

# 10 ANTI-CORRUPTION PRINCIPLES FOR STATE-OWNED ENTERPRISES

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A multi-stakeholder initiative  
of Transparency International



**Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. With more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.**

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# FOREWORD

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**State-owned enterprises (SOEs) are important globally and at the local level because they command such large amounts of state resources and they affect so many people's lives.**

SOEs exist because governments wish to serve their publics by enhancing the wealth and quality of life in their countries, through delivering crucial services, stimulating economic development, attracting investments and protecting strategic resources. Many SOEs have been partially privatised to expand their operations, improve operating efficiency and to release wealth for other vital purposes. SOEs are increasingly operating outside their home countries and some are among the world's top companies, especially in the extractive sector.

Yet, despite their importance to societies and the valuable work they do for their communities, the successful operation of SOEs may be threatened by corruption because of their unique closeness to politicians, the vulnerability of the sectors they operate in and the wealth and resources which they manage. Poor state structures for oversight of SOEs, and weak governance and management systems can lead the way for politicians and public officials to intervene improperly in the running of SOEs. This opens the door for bribery, theft of assets and other forms of corruption.

Major corruption scandals involving SOEs have shown the often devastating economic and social consequences that can result for countries and their peoples. This is particularly so in resource rich countries where ordinary people remain poor while the elites enrich themselves and public goods are exploited or simply misused. However, this can happen in any country and in all sectors, from communications and construction to education and public health.

For these reasons, it is essential that SOEs operate to the highest standards of integrity and transparency, and are beacons of integrity for their countries. To contribute to achieving this aim, these 10 Anti-Corruption Principles for SOEs (the SOE Principles) aim to help and guide SOEs to perform to high standards of integrity and implement anti-corruption programmes. The code sets out 10 best practice principles, which are supported by extensive guidance on how SOEs can structure policies and procedures to counter corruption. The SOE Principles are intended to complement the valuable work being undertaken by the Organization for Economic Co-operation and Development (OECD) in providing governments with guidance on corporate governance and anti-corruption practices for SOEs.

The SOE Principles are aligned to the Business Principles for Countering Bribery, first published in 2003 as an initiative of Transparency International and now in a third edition. The Business Principles have shown how voluntary codes can contribute to change, not only by affecting the behaviour of businesses but also by having a significant influence throughout the world on the development of anti-bribery laws, codes and tools. Transparency International looks forward to the SOE Principles having the same impact on governments, SOE and their stakeholders.

**Delia Ferreira Rubio**

Chair, Transparency International

# INTRODUCTION

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## The 10 Anti-Corruption Principles provide guidance for state-owned enterprises (SOEs) of all types and sizes on anti-corruption best practice.

SOEs are important economically: they constitute a significant portion of global business and social services delivery and increasingly operate internationally.<sup>1</sup> They meet the needs of communities by providing crucial services in areas such as infrastructure, water and power supplies, natural resources, food, banking and financial services and health. SOEs may be used by governments as tools for development, to protect strategic resources and interests and to raise a country's global presence. Many SOEs have been partly privatised and the largest commercial SOEs now rank among the world's top global companies.

SOEs have specific corruption-related vulnerabilities. These include:

- close relationships between government, politicians, SOE boards and senior management
- poor governance and management
- poorly managed conflicts of interest
- lack of accountability through transparency and public reporting

Without effective anti-corruption policies and procedures these vulnerabilities can result in corruption, including:

- bribery in procurement
- corruptly structured purchases and sales of assets
- misuse of the SOE to provide finance to political parties
- anti-competitive behaviour

Public ownership carries enhanced responsibilities for SOEs: they are required to act in the interests of the society in which they operate and they are able to set standards which can influence positively their business partners and stakeholders. In countries that are struggling to improve their anti-corruption performance, SOEs can provide an example, at the highest level, of anti-corruption practices for all sections of society – and specifically for private sector players. In this way, governments can use the activities of SOEs to drive ethical business practices.

## SOE ANTI-CORRUPTION PROGRAMMES MAKE GOOD BUSINESS SENSE

Why is it in the interests of SOEs to have an effective anti-corruption programme? The simple answer is that having such a programme makes business sense because it:

- saves time and money, contributes to the SOE's sustainability and allows more to be spent on investment or distributions to its owners
- promotes local and international investment
- adds to the SOE's business efficiency and success, reduces risk and allows its focus to be full on ensuring the quality of its goods and services, including those provided for the public good
- improves opportunities for sustainable growth
- establishes an attractive culture that aids in the recruitment of talented employees
- attracts other businesses to do business with the SOE because of its 'clean' reputation
- benefits the SOE's board and its members through having an enhanced reputation
- presents a positive image of the business climate in the country
- makes it easier to obtain loan and equity financing, thus removing a potential burden on national budgets
- develop an incident management plan

Despite this strong business case, corruption incidents involving SOEs have shown the scale of these risks and the severity of damage to their enterprises, the local economies and to the general public.

## THE MOST EFFECTIVE CHECK FOR SOES AGAINST CORRUPTION IS TRANSPARENCY

Transparency and public reporting allow the public to see and judge how the SOE operates and to call to account those who introduce corruption into the SOE. Yet, Transparency International's surveys of public reporting indicate that some SOEs have weak anti-corruption disclosure practices. The SOE Principles therefore emphasise good governance and public accountability through transparency.

To aid SOEs to counter the risks of corruption, this code sets out 10 SOE Principles for a best practice SOE anti-corruption programme. The 10 Principles are all important and are interrelated. The ways SOEs use the SOE Principles will depend on their particular circumstances and corruption risks. Smaller SOEs that may not yet have developed anti-corruption practices can use these SOE Principles as a guide on areas they should be striving towards in developing their anti-corruption programmes.

While they are intended primarily for the use of boards of directors and managers of SOEs, these SOE Principles should also be of interest to ownership entities, regulators, lawmakers, prosecuting agencies and professionals. They can also be referred to by any other kind of state-controlled entity or agency since the underlying system for designing and implementing an anti-corruption programme is universal and the risks faced by these entities are often similar to those faced by SOEs.

## TI'S BUSINESS PRINCIPLES FOR COUNTERING BRIBERY

The design of the SOE Principles draws upon the Business Principles for Countering Bribery, a code for business initiated by Transparency International, developed with multiple stakeholders and first published in 2003.<sup>2</sup> The Business Principles have contributed substantially to the development of other codes and have shaped a range of tools produced by Transparency International and its chapters. The SOE Principles are also designed to complement the OECD's recommendations to governments on the corporate governance and anti-corruption measures of SOEs. Like the Business Principles for Countering Bribery, the SOE Principles were developed through a multi-stakeholder process, with guidance and advice from a Working Group whose members were drawn from SOEs, companies, inter-governmental bodies and independent experts, together with a three-month public consultation. Transparency International is grateful to members of the Working Group for contributing their expertise. These members are listed on page 42.

We hope that the SOE Principles will be taken up widely by SOEs as guidance for developing their anti-corruption programmes. The key to the success of the standards contained here will be the extent to which they are implemented in practice, and this will depend on how credibly they are seen in the respective market places. The SOE Principles do not provide implementation guidance, but it is hoped that they will help SOEs and their stakeholders to develop practical tools including frameworks for assessing aspects of performance such as transparency and public reporting.

## Using the SOE Principles

The 10 SOE Principles are listed on the next page. The 10 sections that follow provide further guidance on each of the principles, setting out clauses with additional commentary where appropriate. The glossary at the end of this document defines many of the words and terms used in the text.

Throughout the SOE Principles, the term "ownership entity" is used to refer to the part of the state that is responsible for the ownership function over, or the exercise of ownership rights in, an SOE. "Ownership entity" can be a single state ownership entity, a coordinating agency or a government ministry responsible for exercising ownership.

# 10 ANTI-CORRUPTION PRINCIPLES FOR STATE-OWNED ENTERPRISES

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The SOE board and management, supported by all its employees, shall follow these Principles:

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**PRINCIPLE 1:**

Operate to the highest standards of ethics and integrity

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**PRINCIPLE 2:**

Ensure best practice governance and oversight of the anti-corruption programme

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**PRINCIPLE 3:**

Be accountable to stakeholders through transparency and public reporting

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**PRINCIPLE 4:**

Ensure human resources policies and procedures support the anti-corruption programme

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**PRINCIPLE 5:**

Design the anti-corruption programme based on thorough risk assessment

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**PRINCIPLE 6:**

Implement detailed policies and procedures to counter key corruption risks

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**PRINCIPLE 7:**

Manage relationships with third parties to ensure they perform to an anti-corruption standard equivalent to that of the SOE

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**PRINCIPLE 8:**

Use communication and training to embed the anti-corruption programme in the SOE

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**PRINCIPLE 9:**

Provide secure and accessible advice and whistleblowing channels

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**PRINCIPLE 10:**

Monitor, assess and continuously improve the implementation of the anti-corruption programme

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# GUIDANCE FOR ANTI-CORRUPTION BEST PRACTICE

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## PRINCIPLE 1:

### Operate to the highest standards of ethics and integrity

#### Elements:

- embed an organisational culture of ethics and integrity
- commit to advancing integrity in societies
- commit to an anti-corruption policy and programme
- provide tone from the top

#### EMBED AN ORGANISATIONAL CULTURE OF ETHICS AND INTEGRITY

The general public expects the highest ethical standards of their public institutions, including SOEs. This includes a commitment to ethics and integrity, transparency and accountability, and that the SOE's operations are efficient, effective, equitable and corruption-free. The SOE's commitment to ethics and integrity and its code of conduct should be clearly stated in internal and external communications.

An organisational culture of ethics and integrity is the foundation for countering corruption. An SOE cannot implement its anti-corruption programme effectively unless this culture is led by the board and senior management, and carried throughout the enterprise by all employees. The ability of the SOE to instil this culture will depend on the extent to which the ownership entity provides an enabling framework and does not intervene improperly in the SOE. The board should establish clearly the SOE's values, based on its responsibility to act in the interest of the public good and to perform to the highest ethical and integrity standards. A policy of prohibiting corruption is implicitly a commitment to zero tolerance of corruption. This means that the SOE

should invest appropriate resources and efforts so as to prevent corruption and deal with suspicions or incidents of corruption with prompt and due attention, including implementing consistent disciplinary action and remediation of any weaknesses in the anti-corruption programme.

#### COMMIT TO ADVANCING INTEGRITY IN SOCIETIES

**1.1 As a state-owned entity the SOE should set an example to society and other enterprises on countering corruption and it should contribute to strengthening integrity and countering corruption in the societies in which it operates.**

SOEs should support their anti-corruption efforts and the global anti-corruption movement by enhancing integrity standards in the communities, markets and supply chains in which they operate. They can also contribute to developing environments that are more favourable to fair operations and trading. Activities to this end can include collective action and advocacy on integrity and anti-corruption measures, business education and training for communities, social and financial engagement in the community and community investments. These activities should form part of the SOE's approach to corporate responsibility and sustainability.

SOEs have a unique responsibility to support their governments in achieving the Sustainable Development Goals, which include countering corruption.<sup>3</sup>

**1.2 The SOE's board should commit to creating and maintaining a culture of ethics and integrity throughout the SOE.**



## COMMIT TO AN ANTI-CORRUPTION POLICY PROGRAMME

### 1.3 The SOE's board should commit the SOE to a policy against corruption and to implementing an anti-corruption programme that is supported by adequate resources.

A formal and public commitment by the board and senior management to prohibiting corruption and implementing the anti-corruption programme sets the framework for the design and implementation of detailed anti-corruption policies and procedures. The term “anti-corruption programme” refers to all the SOE's anti-corruption efforts, including its values, code of conduct, detailed policies and procedures, governance, risk management, internal and external communications, training and guidance, advice and whistleblowing channels, internal accounting controls, monitoring, evaluation and improvement efforts. The anti-corruption programme should be set out clearly in the code of conduct and state that it applies to all employees, board directors and subsidiaries, and also that third parties acting for the SOE should have an anti-corruption programme or mechanisms equivalent to the SOE's programme. Getting this commitment from the board is important as it will compel board members to consider their roles and responsibilities in regard to critical aspects of the implementation of the anti-corruption programme, including:

- positioning countering corruption in relation to the SOE's values
- setting the risk approach for countering corruption
- considering the risks from corruption
- observing the board's statutory and fiduciary duties to prevent corruption
- understanding the legal context on anti-corruption
- meeting stakeholders' expectations
- providing oversight and resources for the anti-corruption programme

As the policy will be a public commitment, the board needs to be sure that the SOE is ready to live up to its anti-corruption commitments. The board should understand the nature and different forms of corruption, as this will define the scope of the programme.

## PROVIDE TONE FROM THE TOP

### 1.4 The SOE's leadership should demonstrate a clear tone from the top through internal and public commitments to the anti-corruption policy and programme and contributions to advancing the ethical and integrity culture of the SOE.

The “tone from the top” refers to the way the top leadership – the chair, board members, chief executive officer and senior management – communicate and support the anti-corruption programme in their behaviour and actions. It is an important component of good governance and a critical driver for the anti-corruption programme. Board directors and senior managers must live – and be seen to live – by the standards they set and promulgate.

Tone from the top should involve not only conveying the anti-corruption commitment to employees but also to stakeholders, as this will build their confidence in the SOE's measures to counter corruption and reassure them in the event of a corruption incident. Setting the tone does not stop at the top: **it should be expressed at all levels of management, from the middle to the front line.** The tone at the top can also be expressed in the way the leadership encourages the SOE to participate in and support anti-corruption efforts, such as those led by Transparency International national chapters, the UN Global Compact, the Extractive Industries Transparency Initiative and other collective action initiatives relating to countering corruption.

## ENSURE COMPLIANCE WITH LAWS

### 1.5 The SOE should ensure that its activities are consistent with the anti-corruption and related laws of the jurisdictions under which its activities fall.

The anti-corruption programme should be designed to ensure the SOE complies with legislation, as well as the wider values of the SOE and its objectives for controls for countering corruption. Compliance with all applicable laws and regulations, including relevant anti-corruption laws, is a legal obligation; it requires oversight and management. A formal and public commitment to compliance with laws, and a policy for implementing this commitment, will signal that the SOE takes a comprehensive approach to ensuring it abides by all applicable laws and regulations, and that this holds throughout all of its operations. The SOE should also drive comprehensive compliance by establishing a procedure for identifying, understanding and monitoring all relevant laws. This process should be subject to review and oversight by the leadership.

## PRINCIPLE 2:

### Ensure best practice governance and oversight of the anti-corruption programme

#### Elements:

- implement governance that conforms to accepted global best practice
- ensure that board directors act in the best interests of the SOE
- apply a rigorous and transparent procedure for the appointment of directors to the board
- structure the SOE's board so as to have a balance of skills, experience, knowledge, diversity and independent directors
- set a clear division of responsibilities between the board and the chief executive
- carry out vigilant oversight of the anti-corruption programme and ensure accountability

Best practice corporate governance provides an enabling environment for a well-designed and effective anti-corruption programme. The SOE should strive to maintain its independence from undue state interference in its governance and management. Transparency and accountability on the part of the SOE as regards its anti-corruption measures, and assessment and action by civil society and other stakeholders, can be a protection against improper interference in governance.

