autonomy and managerial flexibility, while requiring SOEs to go through the process of commercialisation and corporatisation.¹⁶ In particular, the OECD Guidelines prescribe several key measures.¹⁷ First, countries should simplify and standardise SOE legal forms by synchronising them with commonly accepted corporate forms and practices existing for private firms. The second step is the centralisation of the state ownership function under a single agency or entity, which, in turn, should be accountable to the legislative body. Third, the OECD Guidelines call for an independent and professional board that acts in the company's interest and is subject to the same legally enforceable duties as the board in a private company. Finally, SOEs are strongly encouraged to maintain adequate transparency and disclosure to allow investors, customers, and independent auditors to monitor important financial and operational information.¹⁸ The idea behind these recommendations is to introduce a corporate governance regime that disciplines directors and managers and establishes a clear separation of ownership and regulation. It attempts to constrain state interference and promote the principles of higher market value and cost-efficiency.¹⁹

However, corporatisation is not a perfect recipe that automatically leads to better SOE performance. Corporatisation does not necessarily guarantee better performance when soft budget constraints, political interference, and insufficient markets still exist. To make the system work, countries should implement a series of complex institutional reforms accompanied by the mindset

¹³Along with China, the newly industrialised economies of East Asia have been widely cited to refer to the role of a strong developmental state. See Alice H Amsden, *Asia's next giant: South Korea and Late Industrialization* (Oxford University Press 1992); Robert Wade, *Governing the Market: Economic Theory and the Role of Government in East Asian Industrialization* (Princeton University Press 2004); Andrew Walter & Xiaoke Zhang (eds), *East Asian Capitalism: Diversity, Continuity, and Change* (Oxford University Press 2012); Curtis J Milhaupt & Wentong Zheng, 'Reforming China's State-Owned Enterprises: Institutions, Not Ownership', in Benjamin Liebman & Curtis J Milhaupt (eds), *Regulating the Visible Hand?: The Institutional Implications of Chinese State Capitalism* (Oxford University Press 2015).

¹⁴René M Stulz, 'Financial globalization, corporate governance, and Eastern Europe' (National Bureau of Economic Research Working Paper No W11912, Jan 2006) <<https://www.nber.org/papers/w11912>> accessed 27 Oct 2021.

¹⁵Many neoliberal economists consider SOEs to be inherently less efficient in mitigating agency and transaction costs and managing performance. See Andrei Shleifer, Maxim Boycko & Robert W Vishny, 'A theory of privatization' (1996) 106 *Economic Journal* 309; Anne O Krueger, 'Government failures in development' (1990) 4 *Journal of Economic Perspectives* 9; Frederic S Mishkin, 'Is financial globalization beneficial?' (2007) 39 *Journal of Money, Credit and Banking* 259. See also Anthony E Boardman & Aidan R Vining, 'Ownership and performance in competitive environments: A comparison of the performance of private, mixed, and state-owned enterprises' (1989) 32 *The Journal of Law and Economics* 1; William L Megginson & Jeffrey M Netter, 'From state to market: A survey of empirical studies on privatization' (2001) 39 *Journal of Economic Literature* 321; Kathryn L Dewenter & Paul H Malatesta, 'State-owned and privately owned firms: An empirical analysis of profitability, leverage, and labor intensity' (2001) 91 *American Economic Review* 320.

¹⁶*ibid.*

¹⁷See OECD (n 2).

¹⁸*ibid.*

¹⁹The OECD Guidelines of 2005 and 2015 are widely cited as a benchmark for measuring SOE corporate governance performance with the focus on corporate commercial SOEs.

shift among government officials and SOE managers. As a result, the real effect of corporatisation varies from country to country, and from an SOE to an SOE.²⁰

Another legitimate question is whether the single regime should govern various legal forms of SOEs with different goals. Most of the studies tend to apply the lens of the single corporate governance model and focus on its benefits. The single regime is deemed to mitigate SOEs' unfair competitive advantage and increase their value by applying standards and norms similar to private firms.²¹ However, this concept does not pay sufficient attention to whether those standards are relevant to the nature of SOE's agency problems, their actual allocation of powers, and the overall quality of governance institutions in a particular country.²² The empirical studies of SOEs demonstrate no 'one-size-fits-all' approach and no universal governance practice. The choice of an applicable framework depends on the context of an individual country or even an individual SOE. This means that for their successful application, the best governance practices should adapt to and corresponds with an existing socio-economic and legal context. Otherwise, the adverse effect of ignoring the context can disrupt SOEs' performance and bring about a significant risk for the sustainability of state-driven economies.²³

Background and Legal Framework

Corporate governance evolution in Russia

Corporate governance has been broadly discussed throughout the entire history of post-Soviet Union Russia.²⁴ As the Russian markets and legal landscape evolved, companies were facing

²⁰Jeffrey N Gordon, 'Convergence and persistence in corporate law and governance', in Jeffrey Gordon & Georg Ringe (eds), *The Oxford Handbook of Corporate Law and Governance* (Oxford University Press 2018) 28–29: 'For example, imagine a governance regime dominated by blockholders that include 'affiliated' directors placed by the large bank that provided debt finance, and the lead underwrites of the company's public equity. These affiliated directors would have institutional backing for their efforts to check private benefits extraction and the misrepresentation of performance. Adoption of the convergent governance standard in favor of "independent" directors rather than affiliated directors would likely undercut the monitoring capacity of the particular national system. Independent directors would be an efficient substitute only if the domestic court system became robust enough to control private benefits extraction and the domestic securities regulation system became robust enough to protect against fraud. Substitution of the convergent standard without regard for these institutional components could result in companies that are less efficient and compete less well in global markets.'

²¹See OECD (n 2).

²²Referring to China as an example, Donald Clarke argues that the traditional concept of the unity of ownership and control was not the one which have contributed to SOE inefficiency since it has never been an issue per se: 'Ownership was in the hands of an abstract entity, the state, whereas control was (and remains) necessarily in the hands of human beings. Whether those human beings are labeled state officials or enterprise managers, they are not owners, and therefore pose the same principal-agent problems that arise whenever managers are not owners. Thus, the problem with the cure is that it sees the separation of ownership and control as a benefit to be actively pursued, not as a cost – a necessary cost, to be sure, inherent in any large undertaking – to be minimized.' See Donald Clarke, 'Blowback: How China's Efforts to Bring Private-Sector Standards into the Public Sector Backfired', in Benjamin Liebman & Curtis J Milhaupt (eds), *Regulating the Visible Hand? The Institutional Implications of Chinese State Capitalism* (Oxford University Press 2015) 29.

²³Almost 25% of the top 100 multinational corporations from such countries as China, India, and Russia were state owned in 2006, predominantly in the primary sectors (oil, gas, and mining) and resource-based manufacturing (metals, steel). See Alexandre Arrobio et al, *Corporate governance of state-owned enterprises: a toolkit (English)* (World Bank Group 2014) <<http://documents.worldbank.org/curated/en/228331468169750340/Corporate-governance-of-state-owned-enterprises-a-toolkit>> accessed 17 Sep 2020.

²⁴For an overview of corporate governance reforms in Russia, see Alexander Settles, James Gillies & Olga Melitonyan, 'Corporate Governance in Russia: Does a Culture really Change?', in Christine A Mallin (ed), *Handbook on International Corporate Governance* (2nd edn, Edward Elgar Publishing 2011); Daniel McCarthy & Sheila Puffer, 'Corporate Governance in Russia: Towards a European, US, Or Russian Model?' (2002) 20 *European Management Journal* 630; Sheila M Puffer & Daniel J McCarthy, 'The Emergence of Corporate Governance in Russia' (2003) 38 *Journal of World Business* 284; Trevor Buck, 'Modern Russian Corporate Governance: Convergent Forces or Product of Russia's History?' (2003) 38 *Journal of World Business* 299; Bernard S Black, Inessa Love & Andrei Rachinsky, 'Corporate Governance Indices and Firms' Market Values: Time Series Evidence from Russia' (2006) 7 *Emerging Markets Review* 361; Michael Rochlitz, 'Corporate Raiding and the Role of the State in Russia' (2014) 30 *Post-Soviet Affairs* 89; Ruth C May, Gregory

different issues. Along with economic modernisation, the corporate governance framework and company law were developing relatively quickly and often fragmentarily. The role of corporate governance transformed due to macroeconomic factors, institutional changes, and legal reforms – all of which have contributed to the Russian corporate governance model. The overview of existing literature roughly distinguishes several stages of the evolution of ownership and corporate governance in modern Russia. Each stage demonstrated particular characteristics and trends triggered by institutional, political, and economic shifts that took place over those years.²⁵

The first stage is typically associated with the initial privatisation program and structural reforms introduced in the early 1990s. The main body of studies around that period focuses on the privatisation of state property and its outcomes.²⁶ They emphasise the lack of institutional conditions for the new privatisation policy to become successful.²⁷ In the early 1990s, there were no legitimate, effective, and transparent corporate governance practices and laws.²⁸ As a result, the ownership of privatised companies became locked in the hands of insiders with the real power exercised by management.²⁹ Employees could not fully appreciate the benefit of being shareholders because of the absence of liquid securities markets and adequate property rights protection.³⁰ When managers obtained the status of dominant or single shareholders, ownership, and management merged. The shareholding concentration produced strong managerial power, non-transparent decision-making processes, self-dealing, and the weak legal protection of a very few remaining minority shareholders.³¹ The mid-1990s finalised the concentration of shares in large blocks held by the single

R Rayter & Donna E Ledgerwood, 'Institutional Erosion and its Effects on Russia's Corporate Leadership' (2016) 23 *Journal of Leadership & Organizational Studies* 191.

²⁵See sources in Russian: Svetlana Orekhova & Larisa Kudin, 'Rossiiskaya model korporativnogo upravleniya: evolyutsiya, specifica, problemy effektivnosti [The Russian model of corporate governance: evolution, specifics, efficiency problems]' (2019) 425 *Vestnik Chelyabinskogo gosudarstvennogo universiteta [The Chelyabinsk State University Newsletter]* 140; Alexander Abramov et al, 'Sovremennye podkhody k izmereniyu gosudarstvennogo sektora: metodologiya i empirika [Modern approaches to the state sector's assessment: methodology and empirics]' (2018) 3 *Economicheskaya politika [Economic Policy]* 28; Juliya Dulyak, 'Evolutsiya instituta soveta direktorov v rossiiskikh kompaniyakh: ot formalnoi roli k realnoi [The evolution of the board of directors in Russian companies: from a nominal role to a real role]' (2012) 21 *Journal Korporativniye Finansy [Journal of corporate finance]* 24.

²⁶See eg, Maxim Boycko et al, 'Privatizing Russia' (1993) 2 *Brookings Papers on Economic Activity* 139; Michael McFaul, 'State power, institutional change, and the politics of privatization in Russia' (1995) 47 *World Politics* 210.

²⁷The generally known concept called 'the Washington Consensus' requires transition economies, including Russia, to adhere to a strong orientation toward a market-based economy. It focuses on minimising the government involvement since a country's economic growth can be ensured only by free and open markets. Those markets considered to be achieved through full privatisation and opening-up the domestic economy for trade and investments. In this regard, transitional countries have been strongly encouraged to adopt institutions that call for deregulation and significant privatisation. Further, the International Monetary Fund, the World Bank, and other international organisations have evaluated corporate governance in transition economies from the perspective of their formal compliance with the best standards with little attention to whether these arrangements would effectively operate and carry out their anticipated functions in terms of transition. See Lázló Árvai & András Schlett, 'The Long March: The Lessons of China's Economic Transition' (2013) 11 *Asia Europe Journal* 39, 43–44, 50. See also Erik Berglöf & Ernst-Ludwig von Thadden, 'The changing corporate governance paradigm: implications for transition and developing countries', in Boris Pleskovic & Joseph E Stiglitz (eds), *Annual World Bank Conference on Development Economics 1999* (The World Bank 1999) 135–162.

