1. BACKGROUND AND CONTEXT

State-owned enterprises (SOEs) in Uzbekistan dominate and have significant influence on the performance of most sectors in the economy including natural resources, energy, manufacturing, telecommunications and transport. The SOE sector has been the key driver of Uzbekistan’s industrial development during the past decades and will likely remain so in the near future. In this respect, improvements in the governance standards and practices of SOEs and increasing their efficiency and financial resilience will ensure their further sustainable contribution to Uzbekistan’s economic development.

The portfolio of SOEs and other state-owned assets in Uzbekistan is overseen by the State Asset Management Agency (SAMA or the “Agency”), which together with relevant ministries, agencies and local authorities manages the ownership over strategic and non-strategic enterprises and assets across multiple sectors. Monitoring, governance, financial supervision and strategic guidance of SOEs are carried out across multiple entities as well.

Recent government decrees envisaged improvements to the system of governance of SOEs, particularly through the introduction of best practices and standards in this area. In particular, the Decree of the President of the Republic of Uzbekistan dated 7 February 2017 “On the Strategy of Actions on Further Development of Uzbekistan” and a related implementation decree underscore the necessity of introducing modern standards and practices of corporate governance in SOEs to increase their efficiency and improve the operations.

Against this background, the Agency is requesting a technical support to review the current legal, regulatory and institutional/administrative frameworks governing the process of management of SOEs, review the existing performance monitoring framework, identify challenges and areas of improvement and develop specific recommendations and a reform road map. This work is carried within the framework of activities agreed in the Memorandum of Understanding signed in August 2018 between the State Investments Committee of the Republic of Uzbekistan, the State Committee for Assistance to Privatised Enterprises and Support of Competition (predecessor institution of the SAMA) and European Bank for Reconstruction and Development in respect of Cooperation on supporting the process of privatisation of state-owned property, improving corporate governance standards and practices in state-owned enterprises and strengthening competition in the Republic of Uzbekistan.
2. OBJECTIVE

Key objective of this assignment is to assist the Government of Uzbekistan to identify key legal, regulatory and institutional reforms to improve the system of governance and monitoring of SOEs and develop a set of recommendations and an actionable road-map of reforms and changes.

The assignment will particularly include the following tasks: (1) review of legal, regulatory and institutional/administrative frameworks governing the process of management and governance of SOEs; (2) benchmarking existing legal and regulatory frameworks against international best practice and standard (e.g., OECD Principles of Corporate Governance of State-Owned Enterprises) and identification of key areas of improvement within legal, regulatory and administrative frameworks; (3) proposal of regulatory and other reforms to address identified issues and challenges; (4) development of a road map of measures and actions necessary to implement these recommendations; and (5) preparation of drafts of the enhanced legislation and regulation.

3. SCOPE OF WORK AND TASKS

To achieve the above objectives, a consultant (the “Consultant”) will be required. The Consultant shall carry out the following tasks:

3.1. Review of the legal and institutional framework for governance of state-owned enterprises

3.1.1 Legal and regulatory framework

(a) Prepare the mapping of key existing legal and regulatory frameworks related to the governance and oversight of state-owned companies and assets (republican assets and those owned by the municipalities);

(b) Provide an assessment of the degree of variability in the application of legal and regulatory frameworks to state assets of different legal forms (i.e., differentiation in treatment of state unitary enterprises, state-owned joint-stock companies and state-owned limited liability companies). This assessment should be done with respect to key aspects of SOE governance including management of an enterprise, monitoring and oversight, disclosure requirements, limitations on types of activities, whether enterprises are all equally subject to insolvency procedures);

(c) Following the assessment in 3.1.1 (b) above, specify if SOEs of certain legal forms are exempt from the application of specific laws and regulations, including insolvency regulation, the competition law or other;

(d) Review the draft “Law on management of state-owned property” identifying how the proposed law may affect the existing legal, regulatory and governance frameworks related to SOEs in Uzbekistan and benchmark the draft law against
international best practice and standards (in particular, in terms of its scope and coverage).

