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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
CORPORATE GOVERNANCE COMMITTEE**

**Note by the OECD Secretariat on Costa Rica's implementation of corporate governance
accession review recommendations**

This Secretariat Note discusses Costa Rica's progress in implementing the recommendations made by the Corporate Governance Committee and Working Party on State Ownership and Privatisation Practices reflected in the Formal Opinion on Costa Rica's accession to the OECD [DAF/CA/CG/ACS(2019)3/FINAL].

Following the Working Party's discussion of a first draft of the Note on 13 March 2024 and its agreement on the conclusions in the Note, the WPSOPP asked the Secretariat to incorporate new information provided by the Costa Rica delegation into the Note and to transmit a revised version of the Note to the Corporate Governance Committee for its agreement to conclude Costa Rica's corporate governance post-accession reporting process and to declassify this Note for publication on the OECD web site. On 9 April 2024, the Corporate Governance Committee agreed on the above-mentioned actions, concluding the corporate governance post-accession review process for Costa Rica following Costa Rica's substantial progress on its SOE-related recommendations.

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1 Introduction

1. This report addresses Costa Rica's advancement in implementing the recommendations provided by the Corporate Governance Committee and the Working Party on State Ownership and Privatisation Practices (WPSOPP) in October 2019 (DAF/CA/CG/ACS(2019)3/FINAL).
2. Costa Rica provided an update on the progress made in implementing the seven priority recommendations by the end of 2021 (DAF/CA/SOPP/ACS/RD(2022)1). The Committee and Working Party concluded in their evaluation carried out in the spring of 2022 ([DAF/CA/CG/ACS\(2022\)2/FINAL](#)) that Costa Rica had made sufficient progress to conclude post-accession reporting with respect to *Priority Recommendation 3* to support consistent implementation of information confidentiality policies, and *Priority Recommendation 5* on the implementation of recently enacted public procurement reforms. However, the Committee requested Costa Rica to report back to the WPSOPP in the spring of 2023 "or once sufficient progress has been made" on the outstanding points for implementation of the following priority recommendations: *Priority Recommendation 1* to ensure that SOEs are broadly able to implement IFRS; *Priority Recommendation 2* on developing better practices for setting and monitoring objectives, in particular through the development of key financial performance indicators; *Priority Recommendation 4* to address the governance concerns related to FANAL; *Priority Recommendation 6* to strengthen its SOE board composition and board practices, in particular through transparent and skills-based nomination processes and ongoing training; and *Priority Recommendation 7* to develop recommendations to support competitive remuneration and incentives that are aligned with good board practices.
3. Costa Rica's Minister of the Presidency Natalia Díaz Quintana provided a first update on Costa Rica's progress in a letter to the WPSOPP Chair on 23 December, 2022. The letter reported advances in addressing several of the recommendations but suggested that the spring of 2023 might be too soon to fully address all of the recommendations. The WPSOPP Chair's response on 6 June, 2023 following the Secretariat's consultation with the WPSOPP Bureau, proposed that Costa Rica provide its full report on its progress by December 2023, with an aim to next consider Costa Rica's progress at its meeting of March 2024. Costa Rica subsequently formally submitted its comprehensive *Progress Report on the Implementation of the post-accession Recommendations to OECD Working Party on State Ownership and Privatisation Practices* (DAF/CA/SOPP/ACS/RD(2024)4), in a 13 December, 2023 letter sent by the Minister of the Presidency, the Minister of National Planning and Economic Policy, the Minister of Finance and the Secretary of the Council of Ministers and Head of the Presidential Advisory Unit.
4. This report relies on Costa Rica's Progress Report mentioned earlier, findings from the fact-finding mission conducted in January 2023, and responses to subsequent follow-up questions received in February 2023. The team conducting the fact-finding mission consisted of Daniel Blume, Head of the Corporate Governance Unit, and Adriana De La Cruz, Policy Analyst, both from the Capital Markets and Financial Institutions Division.
5. This report first addresses Costa Rica's state-owned enterprises (SOEs) portfolio, presenting their primary financial indicators. Second, it offers a comprehensive evaluation of the implementation status of each priority recommendation. Third, the report concludes by summarising Costa Rica's overall progress in implementing these priority recommendations.

6. It should be noted that the Corporate Governance Committee's Formal Opinion provided four additional recommendations related to implementation of the OECD Guidelines on Corporate Governance of State-Owned Enterprises, which Costa Rica was invited to report on as appropriate in the context of the Working Party's regular meetings. These comprised: *Additional recommendation 1* on the corporatisation and other streamlining of SOE legal and corporate forms; *Additional recommendation 2* on considering further reforms to strengthen boards, including staggering of board appointments and separation of the role of Chair and CEO; and *Additional recommendation 4* on defining, reporting and assessing the costs of public service objectives for each SOE. While these recommendations remain relevant, Costa Rica was not required to report on these additional recommendations as part of the post-accession reporting process, and although these additional recommendations remain fit-for-purpose, they are not included in this assessment. With regards to *Additional recommendation 3*: on continuing to work towards a more level playing field, particularly in the banking sector through enactment of deposit insurance reform, Costa Rica adopted its Law Establishing a Deposit Guarantee Fund and Resolution Mechanisms for Financial Intermediaries, Law No. 9816 on 12 February 2020¹.

¹ The law establishes a deposit guarantee scheme and a bank resolution regime applicable to all financial entities under the supervision of SUGEF including SOE banks, private banks, branches of foreign banks, and savings and credit co-operatives/unions. The law establishes that an autonomous Deposit Guarantee Fund be created and administered by the Central Bank of Costa Rica (BCCR) which guarantees deposits up to a maximum of six million Costa Rican Colones (CRC) (approximately USD 9 400). The law is now implemented following issuance of three technical regulations in January 2021 and the first contributions from financial intermediaries received in October 2021.

2 Costa Rica's state-owned enterprises

7. Established in 2018, The Presidential Advisory Unit (PAU) holds the mandate to coordinate the shareholding of state-owned enterprises and the management of autonomous institutions. The PAU receives support from the SOE Steering Committee, comprised by the Minister of the Presidency, the Minister of National Planning and Economic Policy and the Minister of Finance.

8. The PAU aims to promote sound corporate governance practices that contribute to Costa Rica's economic efficiency, sustainable growth, and financial stability. Its activities incorporate the development of Notes of Expectations that are submitted to the Council of Ministers for approval, monitoring the achievement of performance objectives, strengthening, and professionalising the board of directors including through the organisation of structured and transparent board nomination processes and trainings, and implementing relevant regulations to enhance the governance and transparency of SOEs. Costa Rica's fourth aggregated report, consistent with OECD recommended practices, provides a comprehensive overview of its SOE portfolio as of the end of 2022.

Costa Rica's SOE portfolio

9. The Costa Rican SOE portfolio encompasses thirteen companies across diverse sectors including electricity and telecommunications, banking and finance, insurance services, water supply and waste management, hydrocarbon supply, railways, port authorities, postal services, raffles and lotteries, distillation and marketing of alcohol, and public television and radio services (Table 2.1). These SOEs collectively have sixteen subsidiaries, with a notable presence in the banking and finance, insurance, and energy and telecommunications sectors. Banco de Costa Rica (BCR) and Banco Nacional de Costa Rica (BNCR) collectively have nine subsidiaries, while Instituto Nacional de Seguros (INS) has four, and Instituto Costarricense de Electricidad (ICE) has three.