²⁸Katharina Pistor, 'Company law and corporate governance in Russia', in Jeffrey D Sachs & Katharina Pistor (eds), *The Rule of Law and Economic Reform in Russia* (Routledge 2019) 165; Cheryl W Gray & Kathryn Hendley, *Developing Commercial Law in Transition Economies: Examples in The Rule Of Law And Economic Reform In Russia* (Routledge 2019) 139.

²⁹Sergei Guriev & Andrei Rachinsky, 'The role of oligarchs in Russian capitalism' (2005) 19 *Journal of Economic Perspectives* 131.

³⁰Maxim Boycko, Andrei Shleifer & Robert Vishny, *Privatizing Russia* (MIT Press 1997); Hilary Appel, 'Voucher privatisation in Russia: structural consequences and mass response in the second period of reform' (1997) 49 *Europe-Asia Studies* 1433.

³¹See also Bernard S Black, 'Shareholder Robbery, Russian Style' (Institutional Shareholder Services' ISSue Alert, Oct 1998) 3 <<https://ssrn.com/abstract=510123>> accessed 27 Oct 2021.

shareholder or a group of shareholders, who primarily relied on internal capital resources. That stage can be marked with the launch of the new Civil Code of 1994, followed by the new laws on joint-stock companies of 1995 and limited liability companies of 1998.³² Those laws represented the first attempt to design a legal basis for corporate governance in Russia.³³

The second stage commenced in the early 2000s, when an average controlling shareholder share reached 40 to 50 per cent, with two-thirds of joint-stock companies having a controlling shareholder.³⁴ Predictably, corporate governance focused on the interests of controlling shareholders. The rise of controlling shareholders deepened their tension with the interest of minority shareholders. Those conflicts called for new legal norms and institutional standards to mitigate a chance for corporate abuse.³⁵

New legal requirements were not the only incentives for companies to enhance their corporate governance practices. During that stage, companies reached the maximum of their internal financial capacities.³⁶ At the same time, Russian capital markets continued to emerge and offered limited opportunities for companies to raise additional funding. In those circumstances, the priorities shifted towards the exploration of new financial sources. Corporate governance became a significant factor that assisted companies with access to capital markets. The adherence to best practices and international standards, including independent directors and professional boards, fair treatment of minority shareholders, and effective conflict resolution mechanisms, helped companies improve their reputation and build trust with investors and creditors.³⁷ The potential access to new funding strengthened the Russian corporate sector's incentives to mitigate information asymmetry and moral hazard problems. In 2002, Russia approved the Code of Corporate Behaviour.³⁸ Several non-government organisations, including the Association for Investor Rights Protection, Corporate Governance Supervisor Council, Independent Directors Association, and the Russian Institute of Directors, emerged during that period. In 2001–2002, the capitalisation of the Russian securities market started to grow and reached US\$127 billion by 2003.³⁹ The number of IPOs of Russian companies and the amount of attracted capital demonstrated a constant increase.⁴⁰

Another trend of the early 2000s was the Federal Government's attempts to consolidate unitary enterprises and blocks of shares under the management of state holding companies. The Federal Government launched reforms to optimise state assets, increase state control in companies with mixed ownership, and deepen connections between the political establishment and business leaders

³²These laws are available at the Russian legal database Garant: Garant, 'Dokumenty [Documents]' <<http://www.garant.ru/doc/>> accessed 27 Oct 2021.

³³See Katharina Pistor & Chenggang Xu, 'Beyond law enforcement: Governing financial markets in China and Russia', in János Kornai, Bo Rothstein & Susan Rose-Ackerman (eds), *Creating Social Trust in Post-Socialist Transition* (Palgrave Macmillan 2004) 167, 176: 'The corporate law was based on a draft written by leading American scholars in comparative corporate governance and draws heavily, though not exclusively, on US models (Black and Kraakman 1996). The two laws followed somewhat different strategies. The corporate law sought to strengthen shareholder rights but avoided allocating strong lawmaking and law enforcement powers to courts. This was based on the assessment that Russian courts were slow, incompetent, and even corrupt (ibid).'

³⁴Dulyak (n 25).

³⁵Sheila M Puffer & Daniel J McCarthy, 'The Emergence of Corporate Governance in Russia' (2003) 38 *Journal of World Business* 284.

³⁶Dulyak (n 25). See also Orekhova & Kudin (n 25).

³⁷However, it is worth to mention that the effect of better corporate governance standards was higher in larger public companies than in small and medium-sized enterprises which were less concerned about access to international capital markets.

³⁸Kodeks Korporativnogo Povedeniya (Code of Corporate Behaviour) was approved by the Federal Commission on Securities Regulation and recommended for all joint stock companies. The full text is available at: Federal Commission on Securities Regulation of Russia, 'Kodeks Korporativnogo Povedeniya [Code of Corporate Behaviour]' (5 Apr 2002) <http://www.cbr.ru/sbrfr/archive/fsfr/fkcb_ffms/catalog.asp?ob_no=1772.html> accessed 13 Feb 2020.

³⁹Dulyak (n 25).

⁴⁰'Leto vkusnykh razmeshenii [The summer of pleasant issuances]' (Expert Online, 1 Jan 2006) <http://expert.ru/dstroke/2006/05/razmeshenie_akciy/> accessed 13 Feb 2020. See also Orekhova & Kudin (n 25).

loyal to the political regime.⁴¹ Those processes were accompanied by the Federal Government's acquisitions of several large private companies.⁴² The general tendency of expanding the state share in the economy became more evident and steadier after the financial crisis of 2008. The growing state share also contributed to further ownership concentration.⁴³

The third stage began with the crisis of 2008 that caused the collapse of the domestic securities markets and severely affected large public companies.⁴⁴ Adherence to better corporate governance was no longer enough to attract investments, and the focus shifted to higher efficiency and organisational effectiveness in terms of existing resource capacities. Although the number of companies striving to comply with the best corporate governance practices was increasing over the years, the overall quality of corporate governance remained relatively low.⁴⁵ In 2016, the Federal Government adopted a roadmap for eliminating legal loopholes and improving the corporate governance system, including minority shareholders protection.⁴⁶ Russia approved laws on the illegal use of insider information and market manipulations, amended laws on joint-stock companies and securities markets, and reinforced administrative liability for financial violations and misconduct.⁴⁷

The expansion of the Russian state sector

By the end of the 1990s, the State's presence in the economy was widely spread across various sectors in the form of unitary enterprises and newly created joint-stock companies.⁴⁸ In the 2000s, the Federal Government made an effort to increase the management efficiency of its dispersed assets by consolidating them in state holding groups.⁴⁹ As a result, several state corporations emerged in 2007 to 2008, including Rosnanotech, Rostekhnologii, and Rosatom. Simultaneously, the Federal Government defined a few 'trusted' private group companies to maintain the oversight under a specific industry.⁵⁰ The period of 2004 to 2006 marked the return of strategically important companies under state control.⁵¹

⁴¹Alexander Radygin, 'Gosudarstvennyi kapitalizm i finansovyi crisis: factory vzaimodeistviya, izderzhki i prespektivy [State capitalism and the financial crisis: interplay, costs, and perspectives]' (2008) 6 *Economicheskaya politika [Economic Policy]* 88.

⁴²One of them was the case Yukos, the richest private oil company in Russia. See Steven Lee Myers and Andrew E. Kramer, 'From what was once Yukos, Russia builds state-owned oil giant' (NY Times, 27 Mar 2007) <<https://www.nytimes.com/2007/03/27/business/worldbusiness/27iht-yukos.1.5042890.html>> accessed 3 Oct 2020.

⁴³OECD, *OECD Digital Economy Outlook 2017* (OECD Publishing 2017) <<https://doi.org/10.1787/9789264276284-en>> accessed 12 Nov 2020.

⁴⁴Barry W Ickes & Clifford G Gaddy, 'Russia after the Global Financial Crisis' (The Brookings Institution, 10 May 2010) <<https://www.brookings.edu/articles/russia-after-the-global-financial-crisis/>> accessed 3 Oct 2020.

⁴⁵According to PwC, 16% of 127 companies complied with the Code in 2016. Compared to 2015, that percentage doubled, which indicates an understanding of the importance of corporate governance for a solid performance system. In addition, 47% of enterprises partially implemented the Code's principles. See Orekhova & Kudin (n 25).

⁴⁶This state roadmap is available at: Government of Russia, 'On Corporate Governance Enhancement' <<http://government.ru/roadmaps/481/events/>> accessed 27 Oct 2021 (in Russian).

⁴⁷Dulyak (n 25).

⁴⁸By 2002, the Federal Government owned 94,000 state unitary enterprises and held shares in 44,000 state joint-stock companies. Yuri Simachev & Kuzyk I, 'K voprosu ob ideologii i problemakh "novoi privatizatsii" [The question about ideology and the problems of the "new privatisation"]' (2010) 107 *Imushestvennie otnosheniya v RF [Property relations in the Russian Federation]* 10.

⁴⁹Integration took place in such industries as nuclear energy, railways, air and sea transport, defence, and postal services. It went in parallel with the process of restructuring natural monopolies and a growing participation of the largest state banks in the capital of companies through lending and purchase of shares. See Radygin (n 41).

⁵⁰See Radygin (n 41). The Yukos company case followed by its bankruptcy and reallocation of its assets is usually referred to as the most vivid example of the state policy that aimed to redistribute property in favour of state or pro-state economic actors.

⁵¹See Radygin (n 41). Among them are *Sibneft*, *AvtoVAZ*, and *Yuganskneftegaz*, and the purchase of their assets which frequently referred to as nationalisation essentially.

A steady trend towards the state's dominance in the leading sectors of the Russian economy continued in 2007 to 2008, with the reduction in the number of unitary enterprises, the integration of state assets into holding companies, and scaling up those companies and their business interests through acquisitions.⁵² In 2010, the total share of SOEs in the RTS index was about 54.5 per cent, including about 89.5 per cent in the financial sector, 66.5 per cent in the oil and gas sector, and 61 per cent in the power supply sector.⁵³ As a result of the financial recession of 2008 and the following anti-crisis measures,⁵⁴ the state's share in GDP grew from 41.2 per cent in 2008 to 51.8 per cent in 2009.⁵⁵ By 2012, Russia owned shares in more than 2.5 thousand joint-stock companies.⁵⁶ The consolidation of state ownership raised several concerns among experts and academics. The expansion of state and quasi-state structures was associated with typical negative effects triggered by state ownership, including low profitability, market distortions, limited competition, and non-transparency.⁵⁷ The statistics showed that out of 2.5 thousand companies owned by the State, only 60 companies were profitable in 2011, while 22 per cent of joint-stock companies demonstrated losses.⁵⁸

The sanctions of the US and the EU expedited the State's expansion.⁵⁹ Recently, Western countries have vetoed mergers and acquisitions involving Russian companies.⁶⁰ Several joint venture projects with Russian banks and investors have been terminated.⁶¹ Even Russian companies that do not appear on the sanctions list suffer from political tension. Large European and US

⁵²Throughout the entire period, acquisitions by SOEs dominated their sales expanding the state's share in the major sectors. The biggest number of acquisitions by SOEs took place in the oil and gas sector. It accounted for 56% of the total value of mergers and acquisitions by SOEs. Three sectors – oil and gas, finance, and electric power – accounted for US\$110.6 billion, or 80% of all M&A transactions. See Alexander Lyakin, 'Uchastiye gosudarstvennykh korporatsii v protsessakh slyani i poglosheni [The participation of state corporations in mergers and acquisitions]' (2010) 5 *Vestnik Sant-Peterburgskogo universiteta* [The Saint Petersburg University Newsletter] 43.

⁵³*ibid.*

⁵⁴The state sector's growth was pushed by three major trends: (1) government loans to pay out foreign obligations of Russian companies and banks and direct intervention in the stock market, and (3) opening deposits in state banks with the subsequent transfer of these funds to inject them into share capital: Radygin (n 41).

⁵⁵Abramov (n 25).