3.1.2 Ownership policy, mandate and governance

(a) Prepare the mapping of different ministries, agencies and other entities involved in exercising the state’s ownership function, in shaping governance and in performing oversight of SOEs;

(b) Assess whether clear rationales for state ownership and the overall objectives and priorities of the state as an owner are provided in any legal or strategic document of the state and whether there is a process for the ongoing review of those rationales;

(c) Based on 3.1.2 (a) above, provide a detailed assessment of the degree of decentralization (or centralization) of ownership and oversight functions in Uzbekistan. In addition, provide a comparison of functions and responsibilities of the SAMA with functions and responsibilities of other ministries, agencies and entities in regards to the governance and oversight of SOEs;

(d) Overview of accountability lines of key ownership and coordinating entities (e.g., SAMA) with respect to reporting on the performance of the portfolio(s) of SOEs they oversee. Specifically, this assessment should clarify what government or representative bodies and entities they report to on the performance of SOEs (e.g., the Cabinet of Ministers, Parliament, other), what information is provided and at what frequency;

(e) Overview of existing legal responsibilities for exercising the ownership function in SOEs by key ownership and coordinating entities (e.g., representation in shareholders meeting, supervisory board or related, trustees, etc.) and mechanisms for the implementation of these authorities;

   • Based on 3.2 (e) above, provide an overview of organisational arrangements for complying with these responsibilities and mechanisms (e.g., degree of legal autonomy in decision making, remuneration, reporting requirements and performance assessment);

(f) Provide an assessment of the authorities’ approach to evaluating and, if necessary, challenging SOEs’ strategies and medium-term business plans, including sales, profitability, working capital, capex and capital structure assumptions used in those plans;

(g) Provide an assessment of the extent to which SOEs undertake regulatory functions in the respective sectors they operate and specify if they are clearly stated (in legislation, regulation, bylaws) and disclosed. If relevant, clarify if these functions are consistent with competition law or other relevant laws in the country;
(h) Provide an assessment of public service obligations and other social responsibilities of SOEs, if available, and specify whether they are calculated pursuant to a clear methodology and if they are clearly stated (in legislation, regulation, bylaws) and disclosed;

- If relevant, clarify how the performance against these public service obligations is monitored. Specify whether costs associated with fulfilling such public service and other obligations by SOEs are disclosed;

(i) Provide an assessment of existing legal processes, practices and criteria for classifying an SOE as “strategic” and benchmark against best practices in terms of distinguishing between enterprises that are involved in pure commercial activities and those that fulfil broader (i.e., societal) objectives.

3.1.3 Transparency, disclosure and oversight

(a) Provide an overview of performance reporting and information disclosure requirements and practices of SOEs, their frequency, coverage, the extent to which they are audited and existing reporting lines;

(b) Overview of existing aggregate reporting and disclosure requirements and practices on the operational and financial performance of SOEs by key ownership entities including SAMA;

- Clarify if any legal restrictions on reporting and disclosure of information on financial and operational performance of SOEs by these entities exist and what is their nature;

(c) Specify if existing reporting and monitoring requirements and processes are part of a more comprehensive oversight and planning processes (e.g., state investment planning processes or similar), explain the nature of these processes and provide the assessment of the role and input SOE performance monitoring provides to these processes;

(d) Provide an assessment of the feasibility of production and disclosure of a consolidated report on financial and operational performance of the portfolio of SOEs by SAMA and other ownership entities (within the existing legal and governance frameworks, accounting standards, established monitoring processes related to SOEs and technical or other capacities of key ownership entities);

(e) Provide an overview of internal audit and control mechanisms as well as external independent controls in SOEs required by the existing legislation; specify internal and external control requirements of SOEs by legal type, if relevant;

(f) Provide an assessment as to what extent reporting, monitoring and performance evaluation systems as prescribed by the existing legislation provide timely and sufficient information to supervisory boards to carry out their mandates and
responsibilities effectively; benchmarks the existing systems to best practices and standards;

