

Zulat's Position on Government Plan to Appoint SOE Directors Based on Political Affiliation

- Zulat for Equality and Human Rights promotes the protection of the rule of law and democracy. On 20 June 2022, we published a report titled *Pseudo Democracy: State of the Regime in Israel*,¹ which warned of the authoritarian processes that have taken place in the State of Israel over the years and have accelerated since the establishment of the 37th Government on 29 December 2022.
- The Government Companies Authority [GCA] oversees 71 state-owned enterprises [SOE] with assets totaling over NIS 235 billion. Some of them are giant corporations that provide important services to the public and play a significant role in the nation's economy and in the life of Israelis in such areas as energy, education, water, health, housing, seaports, transportation infrastructure, security, and culture.
- The government consented to abolish the Recruitment Database [listing potential candidates for the position of SOE directors] in the coalition agreements, but now there is a disagreement (which awaits Prime Minister Netanyahu's verdict) between Finance Minister Bezalel Smotrich and Regional Cooperation Minister David Amsalem on whether responsibility for the SOEs should transfer to Amsalem. As will be explained in detail in this paper, Zulat calls on the opposition parties and opponents of the regime coup to come out against both the abolition of the Recruitment Database and the placement of the SOEs under Amsalem's responsibility. The abolition of the Recruitment Database will seriously harm the equitable selection of SOE directors and might exacerbate the inequality that already exists in the government's activities in all spheres of life. Even if the Recruitment Database is not abolished, the transfer of responsibility to Amsalem is a perturbing move that will damage the public interest, akin to the subordination of the Israel Police to National Security Minister Itamar Ben-Gvir. Due to the inherent weaknesses in the Government Companies Law-1975, Amsalem will further politicize the selection of directors and their functions and wreak havoc on the SOEs and the Israeli economy, just as Ben-Gvir has been doing with the Israel Police despite the fact that the Knesset has not approved the legislative amendments he demanded.

¹ Eitay Mack, [Pseudo Democracy: State of the Regime in Israel](#), Zulat, 20 June 2022.

- **Existing Legislation:** The minimum requirements for the appointment and tenure of SOE directors are regulated in the Government Companies Law-1975 (henceforth "the law"). Article 18(a) states that an SOE director shall be appointed by the ministers specified in the law, after consulting with the review committee established by virtue of Article 18b. According to Article 18b(c) and Article 18c, the committee must examine every candidate against three parameters: (1) the eligibility requirements set forth in the law (Article 16a and Article 17); (2) suitability to the position; (3) in the case of candidates with personal/business/political connections to a government minister, whether they possess special skills pertinent to the SOE's field of operations or another special skill in addition to the qualifications required by law that justify their selection despite the aforementioned connections.
- **Two tracks are presently available to candidates: Recruitment Database and Database-Compatible.** The first consists of a public, competitive, and equitable headhunting procedure conducted by the GCA, at the end of which a database listing select candidates is placed at the disposal of the ministers. The Database-Compatible route is used to vet exceptional candidates not listed in the database, per the guidelines issued by the Deputy Attorney General on 14 December 2020 stipulating the criteria justifying the selection of external candidates. Candidates considered for the Database-Compatible track, similar to those in the Recruitment Database, are subject to an examination of their qualifications by the review committee. Candidates that do not meet the Recruitment Database requirements will not be appointed SOE directors unless ministers present special justifications in writing. These rules are intended to ensure the optimal staffing of SOE boards in the professional and business sense, as well as to rein in the reprehensible incidence of political appointments.
- **The Recruitment Database was established in 2013 in the wake of recurring criticism by state auditors about the large number of political appointees, who at times lacked proper professional qualifications.** Until 2013, ministers chose the candidates and forwarded their names to the review committee, and SOE directors were appointed following the committee's approval and recommendation. Since no pool of candidates existed, ministers sometimes chose personal acquaintances or people they knew from party circles, not necessarily based on their professional skills.
- **Zulat supports the amendment of the Government Companies Law-1975 in order to anchor the status of the Recruitment Database, enhance the independence and professionalism of directors, and reduce politicians' control over the process of**

their appointment and their day-to-day work. This is based on the concept that SOEs are not plunderable "petty cash" or meant to secure jobs for political hacks, but are a valuable public resource that must be managed in a professional, proper, equitable, and legal manner. Given that passing the required legislative amendment is not politically feasible at the moment, the public at large and the opposition members in the Knesset should at the very least be aware of the problems and potential for abuse in the existing legislation, and accordingly oppose their exploitation and exacerbation.