⁵⁶The Russian Federation was the sole shareholder in more than 50% of such organizations. The State held less than 2% of shares in 25% of the companies, a block share in 9% and a controlling share in 4% of those companies respectively. See Elena Litvina, 'Goskompanii i ikh mesto v sovremennoi ekonomike Rossii [State companies and their role in the Russian economy]' (2013) 8 *Vestnik universiteta* [The University Bulletin] 23.

⁵⁷It is worth mentioning that, in many instances, SOEs may serve broader public needs. They might fulfil objectives other than profit, including macroeconomic sustainability, industrial development, and employment. SOEs often deliver subsidised services and capital, maintain guaranteed markets, and support domestic suppliers. These policy objectives are achieved at the expense of SOEs' profitability. In Russia's case, SOEs can be for-profit and non-profit. Therefore, the profitability argument relates to JSCs expected to generate profit. In this regard, Russia's Accounts Chamber argues that still a 'significant number' of for-profit JSCs with the state share are financially 'unstable' or operate at a loss. The state auditors came to this conclusion based on the analysis of 123 companies, out of which only 66 received a net profit at the end of 2018. Yana Milukova, 'Bolee 500 kompanii s gosudarstvennym uchatiyem poslednye tri goda ne delilis priblyuly s byudjetom [More than 500 companies with the state share have not contributed to the state budget for the last three years]' (Forbes Russia, 27 Aug 2020) <<https://www.forbes.ru/newsroom/finansy-i-investicii/407843-bolshe-500-kompaniy-s-gosuchastiem-poslednie-tri-goda-ne>> accessed 20 Jul 2021.

⁵⁸Despite their significant economic share, the total net profit received by joint-stock company with the state share in 2011 was equal to 1,554 billion rubles, which was only 18% of the total net profit of business organisations operating in Russia. See Litvina (n 56).

⁵⁹Larisa Lugacheva & Maria Musatova, 'Sanctsii i rossiiskii rynek slyanii i pogloshenii [Sanctions and Russia's M&A market]' (2014) 12 *EKO* 99.

⁶⁰The UK blocked the deal of the Russian billionaire Mikhail Fridman on the acquisition of gas fields in the North Sea with the total worth of 5 billion Euros. See Christopher Adams, 'Mikhail Fridman in legal threat over North Sea block' (Financial Times, 2 Mar 2015) <<https://www.ft.com/content/b66feb28-c015-11e4-a71e-00144feab7de>> accessed 17 Sep 2020.

⁶¹Lugacheva & Musatova (n 59).

corporations have received a warning to supply equipment and technologies to their Russian counterparts.⁶² The opportunity to attract long-term funds for projects in Russia has diminished, depriving Russian companies of access to technologies and capital from the West.⁶³ Sanctions against Russian companies facilitated the reliance on state funding and the creation of new SOEs.⁶⁴ In 2015, the Russian Government had to put extra funds to support domestic enterprises affected by the sanctions.⁶⁵ According to the Minister of Finance of the Russian Federation, if the economic situation worsens, the Russian Government plans to allocate more than 60 per cent of the National Welfare Fund to support the economy.⁶⁶

The Federal Antimonopoly Service of the Russian Federation revealed that the combined contribution of SOEs to Russia's GDP in 2015 was about 70 per cent, while that share did not exceed 35 per cent in 2005.⁶⁷ In 2018, that share reached 60 per cent.⁶⁸ Limited domestic data on the state share in the economy generates mixed numbers. Although those numbers can vary, the tendency towards the state share's growth is evident and calls for a comprehensive analysis. The following paragraphs discuss the organisational forms of Russian SOEs.

Organisational forms of Russia's SOEs

Initially, organisational forms of Russia's SOE were limited to socialist unitary enterprises.⁶⁹ Those traditional SOEs operated as means of production managed by the Soviet authorities directly.⁷⁰ They were part of the state planning system and had to deliver specific production targets defined by the State.⁷¹ The revenues, if any, were transferred to the State's budget.⁷²

⁶²The sanctions affected Shell's plans to develop the Bazhenov formation in the Khanty-Mansi Autonomous Area. Schlumberger, one of the largest oilfield services companies in the world, moved out its specialists from Russia in connection with the sanctions. The US Exxon Mobil stopped nine projects under a strategic cooperation agreement with Rosneft. See 'Shell vidit vliyanie sancsui na deyatelnost kompanii v Rossii [Shell acknowledges the impact of sanctions on the company's business in Russia]' (Finmarket, 30 Sep 2014) <<http://www.finmarket.ru/news/3825923>> accessed 17 Sep 2020; Ludmila Klementiyeva, 'Exxon Mobil svernula 9 iz 10 sovместnykh proektov s Rosneftiyu [ExxonMobil has wrapped up 9 out of 10 projects with Rosneft]' (Vedomosti, 30 Sep 2014) <<https://www.vedomosti.ru/business/articles/2014/09/30/exxonmobil-svernul-9-iz-10-sovmestnyh-proektov-s-rosneftiyu>> accessed 17 Sep 2020.

⁶³Lugacheva & Musatova (n 59).

⁶⁴ibid. In 2014, Russia established a large oil service operator, Rosgeology, to expedite import substitution and ensure energy security and mitigate the independence of the national economy in the field of exploration. The new corporation aims to ensure sustainable long-term extraction of Russia's oil, mineral and other raw materials. As part of capitalisation, the Government transferred its shares in 15 exploration enterprises under Rosgeology's management.

⁶⁵ibid.

⁶⁶ibid.

⁶⁷Abramov et al (n 55).

⁶⁸Elena Razumovskaya et al, 'Srvnitelnaya otsenka concurentnosposobnosti kompanii chastnogo i gosudarstvennogo sectorov rossiiskoi ekonomiki na osnove operatsionnoi effektivnosti [Comparative analysis of the competitiveness of private and state companies based on their operational effectiveness]' (2018) 19 Russian Journal of Entrepreneurship 1847.

⁶⁹During the Soviet period, state property was assigned to state enterprises based on the principle of operational management. It included the rights of enterprises to possess, utilise and dispose state property in accordance with the law, planning targets, and the property purpose. The State, represented by an authorised state body, retained the right of appropriation, planning and regulation. See Eugeni Orlov, 'Unitarnye predpriyatiya: istoriya, osnovy deyatelnosti, perspektivy [Unitary enterprises: history, fundamentals, and perspectives]' (2014) 5 Izvestiya Tulskego gosudarstvennogo universiteta. Ekonomicheskie i yuridicheskie nauki [The Bulletin of Tully State University. Economic and Legal Sciences] 74, 75.

⁷⁰ibid.

⁷¹ibid.

⁷²At the time of the *Perestroika* (new economic course), the Soviet authorities introduced some reforms that aimed to increase the economic autonomy of state enterprises without the change of their legal status. 'In some sense it was an attempt to create some sort of market relations without a real market. Enterprises should gain some autonomy without becoming autonomous actors. Legislators hesitated, for example, to transform state enterprises into public companies which could have remained under State control. Instead, the right of operative management was redesigned and complemented by a right of full economic jurisdiction as established by the Law "On property in the USSR" of 1990.' See Eugenia

State unitary enterprises continue to exist in Russia today as a relic of the Soviet management approach.⁷³

Asset management and public policy functions were outside the scope of unitary enterprises designed for pure production purposes. As a response to the State's economic expansion, the legislator introduced new types of SOEs: public law companies, state corporations, and state companies.⁷⁴ All three forms share several main commonalities. First, they have a single owner – the Russian Federation and the Federal Government acting on its behalf. Every such SOE is established by a special federal law defining its goals, governance, property rights, and disclosure obligations. Second, they are non-corporate (unitary) and non-commercial legal entities with no equity capital divided by shares and no focus on profit as their primary goal. Third, these SOEs have a number of functions: from public services and public administration to asset management and industrial development. They still can conduct entrepreneurial activities and operate on the market, but only if such activities contribute to and comply with the goals defined by the federal law. These activities are subject to several restrictions and protection measures. In particular, the state owner has the statutory right to approve major transactions and protect SOE property from any creditor claims while avoiding responsibility for the obligations of its SOEs. Bankruptcy laws and procedures do not apply to these forms of SOEs. Fourth, federal laws establish minimum standards for disclosure and transparency. Finally, these SOEs have an identical governance structure that includes a supervisory board as the supreme governing body and a general director (executive board).

The only organisational form of SOEs in Russia, which has a corporate commercial nature, is a joint-stock company (JSC) regulated by the Federal Law of 1995.⁷⁵ Its governance structure, the distribution of rights and powers, capitalisation, and decision-making processes resemble JSCs elsewhere. The State remains the most influential shareholder in terms of its share's size and impact capacities.⁷⁶ The State's influence causes typical corporate governance distortions, including the complexity of goals, the tension between the roles of a shareholder and a regulator, more profound 'principal-agent' problems, and weak management incentives. The state can hold a controlling, blocking, or minority share. Figure 1 shows the percentage of SOEs based on the state share's size.⁷⁷

The shareholder role can be fulfilled by the Federal Property Management Agency (*Rosimushchestvo*), Federal ministries (ie, the Ministry of Defence or Ministry of Finance), the Central Bank of Russia, state corporations or companies, or municipal authorities. In

Kurzynsky-Singer, 'From Soviet State Enterprises to Russian Unitary Enterprises' (2019) *S Deutch-Russische Kurzeszeitschrift (DRRZ)* 17, 19.

⁷³According to Russia's statistics agency (Rosstat), the number of unitary enterprises has reduced by more than a half since 2016 and was equal to 1,792 as of 1 July 2021. See 'Calendar of the publication of the official statistical information by indicators of the effectiveness of state property management for 2021' (Rosstat) <[https://rosstat.gov.ru/storage/mediabank/Calendar-publ2021\(1\).htm](https://rosstat.gov.ru/storage/mediabank/Calendar-publ2021(1).htm)> accessed 11 Nov 2021 (in Russian). The number continues decreasing. Unitary enterprises operating on competitive markets and created before 1 Aug 2020 are subject to liquidation or reorganisation by 1 Jan 2025: Federal Law of 27 Dec 2019, art 3.

⁷⁴These entities are non-profit organisations regulated by the Federal Law 1996 'On Nonprofit Organizations', which establishes general norms, while specific federal laws define the status, rights, obligations, and governance of individual forms: 'The Federal Law 1996 "On Nonprofit Organizations"' (ConsultantPlus) <http://www.consultant.ru/document/cons_doc_LAW_8824/> accessed 13 Feb 2020 (in Russian).

⁷⁵The Federal Law 1995 "On Joint-Stock Companies" (ConsultantPlus) <http://www.consultant.ru/document/cons_doc_LAW_8743/> accessed 13 Feb 2020 (in Russian).

⁷⁶The State held shares in 2,681 companies, including 2,033 JSCs and 639 LLCs as of 1 July 2021. See Calendar (n 73).

⁷⁷Typically, a controlling, blocking and minority share means up to 50%, from 25% to 50%, and below 25% respectively. As of 1 January 2021, the federal shareholding map looks as follows: the Federal Government holds a controlling share in 42% of JSCs and a blocking share in 8% of them. A half of JSCs has the State as a minority shareholder (less than 25% of shares including the 'golden share'). See Calendar (n 73).