Table 2.1. Costa Rica's SOEs

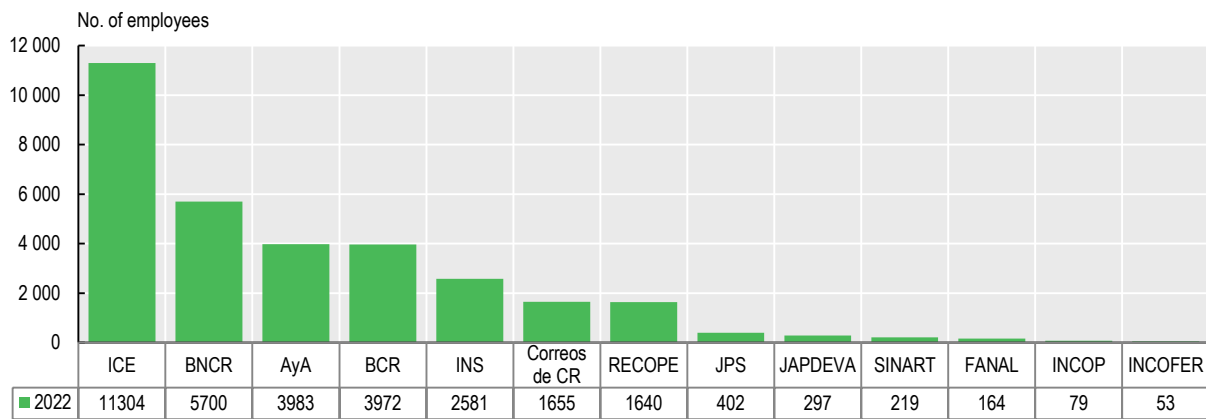
| State-owned enterprise | Sector |
|---|---------------------------------------|
| Banco de Costa Rica (BCR) | Banking & Finance |
| Banco Nacional de Costa Rica (BNCR) | Banking & Finance |
| Correos de Costa Rica S. A. | Postal services |
| Fábrica Nacional de Licores (FANAL) | Distillation and marketing of alcohol |
| Instituto Costarricense de Acueductos y Alcantarillados (AyA) | Water Supply & Waste Management |
| Instituto Costarricense de Electricidad (ICE) | Energy & Telecommunications |
| Instituto Costarricense de Ferrocarriles (INCOFER) | Transport |
| Instituto Costarricense de Puertos del Pacífico (INCOP) | Port Authority |
| Instituto Nacional de Seguros (INS) | Insurance Services |
| Junta de Administración Portuaria y de Desarrollo Económico de la Vertiente Atlántica (JAPDEVA) | Port Authority |
| Junta de Protección Social (JPS) | Raffles & Lotteries |
| Refinadora Costarricense de Petróleo, S.A. (RECOPE) | Hydrocarbon supply |
| Sistema Nacional de Radio y Televisión S.A. (SINART) | Public Television and Radio Services |

Source: Costa Rica's Aggregate Report on State-owned Enterprises 2022.

10. Among the thirteen SOEs in Costa Rica, five companies are monopolies, namely Fábrica Nacional de Licores (FANAL), Instituto Costarricense de Acueductos y Alcantarillados (AyA), Instituto Costarricense de Electricidad (ICE), Junta de Protección Social (JPS), and Refinadora Costarricense de Petróleo, S.A. (RECOPE). The remaining eight companies operate within competitive markets.

11. By the end of 2022, the thirteen SOEs collectively employed over 32 000 individuals within Costa Rica’s workforce, which totals 2.5 million (Figure 2.1). ICE was the largest employer comprising 35% of the SOE workforce, followed by the Banco Nacional de Costa Rica (BNCR) with 18%, and AyA and Banco de Costa Rica (BCR) with 12% each. Notably, five SOEs count less than 300 employees.

Figure 2.1. Employment in SOEs, as of December 2022

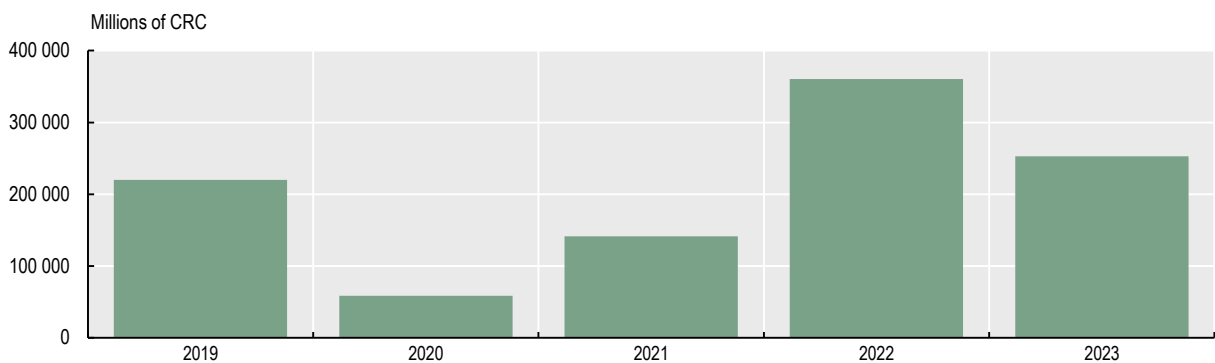


Source: Costa Rica’s Aggregate Report on State-owned Enterprises 2022.

Financial performance

12. After low levels of overall profitability among the Costa Rican SOEs during 2020 and 2021, profitability reached CRC 361 billion (USD 698 million) in 2022. Despite a subsequent decrease to CRC 253 billion (USD 490 million)² in 2023, it remained higher than pre-pandemic levels (Figure 2.2).

Figure 2.2. Overall profitability of SOEs, 2019-23



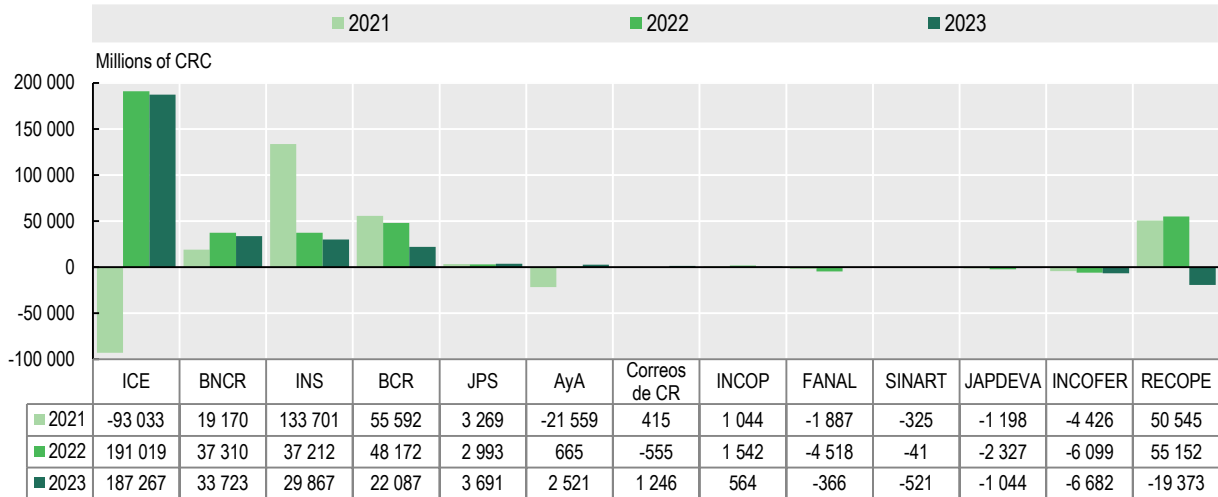
Note: Values for 2023 are preliminary.