#### IMPLEMENT GOVERNANCE THAT CONFORMS TO ACCEPTED GLOBAL BEST PRACTICE

##### 2.1 The governance of the SOE should be in line with internationally recognised best practice.

Corporate governance is the system by which an entity is directed and controlled. The purpose of an SOE's corporate governance is to facilitate responsible and effective management that is best placed to deliver the long-term success of the SOE according to the mandate and objectives set by the ownership entity.

There is general global agreement on what constitutes best practice in enterprise governance. The OECD Guidelines on Corporate Governance of State-Owned Enterprises advise: "The state should be an

informed and active owner and should ensure that the governance of the SOE is carried out in a transparent and accountable manner, with a high degree of professionalism and effectiveness".<sup>4</sup> The governance arrangements agreed with the ownership entity should be made public.

The board of directors' governance responsibilities include:

- setting the SOE's strategic aims within the mandate provided by the ownership entity
- overseeing the risks that could threaten the achievement of the strategic aims, including corruption risks
- formulating high-level objectives for the SOE, additional to those assigned by the state
- allocating resources
- providing oversight, guidance and direction to management
- providing accountability and transparency to stakeholders

##### 2.2 The SOE should be transparent about the rules by which its board operates and how it directs the SOE including the conditions for holding board meetings and the procedure for resolutions. The board should report publicly each year on its operational relationship with the ownership entity and the effects of directions and interventions from the ownership entity.

To counter the risk of undue interference by the state, the SOE should have a written procedure (which should be publicly available) for calling a board meeting, the quorum requisite for a meeting and how resolutions are to be taken. The resolutions adopted by the board of directors should be properly documented and signed, and should be held by the secretary to the board.

#### ENSURE THAT BOARD DIRECTORS ACT IN THE BEST INTERESTS OF THE SOE

##### 2.3 Board directors should act in the best interests of the SOE, in accordance with its mandate and objectives, as set by the ownership entity, and consistent with their statutory duties and the SOE's commitments regarding ethics and integrity.

**2.4 The board should be free from the influence of individuals who could act, or could be interpreted as acting, as “shadow” or de facto directors.**

A shadow director is a person who is not a board director but whose directions and actions the board relies on and is accustomed to act on. A de facto director is similar: a person who acts as a director even though they are not formally appointed. Because they have not been appointed following the appropriate procedures a shadow or de facto director may lack the requisite competence, could have corrupt motives for influencing the board’s decisions or may even use the board as a front for corruption. Their influence on the board can often be opaque. To prevent the influence of such quasi-directors the SOE should implement a rigorous and transparent board appointment process.

**2.5 The SOE’s board should propose board fees and set senior executive remuneration levels that are in the long-term interests of the SOE and that also incentivise an ethical and integrity culture.**

Remuneration of board members, senior management and employees should foster the long-term interests of the SOE and be set at such a level as to attract quality people. They will also provide incentives for building and protecting an ethical and integrity culture. Incentives for employees are discussed in the commentary for Clause 4.3. Board remuneration fees will be approved by the Annual General Shareholders Meeting but for wholly state-owned SOEs, fees will likely be decided by the state or influenced by the responsible ministry. Special levels of remuneration may be set for independent directors to attract board members of high calibre. The remuneration of board members and senior management should be disclosed publicly. Decisions on remuneration should be made as transparent as possible and should be benchmarked against other comparative enterprises. Extraordinary payments and bonuses to any board member or SOE executive must be approved by a qualified majority of the board and may require consultation with the ownership entity.

As state entities, and in line with the provision of the United Nations Convention against Corruption, an SOE should require its board directors and senior management – particularly those who are politically appointed – to make public declarations on their investments and assets.

**APPLY A RIGOROUS AND TRANSPARENT PROCEDURE FOR THE APPOINTMENT OF DIRECTORS TO THE BOARD**

**2.6 There should be a formal, rigorous and transparent procedure for appointing or reappointing directors to the board, with due diligence carried out in relation to their integrity, conflicts of interest, competence, requisite skills and experience.**

SOEs should work to ensure their board members are competent, fulfil their statutory responsibilities and meet standards of fiduciary trust. There is no definitive model for SOE board appointments but any approach should ensure that board appointments are made according to a set procedure. The nomination body should include independent members and public officials and should carry out due diligence for all board appointments.<sup>5</sup> As part of due diligence, potential conflicts of interest should be identified including existing directorships and disclosure of candidates’ beneficial ownership in companies and trusts and specifically, in any related parties of the SOE.

In most countries it is the practice – and sometimes a legal requirement – that direct representatives of the state sit on the board. The selection procedure should ensure that in no circumstances are appointments made because of nepotism, cronyism or patronage. A weak appointment process can result in corruption risks: for example through the appointment of board directors who are beholden to politicians, have material conflicts of interest, or who may be corrupt, negligent or lack the necessary skills and expertise. A process should be established for handling any concerns about the risk of corruption or allegations relating to a serving director – including, if necessary, requiring their resignation from the board.

**2.7 Politicians holding elected office should not hold board positions in the SOE**

Because of the significant risk of a conflict of interest, politicians holding elected office should not serve on the board of SOEs. However, it may not be possible to uphold this principle in countries where the state reserves the right to appoint directors. Former politicians may be permitted to serve on SOE boards subject to the SOE applying a procedure for a “cooling-off” period between government office and appointment to the SOE’s board and conducting due diligence. This clause refers to serving politicians but care should also be taken in the due diligence process for appointing directors to check candidates

for any familial or other close links to politicians, and for whether these could present risks of conflicts of interest, influence peddling or corruption.

## **STRUCTURE THE SOE'S BOARD SO AS TO HAVE A BALANCE OF SKILLS, EXPERIENCE, KNOWLEDGE, DIVERSITY AND INDEPENDENT DIRECTORS**

### **2.8 The SOE's board should have an appropriate balance of skills, experience, knowledge, diversity and independent directors to enable it to discharge its duties and responsibilities effectively.**

The SOE board's composition should allow the exercise of objective and independent judgement. In this respect, there should be adequate diversity on the board. This should extend to the inclusion of independent directors who are not charged with representing the state and who are not executive directors of the SOE. The independent directors should be free of any conflicts of interest, pecuniary or material interests, or relationships that could jeopardise – or could be interpreted by stakeholders as jeopardising – their exercise of objective judgement. They should also be free of marital, family or other personal relationships with the SOE's executives, shareholders or third parties that could be seen as detracting from their independence. In most SOEs, independent directors are nominated by the state, subject to qualification and independence rules. If the SOE has minority shareholders, they may have rights to nominate board members.

The independent directors should provide expertise and technical knowledge and act as a check should there be attempts by the state to interfere unduly in the governance of the SOE. They should also serve on board committees, including the committee that oversees the anti-corruption programme, the remuneration committee and the audit committee. Stakeholders should be able to see the independent directors as being clearly independent and capable. Independent directors can be remunerated through fees, but should not receive remuneration linked to aspects that are material to the operation of the SOE, such as stock options in a commercial SOE.

### **2.9 The SOE should work with the ownership entity to avoid an undue proportion of its board members being representatives from the state administration.**

When the state is the sole owner of an SOE it may nominate and elect the board and, even if it has shareholders, it may make appointments without the consent of the shareholders. This can lead to boards that have a preponderance of state-appointed directors, which carries a risk of poor governance, organisational inefficiency, material conflicts of interest and corruption. The SOE should establish a relationship with the ownership entity that enables a process for board appointments of a kind that results in a board that has an appropriate balance as regards the number of representatives of the state. Such a process will restrict the appointment of government representatives or, if they are to be appointed, ensure that they meet the criteria for appointments, including having due expertise and passing due diligence tests regarding conflicts of interest and integrity concerns.

## **SET A CLEAR DIVISION OF RESPONSIBILITIES BETWEEN THE BOARD AND THE CHIEF EXECUTIVE**

### **2.10 The SOE's board should set strategy and supervise management. There should be a clear division of responsibilities between the board's governance role and the chief executive officer's responsibility for leading the running of the SOE's operations.**

### **2.11 The SOE's board should have the responsibility to for appointing and dismissing the chief executive officer or equivalent position, subject to transparent rules and procedures and free from undue influence.**

The appointment and dismissal of the chief executive officer (CEO) should be a function of the SOE board. The appointment of the CEO should be based on professional criteria, a competitive selection procedure and compensation in line with market norms. The CEO, among other duties, should be responsible for implementing the integrity culture and the anti-corruption programme and working with the board to ensure that tone is set from the top. The rules and procedures for nominating and appointing the CEO should be transparent, respect the independence of the board and be free from undue intervention by the ownership entity or others, such as politicians. In some countries this best practice is not observed and the state directly appoints or dismisses the CEO and possibly other senior management. A consequence can be that a change in government leads to a round of replacements of the CEO and other senior management as well as the chair and



board directors. In such circumstances, a transparent and timely procedure for reporting on board and senior management appointments can enable stakeholders to question and challenge this kind of state intervention.

The use of independent experts to manage the selection procedure is considered a good practice, especially for large SOEs that are engaged in economic activities. Any shareholder agreements with respect to CEO nominations should be disclosed.

## **CARRY OUT VIGILANT OVERSIGHT OF THE ANTI-CORRUPTION PROGRAMME AND ENSURE ACCOUNTABILITY**

### **2.12 The SOE's board should provide oversight and accountability for the anti-corruption programme.**

All board members should have an understanding of the risks posed by corruption, how the risks might apply to the SOE, how such risks are being countered and their role in overseeing the anti-corruption programme. The board should be committed to countering corruption and should be vigilant in its reviews of the anti-corruption programme. The board should challenge and question management on risk assessments and the design and implementation of the anti-corruption programme. Training and briefing of the board members will be important in achieving this objective.

The board should appoint a board committee, such as an audit, ethics or risk committee, to oversee the anti-corruption programme. The committee should be comprised entirely of or by a majority of, independent directors with various competencies as this will be valuable in bringing independent insight, technical skills and experience to the oversight of anti-corruption practice, which is a specialised topic.

As part of the monitoring, assessment and improvement process described in Section 10, board oversight should include receiving regular reports from management on assessments and mitigation of corruption risks and reporting on its assessments of risks to the ownership entity and other stakeholders.

## PRINCIPLE 3:

### Be accountable to stakeholders through transparency and public reporting

#### Elements:

- set and observe best practice in accountability to stakeholders
- report publicly on the anti-corruption programme
- apply organisational transparency and country-by-country reporting
- engage with stakeholders
- be transparent on the relationship with the ownership entity

#### SET AND OBSERVE BEST PRACTICE IN ACCOUNTABILITY TO STAKEHOLDERS

##### 3.1 The SOE should set and observe best practice in accountability to stakeholders through transparency of operations, public reporting and stakeholder engagement.

Transparency, public reporting and stakeholder engagement are critical anti-corruption tools for achieving accountability to the public, investors and other stakeholders, and for countering corruption.

Transparency means allowing the public access to information on an SOE's operating systems, procedures and activities, subject to the requirements of commercial confidentiality, security, data and privacy laws. Public reporting refers to formalised communication by the SOE on topics of material interest for stakeholders. A value of public reporting can be to support an SOE's continuous improvement process as reporting on progress will require developing indicators and reporting on targets, progress and achievements.

Stakeholder engagement refers to a process where an SOE exchanges views with, and informs, stakeholders about the enterprise's activities on topics of material interest and reports back on the outcomes of previous exchanges.

Growing numbers of entities of all forms, SOEs, commercial companies, government departments, voluntary organisations and other bodies, are now taking a comprehensive approach to non-financial reporting, including reporting on their commitments

to integrity and combating corruption and the implementation of their anti-corruption programmes.

The SOE's approach to reporting should be consistent with internationally recognised standards and practice such as the Global Reporting Initiative's sustainability reporting standards. SOE's reporting should also align with government commitments on transparency, including the right to information and open access to information such as those set out by the Open Government Partnership.

In some countries under company laws, listed companies are required to report on non-financial risks; there may also be laws requiring corporate social responsibility or sustainability reporting. SOEs with commercial listings will need to comply with such laws, but as public bodies, all SOEs should set a high standard in transparency and public reporting. To enhance the credibility of reporting, such reports can be attested to by an independent reviewer.

The SOE should establish a policy for transparency and public reporting, should define what these terms mean, and should make clear the information they will disclose, in what detail and through which channels. Transparency and public reporting can act as powerful anti-corruption checks and balances on the politicians and public officials associated with an SOE. Public reporting can allow stakeholders to judge how well an SOE is governed, the extent to which it is free from undue state intervention and how the SOE pursues activities for the public good.

##### 3.2 The SOE should report publicly on the design and implementation of its anti-corruption programme.

The SOE should report publicly on its anti-corruption commitment and the design and implementation of its anti-corruption programme. Such reporting is a component of good governance, transparency and accountability and can contribute to the credibility and improvement of the programme. Public reporting by SOEs spreads knowledge about ethical business standards and can encourage positive trends in the societies in which they operate. In order to be fully accountable, the anti-corruption programme should be accessible in the language of the respective country of operation. The SOE's reporting should cover the following:

- the commitment of the leadership to building the SOE's integrity and ethic culture and to the anti-corruption policy
- how the board provides accountability and oversight to the anti-corruption programme
- how the SOE commits to and carries out a responsibility to building integrity in the societies in which it operate
- key policies and procedures
- its risk assessment process
- the key risks identified and its controls to mitigate these risks
- its monitoring and improvement of the anti-corruption programme

Public reporting on anti-corruption programme can be aligned to standards such as the Global Reporting initiative's Sustainability Reporting Standards and a framework of indicators used in Transparency International's regular surveys of corporate public reporting on anti-corruption programmes.<sup>6</sup>

## APPLY ORGANISATIONAL TRANSPARENCY AND COUNTRY-BY-COUNTRY REPORTING

### 3.3 The SOE should provide organisational transparency by publicly disclosing its holdings in subsidiaries, affiliates, joint ventures and other related entities and financial and operating information on a country-by-country basis

The legislative context and momentum for organisational transparency and country-by-country reporting is advancing, with countries passing laws covering sustainability reporting and transparency requirements, both voluntary and mandatory, for commercial enterprises. This clause encourages two components of SOE transparency: organisational transparency and country-by-country reporting.

A lack of disclosure on payments to foreign governments and the use of offshore centres can make it easier to carry out corruption and to hide any adverse effects for the local communities in which an SOE may operate. By disclosing basic financial data, the SOE will be more accountable to citizens and other stakeholders. Reporting can also assist investors and lenders to assess an SOE's business performance, as well as local circumstances and risks, including tax and banking regulations, economic, political and societal stability, and environmental and societal factors.