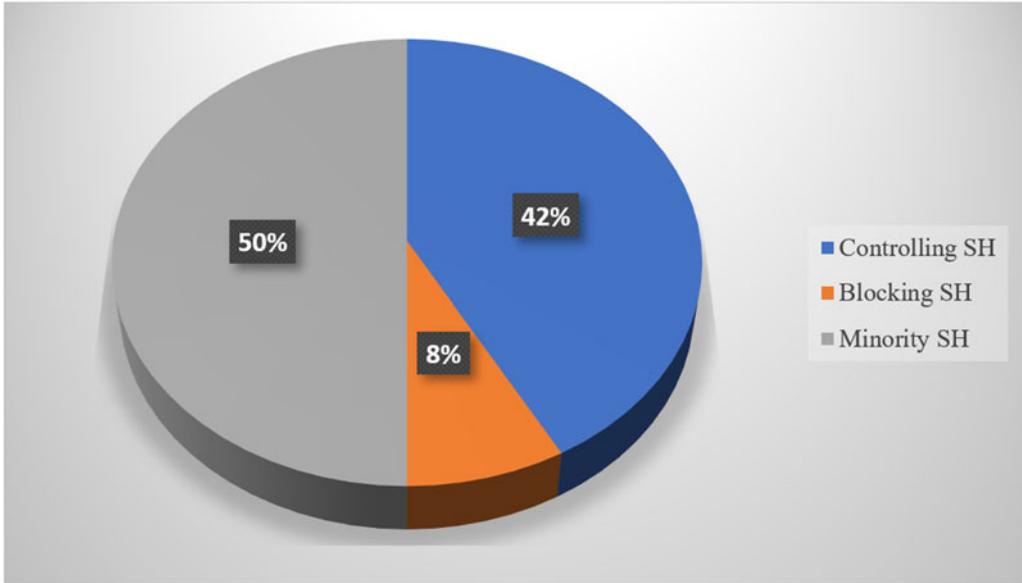


Figure 1. The Percentage of SOEs*

*These numbers are based on Rosstat's data and represent federal ownership.

strategically-important SOEs, the Government of the Russian Federation or the Chairman of the Government of the Russian Federation performs this role.⁷⁸

Due to the growing budget deficit, the Federal Government has been reducing the number of SOEs across different sectors.⁷⁹ However, their substantial reduction over the past five years does not reflect the state's shrinking stake in the national economy, but rather indicates reorganisation processes within the state sector itself, including the growing number of companies with mixed ownership.⁸⁰ When the State becomes a minority shareholder, it utilises several governance tools to protect its interest. In particular, critical shareholder decisions often require a qualified majority of votes, including minority shareholders. The Federal Government can nominate its representative officers and representative members to the board and internal audit commission respectively. The opportunity of cumulative voting increases the chances for these representatives to be elected. The minority share allows the State to call for shareholders meetings, propose an item to its agenda, and

⁷⁸These companies are included in the special list of JSCs approved by the Federal government Decree #91-p in 2003. They are among the largest strategic companies controlled by the Government of the Russian Federation in coordination with the Administration of the President of the Russian Federation. See 'Federal Government Decree #91-p' (Elektronnii Fond Pravovykh i Normativno-Tekhnicheskikh Dokumentov [Electronic bank of legal, normative and technical documents]) <<https://docs.cntd.ru/document/901839169>> accessed 11 Nov 2021.

⁷⁹Since 2016 (Rosstat did not keep track of the number of SOEs until 2016), the number of SOEs dropped from 65,218 to 55,204 as of 1 July 2021. The most significant reduction occurred in agriculture, manufacturing, construction, trade and repair, transport and extractive industries – sectors with higher market competition. In contrast, the number of SOEs producing and distributing gas, electricity and water as well as providing financial services has not change significantly. Despite the decrease, the biggest number of SOEs (with an organisational form of non-commercial institutions) predictably remains in socially important sectors such as military and civil service (15,730), education (10,649), healthcare and social services (12,453), science and R&D (4,592). See Calendar (n 73).

⁸⁰V Rossii stalo men'she goskompanii [The number of state companies in Russia has decreased]' (RBC, 12 Aug 2019) <<https://www.rbc.ru/economics/12/08/2019/5d4c347c9a7947a615e02b77>> accessed 28 Jul 2021.

access financial and other corporate documents. Finally, the privatisation legislation includes several norms protecting the State's share from future dilution.⁸¹

When giving up control, the Federal Government can introduce a 'golden share'.⁸² Its justification is to ensure that the company continues complying with Russia's security interests and protects Russian citizens' morals, health, rights, and other legitimate interests.⁸³ The statistics show that the Federal Government holds 'golden shares' in approximately 9 per cent of the total number of its JSCs.⁸⁴ The State can introduce this share from the moment when its shareholding drops below the blocking threshold (25 per cent plus one share).⁸⁵ Ultimately, the State also has the authority to decide on the termination of this right.⁸⁶

Discussion

The separation of ownership and regulation

From the traditional perspective, Russian SOEs appear to be an example of the classic problem of an 'absent owner'.⁸⁷ There is no single law regulating SOEs, no single set of requirements applicable to them, and no single organisation managing state ownership. State officials, being agents themselves, do not have sufficient economic incentives and autonomy to prioritise SOEs' financial performance. Only a fraction of Russia's largest SOEs has gone through corporatisation.⁸⁸ The rest of SOEs, including the new organisational forms, are not corporations.⁸⁹ The State employs its administrative power and bureaucratic apparatus to govern them directly and prioritise their policy goals and functions.

The explicit non-commercial nature of the new organisational forms tackles the problem of multiple objectives.⁹⁰ Although federal laws do not mention a single objective but rather outline the list

⁸¹Article 40 of the Federal Law 'On the privatisation of state and municipal property' preserves the state's blocking share in the authorized capital in case of any additional issuance of shares: no less than 25% or 50% plus 1 share in strategic SOEs. See 'Federal Law 2001 "On the privatization of state and municipal property"' (ConsultantPlus) <http://www.consultant.ru/document/cons_doc_LAW_35155/> accessed 28 Jul 2021 (in Russian).

⁸²'Golden share' is a special veto right as well as the right to submit proposals to the agenda of the shareholders' meeting, demand the extraordinary meeting, and/or nominate board members. The Federal Government can introduce it when privatising a unitary enterprise or removing a JSC from the list of strategic companies regardless of the state share's size.

⁸³See 'Federal Government Decree #738' (Ofitsialniy Internet-Portal Pravovoy Informatsii [Official Internet Portal for Legal Information], 3 Dec 2004) <<http://pravo.gov.ru/proxy/ips/?docbody=&nd=102089819>> accessed 23 Jul 2021.

⁸⁴See Calendar (n 73).

⁸⁵This applies to any company considered strategically important for the national interests of the Russian Federation, its national security and sustainable development. Alexander Pyatin, 'Pravitelstvo predlozilo rasshirit primeneniye mekhanizma "zolotoi aktsii"' [The Government has proposed to expand the application of the "golden share" mechanism] (Forbes, 13 Jul 2021) <<https://www.forbes.ru/newsroom/finansy-i-investicii/434653-pravitelstvo-predlozilo-rasshirit-primeneniye-mekhanizma-zolotoy>> accessed 28 Jul 2021.

⁸⁶Federal Law 'On the privatisation of state and municipal property' (n 81), art 38.

⁸⁷The phenomenon, when the government officials themselves are agent of the state, and the citizens are far too distant to play any real and meaningful role in governance and decision-making. See Marcel Kahan & Edward B Rock, 'When the government is the controlling shareholder' (2010) 89 Texas Law Review 1293.

⁸⁸Corporations represent a relatively small percentage in the total number of state organisations in Russia (4.8% as of 1 January 2021). Although their percentage is not substantial, they remain important for the economy. Out of the 100 largest companies represented in the Expert RA rating in 2017, 26 companies had at least 25 percent owned by the State. Those corporations employed 5.5% of all employed in the Russian economy in 2017. The share of their revenue in the total revenue of the top 100 largest companies amounted to 50% in the same year. See Federal Government Analytical Centre, 'Gossektor v rossiyskoy Ekonomike [The Public Sector in the Russian Economy]' (Byulleten o razvitii konkurentsii [Bulletin on Competition Development], Mar 2019) <<https://ac.gov.ru/archive/files/publication/a/21642.pdf>> accessed 12 Jul 2021 (in Russian).

⁸⁹Here and in the rest of this article, the reference to the new forms of SOEs mostly means 8 state corporations as the most numerous and influential group among the three forms. There is only one or two state companies and public law companies in Russia.

⁹⁰In this case, the conflict between commercial and policy considerations. See OECD (n 2).

of objectives, they all fall into the state policy agenda, leaving no room for confusion that revenue is not the primary goal. Profit-seeking is allowed, but only if it does not conflict or disrupt strategic policy goals and other development mandates from the State.⁹¹ To align SOEs toward their strategic agenda, the State has designed a governance structure that controls the nomination, selection, appointment, and rotation of SOE directors and executives and reserves the decision-making power on material issues. The governance structure creates no conflict between the black letter law and the State's actual governance approach.⁹² From the perspective of other market actors, it creates no illusion that SOEs act to pursue commercial and market objectives. This approach distinguishes Russia's SOEs from large SOEs in other countries, particularly China, where corporatisation and the formal separation of the commercial and regulatory functions, ownership and control, have been the continuous focus of SOE reforms.⁹³

Blurred distinction among SOE organisational forms

The reference to the term 'company' or 'corporation' in the organisational forms of a public law company, state corporation, or state company might inaccurately indicate that these legal entities are corporate entities. In other words, it may wrongfully signal that they have gone through a corporatisation process that establishes corporate structures and governance practices typical to a corporate form. A standard corporate entity demonstrates the following key features: first, it has a separate legal personality; second, its shareholders have limited liability; third, its equity capital is divided by transferable shares (stakes); and fourth, its governance structure reflects the idea of delegated management.⁹⁴ The fundamental goal behind corporatisation is to create an arms-length relationship between a corporate entity, existing independently, and its shareholders.⁹⁵

However, neither of the new forms of SOEs demonstrate the full scope of corporate attributes; Russia's civil law does not define them as corporations. Therefore, the reference to a 'company' or 'corporation' in this case is misleading and causes challenges for adequate comparative studies.⁹⁶ The law provides the State with an opportunity to safeguard the SOEs' most important assets from creditors exempting these assets from Russia's bankruptcy law. Although the SOEs' assets are separated from the assets of their founder – the State (as opposed to unitary enterprises, in which the state keeps the property title), the law grants the Federal Government the right to exempt a pool of assets and/or type of assets from creditor claims. Additionally, the Federal Government has the authority to identify the scope of transactions that requires its approval or instruct the board to transfer assets back to the ownership of the Russian Federation if such assets are free from

⁹¹See the Federal Law 1996 (n 74).

⁹²China, in contrast, 'has promulgated-and enforced to a large degree-so many national laws, regulations and rules to institutionalize corporate governance, many of which set legal procedures and restrictions to limit external interference of enterprise management and governance.' But at the same time, it is evident that the state 'directly controls not only the personnel but also sometimes the operation of SOEs, bypassing the legal governance structure consisting of the board of directors and management' which the state has introduced. See Wang (n 4).

⁹³See eg, Curtis J Milhaupt & Wentong Zheng, 'Reforming China's State-Owned Enterprises: Institutions, Not Ownership', in Benjamin L Liebman & Curtis J Milhaupt (eds), *Regulating the Visible Hand?: The Institutional Implications of Chinese State Capitalism* (Oxford University Press 2015) 175–201; Lei Zheng, Benjamin L Liebman & Curtis J Milhaupt, 'SOEs and State Governance: How State-owned Enterprises Influence China's Legal System', in Benjamin L Liebman & Curtis J Milhaupt (eds), *Regulating the Visible Hand? The Institutional Implications of Chinese State Capitalism* (Oxford University Press 2015) 203.

⁹⁴For the traditional understanding of a corporate entity, see Robert W Hamilton, 'Corporate Entity' (1970) 49 *Texas Law Review* 979; Gregory A Mark, 'The personification of the business corporation in American law' (1987) 54 *The University of Chicago Law Review* 1441. See also Ronald H Coase, *The Nature of the Firm: Origins, Evolution, and Development* (Oxford University Press 1993).

⁹⁵See OECD (n 2).

⁹⁶Eugeni Sukhanov, 'O grazhdanskoi pravosub'ektnosti gosudarstvennykh yuridicheskikh lits [On the legal capacity of state entities]' (2018) 1 *Journal rossiiskogo prava [Journal of Russian law]* 5, 9.

obligations.⁹⁷ The transfer can potentially occur after the SOE has entered a deal and might significantly affect the SOE's financial sustainability.