Source: Presidential Advisory Unit, Costa Rica’s Aggregate Report on State-owned Enterprises 2022.

² USD/CRC: 516.725 (As of 5 February 2024)

13. In 2023, five SOEs incurred losses ranging from CRC 366 million (USD 0.7 million) for FANAL to CRC 19 billion (USD 37.5 million) for RECOPE (Figure 2.3). ICE emerged in 2023 as the most profitable SOE displaying a profit of CRC 187 billion (USD 362 million), only followed by BNCR, INS and BCR that averaged CRC 28.6 billion (USD 55 million).

Figure 2.3. Profitability of SOEs



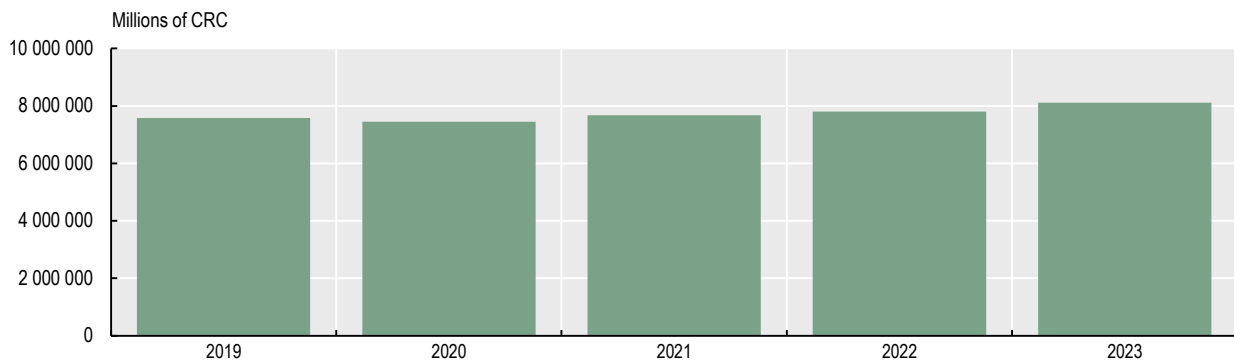
Note: Values for 2023 are preliminary.

Source: Presidential Advisory Unit, Costa Rica’s Aggregate Report on State-owned Enterprises 2022.

Book value of SOEs

14. The book value of SOEs has remained stable over the past five years (Figure 2.4). In 2023, SOEs book value witnessed a 7% increase when compared to 2019 levels, reaching CRC 8 111 billion (USD 15 .7 billion).

Figure 2.4. Overall book value of SOEs, 2019-23

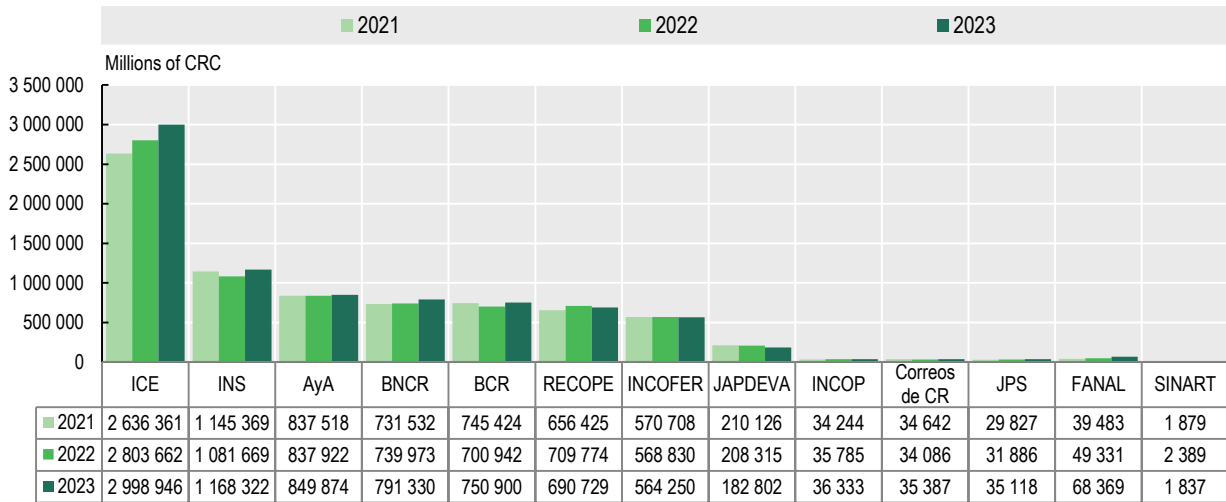


Note: Values for 2023 are preliminary.

Source: Presidential Advisory Unit, Costa Rica’s Aggregate Report on State-owned Enterprises 2022.

15. In 2023, nine SOEs witnessed a rise in their book values compared to 2022. The remaining five SOEs faced declines in their book values, ranging from a marginal 1% decrease in Instituto Costarricense de Ferrocarriles (INCOFER) to a 23% downturn in SINART’s book value. Reflecting the pattern seen in employment and profitability, ICE displays the highest book value among its peers, totalling CRC 2 998 billion (USD 5.8 billion), followed by INS with CRC 1 168 billion (USD 2.3 billion).

Figure 2.5. Book value of SOEs



Note: Values for 2023 are preliminary.

Source: Presidential Advisory Unit, Costa Rica’s Aggregate Report on State-owned Enterprises 2022.

3 Implementation of the Priority Recommendations

Priority Recommendation 1

Fully implement International Financial Reporting Standards (IFRS).

“Costa Rica has defined IFRS as the reporting standard for SOEs. It is recommended that Costa Rica’s government ensure full implementation and compliance with IFRS without further delays to current legal and regulatory requirements.”

16. **Seven out of the ten non-financial SOEs had successfully integrated IFRS in their audited financial statements for 2022.** The remaining three SOEs – Junta de Protección Social (JPS), Fábrica Nacional de Licores (FANAL) and Junta de Administración Portuaria y de Desarrollo Económico de la Vertiente Atlántica (JAPDEVA) – exhibited gaps in the implementation of specific provisions in their 2022 financial reports (Table 3.1).