- **The coalition agreements state that "all factions shall support the government and the Knesset vis-a-vis the legislative amendments needed to abolish the Recruitment Database."** Furthermore, the proposal expected to be approved soon by the government envisions responsibility for the GCA shifting from the Finance Ministry to Minister Amsalem. The latter has for years been waging a campaign against the independence and professionalism of SOE directors. For example, on December 2020, he announced on Twitter his decision to "abolish the Recruitment Database established by Lapid and Yogev," and "to open it to all Israeli citizens who meet the criteria set by law. A housewife and a manual laborer have skills, too."² Responding on behalf of Attorney General Avichai Mandelblit, his deputy Dina Zilber said this would only be possible after a professional procedure is established for the creation of a new database from which SOE directors would be selected; subsequently, the Supreme Court temporarily suspended the abolition. On 14 December 2020, Amsalem tweeted that "Ms. Zilber and Mr. Mandelblit continue their thuggish behavior and insist on Yesh Atid's elitist candidates. They have stopped at nothing to interfere with my work, grossly and blatantly violating the law."³**Zulat's position: Abolishing the Recruitment Database will seriously harm the equitable selection of SOE directors and might exacerbate the inequality that already exists in the government's activities in all spheres of life. Even if the database is not abolished, shifting the GCA under Minister Amsalem's responsibility will inflict grievous damage to the public interest, akin to the harm inflicted by the subordination of the Israel Police to National Security Minister Itamar Ben-Gvir:**

² [David Amsalem](#), *Twitter*, 3 December 2020 (Hebrew).

³ [David Amsalem](#), *Twitter*, 14 December 2020 (Hebrew).

- ☒ This move is an integral part of the effort to change the regime in Israel by means of, among other things, a series of anti-democratic legislative proposals and the abuse of the inherent weaknesses of Israel's democratic institutions and "checks and balances." Furthermore, it is a direct continuation of the "rule of clerks" campaign that the Netanyahu governments have been waging relentlessly since 2015, whereby the "clerks" in government offices and public service are subversive elements set on running the country in an anti-democratic fashion and carrying out a "government coup." This is not a matter-of-fact debate about proper administrative conduct, but rather a crusade to delegitimize the professional ranks, accompanied by messages reminiscent of the conspiracy theories about the existence of a so-called "Deep State" propounded by former US President Donald Trump and his supporters. For instance, on 26 December 2020 Minister Amsalem tweeted that the GCA has "forgotten who is the minister in charge and who was elected to office by the public, and assigns too much power to clerks and advisers as if they were the ones whose job it is to call the shots rather than to provide advice."⁴

- ☒ In view of Minister Amsalem's stated positions, regardless of whether the database is abolished or not, he is expected to appoint directors primarily based on their political identification or affiliation rather than their qualifications, in an unequitable process and in violation of the rules of proper representation. SOE boards are presently short some 200 directors. According to Amsalem's pronouncements, he wants to choose directors based on their political identification rather than candidates who, in his opinion, identify with rival political parties, even if they are those with the best qualifications. As long as the Recruitment Database remains in place, Amsalem is expected to select from it only those who a priori identify with him politically or those who will retroactively declare their political loyalty to him (after they have been entered into the database). Instead of being required to prove that they are the most suitable in terms of their professional skills, candidates will have to prove that they are the most politically loyal. Already today, according to Article 18(a) of the law, a minister may appeal to the government plenum a decision by the review committee to reject his recommended candidate. In view of the public statements made in recent months by some ministers to the effect that they should be free to make any appointment without the interference of

⁴ [David Amsalem](#), *Twitter*, 26 December 2020 (Hebrew).