The State enjoys a wide range of opportunities to challenge the SOEs' transactions if they do not comply with the State's fiscal and policy interests.⁹⁸ The State does not limit SOEs' right to conduct commercial activities if those activities comply with the SOE's goals. Notwithstanding the status of non-profit organisations, public law companies, state corporations, and state companies can do business in their respective industries.⁹⁹ They can raise capital on the market, including the issuance of corporate bonds.¹⁰⁰ However, despite an enormous decision-making authority and interventionalist power, the law releases the State from being financially responsible for its SOEs reinforcing the principles of asset partitioning and limited liability at the expense of creditors.¹⁰¹ The legal prioritisation of the State's interests over creditors' interests creates unequal conditions for state and private market actors. It disrupts constructive market signals, equal access to information, effective capital allocation, and other principles of a free market economy. Therefore, legal norms institutionalising this prioritisation are not compatible with fundamental market standards as well as Russia's constitutional principle of the equal protection of property rights.¹⁰²

Substantively, it is challenging to distinguish among the three forms since they share similar status, objectives, functions, and governance structures. Even if the Federal Government is assumed to perform the role of a single shareholder, it is inherently wrong. In any corporate structure, a single shareholder may decide to split control or raise additional equity investments through private or public offerings of shares. As a result, new shareholders acquire the same rights to participate in the management and receive dividends on the one hand, and bear the same risk of losses equal to their stake on the other. However, this scenario is impossible for public law companies, state corporations, and state companies. The only way these SOEs can raise equity capital is to appeal to their founder.

From the dual role perspective, the new forms of SOEs can not only do business in their industries but also regulate them.¹⁰³ This peculiarity creates the potential for market and regulatory distortions as well as the abuse of powers by those SOEs while initiating investment projects, launching new regulations, granting licenses, or providing access to financial resources. The lack of legislative and conceptual distinctions among SOE forms ultimately leads to difficulties with evaluating their performance and finding efficient governance solutions. Although the governance system of the new forms of SOEs may bear some resemblance to traditional corporate governance, it is not corporate governance per se.

⁹⁷The Federal Law 2007 on Rosatom' (ConsultantPlus) <<http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=LAW&n=342014&fld=134&dst=100000001,0&rnd=0.5329462319539795#006227587701037751>> accessed 13 Feb 2020 (in Russian).

⁹⁸*ibid.* See also "The Federal Law 2016 "On Public Law Companies" (ConsultantPlus) <<http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=LAW&n=342008&fld=134&dst=100000001,0&rnd=0.9540123316612579#037247300660958205>> accessed 13 Feb 2020 (in Russian).

⁹⁹*ibid.*

¹⁰⁰The state development corporation VEB.RF is an issuer of corporate bonds placed domestically. The corporation also arranged several Eurobond emissions in the past. Please see the official website for more details: 'Investor Relations' (VEB.RF) <<https://xn--90ab5f.xn--p1ai/en/investors/#debt-instruments>> accessed 3 Oct 2020.

¹⁰¹The doctrines of limited liability and asset partitioning represent the essence of the modern concept of a corporate entity. However, their application in the three organisational forms of Russian SOEs (ie, state corporations, state companies, and public law companies) can be selective depending on the State's need to protect its interest. In addition, the three organisational forms benefit from soft budget constraints frequently associated with the SOE management. See Alexander Radygin et al, "The state-owned companies: "state failure" or "market failure"?" (2015) 1 Russian Journal of Economics 55, 75.

¹⁰²The Russian Constitution guarantees the recognition and equal protection of the private, state, municipal and other forms of ownership: The Constitution of the Russian Federation, art 8, cl 2.

¹⁰³Regulatory functions have been granted by Russian federal law. See "The Federal Law 2007 on Rosatom' (n 97). See also "The Federal Law on the Russian Highways State Company' (ConsultantPlus) <http://www.consultant.ru/document/cons_doc_LAW_89458/> accessed 13 Feb 2020 (in Russian).

SOE performance management

One of the challenges typically associated with SOE performance is the presence of both commercial and non-commercial objectives.¹⁰⁴ The non-commercial goals have financial costs but do not generate revenue, making it difficult for an SOE to meet its financial targets. Mixed objectives cause information asymmetries that can impede effective monitoring and allow managers to justify poor performance.¹⁰⁵ A sound performance management system addresses these asymmetries and incentive tensions by distinguishing financial and non-financial objectives and clearly articulating non-financial objectives.¹⁰⁶

In 2015, President Vladimir Putin emphasised the need to review the existing management system for SOEs in his Annual Address to the Federal Assembly.¹⁰⁷ The President instructed the Federal Government to introduce new metrics of key performance indicators to reinforce a direct link between the remuneration of senior management and the achieved financial results.¹⁰⁸ Followed by the President's message, the Federal Government attempted to systematise and enhance its approach to SOE performance. Rosimushchestvo has approved a series of mandatory guidelines for increasing investment and operational efficiency, optimising cost reduction, and developing key performance indicators (KPIs) by SOEs.¹⁰⁹ In particular, the guidelines on KPIs segment SOEs depended on their organisational form (JSC, LLC, unitary enterprise, or state corporation), financial performance, and sector. The guidelines empower every SOE to determine an optimal combination of prescribed financial and industry-specific (non-financial) indicators.¹¹⁰ Also, notwithstanding the state share's size, all JSCs are subject to the State program of the federal property management approved by the Federal Government in 2014.¹¹¹ The program targets the reduction of the State's engagement in the ownership and governance of SOEs.¹¹²

¹⁰⁴Mariana Pargendler, 'State Ownership and Corporate Governance' (2012) 80 *Fordham Law Review* 2917.

¹⁰⁵See Marcia Millon Cornett et al, 'The impact of state ownership on performance differences in privately-owned versus state-owned banks: An international comparison' (2010) 19 *Journal of Financial Intermediation* 74; Juliet Roper & Michele Schoenberger-Orgad, 'State-owned enterprises: Issues of accountability and legitimacy' (2011) 25 *Management Communication Quarterly* 693. See also Andrei Shleifer, 'State versus private ownership' (1998) 12 *Journal of Economic Perspectives* 133; Dewenter & Malatesta (n 15).

¹⁰⁶OECD (n 2).

¹⁰⁷Roman Gubarev et al, 'Premirovaniye top-managerov rossiiskikh gosudarstvennykh kompanii "po rezultatam" [Bonus payments of top managers in Russian state companies "based on results"]' (2017) 3 *Upravlencheskiye nauki [Management science]* 68.

¹⁰⁸Vladimir Putin, 'Poslaniye Prezidenta Federalnomu sobraniyu RF na 2015 [The 2015 address of the President of the Russian Federation to the Federal assembly]' (Kremlin, 3 Dec 2015) <<http://kremlin.ru/events/president/news/50864>> accessed 5 Mar 2020.

¹⁰⁹Most of the guidelines apply to SOEs, in which the state interest exceeds 50%. See the 2015 report of Rosimushchestvo available at: Federal Agency of State Property Management, 'Plans and Performance Indicators' <<https://www.rosim.ru/about/reports/performance>> accessed 12 Jul 2021 (in Russian).

¹¹⁰*ibid.* Several financial indicators are mandatory including TSR (total shareholder return) for publicly trading SOEs, the amount of dividends for non-public SOEs, ROIC (return on invested capital) and ROE (return on equity) for all SOEs. Industry-specific KPIs address the activities of each SOE and the Government's policy in its sector. State corporations have the right to establish alternative KPIs based on their development strategies and regulation.

¹¹¹See 'The Federal Government Decree #327' (Ofitsialniy Internet-Portal Pravovoy Informatsii [Official Internet Portal for Legal Information], 15 Apr 2014) <<http://pravo.gov.ru/proxy/ips/?docbody=&prevDoc=102425047&backlink=1&&nd=102349624>> accessed 12 Feb 2020.

¹¹²*ibid.* Among the key indicators to measure progress are the percentage of an annual decrease in the number of joint-stock companies with the state share (from 5% to 20% each year), the percentage of an annual decrease in the number of federal state unitary enterprises (from 9% to 22% each year), and the share of civil servants in the management and supervisory boards (no more than 50%). The program aims to optimise the companies in line with the tasks and strategic interests of the Russian Federation, ensure their competitiveness, improve corporate governance, and create a single system of accounting and management for the federal property.

SOEs remain the key instrument of the strategic development and planning system designed by the Federal Law of 2014: ‘On Strategic Planning in the Russian Federation’.¹¹³ This Federal Law requires SOEs to subordinate their plans and investments to the state strategies, including the national security strategy, the socio-economic development strategy, the spatial development strategy, and regional strategies. The Ministry of Economic Development and Rosimushchestvo are responsible for aligning SOEs’ strategies and performance.¹¹⁴ Since the early 2000s, these two state agencies have offered several packages of recommendations and guidelines.¹¹⁵ However, the lack of consistency and coherence among strategic goals at the federal level and potentially different expectations and agendas supported by government agencies cause a serious coordination problem.¹¹⁶

The non-profit focus of the new forms of SOEs created another challenge: the tension between SOEs’ objectives and their portfolio companies’ interests, which affects the design and delivery of performance indicators. While the new forms have broader development policy targets, their portfolio includes commercial corporations that derive most of their revenues from the market. The presence of conflicting objectives in the group leads to different performance expectations, which in turn creates challenges for adequate performance management. The result is a very complex management system with multiple indicators that can deteriorate performance and innovation. Recent studies show that Russian companies have achieved little progress in offering innovative products to the domestic and international markets.¹¹⁷ The share of Russian enterprises on the global market for high-tech products was only 0.3 per cent.¹¹⁸ The most powerful extractive sector does not demonstrate high performance management efficiency. The largest public SOEs Gazprom and Rosneft occupy leading positions on the Russian and international energy markets.¹¹⁹ However, studies of the two companies from 2013 to 2015 found no direct or strong correlation between management remuneration and the companies’ financial and production performance.¹²⁰ When a high level of remuneration is guaranteed regardless of the company’s financial results, there is no real incentive for the top management to improve economic outcomes. Although both companies adopted key performance indicators for senior management, the studies found no real effect.¹²¹ Another study of SOEs in Russia demonstrates that although 91 per cent of SOEs link top management remuneration to the company’s financial results, this correlation is mostly relevant to short-term results (77 per cent).¹²²

¹¹³See ‘Federal Law 2014 “On Strategic Planning in the Russian Federation”’ (ConsultantPlus) <http://www.consultant.ru/document/cons_doc_LAW_164841/> accessed 13 Feb 2020 (in Russian).

¹¹⁴ibid.

¹¹⁵ibid.

¹¹⁶Juliya Simonova & Olga Smirnova, ‘Strategii razvitiya goskorporatsii – lokomotivy planovogo rosta razvitiya regionov i obespecheniya ekonomicheskoi bezopasnosti Rossii [Development strategies of state corporations: the locomotives for the regions’ planned growth and Russia’s economic security]’ (2015) 6 *Modernizatsiya. Innovatsii. Razvitiye*. [Modernisation. Innovation. Development.] 77.

¹¹⁷ibid.

¹¹⁸ibid. The share of these products in the domestic market was 7%.

¹¹⁹In 2015, the share of Gazprom in the global and domestic market production was equal to 11% and 66% respectively. In the same year, the share of Rosneft was 5.4% and 38% of the world and Russian oil production respectively. See Roman Gubarev et al, ‘Vzaimosvyaz opłaty truda i effektivnosti deyatelnosti rukovodstva gosudarstvennykh kompanii [The connection between the remuneration and efficiency of top management in state companies]’ (2017) 77 *ENSR* 102.

¹²⁰ibid. Gubarev et al reviewed six largest oil and gas companies which are the major players at the Russian market, including Gazprom and Rosneft. The study drew on the analysis of the companies’ annual reports for 2015. Although the study had some limitations (ie, small sample size), it offers an insightful illustration of the existing correlation between remuneration and performance.