Table 3.1. SOEs in the process of full implementation of IFRS, 2022

| | Gaps | Progress |
|--|---|----------|
| Fábrica Nacional de Licores (FANAL) | IFRS 2 (Inventories) IFRS 16 (Property, Plant and Equipment) IFRS 36 (Impairment of Assets) | 93% |
| Junta de Administración Portuaria y de Desarrollo Económico de la Vertiente Atlántica (JAPDEVA) | IAS 1, IAS 2, IAS 7, IAS 8, IAS 10, IAS 16, IAS 19, IAS 32, IAS 36, IAS 38, IAS 37, IAS 40 IFRS 1, IFRS 5, IFRS 7, IFRS 9, IFRS 13, IFRS 15, IFRS 16. | 47% |
| Junta de Protección Social (JPS) | IAS 16 (Property, Plant and Equipment) | 99% |

Source: Costa Rica’s Progress Report on the Implementation of the post-accession Recommendations to OECD WPSOPP.

17. JPS and FANAL were reported as of February 2023 to have achieved full compliance with their few remaining gaps in 2022 reporting according to IFRS in their 2023 reports. Thus, JPS is reported to be in full compliance with IAS 16 (Property, Plant and Equipment) and FANAL with IFRS 2 (Inventories), IFRS 16 (Property Plant and Equipment) and IFRS 36 (Impairment of Assets), according to the external audit of their 2023 reports in March 2024.

18. While progress towards IFRS implementation at JAPDEVA is visible, numerous provisions remain outstanding. In 2019, legislation was enacted to facilitate an administrative, financial and operational reorganisation to ensure the financial viability, sustainability and the fulfilment of the objectives of JAPDEVA. The PAU, in collaboration with the Council of Ministers and with the support of the Ministry of Finance, is closely monitoring JAPDEVA's situation. In this context, remedial plans are being implemented to address both the implementation of IFRS and broader management issues.

19. **Six out of the ten non-financial SOEs obtained an unqualified (clean) opinion from their independent external auditors in 2022.** In addition to JPS, FANAL and JPS; AyA received a qualified opinion, with issues relating to accounting records and impairment of financial assets. However, this marks a considerable improvement from the situation at the time of the Committee's final review for accession in 2019, when five non-financial SOEs did not produce audited financial statements at all, and in comparison to the situation at the time of the WPSOPP's last review, when only three non-financial SOEs received clean opinions on their 2020 accounts.

20. **Financial SOEs are governed by CONASSIF Agreement 6-18, also known as the "Financial Reporting Regulation (RIF)", which was enacted in 2020.** This regulation outlines a phased approach to adopting IFRS within a specified timeline (Table 3.2). As of January 2024, IFRS 9 (Financial Instruments – Recognition of Expected Credit Losses) has become effective. CONASSIF has announced plans to address the gaps in compliance with IAS 12 (Income Tax) and IFRIC 23 (Uncertainty on Income Tax Treatments) by the final quarter of 2024. Additionally, amendments for implementing IFRS 5 (Non-Current Assets Held for Sale and Discontinued Operations) are scheduled to take effect in January 2025. Further, the implementation of IAS 1 (Presentation of Financial Statements) and IAS 21 (Effects of Changes in Foreign Currency Exchange Rates) is slated for January 2027. As for IAS 7 (Cash Flow Statements), approval is anticipated no later than June 2025, including the establishment of an effective implementation date to be determined.

21. The timetable outlined in Table 3.2, indicates a further delay compared to the overall phasing-out period by 2024 presented during the last WPSOPP review in 2022. However, compared to the last WPSOPP review, IFRS 1 (First-time Adoption of IFRS), IFRS 5 (Non-current Assets Held for Sale and Discontinued Operations), IFRS 9 (Financial Instruments) and IFRS 21 (The Effects of Changes in Foreign Exchange Reserves) are implemented in the two state-owned banks, and IFRS 17 (Insurance Contracts) is implemented in INS. Moreover, during the Secretariat fact-finding mission, representatives from CONASSIF and financial institutions indicated that the extended timeline for IFRS full implementation was a response to public consultations involving their regulated entities, that include both private companies and the three financial SOEs. Therefore, although the financial SOEs are not fully compliant with IFRS, they comply with Costa Rica's financial disclosure requirements that are applicable to both private companies and SOEs alike.

22. **The three financial SOEs received an unqualified opinion from their independent external auditors in 2022.**

Table 3.2. IFRS calendar of implementation for the financial SOEs

| IAS / IFRS | Explanation of the gap | Approach | Expected date |
|---|---|--|--|
| IFRS 9 Financial Instruments (Recognition of Expected Credit Losses) | The gap is presented in the credit portfolios of the banking sector. The methodology defined by the regulator is not currently based on expected credit losses. | Issue a new regulation that supports the use of internal methodologies consistent with IFRS 9. | CONASSIF Regulation 14-21 approved in November 2021 and effective as of January 1, 2024. |
| IFRS 5 Non-Current Assets Held for Sale and Discontinued Operations | The gap exists in assets foreclosed or received in payment of loans in the banking sector. | Modification of CONASSIF Agreement 6-18. | Amendment approved in November 2023 and effective as of January 2025. |
| IAS 12 Income tax IFRIC 23 Uncertainty Regarding Income Tax Treatments | The gap exists for only 9 financial institutions. | Served by Law No. 9635. | The gap will be closed in the fourth quarter of 2024. |
| IAS 7 Cash flow statement | The gap exists as regulation requires the indirect method. | Modification of CONASSIF Agreement 6-18. | Approval expected no later than June 30, 2025. |
| IAS 21 Effects of Changes in Foreign Currency Exchange Rates | The gap exists only when the entity must use a functional currency other than the Costa Rican colon. | Modification of CONASSIF Agreement 6-18. | Approval expected no later than June 30, 2025. Effective January 1, 2027. |
| IFRS 9 Financial Instruments (Recognition of Expected Credit Losses) | The gap exists only in the banking sector, as it is subject to countercyclical provisioning requirements. | The accumulation of counter-cyclicals was reactivated as of January 2024. The excess provisions for closing gaps with IFRS 5 and IFRS 9 will be reinforced. At least 24 months of information is required under new CONASSIF 14-21 regulation for recalibration. | This provision proved to be robust and useful during the pandemic. The IMF's Financial Sector Assessment Programme of 2022 did not consider it advisable to deprive the supervisory framework of this useful, simple, and reliable tool. The counter-cyclical capital buffer has other scopes, it does not replace it. |
| IAS 1 Presentation of Financial Statements | The gap exists for the entire financial sector. Disclosure on the impact of IFRS gaps is not currently required. | Modification of CONASSIF Agreement 6-18. | Effective January 1, 2027. |

Source: Consejo Nacional de Supervisión del Sistema Financiero (CONASSIF)

23. **In 2023, the importance of implementing IFRS was underlined in Notes of Expectations issued for each of the thirteen SOEs.** Furthermore, the PAU, in close coordination with the Ministry of Finance, has conducted training sessions for all SOEs. These training sessions covered a wide array of topics directly relevant to IFRS implementation. The objectives of these training sessions varied, encompassing the need to update and enhance financial knowledge to promote the adoption of best practices in IFRS. The training sessions also addressed more specific topics such as IAS 19 (Employee Benefits) and the process of implementing Sustainability Standards. Notably, all of the financial and non-financial SOEs participated in such trainings. Furthermore, the Ministry of Finance has implemented a programme aimed at closely overseeing the advancement of each non-financial SOE and providing assistance in addressing remaining gaps in their IFRS full implementation.