(g) Provide an assessment as to what extent reporting, monitoring and performance evaluation systems as prescribed by the existing legislation provide timely and sufficient information to ownership entities and the government to be able to exercise its ownership function effectively; benchmarks the existing systems to best practices and standards;

(h) Provide an assessment of disclosure requirements in the existing legislation and practices in regards to such matter as ownership and voting structure of SOEs, disclosure of business, investment and procurement plans, disclosure of material risk factors and mitigating measures, disclosure of financial assistance received from the state (e.g., guarantees and related) and disclosure of material transactions with related entities;

(i) Provide an assessment of the degree of compliance of largest SOEs with existing transparency, disclosure and reporting requirements as set out in the existing legislation (this can be done using the example of several large SOEs only).

3.1.4 Supervisory Board

(a) Provide an overview and assessment if the existing legislation and regulations clearly define the duties, responsibilities, liabilities and mandate of the supervisory board directors (both individual and joint) with respect to setting the strategy (and related KPIs), risk appetite and budget of an SOE, appointing and dismissing senior management (including CEO/general manager) of an SOE and monitoring SOE’s and individual managers’ performance as well as the SOE’s risk profile;

(b) Provide an assessment of the degree of legal autonomy of members of the supervisory boards of SOEs with respect to key sets of decisions including appointment and dismissal of an enterprise director (i.e., Chief Executive Officer (CEO)), establishing the remuneration of a CEO and others;

(c) Overview of existing requirements and practices related to consultation by supervisory board members of their voting policies with SOE ownership or oversight entities;

(d) Overview of existing supervisory board nomination and selection processes and practices. Provide an assessment to what extent existing processes are well-structured, clear and transparent and whether qualification criteria for board members are well-defined;

(e) Overview of requirements and practices related to the size of supervisory boards in SOEs and their composition in terms of the mix of skills and expertise required at the supervisory board;
(f) Overview of requirements and practices related to presence of independent board directors in supervisory boards; provide an assessment of the definition of independence as defined in the legislation and how the definition aligns with established best standards and practices as well as the practices by which this independence is assessed and reviewed;

(g) Overview of requirements for the establishment of supervisory board committees (if any), their roles, responsibilities and composition, selection of their members and operating procedures;

(h) Overview of requirements and practices related to systems of reporting and providing performance information by the management to board members;

(i) Overview of requirements and practices related to systems of communications and engagement of board members with internal and external control and auditors;

(j) Overview of existing requirements and practices related to remuneration of supervisory board members and what performance incentive mechanisms are available;

(k) Overview of existing requirements and practices related to evaluation of board performance and if clear criteria for performance of board members exist and how the conclusions based on evaluation results are implemented in practice;

(l) Overview of requirements for the support provided to management, supervisory boards (and committees, if any) of SOEs (e.g., role, functions and responsibilities of the corporate secretary and board administrative support, quality and frequency of reporting by management, etc.);

(m) Overview of existing requirements and practices related to provision of inductions and training to new supervisory board members.

### 3.1.5 CEO and Senior Management

(a) Provide an overview of existing nomination and selection processes and practices of the CEO and other members of senior management. In addition, provide an assessment to what extent existing processes are well-structured, clear and transparent and whether qualification criteria for senior management are well-defined;

(b) Provide an assessment of the degree of operational autonomy that the existing legal framework related to governance and oversight of SOEs provides to the management of enterprises to achieve their objectives (day-to-day operational decisions, investments decisions, hiring/firing practices and related);

(c) Provide an overview of existing requirements and practices related to determination of remuneration of SOE directors and other top management members and what performance incentive mechanisms are available;
(d) Overview of existing requirements and practices related to evaluation of the performance SOE senior management and if clear criteria for performance of management members exist.