¹²¹Gubarev et al (n 107).

¹²²The study of corporate governance practices in Russia’s SOEs are available at: RID, ‘The Russian Institute of Directors (RID)’ <<http://rid.ru/issledovaniya>> accessed 1 May 2020 (in Russian).

One explanation of the weak correlation between remuneration and performance is the practice of state formal directives discussed in the following section.¹²³ This practice mitigates the board's ability to exercise business judgement and substantially limits its incentives to improve SOEs' financial performance. The study conducted by the Russian Institute of Directors indicated that state directives often appear to be generic and do not consider the specific characteristics of each SOE. Also, there might be a lack of consistency among directives issued by different state agencies.¹²⁴ All these factors undermine SOE's financial performance and raise the question of the role of the SOE board in decision-making.

SOE supervisory board¹²⁵

Professional boards of directors are the major elements of a sound corporate governance structure.¹²⁶ Board members usually acquire extensive commercial, financial, and strategic knowledge and skills to exercise their business judgment effectively. The design of robust and transparent practices for well-functioning boards ensures that board members possess the necessary competencies and independence to fulfil their duties.¹²⁷ In this regard, governments intentionally limit their interference in corporate matters to increase autonomy and secure the unbiased business judgment of SOE boards, creating a system of checks and balances that deals with agency conflicts. It is also assumed that the interests of an SOE and its state shareholder are inherently different, especially in corporate commercial SOEs.¹²⁸ In Russia's non-corporate non-commercial SOEs, their governance bodies implement one fundamental purpose: the strategy of an ultimate owner and decision-maker – the State. There is no traditional conflict of objectives since the only interest that matters is the State's interest. In this scenario, the role of the board becomes much less strategic and more instrumental.

The general criticism of the weak board typically emphasises the State's potential to intervene in its activities.¹²⁹ An empowered board can offset the State's opportunistic behaviour and limit its interference.¹³⁰ However, in Russia's non-corporate non-commercial SOEs, the board adopts and implements the strategy that has been pre-defined by the State and endorses executives selected by the State.¹³¹ Government policies and decisions frame the board's powers. The board's role transforms into a watchdog, which administers the State's assets, supervises the strategy's implementation, and supports the general director. This role drives the incentives, determines the qualification requirements of the board members, and shapes performance expectations.

The existing practice of voting based on formal directives issued by the state reinforces this trend. Formal directives are the central element of the state management system. They are administrative acts addressed to state representative officers and expressing the state shareholder's will at the general meeting of shareholders or board meetings. The procedure for issuing formal directives is subject to administrative laws.

¹²³ibid. The assessment of impact on the financial and economic activities of SOEs is not quite clear. The study argues that 33.3% of respondents (SOE directors and top managers) mention the directives mitigate decision-making and financial efficiency, while 32% claims that directives contribute to the development of SOEs. The remaining 34.7% of respondents reply that the nature of impact depends on a particular situation.

¹²⁴ibid.

¹²⁵Supervisory boards fulfil functions similar to corporate boards of directors with three notable differences: (1) they represent the state-owner, not the organisation, (2) they are less professional and have less autonomy in terms of decision-making, and (3) they have less power over executives who are typically appointed by the State.

¹²⁶RID (n 122).

¹²⁷ibid.

¹²⁸OECD (n 2).

¹²⁹ibid.

¹³⁰ibid.

¹³¹In strategic SOEs wholly owned by the Russian Federation, the Federal Government or the President of the Russian Federation appoints the general director (ie, CEO).

The extent to which the directives influence SOE governance and decision-making depends on two factors: the size of the state share and the status of an SOE (publicly traded or nonpublic, strategic or non-strategic). In particular, the Federal Government selects and appoints the entire board in state corporations and JSCs solely owned by the State. In JSCs, in which the State shareholder (typically Rosimushchestvo) holds more than 25 per cent, it can select and nominate its representative officers to the board.¹³² These representative officers can be government officials, civil servants, or professional directors. In the latter case, they receive remuneration and act based on an agreement.¹³³ This agreement describes the representative officer's rights, duties, and liability. The scope of the duties includes: first, timely informing their principal on issues requiring state directives; second, voting strictly per directives; third, calling for a board meeting when it is necessary, and lastly, participating in board meetings and proposing items to their agenda.¹³⁴ These duties largely focus on compliance rather than an independent business judgement. Representative officers essentially are not corporate directors. Instead, they play the role of state administrators obliged to follow formal directives defining their decisions and responsibilities.¹³⁵

The non-fulfilment of the duties leads to the unilateral replacement of a representative officer by the authorised state agency.¹³⁶ Also, representative officers can be held personally liable for their failure to comply with their duties.¹³⁷ It is worth mentioning that personal liability applies to all directors and officers of the companies in which the State holds a controlling share and their subsidiaries. It also applies to the officers of companies in which the State has a 'golden share'.

Ironically, the Russian Institute of Directors' survey demonstrated that the majority of SOE directors are in favour of maintaining formal directives. In particular, 79.1 per cent of SOE directors assessed this practice as acceptable, and 74.8 per cent of respondents even believed that the abolition of this practice would cause management risks.¹³⁸ Among the main positive aspects of formal directives, SOE directors highlighted the possibility of safeguarding federal property, fulfilling the state

¹³²A special state commission carries out the selection process of representative officers. Among the key criteria: experience in strategic planning, audit, HR, corporate governance, innovation, finance or investments, no disciplinary sanctions, board member experience, and leadership positions' experience. See 'V Rosimushchestve prokhodyat zasedaniya Komissii po otboru kandidatov v organy upravleniya i revizionniye komissii JSC Spetsperechnya na 2020 korporativny god [Rosimushchestvo is holding the meeting of the Commission on the selection of candidates in management boards and audit commissions of JSCs from the special list for 2020]' (Federal Agency of State Property Management, 7 Nov 2019) <<https://www.rosim.ru/press/news/362551>> accessed 23 Jul 2021.

¹³³Article 17 of the Federal Law 2004 'On the State Civil Service of the Russian Federation' bans civil servants from a number of commercial and managerial activities. See 'The Federal Law on the State Civil Service of the Russian Federation' (ConsultantPlus) <http://www.consultant.ru/document/cons_doc_LAW_48601/> accessed 13 Feb 2020 (in Russian).

¹³⁴See the Federal Government Decree (n 83).

¹³⁵Andrey Vinnitskii, 'Problemy uchastiya gosudarstva v aktsionernykh obshchestvakh i upravleniya imi: pravovoi aspekt [The problems of the state's participation and management in joint stock companies: the legal aspect]' (2009) 3 Voprosy gosudarstvennogo i municipalnogo upravleniya [The issues of state and municipal management] 126.

¹³⁶The same provisions apply to representative officers in companies in which the State has a 'golden share': The Federal Government Decree (n 83).

¹³⁷In March 2021, Russia amended its Criminal Code to extend criminal liability to not only corporate officers and representative officers of companies with the state controlling share, but also officers of their subsidiaries and companies with the state's 'golden share'. These categories of officers become equal to government officials which means that they can be held liable for such criminal offences as the abuse of official powers, misappropriation of budget funds, receiving and giving a bribe, forgery, and negligence. Dmitri Goncharuk, 'Glavy "dochek" otvetyat za korruptsiyu kak dolzhnostnyye litsa [Top management of "subsidiaries" will be liable for corruption as state officials]' (Parlamentnaya gazeta [Parliamentary Gazette], 7 Mar 2021) <<https://www.pnp.ru/social/glavy-dochek-goskompaniy-otvetyat-za-korrupciyu-kak-dolzhnostnye-lica.html>> accessed 23 Jul 2021.

¹³⁸Only 9.3% of respondents defined the practice as negative, while 51.9% of respondents claimed that they were not ready for the complete removal of the practice in the near future, and 21.7% of respondents were not ready for the complete removal of directives at any time. Only 26.4% of respondents expressed their readiness for the change. See RID (n 122).

shareholder's will, and protecting directors from liability in the absence of liability insurance and profound regulation.¹³⁹

The extent to which the existing practice of formal directives influences SOEs' financial and economic activities is not clear.¹⁴⁰ However, it is quite apparent that formal directives can potentially deprive SOE directors of the opportunity to play a traditional and meaningful role in governance.¹⁴¹ Despite several reforms related to corporate boards in Russia,¹⁴² those changes have been fragmentary and unsystematic, mitigating the overall positive effect.¹⁴³ For instance, while the number of SOEs with independent directors grows,¹⁴⁴ the share of SOEs in which independent directors comprise more than one-fourth of the board still did not exceed 49 per cent.¹⁴⁵

Rationale, Characteristics, and Relevance

Previous sections expose several classic flaws of Russia's state ownership system: no separation of ownership and regulatory functions, inadequate performance management, and non-professional boards. All these factors are considered to raise the agency costs of Russian SOEs and undermine their financial performance. Then, the legitimate questions are: first, what is the rationale behind the system that appears to be costly, and second, how Russia's SOEs can operate on the market and be among the world's largest companies?

All recent legislative amendments illustrate the Federal Government's attempt to find efficient organisational forms to manage state assets.¹⁴⁶ Since state ownership occupies the central place in Russia's economy, creating an effective management system for SOEs becomes critical. At the same time, Russia's system of SOEs is decentralised. The key federal property owner is the Federal Government or the Federal Agency for State Property Management (Rosimushchestvo) which reports to the Government of the Russian Federation. The second category is represented by state corporations (for example, Rostec, Rosatom, or VEB.RF) which are the major owners of assets transferred to them by the State. The third main category includes the Central Bank of Russia, Federal ministries (particularly the Ministry of Defence and the Ministry of Finance), and municipal authorities. Figure 2 offers an illustration of the existing ownership system.

When the shares of SOEs remain federal property, the State's governance approach depends on the non-strategic or strategic (special) status of an individual SOE. In the latter case, the model becomes more complex. It requires the engagement of the Presidential Administration, Federal ministries, and Rosimushchestvo to reach an agreement on crucial shareholder decisions finalised by the

¹³⁹ibid.

¹⁴⁰ibid. The Russian Institute of Directors interviewed 319 board members. The study revealed contradicting results: from a complete rejection of the directive practice to the desire to maintain it.

¹⁴¹ibid. Only 25% of SOE directors claimed that the directives do not affect their professional judgment.

¹⁴²ibid. By 2013, 92% of SOE boards included at least one independent director, 91% adopted an internal document that correlates top management remuneration with the company's activities, 80% of SOE boards created audit committees, and 79% of companies approved a board meeting plan.

¹⁴³ibid. For example, the RID study demonstrated that, although there was an increase in the number of SOEs with at least one independent director on the board, the percentage of SOE boards where an HR and remuneration committee and an audit committee included only independent or non-executive and independent directors remained low (51% and 57% respectively). Another example was the practice of creating board committees. Over 80% of SOEs had audit committees and human resources and remuneration committees. However, only a half of those committees held regular meetings. The level of information disclosure of the results of board meetings remained extremely low. Only 17% of SOEs allocated board decisions on their websites in 2013.

¹⁴⁴Article 81 of the Federal Law 'On Joint-Stock Companies' defines independence solely in the context of interested party transactions in which a board member takes part. The Rules for Admitting Securities to Trading on Russian Stock Exchanges and the Russian Corporate Conduct Code defines additional independence criteria. Those criteria apply to companies listed on the stock exchange and adopted the Code.

¹⁴⁵The Code of Corporate Conduct states that independent directors should comprise at least one quarter of the board.

¹⁴⁶Sukhanov (n 96).