An SOE should provide information that enables stakeholders to understand the SOE's activities. SOEs that operate globally should report comprehensively

on their corporate holdings and transactions with the governments of the countries in which they operate. As well as country-level reporting, this should include reporting at project-level where the SOE is engaged in major projects such as those of the extractive sector.

**Organisational transparency:** Global SOEs should collect and disclose exhaustive lists of their subsidiaries, affiliates, joint ventures, major customers and suppliers, and other related entities, without limiting disclosure to material entities. Such transparency is important for many reasons, not least because organisational structures can be made opaque for the purpose of hiding the proceeds of corruption. An SOE should disclose:

- all of its fully consolidated subsidiaries
- percentages owned in each of its fully consolidated subsidiaries
- countries of incorporation for each of its fully consolidated subsidiaries
- countries of operations for each of its fully consolidated subsidiaries
- all of its non-fully consolidated holdings (associates, joint-ventures)
- percentages owned in each of its non-fully consolidated holdings
- countries of incorporation for each of its non-fully consolidated holdings
- countries of operations for each of its non-fully consolidated holdings

**Country-by-country reporting:** SOEs should be accountable to local as well as global stakeholders by reporting in a transparent manner, in each country in which they operate, on their country-level financial data. This way local stakeholders know which SOEs are operating in their territories, bidding for government licences or contracts, applying for or obtaining favourable tax treatment or undertaking significant ventures or projects. Country-by-country reporting should include:

- revenues/sales by country
- capital expenditure by country
- pre-tax income by country
- income tax by country
- major contracts and projects
- financial relationships between the SOE and governments
- community contributions

### 3.4 The SOE should publicly disclose its own beneficial ownership information, and its beneficial ownership in other entities, including those held by SOE subsidiaries, joint ventures and consortia.

Knowing who owns and controls the SOE, and which other entities the SOE owns and controls, can help prevent internal fraud and corruption, ensure accountability to citizens, clients and customers. Reporting may also include any kind of holdings by relatives of politicians and public officials who might influence or could be seen by the public as influencing the governance and operations of the SOE.

## ENGAGE WITH STAKEHOLDERS

### **3.5 The SOE should identify its key stakeholders and engage with them regularly on the design and implementation of the anti-corruption programme.**

Stakeholder engagement will work only when it is a genuine exchange between the SOE and its stakeholders, including employees, the public, civil society, the ownership entity, politicians, public officials, investors and third parties. Engagement can provide benefits in designing the anti-corruption programme by enabling the SOE to learn of developments, emerging issues and opportunities, exchange views, inform stakeholders on topics of material interest and report back on outcomes of previous exchanges.

Trade unions or employee representative bodies, where they exist, should be included in the consultation, as they can have a great interest in how the anti-corruption programme relates to their members. Their contribution can strengthen the design of the programme as they can bring expertise, knowledge, communication and advocacy to the anti-corruption programme.

In addition to formal stakeholder engagement processes, the SOE should provide accessible channels for stakeholders to ask questions or raise concerns about the anti-corruption programme. This can include appointing managers and employees as contact points for communication, publishing the contact points on websites and in publications, and providing hotlines.

### **3.6 The SOE should identify, analyse, respect and protect any stakeholders' rights related to the anti-corruption programme established by law or through mutual agreements.**

In some countries, certain stakeholders are granted specific rights in SOEs, such as employee board-level representation or decision-making rights for employees' representatives and consumer organisations, for example through advisory councils. As a dominant shareholder, the state may control corporate decision-making and be in a position to take decisions that are to the detriment of stakeholders'

rights and that can carry high corruption risks. As such, in accordance with their rights, stakeholders should be involved in, or consulted on, the design of the anti-corruption programme and its implementation.

### **3.7 If the SOE is listed with minority shareholders or has non-state investors, it should engage with them on the SOE's anti-corruption programme and encourage them to express their views to the SOE and at the Annual General Shareholders Meeting.**

Minority shareholders and other investors can be pressure points for improving the SOE anti-corruption programme and resisting improper intervention by politicians and public officials in the SOE's operations.

### **3.8 The board should report regularly to stakeholders on its commitment to ethics and integrity and its oversight of the anti-corruption programme.**

## BE TRANSPARENT ON THE RELATIONSHIP WITH THE OWNERSHIP ENTITY

### **3.9 The SOE should be transparent about its relationship with the ownership entity.**

Interference by politicians and other state officials in the SOE's governance, management and activities is one of the high-risk areas for corruption for SOEs. The ability of the SOE to implement best practice governance will depend on the framework for governance set by the ownership entity. By being transparent about its governance structure, the SOE will enable shareholders and other stakeholders to judge how the structure accords to global standards and whether it is encouraged or constrained in this by the ownership entity. The SOE should also be transparent about any state support, grants, contracts or other provisions that could provide it with an advantage over any commercial competitors, including trading with other state-owned entities or government. Transparency can act as a deterrent to corruption that may arise in an SOE due to the interface with politicians and public officials, and it can also lead to improvements in the governance and operating arrangements, through the exercise of stakeholder pressure. The SOE should be transparent about:

- the assigned mandate
- how legislation and regulations provide for the corporate governance of the SOE (any changes made to the SOE's ownership, mandate or governance structure should be carried out transparently and reported on publicly)
- its operational relationship with the ownership entity



## PRINCIPLE 4:

### Ensure human resources policies and procedures support the anti-corruption programme

#### Elements:

- design personnel policies and procedures to support the anti-corruption programme
- incentivise ethical behaviour and integrity
- assign responsibilities for the anti-corruption programme
- integrate the anti-corruption programme into the organisational structure
- apply disciplinary procedures

An SOE's ethical and integrity culture and reputation depend on the behaviour of its people: the board directors and employees. As such, human resources management has a significant role to play in the design and implementation of the anti-corruption programme. This includes organisational planning; workforce representation; recruitment of competent, honest people; induction/orientation; employee contracts; line management; communications; training and development; incentives; remuneration; performance evaluation; promotion; recognition; whistleblowing; and disciplinary procedures. The human resources procedures should be assessed for corruption risk and clear procedures should be set out to prevent that risk. Examples are prevention of the use of recruitment and appointments as bribes to win contracts or the implementation of non-compete clauses for employees of the SOE who may transfer to organisations doing business with the SOE, and vice versa.

#### **4.1 The SOE should make compliance with the anti-corruption programme mandatory for employees and board directors and should require them to report concerns about, and incidents of, corruption.**

The employment contract should require that all employees read and acknowledge the SOE's code of conduct, anti-corruption policy and relevant anti-corruption legislation, and that they report corruption concerns and incidents, subject to local laws and regulations covering employment terms.

#### **4.2 The SOE should implement a policy that no employee will suffer for refusing to pay or receive bribes or collude in other corruption, even if such a refusal may result in the SOE losing business or other adverse business impacts.**

## INCENTIVISE ETHICAL BEHAVIOUR AND INTEGRITY

### **4.3 The SOE should encourage ethical behaviour and integrity by its employees through incentives, appraisal processes, and recognition schemes.**

Corruption risks are higher where an SOE has a poor ethical and integrity culture and applies misaligned incentives, and where corrupt board members and employees have opportunities to gain through corruption. Risks can be heightened by risk factors, including:

- operating in an environment where there is pressure to engage in corruption from politicians and public officials
- suppliers are prepared to pay bribes to win orders from the SOE
- the SOE sets unreasonable performance targets where employees may be drawn into bribery and corruption to meet management's expectations
- employees are financially stretched and reliant on bonuses and other performance rewards
- employees are poorly paid relative to their responsibilities and the scale of assets which they control or contracts they award or bid for
- employees feel under-recognised

To counter these risks, the SOE should structure its formal incentives to support an ethical and integrity-based culture. Incentives based on financial or output performance should be accompanied with non-financial incentives that encourage behaviour that is in line with the SOE's culture. The mandate of SOEs for providing public services should influence the design of incentives. Employees should be recognised and rewarded for incorporating integrity into their work, understanding the SOE's expectations and requirements for integrity and anti-corruption standards, applying these when representing the SOE internally and externally, and making suggestions for improvements to the anti-corruption programme.

Measures an SOE can take can include implementing ethical performance assessments, holding management recognition awards and requiring positive ethical assessments to be a pre-requisite for promotion. A flexible approach is appropriate for the appraisal of performance on integrity, which does not easily lend itself to measurement, public disclosure or rankings.

## ASSIGN RESPONSIBILITIES FOR THE ANTI-CORRUPTION PROGRAMME

### 4.4 The SOE's board should assign responsibility to the chief executive officer for ensuring that the anti-corruption programme is carried out consistently, with clear lines of authority.

The board should give the chief executive officer (CEO) overall responsibility for the anti-corruption programme but in a larger SOE, responsibility may be assigned to a senior manager or chief compliance officer to be responsible for the operational aspects of the programme.

### 4.5 The manager responsible for implementing the anti-corruption programme should have direct and ready reporting access to the board or the board committee that oversees the anti-corruption programme, and should be given sufficient autonomy, resources and authority.

The board, CEO and chief compliance officer drive the anti-corruption programme across the SOE's operations, negotiate buy-in where necessary and implement adjustment of organisational structures which block the effective implementation of the programme. The chief compliance officer or person appointed to manage the anti-corruption programme must have ready and direct access to the CEO and board to ensure that the anti-corruption policy and strategy are given prominent oversight and attention. To provide such access, the chief compliance officer should report directly to the board and CEO and also work closely with the audit committee or other board committee that oversees the anti-corruption programme. The chief compliance officer should also participate in important business meetings and reviews so that compliance aspects, including the anti-corruption programme, are fully considered.

## INTEGRATE THE ANTI-CORRUPTION PROGRAMME INTO THE ORGANISATIONAL STRUCTURE

### 4.6 The SOE should ensure that its organisational structure supports the design and implementation of the anti-corruption programme.

In planning the implementation of the anti-corruption programme into the organisational structure, the following factors should be considered:

- A centralised structure may send out strong consistent messages and procedures but has the risk that the programme will be rigid

and not reflect the needs of local operations. This may lead to a lack of local commitment, inadequate controls to deal with local corruption risks and a compliance function that is remote from operations.

- A decentralised structure can bring local input to the design of the anti-corruption programme and can bring buy-in from local employees and managers, but run a risk that policies and messages from the centre may be remote, weakened or distorted.
- Powerful or autonomous subsidiaries, business units or operational functions may resist management from the centre and operate independently in interpreting and applying the anti-corruption programme.
- Support functions and operating units should be encouraged to work together in implementing the programme and management at all levels should be given responsibility to promote and support the anti-corruption programme.

## APPLY DISCIPLINARY PROCEDURES

### 4.7 The SOE should hold the leadership and employees accountable for violations of the anti-corruption programme, and should implement sanctions where they occur.

The SOE's zero tolerance of corruption should be reflected in its disciplinary procedures. Sanctions should form part of the code of conduct and should be communicated in detail in the employee handbook or equivalent publication. Sanctions should be applied proportionately, consistently, fairly and transparently, with appropriate review by senior management and an appeals process. Sanctions should be applied openly to show the SOE's commitment to its no-corruption policy and to deter those who might consider acting corruptly. The SOE should report publicly on the disciplinary policies and procedures and their implementation, giving aggregated data, such as the total number of disciplinary cases and dismissals. Applying sanctions can be complex and a function such as human resources or compliance should have responsibility for the process, which should be documented fully and not rushed. Considerations include the complexity of proving a breach of a no-corruption policy and the risk of civil litigation by the employee if the sanctions process is carried out improperly and evidence is lacking. There may be adverse reputational consequences from a disciplinary case so the internal and external communication should be planned.

## PRINCIPLE 5:

### Design the anti-corruption programme based on thorough risk assessment

#### Elements:

- risk assessment should be the basis for the design of the programme
- identify risk factors
- understand forms of corruption and related risks:
  - bribery
  - trading in influence
  - nepotism, favouritism, clientelism or patronage
  - fraud
  - money laundering
  - abuse of conflicts of interest

#### 5.1 Based on continuing risk assessments, the SOE should design and implement an anti-corruption programme that reflects the SOE's particular business risks, circumstances and culture, and that clearly and in reasonable detail articulates policies and procedures to counter corruption occurring in its activities.

The foundation for the design of an effective SOE anti-corruption programme is risk assessment: it enables the identification and prioritisation of corruption risks and the results are used to design anti-corruption controls to mitigate those risks. The controls should address risks that could prevent the SOE:

- achieving the mandated objectives set by the ownership entity
- achieving its business and social objectives
- complying with anti-corruption and related laws
- meeting its commitments to ethics and integrity
- fulfilling its responsibilities and accountability to the ownership entity, shareholders, investors, society and other stakeholders

The board should ensure that the SOE has a clearly defined risk approach (sometimes called its “risk tolerance” or “risk appetite”) to guide proportionate design and implementation of the anti-corruption programme. The prime factor in determining the risk approach should be ensuring that the SOE will meet its responsibility as a publicly owned body to operate to the highest integrity standard. The risk approach should be developed and refined based on expertise, experience, inputs from stakeholders and continuing risk assessments.

The design of the anti-corruption programme should be guided by a proportionate approach, with resources and efforts directed to mitigating the highest priority risks, and avoiding allocating resources too thinly across a myriad of risks, transactions and third parties. Ultimately, it is the board's role to judge the extent and significance of the SOE's corruption risks, decide a proportionate approach to countering them and to ensure adequate management attention and resources are allocated to the anti-corruption programme.

Risk assessment will also include reviewing legal and regulatory compliance obligations related to corruption and the consequences of non-compliance. To protect the reliability of risks assessments from undue intervention by directors, management or external persons, such as politicians, risk assessments should be subject to independent external review. The risk assessment methodology should be subject to periodic review management review to ensure it remains valid. This includes identifying emerging risks. This can be carried out in various ways, depending on the size of the SOE.

#### 5.2 The SOE should report publicly its risk assessment approach and methodology, and should disclose the principal risks identified and the actions being taken to mitigate the risks.

A thorough and proportionate risk assessment process will identify forms of corruption risks and the factors that make the risks more likely to materialise.

## IDENTIFY RISK FACTORS

### Internal risk factors

- the size and organisational structure of the SOE
- vulnerable functions and transactions, such as purchasing and procurement, awarding large public contracts and licences, bidding for critical contracts or approvals (such as telecommunications contracts or mining, oil and gas concessions) and significant business decisions (including capital investments, mergers and acquisitions, major contracts, projects, new products and entering markets)
- use of third parties – especially intermediaries

## External risk factors

- operations in countries with high levels of corruption
- involvement with sectors and transactions known to be prone to corruption

The forms of corruption covered by the SOE Principles are discussed in the clauses listed below: fraud and money and laundering are included as they are high-risk and often accompany corruption.