Priority Recommendation 2

Develop and implement a system for establishing and monitoring the achievement of financial and non-financial performance objectives.

“Costa Rica’s ownership policy envisages that performance targets will be set via a “note of expectations” sent from the Government Executive to SOEs which will establish goals and indicators for what the State deems important to achieve. The implementation of this system for setting performance objectives should allow for far better monitoring of SOEs. Achieving this will require sufficient resources and a continued strengthening of the PAU’s capacity.”

24. **The PAU actively monitors SOEs and has issued an annual aggregate report of SOEs since 2019.** The 2022 report consolidates information on the progress of each SOE, highlighting the key events undergone during the year, priorities for economic reactivation, performance monitoring and key policy priorities.

25. **The SOE Steering Committee, comprising the Minister of the Presidency, the Minister of National Planning and Economic Policy, and the Minister of Finance, convenes at least on a monthly basis.** The objective of this committee is to liaise with the PAU and communicate the guidelines and performance expectations for SOEs, in accordance with the provisions of the Protocol of Understanding on Relations between the State and its SOEs.

26. **The Notes of Expectations for the 2023 period call upon each SOE to submit semi-annual monitoring tables of financial, non-financial and risk management indicators.**

- Financial indicators: revenues, assets, EBITDA margin (EBITDA/revenue), efficiency indicators (administrative expenses between operating profit), ROE (before tax and after distributions, parafiscal charges or any other transfer), leverage margin (net debt/equity), liquidity Margin, cost of public service obligations and full compliance status with IFRS.
- Non-financial indicators: customer satisfaction, quality of public service, environmental, social and governance.
- Risk Indicators: liquidity risk, business or credit risk, operational risk, reputational risk, impact mitigators & controls.

27. **The Notes of Expectations also include a series of tailored expectations for each SOE.** These expectations encompass requirements and guidance related to transparency, services improvement, responsible business conduct, innovation, financial inclusion, economic stability, and sustainability-related considerations, among others.

28. **The PAU has collaborated with the World Bank to implement a dashboard to provide the main insights of each SOE’s financial performance.** The dashboard has been operational since May 2023, and will be updated annually with information of the audited financial statements that are available on the website of each SOE. Currently, the dashboard does not include non-financial information. More broadly, the ongoing cooperation with the World Bank is planned to be expanded to focus on improving the monitoring of the non-financial indicators, to set public service obligations and focus on climate change.

29. While the PAU has made progress in tracking and monitoring indicators of performance, they profess an ambition to continue to improve notably their tracking of non-financial indicators as well as the development of measurable performance targets for the achievement of public service objectives, along with the capacity to calculate and track the costs of their achievement.

30. While not all SOEs are currently reporting Environmental, Social, and Governance (ESG) indicators, three SOEs have introduced ESG indicators as a pilot initiative, including climate change financial risk disclosure. This is based on the Task Force on Climate-related Financial Disclosures (TCFD) methodology, encompassing governance, strategy, risk mitigation, and standardised social indicators. Currently, a survey is in progress, encompassing the remaining 10 SOEs. The aim of this survey is to establish harmonised ESG indicators across all SOEs.

31. **While the PAU has also established policy manuals³ aimed at strengthening the administration of SOEs, the monitoring capacity of the PAU may be limited due to their relatively small size and a level of uncertainty regarding the continuity through future political changes.** The PAU is currently staffed by a head of unit who also serves as secretary to the Council of Ministers and three dedicated staff within the unit, supported by additional staff from outside of the unit and from the Ministry of Finance. All of the PAU's current staff were appointed following Costa Rica's change of government in 2022, replacing the previous staff that had served since the unit's creation in 2019. As they are not civil service positions, there is no assurance that the individuals holding these positions would be retained following the next Presidential election scheduled in 2026, raising some concerns about the capacity and continuity of Costa Rica's SOE co-ordination function.

32. In this context, the PAU reported that it is currently working on expanding the size of the unit and defining enhanced professional profiles as well as establishing its staff as permanent positions, irrespective of presidential terms, to take effect as part of the 2025 Regular Budget. To this aim, meetings with the Technical Secretariat of the Budgetary Authority, with the General Directorate of the National Budget and the General Directorate of Civil Service have been held. In addition, a request has been made for the transfer of new vacant posts from other Ministries, when available.

Priority Recommendation 3

Develop a consistently applied policy regarding information confidentiality.

"Presidential decrees have been adopted that call for greater transparency amongst SOEs that grant them the right to withhold confidential information. However, these decrees do not define in detail what information is confidential and what is not which has led to differing interpretations. Costa Rica allows SOEs to develop their own confidentiality policies, thus opening the door for a heterogeneity of approaches. It is recommended that a clarification occur at central level and active monitoring and enforcement to ensure consistent application of confidentiality policies in line with best practices."

33. It is worth recalling that the Working Party and Committee considered during their past evaluation that sufficient progress has been made to conclude the formal post-accession reporting requirements with respect to this recommendation. Nevertheless, there have been further developments in this area that are provided as relevant for this review.

34. **SOEs have strengthened their accountability policies, along with protocols for handling confidential information.** In alignment with Guideline No. 102-MP "General Policy on Transparency and Disclosure of Financial and Non-Financial Information for SOEs, their Subsidiaries, and Autonomous

³ "Procedure for Monitoring the Management and Performance of Public Enterprises (SOEs) and Autonomous Institutions", "Procedure for the Selection and Evaluation of Candidates for Positions of the Governing Body of State-Owned Enterprises and/or Autonomous Institutions", "Procedure for the Training of the Governing Body and Personnel of State-Owned Enterprises and/or Autonomous Institutions", and "Procedure for the Attention of Administrative Functions and Institutional Internal Control".

Institutions", the Council of Ministers incorporated into the Notes of Expectations for the 2023 period a mandate for each SOE. Within 30 calendar days of receiving the Note of Expectations, each SOE is required to submit their existing protocol, inclusive of applicable policies and procedures for confidentiality, as well as their company code of responsible conduct or code of ethics.

35. In adherence to Article 5 of Guideline No. 102-MP, confidentiality is defined as information that cannot be disseminated due to reasons of public interest, or as the disclosure of information that would afford a significant advantage to a competitor, particularly applicable if the SOE operates within a competitive sector.

36. All SOEs published an annual report in 2022. However, the PAU has identified areas for improvement such as more detailed information on the existence of succession plans, information related to boards of directors, institutional self-assessments on transparency and disclosure, evaluation of institutional performance and the contracting processes for the external audit (Table 3.3).