3.1.6 Internal Control, Internal Audit, Risk Management

(a) Provide an overview of the legal requirements for internal control functions in SOEs (including risk management, compliance and internal audit) and the mapping of their accountability and reporting to management, supervisory board (and committees, if any), and their integration with the activities of the supervisory board (and committees, if any), the external auditors, regulators, and other state authorities;

(b) Overview the structure, working processes (including the internal audit plan and its implementation), independence, reporting of the internal audit function (if any), and their compliance with best practices;

(c) Overview of the structure, working processes, independence, reporting of the risk management function (if any), and their compliance with best practices;

(d) Overview of the requirements for a Management Information System (MIS) (if any) to support the management and internal control functions and identify shortcomings in SOE operations.

3.1.7 Review Report

a) The results of the review under 3.1.1 - 3.1.6 above and the gap analysis against international best practices will be delivered within the review report (the “Review Report”).

3.2. Development of recommendations for enhancement of existing legal, regulatory and administrative/institutional frameworks for governance of SOEs

(a) Based on the Review Report, identify key areas for improvement in the existing policy, legal, regulatory and institutional frameworks and prepare recommendations (the “Recommendations”), while benchmarking existing frameworks and regulations to best practices and standards (e.g., OECD Guidelines/Principles on Corporate Governance of State-Owned Enterprises and related);

(b) The Recommendations shall also include a detailed roadmap of measures and steps necessary to be implemented by the Government of Uzbekistan. For each measure and recommendation, responsible stakeholders, affected existing laws and regulations and priority (e.g., short-term measures (to be implemented within 6-12 months), medium-term measures (to be implemented within 12-36 months) or equivalent) shall be identified;

(c) Recommendations should include draft legislative acts necessary for the implementation of the Recommendations (“Draft legislative acts”).
3.3. Assist SAMA in evaluating the internal skills and capacities it needs to develop to improve and modernize its ability to manage and monitor the portfolio of its enterprises

(a) Given assessments as per 3.1 and 3.2 above, provide recommendations on the set of skills and capacities SAMA will need to develop to improve its ability to manage and monitor the portfolio of its enterprises.

3.4. Prepare and assist with preparing the drafts of the enhanced legislation and regulation

(a) As necessary, Consultants may be asked to review or assist with drafting new regulation and legislation in this area.

3.5. Workshops and consultations with the stakeholders

The Consultant will organize up to three key workshops for the stakeholders:

1. To present and discuss the Review Report (as per 3.1 above);
2. To present and discuss the Recommendations (as per 3.2 and 3.3 above);
3. To present and discuss the draft legislation and regulation (as required).

4. PROJECT IMPLEMENTATION

4.1. The Assignment will be managed by the EBRD project team consisting of Umidjon Abdullaev, Principal Economist, Economics Policy and Governance (EPG); Rika Ishii, Lead Economist, EPG; and Hans Holzhaecker, Lead Economist for Central Asia, EPG; Anastasia Rodina, Principal Counsel, Governance and Political Affairs; Dilshod Akhundjanov, Senior Banker, Tashkent Resident Office and Pavle Djuric, Principal Counsel, Legal Transition Team (LTT).

4.2. The project will be managed by the EBRD team listed above in consultation with the SAMA and other stakeholders as will be communicated to the Consultant. The Consultant shall consult the EBRD prior to their meetings with counterparties related to the Assignment.

4.3. SAMA will provide a working contact person for coordination. SAMA will make available their experts and any documents, data and information necessary for the implementation of this Assignment. SAMA will ensure coordination with ministries and agencies and other national stakeholders. The need for the formation of the working group with the involved stakeholders will be discussed between the EBRD and SAMA.

4.4. The Consultant is to provide for their own office space except when visiting the SAMA (in those cases the SAMA will provide office space for the Consultant to review the materials, interview the stakeholders, etc.).

4.5. The Consultant will provide English and Russian versions of all relevant materials and deliverables and will be responsible for presenting the work developed under the Assignment.
as/when necessary. The Consultant will be responsible for providing translation for their experts if those don’t have Russian language capacity.