## UNDERSTAND THE FORMS OF CORRUPTION AND RELATED RISKS:

### Bribery

#### **5.3 The SOE should prohibit all forms of bribery, active or passive, whether they take place directly or through third parties.**

Bribery is one of the most prevalent and significant forms of corruption and is subject to increasingly stringent laws, including notably the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

The terms active and passive bribery refer to the direction in which a bribe transaction is made. For instance, active bribery is the offering, promising or giving (directly or indirectly) of a financial or other advantage to a person or persons with the intent that the person or persons act improperly.

Passive bribery is the request or receipt (directly or indirectly) by a person of a financial or other advantage, or the promise of this, in return for acting improperly. Whether active or passive, bribery is made with the intent of causing a person to breach the trust bestowed on them and to fail to act impartially and in good faith.

Active bribery is a risk for SOEs when they are involved in bidding for contracts and it commonly takes place in the following forms:

- Bribes are used by SOE employees to win contracts, gain licences or obtain other business advantage, such as being awarded a critical licence. Agents or consultants are common routes for such bribery.
- Regional and local public officials in countries with high levels of corruption solicit or demand bribes from SOE employees. This can happen for instance when an SOE is seeking permission to operate or seeking to receive permits and licences.

- Many significant bribery cases have involved active bribery of public officials. SOEs should be aware of the extra-territorial scope and provisions of anti-bribery laws covering bribery of foreign public officials, notably the UK Bribery Act and the US Foreign Corrupt Practices Act, and should ensure that appropriate due diligence, regarding the involvement of public officials, is carried out when using third parties or bidding for contracts.

Small bribes may be solicited or demanded to secure or expedite routine or necessary actions to which the bribe payers are entitled. For instance, an employee of an SOE utility company might demand a bribe for connecting a customer speedily. Such bribes may be used systemically, as in obtaining preferential forwarding of goods through customs.

### Trading in influence

#### **5.4 The SOE should identify and counter risks of trading in influence in its operations.**

Trading in influence (also called “influence peddling”) is a form of corruption carried out by using someone with influence in government, with public officials or other personal connections with the intent to influence a decision-maker unduly to gain a favourable outcome for the influence peddler. The decision-maker may be unaware that influence is being peddled.

It can be a significant risk for an SOE because of the high level of interface between politicians, public servants and the SOE and the potential for manipulation or distortion of an SOE’s operations. This can be in areas such as appointment of board members and management, awarding of contracts or selection of intermediaries or other third parties. Influence peddling might also be carried out by board directors or employees of an SOE such as when a commercial SOE is bidding for a contract or seeking to influence politicians to provide a political environment favourable to its business.

### Nepotism, favouritism, clientelism and patronage

#### **5.5 The SOE should ensure that its transactions and operations are free from nepotism, favouritism, clientelism and patronage.**

These forms of corruption occur when SOE board directors or employees favour a relative, friend or associate. Examples include appointments of friends to positions in an SOE or awarding contracts to a relative’s company. An example of clientelism or



patronage is where a board director or manager owes their position to a politician and returns the favour by making decisions that benefit the politician or by providing them with cash, assets gained from the SOE's operations or other benefits. Even if no nepotism or related favouritism actually takes place, it will be a concern for an SOE if there is a public perception that such activities take place. The SOE should implement well-designed, transparent processes for recruitment and appointments and other areas that could be vulnerable to nepotism and related forms of favouritism. The procedure for managing conflicts of interest, described in the commentary for Clause 5.8, can also be a control to prevent these forms of corruption.

## Fraud

**5.6 The SOE should establish an anti-fraud culture and develop a specific anti-fraud policy and programme, including: regular assessments of fraud risks; design, implementation and improvement of controls to mitigate fraud risks; and monitoring of the effectiveness of controls.**

Fraud is wrongful or criminal deception intended to result in financial or personal gain. It takes place through false representation, failure to disclose information and abuse of position. Fraud represents a very high risk for all forms of organisation, including SOEs. Fraud is likely to be carried out internally by an individual acting alone. Internal fraud typically takes the form of overstating expenses or understating income and often involves relatively small amounts, which are difficult to detect but which cumulatively can represent substantial sums. External threats from cybercrime fraud are growing and this may come from individuals, activists, organised crime, terrorists or even governments. Information theft is a growing concern, particularly for SOEs engaged in financial services and those possessing personal and financial data or high-value intellectual property. The methods used by fraudsters are ever-changing as they seek to exploit vulnerabilities or opportunities created by changes in an organisation's activities, systems, employee population and supply chain.

The damage from a serious fraud incident can be substantial and even catastrophic, including loss of assets, damage to reputation and confidence in the enterprise, and associated damage to those associated with the enterprise, as well as communities. All SOEs should take preventive measures to counter fraud risks.

## Money laundering

**5.7 The SOE should implement a comprehensive anti-money laundering procedure to address the risk of its operations being used for money laundering by third parties or of money laundering being used to transfer the proceeds of corruption in its operations.**

Money laundering is the processing of the proceeds of corruption or other criminal activity. There are extensive laws, regulations and guidance covering anti-money laundering. In particular, the Financial Action Task Force has published extensive guidance on anti-money laundering, including a best practices paper that aims to provide policy-makers and practitioners with guidance on how anti-money laundering and countering financial terrorism measures can be used to combat corruption.<sup>7</sup>

## Abuse of conflicts of interest

**5.8 The SOE should implement a policy to identify, monitor and manage conflicts of interest that could give rise to a risk of corruption – actual, potential or perceived. The policy should apply to board directors, officers, employees, subsidiaries and contracted third parties, such as agents, and other intermediaries. The SOE should implement controls to prevent conflicts of interest leading to political interference and corruption in the SOE's operations.**

A conflict of interest is not inherently wrong but is a situation which can sometimes lead to or involve corruption. This Clause provides for cases where conflicts of interest involve corruption risk. A conflict of interest occurs where a person or entity with a duty to the SOE has or could have a conflicting interest, duty or commitment to another entity, person or personal interest. Actual or potential conflicts of interest are common because people inevitably have many interests – family, friends, business, voluntary work, political affiliations and their personal life – and sometimes these clash with the interests of their employer. Examples of risks from conflicts of interest include the following:

- **Politicians and public officials are appointed as board members or executives:** Politicians or public officials may act corruptly in their own interest or in favour of others to whom they are beholden. This is a high-risk area for SOEs (politicians holding elected office should not hold board positions in the SOE (see Clause 2.7)).

- **Failure to declare a conflict of interest:** A board director, employee or contracted third party may fail to declare a conflict of interest to the SOE and may then later act in consideration of that private interest. This improper behaviour could result from ignorance or negligence or could be engaged in with the intention of acting corruptly. Whatever the reason, it breaches the individual's duty to the SOE and could expose the person to extortion demands or be a first step to more serious undue behaviour.

The SOE should identify where it is exposed to risks of conflicts of interest and implement a procedure to manage potential and actual conflicts of interest. Conflicts of interest are not static: new conflicts can emerge and existing conflicts can change in nature. Board directors, employees and relevant third parties should be required to disclose any conflicts of interest before appointment and then, following appointment, to make an annual on-line declaration and advise of any changes or new conflicts of interest. Management should be trained to be alert to detect conflicts of interest involving their employees.

The SOE should maintain an up-to-date register of conflicts of interest. This should include:

- managing any conflict of interest related to a politician serving on its board or in an executive function, to ensure that the SOE is not associated with government policy-making, a political cause, debate, campaign or contribution
- requiring board members, senior management and key staff to declare and register business interests
- carrying out regular reviews and audits of the procedure for identifying trends, remedying weaknesses and making improvements.

## PRINCIPLE 6:

### Implement detailed policies and procedures to counter key corruption risks

#### Elements:

- implement controls to counter risks related to vulnerable functions and transactions
- commit to fair trading practices
- provide transparency of contracting and procurement processes
- counter the highest corruption risks
- establish and maintain internal accounting controls
- maintain accurate books and records
- subject the anti-corruption programme to regular internal audits
- develop an incident management plan

This section firstly identifies SOE functional areas and transactions that experience shows are vulnerable to corruption and provides guidance on anti-corruption controls. The section then provides general controls covering internal financial controls and incident planning and management. Other key general controls are described in the Sections 7–10:

- Third-party management is covered in Section 7.
- Communication and training is covered in Section 8.
- Advice and whistleblowing channels are covered in Section 9.
- Monitoring, assessment and improvement is covered in Section 10.

Corruption risks will vary across SOEs according to their circumstances, so the guidance in this section should be applied according to the individual SOE's risks.

#### IDENTIFY AND PRIORITISE CORRUPTION RISKS BASED ON REGULAR RISK ASSESSMENTS

The risk assessment process should identify a prioritised list of the corruption risks faced by the SOE. The SOE should then mitigate these risks by designing detailed anti-corruption policies and procedures. The process should also result in an analysis of the factors that can increase the risks, and an understanding of the nature and characteristics of the forms of corruption and how they reveal themselves in activities and transactions.

The detailed anti-corruption policies and procedures should comprise a set of general anti-corruption controls applicable to all forms of risk and also a range of tailored policies and procedures addressing specific transactional or functional risks. An integrated view should be taken of such controls, as forms of corruption are often interrelated. For example, as a result of receiving a bribe, an SOE official might undertake fraud to hide the bribery activity and then use money laundering to transfer the proceeds of the bribery.

#### IMPLEMENT CONTROLS TO COUNTER RISKS RELATED TO VULNERABLE FUNCTIONS AND TRANSACTIONS

##### 6.1 The SOE should design and implement tailored anti-corruption controls for functions and transactions with high corruption risks.

Certain functions and transactions are commonly a risk for businesses and SOEs. Some examples are given below:

- **Purchasing and procurement:** The awarding of large contracts presents high risks of corruption where bidders may offer bribes and kickbacks.
- **Projects:** Bribery can be a significant risk in public projects. This applies in the bidding, operations and closing out stages of a project each with a high danger of kickbacks to public officials.<sup>8</sup>
- **Sales and marketing:** Bribes may be offered to win contracts, provide preferential allocation of products in short supply, or the government or politicians may manipulate SOE contracts and selling prices to favour a related party.

- **Services:** An SOE's employees may accept systematically, small bribes to expedite or favour the installation or delivery of public services, such as utilities, or the awarding of licences.
- **Market distortion:** Pricing policies may be distorted by political interference, especially for governmental contracts or to favour a government policy position.
- **Human resources:** Bribes are accepted to favour appointment to positions in the SOE, positions are given to relatives of customers as bribes to win contracts.
- **Finance:** Fraud and corruption risks include embezzlement of assets; manipulation or falsification of accounts; tax evasion; insider trading; abuse in asset transactions and mergers and acquisitions; money laundering; and bribery of tax officials to obtain preferential treatment.
- **Health and safety:** Examples include falsification of safety records and bribes paid to gain safety certificates.
- **Supply chain:** Bribes are used to obtain licences and concessions, such as mining and extraction rights or forestry concessions.
- **Logistics:** Bribes, especially small bribes are used systemically to expedite transit of goods through customs, enable passage of ships across borders and entry to ports or transit through canals, and to cover up smuggling or trafficking.
- **Corporate affairs:** Examples include trading in influence, the use of illegal political donations, undue lobbying, charitable donations or sponsorships made as bribes.

## COMMIT TO FAIR TRADING PRACTICES

### 6.2 The SOE should have a clear policy and procedure for applying fair trading practices and preventing anti-competitive and cartel behaviour. The SOE should be transparent about its commitment to fair trading practices and should report publicly on its policies and measures to ensure this.

The SOE should, as part of its values or code of conduct, make a commitment to fair trading practices. There can be risks of corruption attached to trading. For instance, sales and marketing can employ anti-competitive behaviour, including cartels, price sharing and fixing, bid-rigging or rotation, cover pricing, apportioning markets, price maintenance, subsidies, price cutting, output restriction and abuse of market dominance. Transactions between an SOE and the government or other SOEs can also threaten a commitment to fair trading practices by providing favourable terms. Such transactions should be on the

same terms as with other market participants. Cartel-related contacts will usually occur between senior managements of the involved enterprises at covert meetings, whether directly between competitors or under the banner of trade association meetings. Joint ventures and consortia are also risk areas as they provide formal relationships, which can be used as a platform for corrupt contacts.

The SOE should define the parameters for what constitutes fair trading and implement controls to prevent and detect anti-competitive behaviour, including providing guidance and training to board members and employees. Monitoring and audits should focus on detecting anti-competitive red flags and practices, as well as the meetings and contacts where such anti-competitive agreements are made and any unusual sales, pricing and market patterns.

## PROVIDE TRANSPARENCY OF CONTRACTING AND PROCUREMENT PROCESSES

### 6.3 The SOE should make public full information on its contracting and procurement processes, with the exception of information that is legally protected for reasons such as national security, the protection of intellectual property or other confidentiality criteria.

One of the highest corruption risk areas for SOEs is passive bribery related to the awarding of contracts. This can involve a range of corruption risks, including bribery, kickbacks, bid rotation and bid-rigging, trading in influence in decision-making and awarding contracts through nepotism and cronyism. Politicians and public servants may also use their influence to steer the awarding of contracts to suppliers. Offset contracts and local content requirements are also an area of corruption risk.

The acceptance of bribes or kickbacks by board directors and employees when awarding contracts poses a significant corruption risk for many SOEs: it is the most common form of global bribery. Bribes and kickbacks might be taken for granting the right to access a bidding process or for awarding a contract to a briber. Kickbacks are a form of passive bribery and take place when a bidder promises to pay a bribe to an SOE employee after a contract has been awarded. The funds for the bribe can be created by inflating the contract fee or through additional contract fees generated in ways such as manipulating rush orders or varying contract terms.<sup>9</sup>



Transparency in contracting processes is a strong defence against corruption in public procurement. Information can be made available on the SOE's website and on the government's open web portal, if one exists. Details about best practice are provided by the Open Contracting Global Principles, which gather norms and best practices for disclosure and participation in public procurement.

## COUNTER THE HIGHEST CORRUPTION RISKS

### Asset transactions

#### **6.4 The SOE should maintain efficient and comprehensive systems for recording the disposition of assets, and controls for the use of and access to assets, to prevent misuse or theft.**

Asset transactions include mergers, acquisitions, divestments, refinancing, sales and write-offs. Asset transactions can be a high-risk area for SOEs. Risks can include the following:

- Politicians or public officials manipulate valuations and decisions in transactions to extract value from the SOE for their own or another's benefit or to launder money.
- During privatisation, SOEs – or portions of their operations – are sold at less than market value.
- Assets are bought or sold at non-market prices.
- Benefits are given to political parties or politicians through loans of assets or giving access to an SOE's resources, such as the use of premises or facilities.

These risks can be countered by rigorous and transparent processes for vulnerable areas, including requiring business cases for transactions, ring-fencing those people involved in transactions, carrying out due diligence on counterparties, monitoring for abnormalities in transactions, and obtaining an independent review of transactions and valuations.