Table 3.3. SOEs compliance with transparency and disclosure according to Guideline No. 102-MP

| State-owned enterprise | Annual report | Accountability | Criteria for selection of the external audit | Sustainability report | Transparency self-assessment |
|---|---------------|----------------|--|-----------------------|------------------------------|
| Banco de Costa Rica (BCR) | √ | √ | √ | √ | √ |
| Banco Nacional de Costa Rica (BNCR) | √ | √ | √ | √ | √ |
| Correos de Costa Rica S. A. | √ | √ | ○ | √ | ○ |
| Fábrica Nacional de Licores (FANAL) | √ | √ | ○ | ○ | ○ |
| Instituto Costarricense de Acueductos y Alcantarillados (AyA) | √ | √ | ○ | ○ | ○ |
| Instituto Costarricense de Electricidad (ICE) | √ | √ | ○ | √ | ○ |
| Instituto Costarricense de Ferrocarriles (INCOFER) | √ | √ | ○ | ○ | ○ |
| Instituto Costarricense de Puertos del Pacífico (INCOP) | √ | √ | ○ | √ | ○ |
| Instituto Nacional de Seguros (INS) | √ | √ | √ | √ | √ |
| Junta de Administración Portuaria y de Desarrollo Económico de la Vertiente Atlántica (JAPDEVA) | √ | √ | ○ | ○ | ○ |
| Junta de Protección Social (JPS) | √ | √ | ○ | ○ | ○ |
| Refinadora Costarricense de Petróleo, S.A. (RECOPE) | √ | √ | ○ | ○ | ○ |
| Sistema Nacional de Radio y Televisión S.A. (SINART) | √ | √ | ○ | ○ | ○ |

Note: √ indicates that the information is accessible on the SOE's website, ○ indicates the information is not accessible.

Source: Costa Rica's Aggregate Report on State-owned Enterprises 2022.

37. **A freedom of information provision in the General Law of the Public Administration applying to all public institutions including SOEs requires that their governing boards record their deliberations and make them publicly accessible (Article 56).** Importantly, SOE board members interviewed for this review reported that there are mechanisms in place to allow for discussions of sensitive matters requiring confidentiality to remain confidential in line with the exceptions allowed for and cited above.

Priority Recommendation 4

Enact legislation to remove the Minister of Agriculture from the board overseeing FANAL.

“The government has introduced a draft bill to Congress that would remove the Minister of Agriculture from the board of directors of the National Production Council, the parent body whose board currently takes decisions on behalf of its subsidiary SOE, the national liquor production company FANAL. The government is also currently reviewing the possibility of re-structuring or privatising these entities. In the event that the government decides to retain FANAL as an SOE, it should ultimately establish a separate board of directors for FANAL.”

38. **The bill under file No. 22877 amending the Article 15 of Law No. 2035 "Organic Law of the National Production Council, of July 17, 1969" was approved on 31 October 2023, in the second reading of the Plenary Session of the Congress.** This bill mandates the separation of the Minister of Agriculture and Livestock, who serves as a member of the Board of Directors of the National Production Council (CNP), from involvement in any matters concerning the administration and governance of the National Liquor Company (FANAL).

39. Under Costa Rica's classification of SOEs, the National Production Council is considered an autonomous government agency with its own board. FANAL, which operates separately as a department of the CNP and has its own separate accounts, is defined as an SOE due to its production and licensing of alcoholic products. FANAL does not have its own board of directors, while the CNP board acts also as the board for FANAL.

40. One of the primary focal points on the agenda at the SOE Steering Committee has been the enhancement of administrative improvements to FANAL. The enactment of the aforementioned bill was specifically promoted by the Ministry of the Presidency, with support from the PAU and the Ministry of Foreign Trade (COMEX).

41. The amendment prohibits the Minister of Agriculture and Livestock (and/or his representative) from being informed, engaging in discussions, or voting on any issues that relate to the organisation and administration of FANAL. Furthermore, it stipulates that any board decision pertaining to FANAL involving the Minister of Agriculture will be deemed invalid and could potentially constitute a violation of the duty to abstain, potentially resulting in legal consequences, as outlined in Article 339 of the Penal Code.

42. The Costa Rican authorities have indicated that they are continuing to consider longer-term reforms such as the possible restructuring or privatisation of FANAL. In the meantime, they have been taking steps to strengthen its management through the establishment of an audit committee and the implementation of IFRS. But the future of FANAL remains a sensitive issue and Costa Rica's representatives indicated that the removal of the Minister of Agriculture from CNP board matters concerning FANAL was the most that could be achieved with respect to governance changes requiring Congressional approval in the shorter term.

Priority Recommendation 5

Pursue public procurement reforms to monitor and limit the use of exceptions for direct public procurement between public entities including SOEs.

“Costa Rica plans in the shorter term to enact a targeted reform to reduce the exceptions allowing for direct public procurement involving SOEs, and to work in the longer term to enact comprehensive law that envisages a full reform of the Procurement Law and aims to achieve greater efficiency and competition in all public procurement procedures. The draft laws would reduce the number of exceptions to ordinary procurement procedures and introduce new requirements for their use.”

43. It is worth recalling that the Working Party and Committee considered during their past evaluation that sufficient progress has been made to conclude the formal post-accession reporting requirements with respect to this recommendation. Information is provided below, however, to provide additional context for the Working Party’s review.

44. **Costa Rica has established comprehensive legal reforms aimed at bolstering efficiency and promoting increased competition within its public procurement framework.** The enactment of the General Law on Public Procurement (Law No. 9986), ratified in 2021 and enforced since December 2022, aims to streamline processes by reducing the prevalence of exceptions that had previously drawn criticism. This legislation prioritises harmonisation, transparency, and traceability in procurement procedures, mandating the adoption of a centralised electronic public procurement platform by public entities.

45. **Importantly, the General Law on Public Procurement draws upon the OECD Recommendation on Government Procurement and benefited from the input of the OECD Public Governance Directorate.** In this context, the Public Governance Directorate has been carrying out further actions in Costa Rica. Recently, the Directorate conducted a fact-finding mission in Costa Rica during the week of 11 September, 2023, to implement the Professionalisation Module of the Methodology for Assessing Procurement Systems (MAPS). This exercise will help the Public Procurement Directorate (DCOP) in developing a professionalisation strategy for the procurement workforce, aligning with international best practices.

Priority Recommendation 6

Make further progress on implementing initiatives to strengthen the functioning of boards, including the implementation of board evaluations, and effective risk management and control systems.

“SOE boards continue to need board members with greater private sector, financial, international and business expertise and knowledge of best practices in SOE governance. An important step in developing stronger boards is to conduct board self-evaluations mandated by law, analyse them at central level and develop remedial action plans. Further, boards need to act on their responsibility under best practice to ensure an effective control environment including one that monitors and manages risks associated with conflicts of interest and corruption. The establishment of audit committees may assist in this regard.”