5. **CONSULTANT PROFILE**

Corporate services are required. The Consultant will be a firm or a group of firms preferably with previous project experience related to:

- Developing, managing and implementing complex projects related to overall governance framework and corporate governance of state-owned enterprises (previous experience in issues related to corporate governance of SOEs in Uzbekistan will be considered an advantage);
- Advising relevant agencies and institutions (similar to SAMA in Uzbekistan) on the analysis and review of corporate governance standards and practices in SOEs as well as relevant performance monitoring practices, processes and policies and in developing recommendations for their improvement and putting in place methodologies for the implementation;
- Reviewing and assessing the legislative and regulatory frameworks and in drafting legislative and regulatory amendments to improve corporate governance standards and practices of SOEs in line with best practices;
- Reviewing and assessing corporate governance practices and standards based on desk reviews, field research, interviews and site-visits.

The Consultant shall also have good understanding and knowledge of the Uzbekistan’s context and successful experience in implementing similar assignments. The Consultant’s expert team shall have Russian and English language capacity.

6. **DELIVERABLES AND PROJECT SCHEDULE**

The schedule of activities and deliverables is set out below (indicative timeline). The activities are expected to start in Q2 2019 and run for approximately 10 calendar months. The timing below assumes there is continuing support and commitment by the national stakeholders, no delays in establishing meetings with stakeholders and access by the Consultant to relevant policy, legal and regulatory documentation. The timetable also depends on contractual and administrative procedures, including selection of the Consultant.

The project shall start with a kick-off meeting, in which all key parties – national stakeholders, the EBRD and the procured Consultant – will participate.

The Consultant shall submit the following written reports/deliverables (to be submitted to the EBRD project team in electronic format (Microsoft Word)):
<table>
<thead>
<tr>
<th>No.</th>
<th>Deliverable</th>
<th>Due</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>Regular reports: biweekly reports to the EBRD project team summarising completed activities and progress</td>
<td>During the implementation of the Assignment</td>
</tr>
<tr>
<td>2.</td>
<td>Inception report outlining approach and planned timeline for the assignment</td>
<td>1 week before the kick-off meeting with the national stakeholders or two weeks of the contract signing, whichever is earlier</td>
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<tr>
<td>3.</td>
<td>Draft Review Report</td>
<td>8 weeks following the kick-off meeting</td>
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<tr>
<td>4.</td>
<td>Final Review Report</td>
<td>2 weeks after receiving comments from the EBRD and the SAMA on the draft Review Report or the first workshop, whichever is earlier</td>
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<td>5.</td>
<td>Draft Recommendations, excluding Draft Regulations</td>
<td>10 weeks following the kick-off meeting</td>
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<tr>
<td>6.</td>
<td>Final Recommendations, including the Draft Regulation</td>
<td>2 weeks after receiving comments from the EBRD and the SAMA on the draft Recommendations or the second workshop, whichever is earlier</td>
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<tr>
<td>7.</td>
<td>Final Draft Regulation</td>
<td>2 weeks after receiving comments from the EBRD and the SAMA on the Draft Regulation or the third workshop, whichever is earlier</td>
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<tr>
<td>8.</td>
<td>Final report summarising the findings, final recommendations and reflecting the feedback provided by the national stakeholders</td>
<td>4 weeks following the second workshop</td>
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All written deliverables shall be submitted in both English and Russian, except for the periodic report and the inception report (as per Items 1 and 2 in the table above), which shall be in English only. No deliverables will be considered as final before being approved by the EBRD project team as being of an acceptable quality.
Meetings as part of this assignment will be conducted in English. Depending on the needs of the participants of the meetings with national stakeholders, translation from/to Russian will be provided by the Consultant.

7. **CONFIDENTIALITY**

The consultants agree to strict confidence with respect to their findings, information given by the national stakeholders or the EBRD. EBRD may decide to make the information available to other interested parties on a case by case basis.