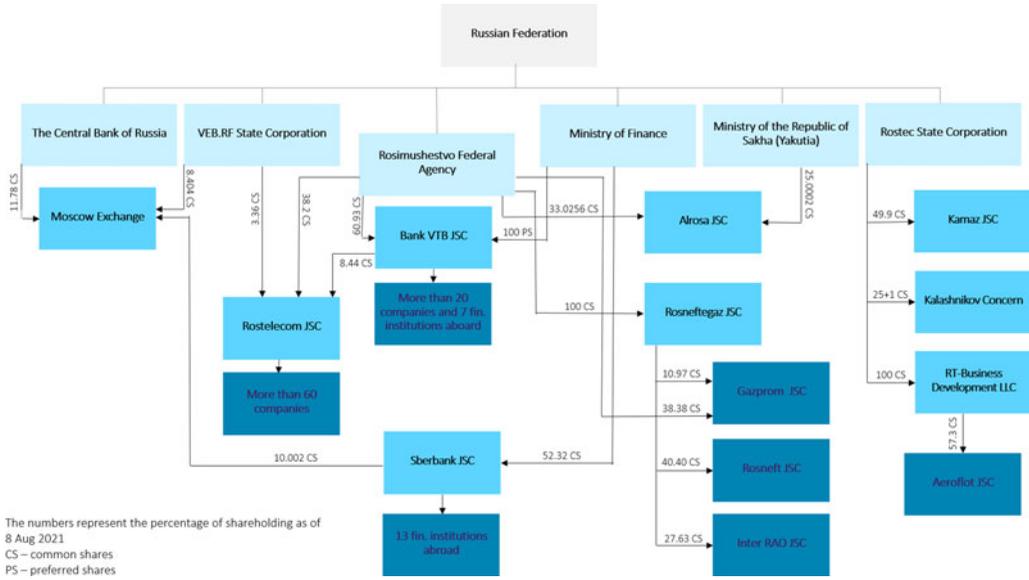


Figure 2. An illustration of Russia’s shareholding system.

Federal Government. In SOEs with no special or strategic status, Rosimushchestvo has the right to exercise shareholder powers independently.¹⁴⁷

Another factor determining the State’s governance approach is the percentage of shares owned by the Russian Federation. When all shares belong to federal property, the Federal Government or Rosimushchestvo (depending on the strategic status of an SOE) replaces the general meeting of shareholders. Their decisions become the decisions of the single shareholder. The State typically holds a hundred percent of shares in the military industry and the most critical elements of infrastructure – railways, energy facilities, and post office, etc.

When the Russian Federation has a controlling, minority, or ‘golden share’, the Federal Government or Rosimushchestvo appoints its representative officers participating in general meetings of shareholders and board meetings, voting per formal directives, and reporting to the Federal Government or Rosimushchestvo. To improve communication with representative officers, Rosimushchestvo has introduced a special channel – MV Portal. The portal’s single informational space allows all authorised participants to access the state asset management data in real time. The portal offers the opportunity to interact and exchange information, monitor the implementation of directives, and report on specific instructions from the President of the Russian Federation and the Federal Government.¹⁴⁸

State corporations are the second category of SOE shareholders. The expansion of the State’s presence in the national economy and the call for the more effective governance of state assets resulted in the emergence of state corporations designed to manage and control a large pool of different organisations. The new forms of SOEs appear as a combination of corporate governance, market, and administrative instruments. For instance, Rosatom and Rostec are state corporations that manage a broad portfolio of companies through participation in authorised capital. The portfolio of Rosatom and Rostec resembles a classic holding company structure that governs subsidiaries and affiliated organisations based on direct, indirect, or cross-shareholding. Both groups serve state interests in strategically important sectors. They are platforms for the implementation of the State’s

¹⁴⁷The Federal Government Decree (n 83).

¹⁴⁸Rosimushchestvo Report (n 109).

development programs and investments.¹⁴⁹ They accumulate significant financial and production resources which they then distribute across different industries based on the existing market and the country's socio-economic needs.

The main feature of Russia's state group model is its heterogeneous nature in terms of industries, business activities, legal entities, their status (strategic or non-strategic), and goals (commercial and non-commercial). The core idea of the model is better governance by introducing market forces, inviting professional management expertise, and mitigating the bureaucracy of administrative processes.¹⁵⁰ The model exposes the groups to domestic and, more importantly, international market competition to boost incentives to innovate. It integrates SOEs into different industries and production chains to assist the Federal Government with regulation and monitoring when legal norms fail to function effectively.

As mentioned in the previous section, state corporations and other large SOEs do business in their industries and, *de jure* or *de facto*, regulate them. For instance, Rosatom is legislatively empowered to implement a public administration function related to the usage, licensing, development, production, and disposal of nuclear weapons and nuclear power. The state corporation issues legal acts regulating the industry's control, standardisation, and certification. At the same time, Rosatom's group includes more than 140 companies (out of which, approximately 100 are commercial JSCs and LLCs), including several commercial companies established overseas under foreign law. The group is among the world's leading producers of nuclear energy and uranium.¹⁵¹ The overseas companies explore new business opportunities and manage Rosatom's portfolio worldwide, including Central Asia, Africa, and the US.¹⁵²

Another example is Rostec – a state corporation established by the Presidential decree in 2008 'to support Russia's industrial complex through hard times and make domestic industries competitive on the international market.'¹⁵³ Back then, the Federal Government transferred 426 legal entities to Rostec's group. About half of those entities were insolvent, experiencing financial losses, or undergoing bankruptcy.¹⁵⁴ Many of them represented Russia's military industry. Over ten years, the group could grow its production and revenue, launch non-military projects and new businesses, expand its international contracts portfolio and export. The total revenue of Rostec grew from RUB 511 billion in 2009 to RUB 1,771 billion in 2019.¹⁵⁵ Today, Rostec's group includes 25 large holding companies.¹⁵⁶ These holding companies operate in various business sectors: from investment banking and business development to car manufacturing, from pharmaceuticals to information security. They are JSCs with a clear commercial agenda that export their products and services to 70 countries.¹⁵⁷

¹⁴⁹For instance, VEB.RF is a state corporation and national economic development institution. 'In partnership with commercial banks, VEB.RF provides financing for large-scale projects to develop the country's infrastructure, industrial production and social sphere, strengthen its technological potential and improve quality of life.' See 'Our Development Strategy — Russia's Development Strategy' (VEB.RF) <<https://xn--90ab5f.xn--p1ai/en/about-us/>> accessed 21 Jul 2021.

¹⁵⁰As noted by the President of the Russian Federation Vladimir Putin, the goals of creating state corporations are to stop the collapse of industries and to preserve the national economy's potential through the consolidation of resources and centralization of management. GE Mamtsev, 'Finansovo-pravovyye aspekty razvitiya instituta gosudarstvennykh korporatsii v Rossii i zarubezhnykh gosudarstvakh [Financial-legal aspects of the development of state corporations in Russia and abroad]' (2015) 3 *Journal zarubezhnogo zakonodatelstva i sravnitel'nogo pravovedeniya* [Journal of foreign and comparative law] 484, 484.

¹⁵¹For more details about Rosatom's companies please visit its official website. See 'Our enterprises' (Rosatom) <<https://www.rosatom.ru/en/all-enterprises/>> accessed 13 Jul 2021.

¹⁵²*ibid.*

¹⁵³For more information, please visit Rostec's official website. See Rostec, 'History' <<https://rostec.ru/en/about/history/>> accessed 19 May 2021.

¹⁵⁴*ibid.*

¹⁵⁵Today Rostec accounts for 48% of the total revenues of the largest companies in the mechanical engineering industry. See The Federal Government Analytical Centre (n 88) 13.

¹⁵⁶Rostec (n 153).

¹⁵⁷*ibid.* According to Rostec's website, the total revenue of all of the group grew from RUB 511 billion in 2009 to nearly RUB 1.5 trillion in 2017. In the same year, Rostec's products were exported to 70 countries. The military export's share was

The Federal Government and the Presidential Administration control both groups through their parent companies: Rostec and Rosatom. The parent company manages its group independently through a single or controlling shareholding and board representation. Every company in the group (except for several unitary enterprises) is a separate legal entity with fundamental corporate attributes, including limited liability and asset partitioning. Group companies are established and regulated by corporate law norms and corporate governance practices, not administrative rules and processes.

Therefore, the existing model of Russia's SOEs represents a compromise: exercising close control over strategic SOEs while taking advantage of market infrastructure and some contemporary corporate governance practices. Initial organisational forms inherited from the Soviet legacy did not provide the State with enough flexibility and freedom to raise capital, restructure assets, and take business risks domestically and internationally.¹⁵⁸ In contrast, traditional corporate forms could hardly control negative externalities and created barriers to direct oversight that the political leadership intended to preserve.¹⁵⁹ However, it is doubtful that the existing model is efficient. The efficiency argument relates to the model's design and implementation. A recent report issued by the Accounts Chamber of the Russian Federation emphasises that the model suffers from several major shortcomings.¹⁶⁰

First, there is no reliable source of data on the number of SOEs in Russia. Rosimushestvo, Rosstat, and the Federal Tax Service offer contradictory statistics. The absence of adequate and reliable data hinders the analysis of SOEs' governance, performance, and real impact on the national economy. The Federal Government focuses on a narrow circle of the largest and most strategic SOEs securing a substantial budget revenues inflow.¹⁶¹ Since 2017, the 20 largest JSCs have contributed 97 per cent of the total dividends received by the federal budget, while other SOEs have been hardly monitored.¹⁶²

Second, decentralised governance and a heterogeneous pool of SOEs add to the problem of poor data. Different state bodies and organisations supervise Russia's SOEs. These SOEs vary depending on the state share's size, strategic or non-strategic role, commercial or non-commercial focus, market capitalisation, monopolistic status, and revenue flows. Multiple governance actors represent diverse interest groups and advocate for different results. The multiplicity of actors brings about no consistent approach to SOE governance.

Third, despite the opportunity to select professional directors and experts, civil servants and state officials are still the largest groups of state representative officers (almost 50 per cent of their total number).¹⁶³ The remuneration of SOE managers does not depend on their companies' financial results creating incentive disparities.¹⁶⁴ These disparities reveal the lack of an efficient and consistent performance management system that shapes adequate incentives for equivalent SOEs.

still more than a half of Rostec's total revenue. In 2017, it reached US\$13 billion. See Rostec. 'History' <<https://rostec.ru/en/about/history/>> accessed 19 May 2021.

¹⁵⁸Radygin et al (n 101).

¹⁵⁹Typical negative externalities are related to employment, social security, and the environment in the extractive sector and energy production.

¹⁶⁰It worth mentioning, however, that the criticism mainly targets SOEs (JSCs and unitary enterprises) belonging to the federal property (owned by Rosimushchestvo or Federal ministry).

¹⁶¹In its reports to the Federal Government, the Ministry of Economic Development focuses on 10 largest SOEs only.

¹⁶²At the beginning of 2020, the register of federal property included the shares of 979 JSCs, of which information on the performance of 606 JSCs is absent. There is a lack of information on unitary enterprises as well. See Milukova (n 57).

¹⁶³RID (n 122).

¹⁶⁴State auditors offers an example when the management's remuneration in an unprofitable SOE is twice higher than such remuneration paid by a similar SOE generating profit. 'Chetnaya palata raskritikovala vlasti za neznanie chisla goskompanii [The State Accounts Chamber criticised the authorities for not knowing the exact number of state companies]' (RBC, 27 Aug 2020) <<https://www.rbc.ru/economics/27/08/2020/5f46759e9a7947784569e00>> accessed 12 Jul 2021.