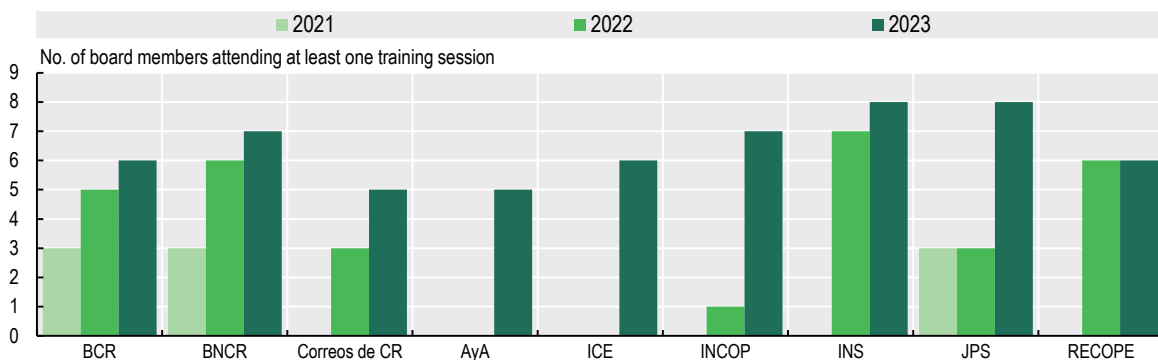
46. **The PAU has undertaken various actions to improve the functioning of the boards of directors within the SOEs.** Such actions include for instance the implementation of the report on the performance evaluation of the board of directors in each SOE, an updated procedure for the selection and

evaluation of board member appointments and a procedure for the training of the governing bodies and personnel of SOEs.

47. **The PAU has organised an extensive series of training sessions in collaboration with selected experts focussing on corporate governance best practices.** To ensure that these sessions contribute effectively to improving governance within SOEs, the PAU also provides newly appointed board members with training materials aimed at guiding them on their responsibilities of establishing, approving, and supervising the corresponding guidelines, performance objectives and strategy of their entities.

48. **The PAU oversees the internal training programmes conducted in each SOE.** These training sessions cover a wide range of topics, including internal control systems, strategic planning, risk management, ethics, IFRS, the Law on Narcotic Drugs, Psychotropic Substances, Drugs of Unauthorized Use, Related Activities, Money Laundering and Financing of Terrorism, No. 7786 and specific topics that relate to the business nature of each SOE. Figure 3.1 displays the nine SOEs for which the PAU provided detailed information on the internal training sessions. While in 2021, only three board members of BCR, BNCR and JPS participated in at least one training, in 2023 the nine SOEs in the figure below enrolled on average 6 board members participating in at least one training.

Figure 3.1. SOE internal trainings



Source: Presidential Advisory Unit (PAU).

49. **All thirteen SOEs have now established an audit committee.** This number has increased since the last WPSOPP review in 2022, when eight of them had audit committees in place. The main duties of the audit committees within Costa Rica’s SOEs include advising on the appointment or revocation of the external auditor, reporting to the board of directors on the reliability of accounting and financial processes, reviewing the audited financial statements and overseeing the effectiveness of governance, risk management, and internal control systems. Of the five remaining SOEs without an audit committee in 2022, FANAL was the first to establish an audit committee during 2023, followed by AyA (the water company), INCOFER (the railway company), INCOP (the Pacific port authority) and SINART (broadcasting) – that established an audit committee in February 2024.

50. Interviews during the Secretariat fact-finding mission with board and management representatives of four SOEs (Correos de Costa Rica, RECOPE (petroleum refinery), JPS (state lottery) and FANAL) gave an impression of increased awareness and understanding of the board’s responsibilities and strategic oversight of risk management and internal controls, in comparison to interviews undertaken during Costa Rica’s accession review process.

51. **Six of the SOEs have established additional committees in their governance structure.** These committees are detailed in Table 3.4 below.

Table 3.4. Additional committees in the SOEs

| State-owned enterprise | Committees |
|---|--|
| Banco de Costa Rica (BCR) | <ul style="list-style-type: none"> ▪ Compliance Committee ▪ Risk Committee ▪ Technology Committee ▪ Nomination and Remuneration Committee |
| Banco Nacional de Costa Rica (BNCR) | <ul style="list-style-type: none"> ▪ Compliance Committee ▪ Information Technology Committee ▪ Risk Committee ▪ Compensation, Nomination and Governance Committee |
| Correos de Costa Rica S. A. | <ul style="list-style-type: none"> ▪ Strategy and Risk Committee ▪ Human Talent Committee ▪ Digital Transformation Committee |
| Instituto Costarricense de Electricidad (ICE) | <ul style="list-style-type: none"> ▪ Strategy Committee |
| Instituto Nacional de Seguros (INS) | <ul style="list-style-type: none"> ▪ Support Committee to the Corporate Audit Committee ▪ Executive Committee ▪ Nomination and Remuneration Committee ▪ Compliance Committee ▪ Human Talent Committee ▪ Risk Committee ▪ Committee on Ethics, Conduct and Human Rights ▪ Technology, Innovation and Digital Transformation Governance Committee |
| Junta de Protección Social (JPS) | <ul style="list-style-type: none"> ▪ Risk Committee ▪ Committee on Information Technology and Innovation ▪ PEI Corporate Formulation Committee ▪ Nomination Committee ▪ Sales Committee ▪ Social Management Committee ▪ Institutional Image Committee ▪ Draft Monitoring Committee ▪ Corporate Officer Recognition Committee ▪ Strategy and Crisis Committee |

Source: Presidential Advisory Unit (PAU).

Priority Recommendation 7

Review SOE board remuneration and develop recommendations to support competitive remuneration and incentives that are aligned with good board practices.

“A research study was being conducted on remuneration practices in the public sector in co-operation with the Inter-American Development Bank and MIDEPLAN. That study has the objective of establishing a fee scale for SOE boards using labour market data from the public and private sector as reference. The study is expected to be completed during the first semester of 2020.”

52. **Remuneration practices for board members vary significantly among SOEs due to differing legal frameworks, resulting in notable disparities in board member compensation across these entities.** The PAU conducted an information collection process to gain a deeper understanding of the current methodologies that govern the remuneration of board members, and that may also influence the frequency of their meetings. The results of this exercise are presented in Table 3.5 below.

Table 3.5. Remuneration schemes of SOEs board members

| State-owned enterprise | Normative classification of remuneration | Remuneration amount per session | | Number of quarterly sessions |
|---|--|---------------------------------|---------|------------------------------|
| Banco de Costa Rica (BCR) | As directed by the Council of Ministers. (Law No. 1644, Law No. 12 and Law No. 8718) | CRC 209 615 | USD 406 | 15 |
| Banco Nacional de Costa Rica (BNCR) | | CRC 209 615 | USD 406 | 15 |
| Instituto Nacional de Seguros (INS) | | CRC 90 000 | USD 174 | 15 |
| Junta de Protección Social (JPS) | | CRC 51 029 | USD 99 | 19 |
| Correos de Costa Rica S. A. | Equal to the remuneration of the members of the Board of Directors of the BCCR, adjusted annually in accordance with the inflation index. (Law No. 7768) | CRC 209 615 | USD 406 | 13 |
| Instituto Costarricense de Electricidad (ICE) | 10% of base salary of the Comptroller. (Law No. 449) | CRC 211 115 | USD 409 | 13 |
| Sistema Nacional de Radio y Televisión S.A. (SINART) | 10% of a deputy's monthly allowance. (Law No. 8346) | CRC 73 914 | USD 143 | 10 |
| Fábrica Nacional de Licores (FANAL) | Three thousand colones, adjusted annually by the CPI. (Law No. 7138) | CRC 54 308 | USD 105 | 6 |
| Instituto Costarricense de Acueductos y Alcantarillados (AyA) | | CRC 52 246 | USD 101 | 15 |
| Instituto Costarricense de Ferrocarriles (INCOFER) | | CRC 50 204 | USD 97 | 7 |
| Instituto Costarricense de Puertos del Pacífico (INCOP) | | CRC 45 499 | USD 88 | 16 |
| Junta de Administración Portuaria y de Desarrollo Económico de la Vertiente Atlántica (JAPDEVA) | | CRC 50 095 | USD 97 | 9 |
| Refinadora Costarricense de Petróleo, S.A. (RECOPE) | | CRC 57 737 | USD 112 | 15 |

Source: Presidential Advisory Unit (PAU) as of May 2023.