Functions that require particular attention regarding controls on asset transactions include:

- appointment of politicians or public officials to the SOE's board or executive positions
- sales, marketing and contracting
- mergers, acquisitions, refinancing and disposal of businesses
- physical asset management
- intellectual property management

#### **6.5 The SOE should implement a policy and procedure for managing related-party transactions, including thresholds for approval and public disclosure of material transactions.**

A related-party transaction presents a form of conflict of interest. It occurs when a business transaction or arrangement takes place between two parties who have a relationship with each other which started before the transaction. Such transactions can be a breach of fair trading commitments, as set out in Clause 6.2. Dealings with the state and other SOEs should be on the same terms as dealings with other market participants. The relationship between the related parties can be organisational links, such as contracts, ownership, investments and loans and transactions (including, for example, sale and purchase of goods and services, consultancy agreements and supply contracts). Such transactions are common and most are legitimate but some can be vulnerable to corruption when SOE board members, management, politicians, public officials or influential shareholders have a conflict of interest. This could lead to the SOE and a related party each acting in a way that favours the other. Examples of the risks attached to related-party transactions include the following:

- an SOE makes an asset transaction at non-market rates, such as an equity investment by the SOE in another enterprise
- board members, management, politicians and public officials steer transactions in the favour of entities in which they have an interest (such interests may be revealed through the procedures from registering conflicts of interest or identifying beneficial ownership of third parties)
- the SOE controls a network of subsidiaries and manipulates financial transactions between them
- the government requires an SOE to trade at favourable rates with other SOEs or government departments to the disadvantage of commercial businesses

#### **6.6 The SOE should institute a procedure to ensure asset transactions follow a transparent process and that transactions accord to market value. A board committee comprised of independent directors should make an independent assessment of asset transactions.**

Management of assets should be subject to independent oversight by a board committee or external monitor, and to internal and external audits. These audits should be open and transparent, to deter corruption (subject to confidentiality restrictions for commercial reasons).

## Gifts, hospitality and expenses

**6.7 The SOE should implement a policy and procedures to ensure that all gifts, hospitality and expenses are reasonable and bona fide. The SOE should prohibit the offering, giving or receiving of gifts, hospitality or expenses whenever they could influence, or could reasonably be perceived to influence, the outcome of the SOE's transactions or activities.**

Gifts, hospitality and travel expenses ("promotional expenses") are used as a way of building or cementing relationships and promoting products and services and can involve bribery and other corruption risks. A high risk for SOEs is passive bribery, where a bidder for an SOE contract uses promotional expenses to influence an SOE buyer to award the contract in favour of the bidder.

It can be challenging for SOEs to manage promotional expenses. They are a common business practice and in some societies there are deep-rooted customs regarding gifts and hospitality. However, many bribery scandals have involved excessive hospitality and gift-giving. It can be difficult to draw the line as regards where improper conduct starts, and laws are unable to define precise boundaries. Promotional expenditures are acceptable where they are transparent, proportionate, reasonable and bona fide. In making such expenditures, an SOE must ensure it has implemented appropriate risk-based policies and procedures, such as thresholds for approval of promotional expenses, review of expenditures and testing of the procedures against applicable laws and public expectations.

## Charitable contributions, community investments and sponsorships

**6.8 The SOE should ensure that charitable contributions and sponsorships are not used as a subterfuge for bribery or other forms of corruption. To prevent corruption, charitable contributions, community investments, community benefits and sponsorships should conform to an established and publicly disclosed policy, strategy, criteria and approval process.**

SOEs may institute a corporate responsibility policy under which they support communities, for example through making charitable donations and community investments. Sometimes, when bidding for a contract, commercial entities are required to commit funding to some form of community investment or benefit, such as investment in an infrastructure project or in skills and training for the local population. Sponsorships are commercial activities and SOEs may use these to promote their reputation, brands or carry out other marketing activities.<sup>11</sup> Corruption risks posed by such transactions include the following:

- A donation or sponsorship is made to influence the awarding of a contract or to influence a decision.
- Kickbacks or in-kind benefits are paid by the recipient of a sponsorship to the employee responsible for awarding the sponsorship contract. There may be no market rate for a donation or sponsorship and this can facilitate a kickback by inflating the amount given.
- A donation or sponsorship is made to benefit the constituency of a politician who is on the board of the SOE.
- A community investment is included as part of a contract bid and favours a political party, cause or policy area.
- The SOE is pressured by the government or politicians to direct funds to a particular cause or project.
- A donation or sponsorship is used to transfer or launder funds.

A publicly disclosed policy and criteria for such transactions will counter the risk of ad hoc actions making possible bribery or other forms of corruption. The procedure for providing sponsorships should include due diligence on the rights holder, including determining the organisation's officials, beneficial owners and any conflicts of interest that could result from the association with the SOE.

**6.9 At least annually, the board should review a report from management on donations, community investments and sponsorships made by the SOE.**

**6.10 The SOE should be transparent about its processes for making charitable donations, community investments and sponsorships, and should report publicly on those it has made.**

## Political engagement

### **6.11 The SOE should implement a policy prohibiting political contributions, whether direct, indirect, or in kind.**

The SOE should make an annual public statement that it has not made any political contributions.

### **6.12 The SOE should prohibit its board directors, employees, agents, consultant lobbyists or other intermediaries from making political contributions on behalf of or related to their work for the SOE.**

### **6.13 The SOE should ensure that no portion of its earnings or profits is returned to a political party or funds diverted for covert donations.**

An SOE may be required to make a financial return to the ownership entity. This clause makes clear that any financial returns to the government should be as set out in the mandate between the SOE and the ownership entity and subject to observing shareholder rights. Any financial transfers to the ownership entity should be transparent. Controls should be implemented to counter the risk of funds or assets being transferred from the SOE to politicians or political parties.

## Advocacy and lobbying

### **6.14 If advocacy and lobbying are carried out, the SOE should ensure this is responsible and transparent and limited to providing expert comment related to its mandate.<sup>12</sup>**

Advocacy and lobbying refer to any direct or indirect communication with an elected or public official that is made, managed or directed with the purpose of influencing public decision-making. Advocacy and lobbying can be legitimate activities that are carried out in many countries and an important part of the democratic process: they can contribute to the development of well-designed laws and regulations and economic and social strategies, and environments where businesses and societies can prosper.

There can be corruption risks attached to advocacy and lobbying including illegal political donations, improper gifts and hospitality and trading in influence. The size, intensity and pervasiveness of lobbying, compounded by scandals and abuses by businesses and politicians, have created deep public suspicion of lobbying in its role in allowing businesses and interest groups to have covert privileged access and influence with politicians and officials.

It is appropriate for an SOE to stimulate or contribute to a public debate where it will be in the public interest for the SOE to bring its skills and knowledge to inform the debate or to advocate for a particular course of action that will lead to a public good. SOEs as publicly-owned bodies must take care that any advocacy and lobbying is limited to providing expert comment and information related to its mandate and in a politically neutral and transparent manner; the SOE should not take politically partial positions or use undue lobbying methods.<sup>13</sup>

In the interest of transparency and responsible behaviour, an SOE if it carries out advocacy and lobbying, should ensure it is listed in relevant registers of lobbyists where these exist and disclose its meetings with key government decision makers and regulators in sufficient detail to enable stakeholders the public to understand the scale and nature of such activities.

### **6.15 The SOE should monitor and control its membership of trade associations and similar bodies to ensure they do not associate the SOE with any political donations those organisations make, and that the SOE's membership fees are not attached to the association's political donations or undue lobbying.**

### **6.16 The SOE should report publicly on, and describe, the main topics on which it conducts advocacy and lobbying and the related activities.**

### **6.17 The SOE should implement a policy and procedure for managing transparently the movements and exchange of people, in either direction, between the SOE, the government, other forms of public service and the private sector. The policy and procedure should ensure appointments are made for valid reasons and that potential conflicts of interest are identified and managed.**

Movements and exchanges of people between commercial entities and the political and public sectors (the revolving door) are a legitimate way for the public and private sectors to build and access skills and knowledge. Such movements can be common for SOEs, owing to their close connections with the state, politicians and public officials. Movements can include appointments to the board or executive roles, secondments, short-term placements and career movements.

These movements can, however, give rise to risks of conflicts of interest, public distrust and corruption. There should be clear rules for recruitment and cooling-off periods for politicians and public officials before they can take up a position with the SOE. Attention needs to be paid to politicians and public officials moving into SOEs to ensure that they meet the criteria for the positions they are taking up and that due diligence is carried out for conflicts of interest and any corruption red flags.

## Knowledge, information, data and intellectual property

### **6.18 The SOE should have a clear policy and procedures for protecting its knowledge, information, data and intellectual property from theft and corruption.**

Knowledge, information, data and intellectual property are prime areas for corruption. Transactions can be subject to fraud, theft, insider trading, and illegal information brokering of contract bid specifications and terms, and intellectual property.

## Insider trading

### **6.19 If it is listed on a stock exchange or has issued traded debt instruments, the SOE should prohibit board directors and managers from engaging in illegal insider trading. The board directors and senior executives of the SOE, or anyone in the SOE with privileged or non-public information, should be required to notify an appointed manager, such as the chief financial officer or chief legal officer, before making a trade.**

Insider trading is the buying or selling of a security by someone who has access to material, non-public information about the security. It can be legal for a company's board directors and employees to trade in its stock or sell the stock with special knowledge, as long as they disclose the transactions to a stock market regulator, such as the US Securities and Exchange Commission, and as long as the commissions and trades are disclosed to the public. Illegal insider trading generally refers to buying or selling a security in breach of a fiduciary duty or other relationship of trust and confidence, while in possession of material, non-public information about the security. For instance, an SOE's board directors, employees or associated parties may give information to their friends, family or others on a forthcoming transaction, such as the purchase of an entity, to enable them to benefit by buying shares. A critical risk

comes from the close interface between politicians and public officials and the SOE, which can lead to an SOE board director, officer, or manager obtaining non-public information on a law that is about to be passed or a government decision that will soon be announced.

An insider trading policy should define clearly what insider trading entails and, if not already proscribed by stock exchange regulations, specify blackout periods within which insiders are not allowed to buy or sell stock. Techniques to regulate transactions can be used, such as requiring the leadership to sell their shares according to a pre-arranged schedule.

### **6.20 The SOE should identify the risks of insider trading and monitor activity involving its shares for evidence of irregular trading when the SOE is undertaking activities or transactions that could affect share prices.**

It can be difficult to counter insider trading and an SOE should work closely with the ownership entity and regulators on preventive and detection methods. It should appoint someone to monitor share transactions and to talk to analysts about any suspicions of improper activity in the market. These methods should be supported by sanctions for those involved. When there is an irregularity or there is suspicion of corrupt behaviour, the SOE should investigate, in cooperation with the regulator as necessary.

## ESTABLISH AND MAINTAIN INTERNAL ACCOUNTING CONTROLS

### **6.21 The SOE should establish and maintain an effective system of internal accounting controls to counter corruption, comprising financial and organisational checks and balances over its operational transactions and record-keeping procedures.**

Internal accounting controls act as preventive and detective measures. Preventive internal controls are policies and procedures that aim to stop corruption occurring and detective controls are designed to identify when corruption occurs. The entire anti-corruption programme acts as a control system to prevent corruption but there are also certain specific controls related to financial transactions and their documentation. The SOE's internal financial and accounting controls should provide reasonable assurance that:

- corruption is likely to be prevented, or detected and exposed if it occurs
- transactions are executed in accordance with management's authorisation



- assets are safeguarded and access to assets is permitted only in accordance with management authorisation
- the controls provide a basis for monitoring to identify that the programme is working satisfactorily, to detect any deficiencies, and to enable improvement to the anti-corruption programme
- transactions are recorded in the required way so as to permit preparation of financial statements in conformity with generally accepted accounting principles

Accounting corruption involves abuse or circumvention of procedures, concealment, miscoding or manipulation of books and records. Internal financial controls counter these with checks and balances, including the separation of functions, countersignatures, approval thresholds, document controls, cash controls (with cash eliminated wherever possible), continuous monitoring, automated systems that check workflows for red flags and other indicators and internal audits.

## MAINTAIN ACCURATE BOOKS AND RECORDS

**6.22 The SOE should maintain accurate books and records and accounts that properly and fairly document in reasonable detail all financial transactions and dispositions of its assets. These should be available for inspection by the ownership entity, national audit body and authorities. The SOE should not maintain off-the-books accounts.**

Keeping complete and accurate accounting records enables:

- financial statements to be prepared that conform to generally accepted accounting principles, laws and regulations
- information to be prepared and disclosed in a timely and requisite manner for reviews by management, the board and the ownership entity
- recording and identification of improper transactions
- requisite information, including supporting electronic records, documents and vouchers, to be retained and provided for audits and investigations

**6.23 The SOE should maintain an efficient and secure records retention system that stores, for the required period, key documentation related to the design and implementation of the anti-corruption programme.**

Records should be kept to:

- assist reviews of the anti-corruption programme by providing information on past reviews, such as risk assessments
- assist audits and investigations, by providing information such as due diligence reviews and relationship management in respect of high-risk third parties, meetings and discussions relating to contract bids or the awarding of contracts
- inform efforts to improve the anti-corruption programme

The SOE should ensure the security of its data and information technology and other systems for documenting implementation of the anti-corruption programme. It should also ensure that its data use, security and retention comply with relevant privacy and data security laws – particularly when conducting due diligence on third parties.

## SUBJECT THE ANTI-CORRUPTION PROGRAMME TO REGULAR INTERNAL AUDITS

**6.24 The SOE should subject the anti-corruption programme, including the internal accounting and record-keeping practices, to regular internal audits to provide assurance on the programme's design, implementation and effectiveness.**

## DEVELOP AN INCIDENT CONTINGENCY PLAN

**6.25 The SOE should develop an incident contingency plan and procedure to manage suspicions and allegations of corruption, and actual incidents of corruption.**

Corruption is often detected through monitoring and audits. The SOE should be prepared for corruption incidents, however unlikely. Planning should cover assigning management responsibility for incident management, communications to the board and ownership entity, internal and external communications, liaison and cooperation with the authorities, and remedial and disciplinary actions. All actions should be under the review of the legal function and this may need to include the ownership entity as a corruption incident may have repercussions that extend beyond the SOE to the state.

**6.26 The SOE should cooperate with the relevant authorities in connection with corruption investigations and prosecutions.**

Cooperation with law enforcement authorities in the event of investigation of a corruption offence is a provision in the United Nations Convention against Corruption and may be incorporated into some state laws. It can also be an expectation of investigating authorities.<sup>14</sup> The SOE's incident planning procedure should provide for prompt reporting of material corruption incidents to the authorities. Cooperation facilitates the work of authorities to counter corruption and, depending on the jurisdiction involved, can help to speed up the process by making available the resources of an SOE that is under investigation, and by providing access to its documents. Further, the enterprise may benefit through mitigation in sentencing should it be convicted. Cooperation can be complemented by the SOE taking disciplinary actions against its employees and officers and any of its third parties found to have been involved in corruption and taking prompt remedial action to correct deficiencies in the anti-corruption programme.