Finally, all SOEs benefit from access to state financial resources. Depending on the industry, the demand for state budget funds may vary from an SOE to an SOE. For instance, SOEs operating in the military sector rely significantly on the State as the primary investor and consumer, while publicly-listed SOEs operating in revenue-generating sectors such as oil and gas tend to depend less on state budget funds. Nonetheless, even the most profitable SOEs take advantage of soft budget constraints and existing federal programs to compensate for their costs.¹⁶⁵

The next question is the extent to which Russia's state ownership system is similar to or different from other models. The literature draws on several well-studied examples of state-driven economic systems, including Brazil, India, and China.¹⁶⁶ However, Russia's leadership might favour China's experience the most for the following reasons. In recent years, China-Russia relations have attained an 'unprecedentedly high level'.¹⁶⁷ The leadership of the two States praises the comprehensive and strategic partnership and display of closeness of their cooperation.¹⁶⁸ In 2015, Russia and China signed a joint statement on cooperation between the Belt and Road Initiative and the Eurasian Economic Union (EAEU).¹⁶⁹ The two countries embrace the Shanghai Cooperation Organisation (SCO), of which both States are active members. The ties between Moscow and Beijing have entered new frontiers amid their deteriorating relations with the West. Western sanctions accelerated and expanded Sino-Russian cooperation boosting new technology, manufacturing, and military projects.¹⁷⁰ Beijing and Moscow refer to each other as 'priority partners' that seek to strengthen political, security, military, economic, and energy cooperation.¹⁷¹ For Russia, its pivot to the East is a natural response to the pressure from the West. Moscow is Beijing's largest arms supplier, while China is Russia's top trading partner.¹⁷² In 2020, bilateral trade reached US\$107 billion, representing a dramatic increase from US\$58 billion in 2010.¹⁷³ Russia is China's second-highest provider of oil, after Saudi Arabia.¹⁷⁴ Russia actively attracts Chinese investments in its financial market, energy sector, and infrastructure, while China is interested in building its presence in

¹⁶⁵Dmitri Vaganov, 'Osobnosti strategii i strategicheskogo planirovaniya v krupnykh rossiiskikh kompaniyakh s gosudarstvennym uchastiyem [The specifics of strategy and strategic planning in large Russian companies with the state share]' (2014) *Globalnyie rynki i finansovyi engineering [Global markets and financial engineering]* 1, 35.

¹⁶⁶In addition to publications on China (n 4), there is a rich literature on Brazil and India. For instance: Pargendler (n 104); Kunmin Kim & N Panchanatham, 'Reform and privatization of state-owned enterprises in India', in Farhad Taghizadeh-Hesary et al (eds), *Reforming State-Owned Enterprises in Asia: Challenges and Solutions* (ADB Institute 2021) 157.

¹⁶⁷'Putin says Russia-China relations at highest-ever level' (China Daily, 5 Jul 2021) <<http://europe.chinadaily.com.cn/a/202106/05/WS60bb0cbac31024ad0bac3d34.html>> accessed 1 Aug 2021.

¹⁶⁸'Telephone conversation with President of China Xi Jinping' (Kremlin, 28 Dec 2020) <<http://en.kremlin.ru/events/president/news/64758>> accessed 30 Jul 2021.

¹⁶⁹Alexander Korolev, 'Systemic Balancing and Regional Hedging: China-Russia Relations' (2016) 9 *The Chinese Journal of International Politics* 375.

¹⁷⁰Janko Šćepanović, 'Good China-Russia Relations Are Here to Stay' (The Diplomat, 14 Jun 2021) <<https://thediplomat.com/2021/06/good-china-russia-relations-are-here-to-stay/>> accessed 30 Jul 2021.

¹⁷¹Shi Jiangtao, 'China-Russia relations: Xi and Putin show united front in message to Biden' (South China Morning Post, 30 Jun 2021) <<https://www.scmp.com/news/china/diplomacy/article/3139206/china-russia-relations-xi-and-putin-show-united-front-message>> accessed 2 Aug 2021.

¹⁷²Nectar Gan & Ben Westcott, 'US and allies are pushing China and Russia closer together, but will their "unbreakable friendship" last?' (CNN, 17 Jun 2021) <<https://edition.cnn.com/2021/06/16/china/china-russia-ties-mic-intl-hnk/index.html>> accessed 2 Aug 2021.

¹⁷³Claudia Westwood, 'Ambivalent partners: The complex Russia-China relationship' (European Leadership Network, 28 Apr 2021) <<https://www.europeanleadershipnetwork.org/commentary/ambivalent-partners-the-complex-russia-china-relationship/>> accessed 30 Jul 2021. As of 2019, Russia ranked No. 13 among foreign destinations for Chinese investment at \$12.8 billion, according to the latest Chinese official data. But analysts said that the figure could be lifted to a much higher level, given the massive opportunities in a wide range of areas, including energy, agriculture, manufacturing and technology. Wang Cong, 'With China-Russia ties at "best in history", trade still needs a boost to ensure security' (Global Times, 23 Mar 2021) <<https://www.globaltimes.cn/page/202103/1219223.shtml>> accessed 2 Aug 2021.

¹⁷⁴Westwood (n 173).

Eurasia to create economic and transport links between Asia and Europe. These mutual economic interests supported by like-minded political regimes and foreign policy alignment make Chinese SOEs the most appropriate example for comparative analysis.

The comparative analysis of Russia's and China's state ownership systems exposes several main similarities and differences, particularly relevant to this study. Large SOEs play a central role in the strategic sectors of both countries. They dominate their industries domestically and are increasingly active globally.¹⁷⁵ The analysis of state ownership in China emphasises its main flaw: the lack of autonomy and profit incentives.¹⁷⁶ Similar to Russia, corporate boards in China's SOEs are primarily selected through political and administrative processes rather than endogenously chosen in the competitive managerial market.¹⁷⁷ Like China, Russia employs 'a networked hierarchy' of a group structure to manage its SOEs.¹⁷⁸

Unlike China, though, Russia's system is decentralised, with several 'core' organisations controlling groups of SOEs. Although these groups can be vertically integrated, not every group is concentrated around a particular production chain or sector. Instead, they might be highly diversified across a wide range of industries. They combine hierarchical shareholding with cross-ownership. Therefore, Russia's system appears to be even more complex, representing a hybrid between China's hierarchical architecture and the Japanese *keiretsu* or the Korean *chaebol*.¹⁷⁹

Another difference relates to the parent company at the top of each group. In China, these companies typically are former ministries transformed into corporate entities. In Russia, state corporations are not corporate entities, but non-commercial organisations with all the peculiarities discussed previously. State corporations report directly to the Federal Government and the Presidential Administration. They do not serve as an intermediary between the state agency and the group. Instead, they fulfil the state shareholder's role, act as asset management companies, and produce policies and regulations. Although multiple actors can complicate or obstruct the coordination process, Russia's leadership prefers a multipolar system that identifies no single powerful agency managing huge state assets and potentially questioning the leadership's agenda.

In contrast to the Russian approach, China has demonstrated a firm commitment to the strongly recommended corporatisation.¹⁸⁰ Driven by much greater global market and trade exposure than Russia, the Chinese leadership has been pragmatic in its desire to improve management and performance by corporatising its SOEs and adopting market principles.¹⁸¹ Many SOEs in China have been converted from political entities to market-oriented corporations that operate internationally and compete globally. Chinese large SOEs are widely represented in the Fortune Global 500.¹⁸² China's Company Law applies to all enterprises, including corporate SOEs.

¹⁷⁵Li-Wen Lin & Curtis Milhaupt, 'We Are the (National) Champions: Understanding the Mechanisms of State Capitalism in China' (2013) 65 *Stanford Law Review* 697.

¹⁷⁶This conclusion has been made after the investigation of 744 publicly listed manufacturing firms in China between 1999 and 2006. For a comprehensive literature review on the corporate governance in Chinese firms see Dongwei Su & Xingxing He, 'Ownership structure, corporate governance and productive efficiency in China' (2012) 38 *Journal of Productivity Analysis* 303.

¹⁷⁷Margaret M Pearson, 'The business of governing business in China: Institutions and norms of the emerging regulatory state' (2005) 57 *World Politics* 296.

¹⁷⁸Kahan & Rock (n 87).

¹⁷⁹For the discussion about China's hierarchical group models and its differences from the ones in Japan and South Korea, see Lin & Milhaupt (n 175).

¹⁸⁰Hua et al (n 4).

¹⁸¹Clarke describes this approach as the following: '[T]he state wants to maintain full or controlling ownership in enterprises in several major sectors, and it wants these enterprises to be run along commercial lines in the service of wealth maximization.' See Donald Clarke, 'Corporatization, not privatization' (2003) 7 *China Economic Quarterly* 27.

¹⁸²To see the list of Global Fortune 500 please follow the link: Fortune, 'Fortune Global 500' <<https://fortune.com/global500/>> accessed 11 Nov 2021.

Finally, the Chinese Communist Party exercises significant influence over corporate governance and decisions in strategic SOEs.¹⁸³ China's system has two parallel structures: a traditional corporate shareholding structure and a party-based political structure.¹⁸⁴ This duality is embedded in the corporate governance of China's SOEs making it unique and context-specific.¹⁸⁵ In Russia's case, there is no political party element in SOE governance. The ruling party United Russia neither possesses the same extent of influence on the management of Russia's SOEs nor serves as an institutional bridge that connects the system's elements as in China's case.¹⁸⁶

Conclusion

This article examined the role of law and corporate governance in enabling the growing influence of the state in Russia. The analysis sheds light on the organisational framework of SOEs, their objectives, and governance mechanisms. Despite increasing scholarly attention to legal institutions and governance practices of state capitalism, existing studies have focused primarily on Asian economies, while Russian SOEs remain lost. In Russia, the Federal Government has chosen to set up a group of new SOEs and deal with unexpected contingencies through their internal governance structures rather than establishing a contract-based regulatory regime to address such concerns.

The newly established SOEs are non-corporations from the perspective of both Russia's civil law and the scholarly understanding of a corporate entity. Russia's SOEs add another perspective to the understanding of state ownership systems and corporate governance narratives. In this context, the current recommendations and standards offered to SOEs may provide limited insight into Russia's state ownership system. Recent economic challenges and political agenda have shaped the Federal Government's response that provides the State with full discretion and control over its SOEs. The law expressly channels policy mandates from the Federal Government, eliminating any ambiguity about SOE objectives and awarding the state owner with substantial power over SOEs' governance. This approach has its own costs, including unequal treatment of legal entities and the lack of solid and comprehensive regulation.

While Russian markets continue to be affected by limited access to capital, imposed sanctions, and countersanctions, the Russian economy proceeds with the reliance on the state sector, which will be driven by the Federal Government strategies and Russia's national interests. These strategies bring about legislative changes and state ownership policies that can drive the system even further away from contemporary governance standards. The State's controlling position continues to be a significant factor in determining accountability structures and investment policies in Russia. Many SOEs operate not as independent corporate entities but as an instrument of the state policy that manages a large market-oriented portfolio. Without acknowledging this context and the actual dynamics of Russia's state ownership system, the dominant academic view on SOE governance sheds little light on SOEs in Russia. It can even be misleading in terms of Russia's political, legal, and economic landscape. Unless this context is understood, attempting to draw a simple

¹⁸³Michael Firth, Sonia ML Wong & Yong Yang, 'The double-edged sword of CEO/chairperson duality in corporatized state-owned firms: evidence from top management turnover in China' (2014) 18 *Journal of Management and Governance* 207.

¹⁸⁴See Wang (n 4).

¹⁸⁵See Curtis J Milhaupt, 'The Governance Ecology of China's State-Owned Enterprises', in Jeffrey Gordon & Wolf-Georg Ringe (eds), *The Oxford Handbook of Corporate Law and Governance* (Oxford University Press 2018).

¹⁸⁶For recent studies of China's SOEs, see Lauren Yu-Hsin Lin & Curtis Milhaupt, 'Party Building or Noisy Signaling? The Contours of Political Conformity in Chinese Corporate Governance' (2021) 50 *Journal of Legal Studies* 187; Lauren Yu-Hsin Lin & Yun-chien Chang, 'Do State-Owned Enterprises Have Worse Corporate Governance? An Empirical Study of Corporate Practices in China' (NYU Law and Economics Research Paper No 19-28, Dec 2019) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3111820> accessed 27 Oct 2021.

analogy between corporate governance theories and Russian SOEs will most likely obscure rather than illuminate the nature, features, and impact of Russia's SOEs. This gap calls for further studies of performance, governance mechanisms, and the political economy of SOEs in Russia and their comparative analysis with other state-driven models.