legal counsels or the Civil Service Commission, there is no doubt that the government will approve any nominee demanded by Amsalem in contravention of the committee's position. If the Recruitment Database is abolished, bearing in mind that it is not yet anchored in legislation (and to the extent that the Supreme Court does not nix such a move), Amsalem may establish his own "Database of Political Loyalists" from which he will choose candidates who meet the minimum requirements set by law and will rule out others with better and more suitable qualifications only because of their political identification. Either way, given the severe violation of the principle of equality between candidates that is expected to occur, there will be no point to applications by Israelis who meet the eligibility requirements set by law but do not share Amsalem's politics. Moreover, under these circumstances, the lack of representation on SOE boards of women, Arab citizens, people with disabilities, the Ethiopian community, the ultra-Orthodox population, and new immigrants is expected to worsen.

- ☒ **Appointing directors based on political affiliation might worsen the inequality that already exists in almost all the government's activities and in many spheres of life in the country.** As mentioned, some SOEs are giant corporations that provide important services to the public and play a significant role in the nation's economy and in the life of Israelis in such areas as energy, education, water, health, housing, seaports, transportation infrastructure, security, and culture. The role of the board of directors, as defined in Article 32 of the law, is to determine the SOE's general policy in terms of its objectives, financial operations, annual budget and its disbursement, and the use of the resources at its disposal. A board of directors controlled by political loyalists might allow the government to implement discriminatory policies in favor or against the provision of public services and the development of infrastructures for certain populations based on political or racist reasons, and even to degrade existing services due to political rivalry or vindictiveness.
- ☒ **Appointing directors based on political affiliation might seriously harm the functioning and stability of SOEs.** Instead of pondering practical considerations, a director elected solely on the basis of his political affiliation will first and foremost be compelled to demonstrate his political loyalty, even if this counters the SOE's interests. For example, such a director might favor disadvantageous and corrupt

contracts with suppliers or customers only because of their affiliation with his party, contrary to the interest of the public and the SOE. Already today, Article 22(6) of the law allows "the GCA or the ministers, after consulting with the GCA, to notify an SOE of the termination of its director if they conclude that he is not performing his duties properly."⁵ A director might be replaced whenever the minister/political echelon/political interest changes or if the director falls out of political favor with the minister. Board members will effectively be the minister's rubber stamp, or else they will be removed.

☒ **Appointing directors based on political affiliation might increase corruption not only within the SOEs but in all government activities, in a way that harms the public interest and the nation's economy.** As noted, the GCA oversees 71 SOEs with assets worth over NIS 235 billion, some 57,000 employees, and engagements with numerous suppliers, local authorities, and private companies. The main purpose of a political appointment is to provide a perk to boost the minister's personal status within his party or a certain constituency. In other words, such appointments contain a strong element of exploitation of a public position for personal needs. A director whose main obligation is not to the public and the SOE's stability and profits but to personal and political interests might severely hurt the state's coffers, damage the quality of services provided to the public, and adversely affect the economy. Since SOEs are a major player in diverse areas of the economy and in the life of citizens, their operation by means of dubious engagements will increase national corruption and among the multitude of suppliers, local authorities, and business firms coming in contact with them. The State Comptroller's Report from May 2022 noted that already today there is a high incidence of embezzlement of SOE funds and that no appropriate mechanisms exist to deal with it.

☒ **Appointing directors based on political affiliation will damage the trust of the Israeli public and of international entities on which Israel's economy depends.** The Israeli public's trust in the SOEs might be impaired, thereby hindering their ability to compete for professional manpower and deterring private companies from doing business with them for fear of "tarnishing" their image. Such fading trust might prompt gratuitous privatization of SOEs: the very same government responsible for

⁵ [Government Companies Law-1975](#), *Nevo*, updated 1 December 2021 (Hebrew).

the decline of SOEs and their services could present privatization as a "magic solution," which would increase corruption as the assets of a privatized SOE would be transferred to cronies. Foreign countries and organizations viewing SOEs as corrupt might result in the loss of international customers, including countries that restrict business and investments with corrupt companies, and Israel would be seen as breaching its obligations to the OECD. Due to all the above, government-funded economic and social programs that are supposed to serve all Israelis would be seriously harmed.

Author and legal consultant: Adv. Eitay Mack