## PRINCIPLE 7:

### Manage relationships with third parties to ensure they perform to an anti-corruption standard equivalent to that of the SOE

#### Elements:

- apply general standards in all dealings with third parties
- implement controls for specific forms of third parties:
  - controlled entities, investments and mergers and acquisitions
  - joint ventures and consortia
  - agents and other intermediaries

Third parties are prospective or contracted business associates, and include agents, distributors, consultant lobbyists, brokers, consultants and other intermediaries, joint venture and consortia partners, contractors, vendors and suppliers. Third parties can represent a considerable corruption risk for SOEs as they may not operate to the standards of the SOE and they may be used by corrupt board directors and employees as channels for corruption, including manipulation of transactions and money laundering. The largest settled bribery cases have all involved bribery between intermediaries and public officials.<sup>15</sup> Intermediaries acting for bidders can present a high risk of bribery.

#### APPLY GENERAL STANDARDS IN ALL DEALINGS WITH THIRD PARTIES

The general standards listed below should be applied by the SOE to all of its dealings with third parties.<sup>16</sup>

##### **7.1 The SOE should maintain an up-to-date register and database of all its contracted third parties.**

The SOE should have a clear understanding and record of its third party population comprising the third parties with which the SOE has a past, current or potential relationship. Information should be recorded by the SOE on the third parties in a register and should form the basis for risk assessment and due diligence on third parties.

Depending on the size and type of business it conducts, an SOE may have a handful, or hundreds or thousands of third parties with which it deals. The SOE should ensure that it has designed and implemented a systematic register or database to capture basic information on its current and prospective third parties. The register will provide the basis for anti-corruption management of its third parties. It will also allow the SOE to obtain a high-level view of the risk profile of its third party population, and this can then be used to design the due diligence process to be applied to the third parties.

##### **7.2 The SOE should undertake properly documented, risk-based anti-corruption due diligence on third parties before entering into a contract or transaction, including mergers, acquisitions and significant investments. Contracts should be entered into with third parties only where the beneficial ownership is clear.**

Due diligence should be repeated at regular intervals for higher risk third parties and on re-engagement.

##### **7.3 All appointments of third parties should require prior approval of management, with thresholds for approval. Approval should be given subject to satisfactory due diligence assessments and anti-corruption contractual terms.**

##### **7.4 The SOE should establish anti-corruption contractual rights in contracts with its third parties.**

This should include requiring a no-corruption policy, an anti-corruption programme equivalent to its own, rights to audit and inspect books and the right to terminate the contract if a third party engages in corruption or acts in a manner inconsistent with the SOE's anti-corruption programme.

##### **7.5 The SOE should provide tailored communications on its anti-corruption programme and training to higher risk third parties and outsourcing contractors.**

**7.6 In the event that the anti-corruption performance of contracted third parties does not adhere to the standards of its own anti-corruption programme, the SOE should take appropriate action, including correcting deficiencies, applying sanctions or exiting from the arrangement.**

**7.7 The SOE should perform anti-corruption risk based relationship management and monitoring of its third parties.**

This may include carrying out audits and inspections of the third parties' books and records. The SOE should document the monitoring of the application of its anti-corruption programme to its third parties.

**7.8 Senior management and the SOE's board should review regularly the results of the application of the anti-corruption programme to third parties and require amendments and improvements to the programme as necessary.**

## **IMPLEMENT CONTROLS FOR SPECIFIC FORMS OF THIRD PARTIES:**

### **Controlled entities, investments and mergers and acquisitions**

**7.9 The SOE should implement its anti-corruption programme in all entities over which it has effective control or material influence. It should use its influence to encourage an equivalent programme in business entities in which it has a significant investment.**

A controlling interest in an enterprise gives an SOE the ability to exercise control over the operational and strategic decision-making processes of the company. An SOE can have effective control of an entity through one of the following:

- ownership of a majority of the shares of the controlled entity
- a controlling interest through a dominant ownership stake in the entity
- a significant proportion of its voting shares
- material influence, such as through appointing board directors

**7.10 The SOE should carry out anti-corruption due diligence on a proportionate basis for all mergers, acquisitions and disposals, and material investments – including checks for beneficial ownership.**

Fraud and corruption can be risks in transactions for mergers and acquisitions and equity investments in enterprises. There may be past or current bribery and corruption attached to a target enterprise with the risk that the target enterprise's operations and value are inflated though being built on corruption. The investing SOE may be acquiring current corruption and bringing this into its operations; it may be legally liable (depending on the jurisdiction under which it or the target enterprise falls) for past corruption by the target enterprise ("legacy bribery and corruption") and, the transaction may itself be subject to bribery or corruption risk. Anti-corruption due diligence can help SOEs engaged in such transactions to manage their investment risk in transactions. Anti-corruption due diligence should be applied to all investments on a risk-based approach, with the level of due diligence being proportionate to the investment and the perceived likelihood of risk of bribery.

### **Joint ventures and consortia**

**7.11 When entering into a joint venture or consortium, where the SOE is unable to require or ensure that the third party has an anti-corruption programme that is consistent with its own, it should develop a plan for taking appropriate action if corruption occurs or is reasonably thought to have occurred during the course of the venture or consortium.**

This can include requiring deficiencies to be corrected in the implementation of the joint venture or consortium's anti-corruption programme, or applying sanctions or exiting from the arrangement.

### **Agents and other intermediaries**

**7.12 The SOE should ensure that its agents and other intermediaries are not used by the SOE's directors or employees as channels for bribery or other corruption.**

**7.13 Compensation paid to agents and other intermediaries should be appropriate and justifiable remuneration for legitimate services rendered.**

**7.14 Agents and other intermediaries should be contractually required to comply with the SOE's anti-corruption programme and provided with documentation, guidance and training explaining this obligation.**

## PRINCIPLE 8:

### Use communication and training to embed the anti-corruption programme

#### Elements:

- establish effective internal and external communications
- provide general and tailored training

#### SUPPORT BUILDING THE INTEGRITY CULTURE

The aims of anti-corruption internal communication and training should be to support building the integrity culture and ensure that board members, employees and third parties acting on behalf of the SOE understand, fully support and act in accordance with the SOE's commitment to integrity and zero tolerance of corruption. They should know what is expected of them, have the knowledge and skills to recognise and counter corruption, be motivated to contribute to improving procedures and performance, and should be aware of the consequences of breaching the anti-corruption policy.

Communication and training need to convey consistent messages and should be designed and implemented to align with human resource practices including the employee contract, channels for advice and whistleblowing, the role of line management, incentives, personal development, recognition and disciplinary processes. Communications and training should be given in the main local and international languages and tailored to specific regional or local risks.

Care should be taken that the integrity and anti-corruption messages are given appropriate prominence as they will inevitably be only one part of a wider agenda across the SOE, which will also cover other topics such as health and safety, security, environment and human rights.

#### **8.1 The SOE should establish effective internal and external communication of the anti-corruption programme.**

Internal communication should be carried out through a wide range of media and channels. The core publication should be the code of conduct, which should include reference to the SOE's anti-corruption commitments. A supporting guidelines publication and intranet content can also be provided giving

extensive details about, and practical guidance on, policies and procedures. Campaigns be used to reinforce the key messages. Line management can be an important route for communicating the anti-corruption programme and for receiving feedback from employees.

External communication should be used to convey the anti-corruption messages to external stakeholders. This will contribute to building the SOE's reputation for integrity and to projecting the SOE's commitment to zero tolerance of corruption. It may also deter those that might consider acting corruptly in relation to the SOE. Communications and training messages should match those used in public reporting on the anti-corruption programme. It should be remembered that external communications will be seen internally and will support internal communications.

#### **8.2 All board directors and employees should receive general training on the anti-corruption programme. Based on the results of risk assessments, tailored anti-corruption training should be provided to employees in higher risk positions.**

Training should provide practical advice on how the anti-corruption programme applies to the everyday roles and activities of employees. General training should be provided to all employees, and tailored anti-corruption training should be given to those in functions that are identified as facing high corruption risks and also to high-risk third parties.

Training should enable understanding of the different forms and risks of corruption, how corruption can take place and how to prevent negligence, inaction or error. Training should support the development of skills to avoid or resist corruption demands or solicitation. Training should make use of role-playing and exploration of scenarios that pose dilemmas as corruption is not always easily discernible and courses of action in response to instances of possible corruption are not always clear-cut.



## PRINCIPLE 9:

### Provide secure and accessible advice and whistleblowing channels

#### Elements:

- position advice and whistleblowing channels within an organisational culture of openness and trust
- provide accessible and secure advice channels, including hotlines
- adopt a policy and procedure that provides secure and accessible channels for whistleblowing

Advice and whistleblowing channels are fundamental to an anti-corruption programme. The SOE should provide systems that employees and others can use to seek advice on an organisation's policies and procedures, including its anti-corruption programme, or to raise concerns about wrongdoing or issues, including suspicions or incidents of bribery and other forms of corruption. Such systems will only succeed when there is an organisational culture of openness and trust. People must feel able to raise concerns or seek advice and clarifications, and feel confident that their use of the channel is protected, that they are supported by the organisation and that they will not suffer rebuke or retaliation. The use of advice and whistleblowing channels can be extended beyond internal use to use by third parties and other stakeholders.

#### 9.1 The SOE should provide accessible advice channels, including secure helplines, for all employees.

Formal communications and training will not be able to anticipate every situation or the nuances or dilemmas of all particular circumstances, thus channels should be made available to provide advice to employees who have concerns about corruption. The SOE should take an integrated and accessible approach to providing advice on its code of conduct, policies and procedures and specifically the anti-corruption programme, using a range of channels including secure helplines, access to immediate or higher management, and advice from advisers, such as compliance and ethics officers or trusted, experienced employees. Advice channels can provide specific interpretations of policies and procedures and how to handle a particular situation. Secure helplines are effective as they allow sensitive questions to be raised in confidence.

#### 9.2 The SOE should adopt a whistleblowing policy and procedure that provides secure and accessible channels for whistleblowing that employees and others can feel confident in using without risk of reprisal. SOEs should undertake appropriate action in response to matters raised.

Whistleblowing refers to an employee or other person sounding an alarm to reveal a suspicion of neglect, wrongdoing or abuse within an organisation's activities or one of its third parties.<sup>17</sup> Whistleblowing channels should be made available not only to employees but to any person or entity that might have a material interest in the SOE's activities. This will include outsourcers, contracted third parties and other stakeholders. A whistleblowing policy and procedure, and protected, accessible channels for whistleblowing are important for countering corruption, as is shown by significant corruption scandals that have been exposed by whistleblowers. However, experience also shows that whistleblowers often suffer significant adverse consequences as a result of their efforts to expose wrongdoing.

The SOE should provide, according to the laws of the jurisdictions in which they operate, confidential or anonymous channels that are accessible and give confidence to whistleblowers that they will not be exposed or penalised as a result of blowing the whistle on misconduct. The SOE should encourage and enable employees and other stakeholders to report suspicions and incidents of wrongdoing or hazard, including concerns relating to corruption, as early as possible. A whistleblowing hotline is a key component of a whistleblowing system. Ideally, this should be a dedicated line but often will be combined with the advice channel helpline. Separate whistleblowing channels can be considered for suppliers and other third parties. SOEs, as publicly owned entities and providers of public services, should also consider providing dedicated whistleblowing hotlines for the general public. The management of whistleblowing hotlines can be provided in-house or by an external provider, such as a professional firm, ombudsman or a civil society organisation.

The SOE should ensure there is awareness across the organisation of the advice and whistleblowing channels. Processes should be in place to protect the identity of the whistleblower, and to protect them against unjustified dismissal and any other forms of retaliation, disadvantage or discrimination. Processes

should also ensure whistleblowing results in genuine and prompt investigation and effective remedies, and that complaints of retaliation against whistleblowers are investigated and remedied. There should be board commitment to, and oversight of, the whistleblowing policy, including reviewing the implementation of the whistleblowing system, ensuring that concerns raised are acted on promptly and effectively, and that there is no intimidation of or retaliation against those using the whistleblowing channels.

**9.3 The SOE should report publicly on its provisions for advice and whistleblowing channels, and on measures of their use – recognising that confidential or anonymous use of channels may limit the scope for reporting.**

## PRINCIPLE 10:

### Monitor, assess and continuously improve implementation of the anti-corruption programme

#### Elements:

- implement systematic, continuous monitoring and improvement
- undergo regular independent review
- provide regular leadership reviews and make improvements as appropriate

#### IMPLEMENT SYSTEMATIC CONTINUOUS MONITORING AND IMPROVEMENT

##### **10.1 As part of continuous improvement, the SOE should implement monitoring procedures to check the efficiency and effectiveness of the implementation of the anti-corruption programme.**

SOEs operate in dynamic environments, both internal and external: stakeholder expectations regarding organisational integrity and transparency are growing, laws and regulations are becoming more stringent, standards for best practice are advancing and methods and technologies for countering corruption are evolving. A commitment to continuous improvement and systematic monitoring, supported by regular risk assessments and internal audits, will provide confidence to the board and management, the ownership entity, regulators, investors and other stakeholders that the SOE is serious about countering corruption and has a well-designed and effective programme in place.

Benchmarking and stakeholder engagement are also ways to obtain feedback on the programme and any concerns or suggestions. Monitoring helps to develop the design of the anti-corruption programme and ensure that it is kept up-to-date and remains efficient and effective. Monitoring can generate information and indicators for public reporting and can act as a control for detecting corruption.

#### UNDERGO REGULAR INDEPENDENT REVIEW

##### **10.2 The SOE should undergo regular independent review to test or verify the design and/or effectiveness of its anti-corruption programme and to identify areas for improvement.**

Independent reviews can be carried out to identify improvement areas, deal with specific concerns, and provide confidence in the quality of the anti-corruption programme to the management, board, ownership entity and regulator, and to third parties and other stakeholders. Internal audits can also be used to contribute to the monitoring process.

Independent review can take the form of a formal audit by a state audit function or a review initiated by the SOE, such as voluntary independent assurance or an engagement conducted by professional advisers or consultants. The scope of an assurance engagement can be SOE-wide or it can look at specific areas, such as a geographical location, a business unit, a function, a transaction or a particular risk. Independent assurance can look at the design and implementation of controls or can be extended to examine effectiveness.<sup>18</sup> For a small SOE in a low-risk environment, an independent review may be limited to a discussion with an external adviser or an independent body, such as a civil society organisation.

Certification standards can help to provide confidence on an enterprise's design and standardisation of its systems. At present there is no anti-corruption certification standard, although there is an anti-bribery management standard, ISO 37001. However, it should be noted that a certification standard may not be suitable for judging the effectiveness of the implementation of a process. Consultancy reviews can assess and advise on the anti-corruption programme and are a way of supporting continuous improvement. They can also provide information about the effectiveness of the programme and may be able to detect concerns.