53. The PAU formulated the draft bill entitled "**Law on the Allowance Remuneration System of the Management Bodies of State-Owned Enterprises**". This draft bill was reviewed by the Ministries comprising the SOE Steering Committee (including the Ministry of Finance, Ministry of National Planning and Economic Policy and the Ministry of the Presidency) with the approval of the Presidency of the Republic. The Ministry of the Presidency is actively engaged in the preparatory stages for its submission to the Legislative Assembly.

54. The draft bill stipulates that the Ministry of National Planning and Economic Policy will serve as the governing body of the remuneration system, tasked with defining the calculation methodology. Moreover, the proposal encompasses provisions for setting the maximum number of ordinary and extraordinary sessions of the board of directors, regulating the participation in additional committees, and establishing a calculation methodology for remuneration levels.

55. While the draft bill has not been enacted, the preparation of the bill marks the first time that the government has demonstrated a willingness to move beyond a study of the issues to actually advocate reforms to strengthen both the consistency of treatment and pay levels of SOE boards.

4 Conclusions

56. State-owned enterprises are crucial for the economy of Costa Rica and for its citizens. They operate in key sectors such as insurance, banking, electricity, water and transport. Given their significance, good practices for their governance are essential.

57. While Costa Rica does not claim to have fully addressed all seven WPSOPP recommendations, they have achieved major progress on most of them and express a strong political commitment to work toward continued progress where achievements have been more modest. This was evident in the willingness of the President and Council of Ministers to meet with the Secretariat at the conclusion of its fact-finding mission in February 2024 to discuss the preliminary findings and to underscore the role they play personally in advocating continuing improvements to the governance, transparency and accountability of Costa Rica's SOEs.

58. More specifically, Costa Rica's progress in addressing the OECD Recommendations can be summarized as follows:

- During the 2022 review of the Working Party and Committee, it was considered that sufficient progress was made to conclude the formal post-accession reporting requirements with respect to *Priority Recommendation 3* on developing a consistently applied policy regarding information confidentiality and *Priority Recommendation 5* on pursuing public procurement reforms to monitor and limit the use of exceptions for direct public procurement between public entities including SOEs.
- *Priority Recommendation 1* on the full implementation of IFRS: A concerted programme has been undertaken to strengthen financial reporting quality that has resulted in significant progress. Seven out of the ten non-financial SOEs had successfully integrated IFRS in their audited financial statements for 2022, and the number of qualified opinions issued by external auditors has also been significantly reduced. Of the three remaining non-financial SOEs with 2022 compliance gaps, two achieved full compliance in February 2024. For Costa Rica's three financial SOEs, the timetable established by CONASSIF applying to all regulated entities in the financial sector has suffered from a delay compared to the overall phasing-out period by 2024 presented during the last Working Party and Committee review. However, the financial SOEs are fully compliant with Costa Rica's financial disclosure requirements that are applicable to both private companies and SOEs alike and have received clean external audit opinions.
- *Priority Recommendation 2* on developing and implementing a system for establishing and monitoring the achievement of financial and non-financial performance objectives: The Notes of Expectations system is now well established and in 2023 called upon each SOE to submit semi-annual monitoring tables of financial, non-financial and risk management indicators. While the PAU has made progress in tracking and monitoring indicators of performance, they profess an ambition to continue to improve notably their tracking of non-financial indicators as well as the development of measurable performance targets for the achievement of public service objectives.

- *Priority Recommendation 4* on enacting legislation to remove the Minister of Agriculture from the board overseeing FANAL: The bill that mandates the separation of the Minister of Agriculture from involvement in any matters concerning the administration and governance of FANAL was approved in October 2023. FANAL also recently established an audit committee and has committed to fully implement IFRS by the end of 2023. Although the Costa Rican authorities have indicated that they are continuing to consider longer-term reforms such as the possible restructuring or privatisation of FANAL, such reforms have not yet been considered politically feasible.
- *Priority Recommendation 6* on making further progress on implementing initiatives to strengthen the functioning of boards, including the implementation of board evaluations, and effective risk management and control systems: The PAU has undertaken various actions to improve the functioning of the boards of directors within SOEs, including the implementation of the report on the performance evaluation of the board of directors in each SOE, an updated procedure for the selection and evaluation of board member appointments and a procedure for the training of the governing bodies and personnel of SOEs.
- *Priority Recommendation 7* on reviewing SOE board remuneration and developing recommendations to support competitive remuneration and incentives that are aligned with good board practices: The PAU formulated a draft bill reviewed by the Ministries comprising the SOE Steering Committee. Currently, the Ministry of the Presidency is actively engaged in the preparatory stages for its submission to the Legislative Assembly.

59. Clear achievements and progress have been witnessed across all seven areas of priority recommendations since Costa Rica's accession. In particular, the implementation of Notes of Expectations and tracking of performance indicators has strengthened the monitoring capacity of the State as an owner. Moreover, the transparency and the quality of disclosure are notable, including good practices in the annual reports and the aggregate reports prepared by the PAU, as well as progress in adhering to international accounting standards. In addition, sustained attention to the improvement of boards through the establishment of transparent board nomination and appointment processes, board evaluations and extensive training is appearing to yield positive results.

60. The Office of the Presidency is currently preparing a budget proposal to enlarge the size of the Presidential Advisory Unit, and to strengthen their professional profiles through the creation of permanent positions, irrespective of political terms, that are meant to be part of the 2025 Regular Budget. It is also envisaged to separate the Head of the Presidential Advisory Unit from the Secretariat of the Council of Ministers by 2026. In this context, to ensure sustained progress, it will be crucial for the government to confirm the steps necessary to bolster the Presidential Advisory Unit's capacity and secure the continuity of professional staff. Such capacity is vital for Costa Rica to continue to improve its system for developing and issuing Notes of Expectations in order to enable it to establish meaningful targets, clear public service objectives, and to better track indicators of both financial and non-financial performance. Such continuity will also be necessary to facilitate the renewal of commitments by future governments to develop and maintain well qualified and professionalised SOE boards.

61. While Costa Rica continues to have a full agenda for further improvements, Corporate Governance Committee and Working Party agree to conclude their post-accession reporting process on the priority recommendations issued in October 2019 (DAF/CA/CG/ACS(2019)3/FINAL), and to declassify and publish this Note on the OECD web site, based on the substantial progress achieved to date. Nevertheless, both the Working Party and Costa Rican authorities acknowledge the ongoing importance of pursuing the outlined reforms. Moving forward, opportunities to report on additional achievements in the context of regular updates by Members to Working Party is encouraged.