**10.3 Where an independent assurance review has been conducted, the SOE should report publicly that it has taken place and disclose the related assurance opinion.**

The conclusion of an assurance process is the provision by the assurance practitioner of an assurance opinion to its intended users. It is a critical decision for management to decide to report publicly that an assurance review has taken place. It is recommended that the SOE does indeed report publicly that its programme has undergone an assurance review and that it provides information on the results.

## REGULAR LEADERSHIP REVIEW

**10.4 Senior management should review regularly the results of monitoring of the anti-corruption programme and assess its suitability, adequacy and effectiveness, taking into account the results of risks assessments, and should implement improvements as appropriate.**

**10.5 The SOE's board should receive regular reports from management on the results of reviews, and make an independent assessment of the adequacy of the anti-corruption programme. The board should make a report on its findings in the annual report and should provide reports on the results of reviews to the ownership entity.**

As part of the corporate governance provided for in Clause 2.12, the board should oversee the implementation of the anti-corruption programme directly or through a board committee, such as an audit committee (such a committee may be a legal requirement for an SOE). The board should receive regular reports from management on the results of monitoring, should assess and question those results and should require actions as necessary.

The credibility and effectiveness of board oversight and monitoring of the anti-corruption programme will depend on it providing a truly independent view. A board audit committee, governance committee or equivalent committee comprised of independent directors may be required by the ownership entity or regulator to protect the interests of the ownership entity and any shareholders in relation to financial reporting and internal control, including the anti-corruption programme. Such a committee will

provide the necessary independent view. By contrast, adequate independence might not be provided by a body containing executive directors who are linked to the management of the SOE and the implementation of the anti-corruption programme, or who owe undue allegiance to politicians or other external parties.

To this end, the board committee will need to understand the anti-corruption control objectives, the risk approach, prioritised corruption risks identified by management and how these risks are mitigated and controlled. The committee should question and challenge management as necessary and be vigilant regarding corruption risks and red flags. The committee should make reports to the ownership entity and any shareholders, and should disclose any material non-compliance.

# GLOSSARY

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**Abuse of position:** A person in a position of authority or appointed trust uses their position to pursue personal gain, or another's gain, or to expose another to loss or suffering (such as being bullied or being subjected to unreasonable treatment). Abuse can take the form of action or inaction.

**Access to information:** The right by law – often through freedom of information legislation (acts or laws) – to access key facts and data from the government and any public body based on the notion that citizens can obtain information which is in the possession of the state (*Transparency International Anti-Corruption Glossary*, November 2017).

**Active bribery:** The promising, offering or giving, directly or indirectly, of any advantage to a person or persons who directs or work for an entity, for themselves or for anyone else, with the intent that the person or persons act, or refrain from acting, to breach trust and to fail to act impartially and in good faith. See also [Passive bribery](#).

**Advocacy:** An entity makes communications and representations on its own behalf with the aim of influencing some aspect of the society and decision-making. See also [Lobbying](#).

**Agent:** A representative who normally has authority to make commitments on behalf of the principal represented.

**Anti-corruption programme:** A programme that represents the SOE's anti-corruption efforts. The programme covers the SOE's values, code of conduct, detailed policies and procedures, governance, risk management, internal and external communications, training and guidance, advice and whistle-blowing channels, internal accounting controls, monitoring, evaluation and improvement.

**Assurance engagement:** An engagement in which a practitioner expresses a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria (definition by the International Auditing and Assurance Standards Board).

**Beneficial owner:** The real person who ultimately owns, controls or benefits from a company or trust fund and the income it generates. The term is used to contrast with the legal or nominee owners and with trustees, all of whom might be registered as the legal owners of an asset without actually possessing the right to enjoy its benefits. Complex and opaque corporate structures set up across different jurisdictions, make it easy to hide the beneficial owner, especially when nominees are used in their place and when part of the structure is incorporated in a secrecy jurisdiction (*Transparency International Anti-Corruption Glossary*, November 2017).

**Bid-rigging:** Where bidders for a contract collude on deciding which should win the bid. This is achieved by agreeing on pricing and other components of the bid. Bid-rigging can include *bid rotation*, *complementary bidding*, *cover pricing* and *production limitation*. Bid-rigging is a form of *collusion* and can be an offence under cartel or antitrust laws.

**Bid rotation:** Where tenders are a continuing opportunity companies collude to rotate winning bids among themselves so that all the companies benefit over time.

**Board of directors:** The corporate body charged with the functions of governing the enterprise. In a *one-tier system*, a single board of directors provides the strategic direction for, and oversight of, the SOE. Its board may comprise entirely non-executive directors or a combination of non-executive (independent) directors and executive directors who are also senior management. In a *two-tier system*, the SOE has both a *supervisory board* and a *management board*. The supervisory board, usually composed entirely of non-executive directors, oversees the management board, which consists of the enterprise's senior management team. In the SOE Principles, reference to the board refers either to a unitary board or, in the case of a two-tier system, to the supervisory board.

**Bona fide:** An act made in good faith without an intention to engage in undue action. The term can be included in policies regarding gifts, hospitality or expenses.

**Bribery:** The offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal or a breach of trust.<sup>19</sup>



**Business Principles for Countering Bribery:**

A best practice model for corporate anti-bribery policies and programmes developed through a multi-stakeholder process initiated and led by Transparency International. The Business Principles were first published in 2003 and a third edition was published in 2013.

**Charitable contribution:** A payment or in-kind benefit gifted to a body having charitable or equivalent status and made without expectation of return.

**Clientelism:** Also called patronage. An unequal system of exchanging resources and favours based on an exploitative relationship between a wealthier and/or more powerful “patron” and a less wealthy and weaker “client” (*Transparency International Anti-Corruption Glossary*, November 2017). For example, a politician acts as a patron and rewards persons by providing them with jobs in an SOE and they in return provide illegal financial support to the politician using funds obtained corruptly through their work in the SOE.

**Code of conduct:** A policy statement setting out the principles and standards that all company personnel and board members must follow. The code of conduct can be applied to or adapted to cover third parties.

**Coercion:** Used in extortion. Forcing another party to act in an involuntary manner by use of intimidation or threats or some other form of pressure or force.

**Collective action:** A collaborative and sustained process of cooperation amongst stakeholders. It increases the impact and credibility of individual action, brings vulnerable individual players into an alliance of like-minded organisations and levels the playing field between competitors (definition by The World Bank).<sup>20</sup> See also [Integrity Pact](#).

**Collusion:** This is an agreement, usually secretive, between two or more persons or businesses to limit or distort open competition. It can involve an agreement among companies to divide the market, to set prices, to limit production or to share private information. It may also involve [Bid-rigging](#).

**Community benefit:** Where a company, in order to win a contract from a public body, agrees to provide, as part of the contract, a community benefit, such as funding an educational or medical facility.

**Community investment:** A strategic, voluntary contribution made by an entity to benefit society, or an action by an entity to catalyse such a benefit. It can include charitable donations, employee secondments and fundraising, sponsorships with community impacts, training and work placements, support to small businesses and start-ups, educational activities and other activities judged to benefit society.

**Complementary bidding:** Where some of the bidders for a contract agree to submit bids that are intended not to be successful, so that another conspirator can win the contract. See also [Bid-rigging](#).

**Conflict of interest:** A situation where an individual or the entity for which they work, whether a government, business, media outlet or civil society organisation, is confronted with a choice between the duties and demands of their position and their own private interests (definition from *Transparency International Anti-Corruption Glossary*, November 2017).

**Consultant lobbyist:** A contracted third party providing consultancy services on advocacy and lobbying. See also [Advocacy and Lobbying](#).

**Cooling-off period:** A time-limited restriction on the ability of former politicians or public officials to accept appointments to positions in an SOE or the private sector.

**Country-by-country reporting:** Reporting by global companies and SOEs on financial indicators for their country-level operations, such as revenues, capital expenditure, income before taxation, income tax, projects and community contributions. This information, if disclosed, can provide an overview of a company’s or SOE’s operations in a given country or region, and of its direct contribution to the local economy.

**Cover pricing:** Where a company or SOE wishes, or believes it is necessary, to be seen to tender for a particular project but either does not wish to win the tender or does not have the time or resources to prepare a carefully priced tender for that project. The company or SOE accordingly submits a high bid that it expects to be unsuccessful. It can be used in [Bid-rigging](#).

**Cronyism:** The favouring of friends. See also [Clientelism](#) and [Patronage](#).

**De facto director:** A person who is not a formally elected board director but is part of the corporate governance system of an entity and assumes the status and function of a director. See also [Shadow director](#).

**Due diligence:** An investigation or audit of a potential business, investment or individual prior to entering into a business transaction or appointment of individuals. Due diligence is an essential part of an anti-corruption programme.

**Embezzlement:** When a person holding office in an institution, organisation or company dishonestly and illegally appropriates, uses or traffics the funds and goods they have been entrusted with for personal enrichment or other activities (definition from *Transparency International Anti-Corruption Glossary*, November 2017).

**Executive director:** A board director who is also an executive of an enterprise.

**Expenses:** The provision or reimbursement by an enterprise of travel, per diems and other related expenses incurred by a third party, such as a prospective client or customer, such reimbursement not being part of a contractual agreement. Typically, these relate to the costs of activities such as travelling to view a manufacturing plant, benchmarking an installation of the type to be purchased or attending training courses or conferences.

**FATF:** See [Financial Action Task Force](#).

**Financial Action Task Force:** The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the ministers of its Member jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF has developed a series of recommendations that are recognised as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction.<sup>21</sup>

**Extortion:** The criminal offence of obtaining money, property, or services from a person or an entity by *coercion*.

**Facilitating payment:** Commonly used to describe an intractable form of bribery where foreign public officials demand small bribes for providing routine services. The term derives from the US Foreign Corrupt Practices Act (FCPA) and is defined in the US Department of Justice Resource Guide to the FCPA as “a narrow exception from prosecution for ‘facilitating or expediting payments’ made in furtherance of ‘routine governmental action’ that involves non-discretionary acts. Examples of ‘routine governmental action’ include processing visas, providing police protection or mail service, and supplying utilities like phone service, power, and water. Routine government action does not include a decision to award new business or to continue business with a particular party. Nor does it include acts that are within an official’s discretion or that would constitute misuse of an official’s office”.<sup>22</sup> The US Department of Justice and the US Securities and Exchange Commission have increasingly narrowed the limits of the facilitation payment exception. Apart from the US, only a handful of countries, including Australia, New Zealand and South Korea, provide such an exception in their anti-bribery legislation. See also [Small bribe](#).

**Foreign public official:** Defined in the UK Bribery Act as an individual who holds a legislative, administrative or judicial position of any kind, exercises a public function for or on behalf of a country or territory outside the UK, or for any public agency or public company of that country or territory, or is an official or agent of a public international organisation. Unlike the FCPA, under the Bribery Act the term foreign public official does not include foreign political parties or candidates for foreign political office.

**Fraud:** To cheat. The offence of intentionally deceiving someone to gain an unfair or illegal advantage: financial, political or otherwise (*Transparency International Anti-Corruption Glossary*, November 2017).

**Gift:** Money, goods, services or loans given ostensibly as a mark of friendship or appreciation. A gift is professedly given without expectation of consideration or value in return. A gift may be used to express a common purpose and the hope of future business success and prosperity. It may be given in appreciation of a favour done or a favour to be carried out in the future.

**Hospitality:** Entertaining given or received to initiate, develop or strengthen relationships, including meals, receptions, tickets to entertainment, social or sports events, and participation in sporting events. The distinction between hospitality and gifts can blur, especially where the giver of the hospitality does not attend and act as host.

**Independent director:** A board director who is not charged with representing the state and is not an executive director of the SOE. Independent directors should be free of any material interests or relationships with the enterprise, its directors and management, other major shareholders and the ownership entity that could jeopardise their exercise of objective judgement. They should also be free of marital, family or other personal relationships with the enterprise's directors, executives, controlling shareholders or third parties that could be seen as limiting their independence. See also [Non-executive director](#).

**Influence peddling:** See [Trading in influence](#).

**Inherent risk:** Sometimes referred to as “gross risk”. Risk existing in a transaction or situation before the application of the mitigating effect of any controls.

**Insider trading:** The buying or selling of a security by someone who has access to material, non-public information about the security. Subject to local stock market regulations, it can be legal for insiders, officers, board directors and employees of listed companies to buy and sell stock in their own companies. Illegal insider trading refers generally to buying or selling a security in breach of a fiduciary duty or other relationship of trust and confidence, while in possession of material, non-public information about the security.

**Integrity Pact:** A tool developed by Transparency International for preventing corruption in public contracting, comprising an agreement between the government agency offering a contract and the enterprises bidding for it that they will abstain from bribery, collusion and other corruption for the extent of the contract. To ensure accountability, Integrity Pacts include a monitoring system, typically led by civil society open government groups.<sup>23</sup>

**Kickback:** A payment or in-kind bribe given in return for facilitating a commercial transaction, such as a contract or a loan. The term kickback describes its most common form where a portion of a contract fee from an awarded contract is kicked back or returned to the person approving the contract.

**Lobbying:** Any direct or indirect communication with a public official that is made, managed or directed with the purpose of influencing public decision-making (Definition from *International standards for lobbying regulation*). See also [Advocacy](#).

**Lobbyist:** A *consultant lobbyist* or an in-house lobbyist (an employee who spends a significant proportion of time on lobbying).

**Money laundering:** The goal of a large number of criminal acts is to generate a profit for the individual or group that carries out the act. Money laundering is the processing of these criminal proceeds to disguise their illegal origin. This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardising their source (definition by FATF).

**Nepotism:** A form of *favouritism* based on family relationships whereby someone in an official position exploits his or her power and authority to provide a job or favour to a family member.

**Non-executive director:** A member of the board of directors of an SOE who does not form part of the *executive* management team. There is no legal distinction between an executive and non-executive director but the role of a non-executive director may be to bring a wider perspective than that provided by executive directors. See also [Independent director](#).

**Open Government Partnership:** The initiative was launched in 2011 by eight founding governments to provide an international platform for domestic reformers committed to making their governments more open, accountable, and responsive to citizens.

**Organisational transparency:** Full disclosure by a company or SOE of its holdings: information is reported in an accessible form to the public by a company on all its subsidiaries, associates and joint ventures, including information about the percentages owned by the parent company or SOE, the countries of its incorporation and the countries in which it conducts business.

**Ownership entity:** “The part of the state that is responsible for the ownership function over, or the exercise of ownership rights in, an SOE. ‘Ownership entity’ can be understood to mean either a single state ownership agency, a coordinating agency or a government ministry responsible for exercising ownership... the term ‘ownership entity’ is used without prejudice to the choice of ownership model. Not all states necessarily assign a government institution to play a predominant ownership role”. Definition from *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, p16.

**Passive bribery:** The request or receipt, directly or indirectly, by a person of any undue advantage, or the promise thereof, for themselves or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting, to breach trust and to fail to act impartially and in good faith. See also [Active bribery](#).

**Patronage:** Also called, clientelism. The dispensation of favours and benefits such as public office, positions in SOEs, employment, contracts, subsidies, grants or honours by a patron. Patronage is often made to build and retain the support of those who benefit from it. This can be done in order to retain political office or to exercise informal power.

**Political contribution:** Financial and in-kind gifts donated or transferred to a political party, politician or political candidate, including sponsorships, gifts of property or services, advertising or promotional activities endorsing a political party, stands at party conferences, the purchase of tickets to fundraising events, subscriptions and affiliation fees, money to meet expenses, and loans, property, services and other facilities provided at less than market value. It can include the release of employees without pay from the employer to undertake political campaigning or to stand for office.

**Political engagement:** The ways in which an enterprise contributes to or participates in the political process. This can include but is not limited to activities such as making *political contributions*, indirect political expenditure, *advocacy* and *lobbying*, lobbying through trade associations and other membership bodies, *the revolving door*, *secondments*, training of public-sector officials and political activities related to the workplace.

**Political expenditure – indirect:** Any independent campaign spending on an activity that can reasonably be seen as intended to influence who or what people vote for in a poll.

**Public official:** Any person holding a legislative, executive, administrative or judicial office, whether appointed or elected; and any person exercising a public function, including for a public agency or public enterprise.

**Related-party transaction:** A business transaction or arrangement between two parties who were in a relationship before the transaction took place.

**Revolving door:** The movement of individuals between positions of public office, SOEs or the private sector, in any direction.

**Risk:** The possibility that an event will occur and adversely affect the achievement of objectives.<sup>24</sup>

**Risk approach:** Also termed “risk appetite” or “risk tolerance”. This is the amount of risk, on a broad level an organization is willing to accept in pursuit of value. Each organization pursues various objectives to add value and should broadly understand the risk it is willing to undertake in doing so’ (definition from *ERM Understanding and Communicating Risk Appetite*, COSO, 2012).

**Risk assessment:** A systematic and continuing process for identifying and analysing *inherent risks* to enable an assessment of their likelihood and impact on the enterprise’s ability to achieve its commitments and objectives. Within the framework of the *risk approach* of the enterprise, the results of anti-corruption risk assessments are used to identify and prioritise risks and to design controls for the anti-corruption programme to be implemented to mitigate the risks.

**Secondment:** The temporary placement of a private sector employee in a public position or an SOE or public-sector employee or elected official in the private sector. Typically, placements vary in length from a few weeks to a year or more.

**Shadow director:** A shadow director is a person who is not a board member but who directs or influences the actions and decisions of board members. The term can refer to individuals, such as politicians, or to corporate bodies. See also [De facto director](#).

**Small bribe:** A commonly encountered form of bribery where an official demands a bribe for the provision of routine services to which a person or entity is entitled, or a bribe to induce an official not to perform a routine action, such as imposing a driving fine or other similar penalty.<sup>25</sup> See also [Facilitating payment](#).

**Sponsorship:** A transaction where an enterprise makes a consideration, in cash or in kind, to associate its name with a rights holder and receives in consideration for the sponsorship fee, rights and benefits, such as the use of the rights holder’s name, advertising credits in media, events and publications, or the use of facilities and opportunities to promote its name, products and services. It is a business transaction and a part of promotion and advertising.

**Stakeholders:** Those groups that affect and/or could be affected by an organisation’s activities, products or services and associated performance. This does not include all those who may have knowledge of or views about an organisation. Organisations will have many stakeholders, each with distinct types and levels of involvement, and often with diverse and sometimes conflicting interests and concerns.<sup>26</sup>



**Stakeholder engagement:** A process used by an enterprise to exchange views, inform stakeholders of the enterprise's activities on topics of material interest and to report back on outcomes of previous exchanges.

**State-owned enterprise:** Defined broadly for the purposes of the SOE Principles as an entity that is owned or controlled by the state that carries out activities that are commercial or for public policy objectives, or a combination of these.

**Subsidiary:** A separate legal entity in which the company (the parent or holding company) has a controlling equity interest or exercises a de facto controlling interest, such as the right to nominate members of the board of directors and thereby control the board, founder/priority shares, preferred shares, a controlling foundation or other devices.

**Support functions:** Staff functions that support the design and implementation of the anti-corruption programme. They include: compliance, ethics, legal, finance, internal audit, security, corporate affairs, public or government affairs, communications and human resources.

**Sustainable Development Goals ("SDGs"):** An inter-governmental commitment and plan of action for sustainability for the period up to 2030 made in a UN Resolution in September 2015 signed by all 193 UN Member States.

**Theft:** Dishonestly appropriating the property of another with the intention of permanently depriving them of it. This may include the removal or misuse of funds, data, intellectual property, assets or cash. See also [Embezzlement](#).

**Third party:** For anti-corruption purposes, a third party is a prospective or contracted business associate, including agents, distributors, lobbyists, brokers, consultants and other intermediaries, joint venture and consortia partners, contractors, vendors and suppliers.

**Third party population:** Third parties with which the SOE has a past, current or potential relationship. Information should be recorded by the SOE on the third parties in a register and this can form the basis for risk assessment and due diligence on third parties.

**Tone from the top:** The way the top leadership – the chair and CEO, as well as board members and management – communicate and support by their actions the enterprise's commitment to values, including openness, honesty, integrity, and ethical behaviour – and in particular the anti-corruption programme.

**Trading in influence:** Also called "influence peddling", this occurs when a person who has real or apparent influence on the decision-making of a person exchanges this influence for an undue advantage. The person with influence has the intention of persuading the decision-maker to act in a desired manner. The emphasis here is on "undue", to distinguish it from legitimate influence-seeking, such as lobbying or advocacy. The decision-maker may be unaware of the undue influence.

**Transparency:** Being open in the clear disclosure of information, rules, plans, processes and actions. As a principle, public officials, civil servants, the managers and directors of companies and organisations, and board trustees have a duty to act visibly, predictably and understandably to promote participation and accountability and to allow third parties to easily perceive what actions are being performed (definition from *Transparency International Anti-Corruption Glossary*, November 2017).

**Solicitation of corruption:** The act of a person asking or enticing someone to commit bribery or another act of corruption. See also [Coercion](#).

**United Nations Convention against Corruption:** This is the only legally binding universal anti-corruption instrument. It was adopted by the UN General Assembly on 31 October 2003 and entered into force on 14 December 2005. The vast majority of United Nations Member States are parties to the Convention. The Convention covers five main areas: preventive measures, criminalisation and law enforcement, international cooperation, asset recovery, and technical assistance and information exchange. The Convention covers many different forms of corruption, such as bribery, trading in influence, abuse of functions, and various acts of corruption in the private sector.

**Undue advantage:** An improper or unfair benefit, whether promised, given or received.

**Whistleblowing:** The making of a disclosure in the public interest by an employee, director or external person, in an attempt to reveal neglect or abuses within the activities of an organisation, government body or company (or one of its business partners) that threaten the public interest and/or the entity's integrity and reputation (definition from *Transparency International Anti-Corruption Glossary*, November 2017).



# STAKEHOLDER DEVELOPMENT OF THE SOE PRINCIPLES

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**The 10 Anti-Corruption Principles for SOEs are an initiative of Transparency International and were developed with the guidance of a multi-stakeholder Working Group, whose members are listed below.**

The development of the SOE Principles was proposed by the Business Principles Steering Committee, whose members provided their expertise as well as financial support.<sup>27</sup> The contents of the SOE Principles reflect the general views of the Working Group and the Steering Committee but not necessarily those of their individual members on individual topics.

Transparency International wishes to express its gratitude and appreciation for the valuable contribution of the members of both groups.

**Transparency International also wishes to acknowledge the important contributions of:**

Jermyn Brooks, former Transparency International Board Member and Chair of the SOE Principles Working Group

Susan Côté-Freeman, former Head of Transparency International's Business Integrity Programme

Peter Wilkinson, for his expert authorship and guidance.

## SOE PRINCIPLES WORKING GROUP MEMBERS

European Bank for Reconstruction and Development

Norsk Hydro ASA

Organisation for Economic Cooperation and Development

Petróleos Mexicanos (PEMEX)

Petroleum Nasional Berhad (PETRONAS)

Statoil ASA

Transparencia Mexicana

Transparency International Mozambique

UN Global Compact Network India

# END NOTES

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1. See the OECD publication: *The Size and Sectoral Distribution of State-Owned Enterprises* (Paris: OECD, 2017).
2. [www.transparency.org/whatwedo/tools/business\\_principles\\_for\\_countersing\\_bribery/1/](http://www.transparency.org/whatwedo/tools/business_principles_for_countersing_bribery/1/)
3. The Sustainable Development Goals (SDGs) have been signed up to by all 193 UN Member States. Goal 16 of the SDGs reads: “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. Target 16.5: is to “substantially reduce corruption and bribery in all its forms”.
4. *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, 2015 Edition (Paris: OECD, 2015), p. 18. See also: *Boards of Directors of State-Owned Enterprises: An overview of national practices* (Paris: OECD, 2013).
5. For guidance see: *Corporate Governance Boards of Directors of State-Owned Enterprises* (Paris: OECD, 2013), Annotations to Chapter II: The state’s role as an owner. [www.oecd-ilibrary.org/governance/board-of-directors-of-state-owned-enterprises\\_9789264200425-en](http://www.oecd-ilibrary.org/governance/board-of-directors-of-state-owned-enterprises_9789264200425-en)
6. For guidance see: *Transparency in Corporate Reporting – Assessing Emerging Market Multinationals* (Berlin: Transparency International, 2016). [https://www.transparency.org/whatwedo/publication/transparency\\_in\\_corporate\\_reporting\\_assessing\\_emerging\\_market\\_multinat](https://www.transparency.org/whatwedo/publication/transparency_in_corporate_reporting_assessing_emerging_market_multinat)
7. *Best Practices Paper: The Use of the FATF Recommendations to Combat Corruption* (Paris: FATF/OECD, 2013) <http://www.fatf-gafi.org/publications/corruption/documents/bpp-fatfrecs-corruption.html> [www.fatf-gafi.org/publications/corruption/documents/bpp-fatfrecs-corruption.html](http://www.fatf-gafi.org/publications/corruption/documents/bpp-fatfrecs-corruption.html)
8. Transparency International developed the Integrity Pact which is a tool widely used for preventing corruption in public projects. [www.transparency.org/whatwedo/tools/integrity\\_pacts](http://www.transparency.org/whatwedo/tools/integrity_pacts)
9. For detailed guidance on managing public contracting, see Transparency International, *Curbing Corruption in Public Procurement: A Practical Guide* (Berlin: Transparency International, 2014). [www.transparency.org/whatwedo/publication/curbing\\_corruption\\_in\\_public\\_procurement\\_a\\_practical\\_guide](http://www.transparency.org/whatwedo/publication/curbing_corruption_in_public_procurement_a_practical_guide)
10. See: [www.open-contracting.org/get-started/global-principles/](http://www.open-contracting.org/get-started/global-principles/)
11. Note: charitable donations and corporate social responsibility should not be confused with corporate responsibility, which refers to the guiding values of a commercial entity, including responsible business conduct.
12. See Peter Wilkinson, *Wise Counsel or Dark Arts? Principles for Responsible Corporate Political Engagement*. (London: Transparency International UK, 2014). [www.transparency.org.uk/publications/wise-counsel-or-dark-arts-principles-and-guidance-for-responsible-corporate-political-engagement/](http://www.transparency.org.uk/publications/wise-counsel-or-dark-arts-principles-and-guidance-for-responsible-corporate-political-engagement/)
13. See the publication on responsible political engagement: Peter Wilkinson, *Wise Counsel or Dark Arts? Principles for Responsible Corporate Political Engagement* (London: Transparency International UK, 2015). [www.transparency.org.uk/publications/wise-counsel-or-dark-arts-principles-and-guidance-for-responsible-corporate-political-engagement/](http://www.transparency.org.uk/publications/wise-counsel-or-dark-arts-principles-and-guidance-for-responsible-corporate-political-engagement/)
14. *United Nations Convention against Corruption: Article 37. Cooperation with law enforcement authorities* (New York: United Nations, 2003).
15. See *OECD Foreign Bribery Report, An Analysis Of The Crime Of Bribery Of Foreign Public Officials* (Paris: OECD, 2014)
16. For guidance on anti-bribery management of third parties see: *Only Strong as Your Weakest Link* (London: Transparency International UK, 2016)
17. *The Business Case for “Speaking Up”: How Internal Reporting Mechanisms Strengthen Private-Sector Organisations* (Berlin: Transparency International, 2017). [www.transparency.org/whatwedo/publication/business\\_case\\_for\\_speaking\\_up](http://www.transparency.org/whatwedo/publication/business_case_for_speaking_up)
18. See: *Assurance Framework for Corporate Anti-Bribery Programmes* (Berlin: Transparency International, 2012). [www.transparency.org/whatwedo/publication/assurance\\_framework\\_for\\_corporate\\_anti\\_bribery\\_programmes](http://www.transparency.org/whatwedo/publication/assurance_framework_for_corporate_anti_bribery_programmes)
19. See: [www.transparency.org/whatwedo/tools/business\\_principles\\_for\\_countersing\\_bribery](http://www.transparency.org/whatwedo/tools/business_principles_for_countersing_bribery)
20. See: [www.collective-action.com/resources/collective\\_action](http://www.collective-action.com/resources/collective_action)
21. [http://www.fatf-gafi.org/publications/fatfrecommendations/?hf=10&b=0&s=desc\(fatf\\_releasedate\)](http://www.fatf-gafi.org/publications/fatfrecommendations/?hf=10&b=0&s=desc(fatf_releasedate))
22. *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (The Criminal Division of the US Department of Justice and the Enforcement Division of the US Securities and Exchange Commission, 6 August 2015). [www.justice.gov/criminal-fraud/fcpa-guidance](http://www.justice.gov/criminal-fraud/fcpa-guidance)
23. See: [www.transparency.org/whatwedo/tools/integrity\\_pacts](http://www.transparency.org/whatwedo/tools/integrity_pacts)
24. *Internal Control – Integrated Framework, Executive Summary* (US: The Committee of Sponsoring Organizations of the Treadway Commission, 2013), p. 4.
25. Peter Wilkinson, *Countering Small Bribes: Principles and Good Practice Guidance for Dealing with Small Bribes, Including Facilitation Payments* (London: Transparency International UK, 2014). [www.transparency.org.uk/publications/countering-small-bribes/](http://www.transparency.org.uk/publications/countering-small-bribes/)
26. See: [www.accountability.org/standards/](http://www.accountability.org/standards/)
27. Transparency International has facilitated the development of an anti-bribery code, *Business Principles for Countering Bribery*, in collaboration with a Steering Committee drawn from business, academia, trade unions and non-governmental organisations. The *Business Principles* were first published in 2003 and revised in 2009 and 2013, and have become a reference for other global anti-bribery standards.

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