



Combating corruption and promoting business integrity in state-owned enterprises: Issues and trends in national practices

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FOREWORD

This report examines issues and trends in national practices towards combatting corruption in state-owned enterprises (SOEs). It discusses key sources of heightened corruption risk in SOEs, notably those stemming from their ownership, corporate governance, regulatory and disclosure arrangements. It also examines measures taken at the policy, institutional and enterprise-specific levels to prevent corruption and promote ethical business conduct by SOEs and their employees. The findings draw primarily on national responses to a questionnaire developed by the OECD Secretariat as well as desktop research. Questionnaire responses were submitted by Argentina, Brazil, India, Korea, Lithuania, Malaysia, Mexico, Paraguay, Peru, the Philippines, Sweden, the United States and Viet Nam.

The report is the result of the ongoing work of the OECD Global Network on Corporate Governance of State-Owned Enterprises, which supports implementation in countries around the world of the international standard *OECD Guidelines on Corporate Governance of State-Owned Enterprises*. The report, like the Network, has benefitted from the financial support of the Ministry of Strategy and Finance of Korea. It was prepared by Korin Kane of the Corporate Affairs Division of the OECD Directorate for Financial and Enterprise Affairs.

LIST OF ABBREVIATIONS

AGN	<i>Auditoría General de la Nación</i> / General Audit Office (Argentina)
CFE	<i>Comisión Federal de Electricidad</i> / Federal Electricity Commission (Mexico)
DEST	<i>Departamento de Coordenação e Governança das Empresas Estatais</i> / Department of Co-ordination and Corporate Governance of State Enterprises (Brazil)
CPSE	Central Public Sector Enterprise (India)
CVC	Central Vigilance Commission (India)
CVO	Central Vigilance Officer (CVO) (India)
FONAFE	<i>Fondo Nacional de Financiamiento de la Actividad Empresarial del Estado</i> / National Fund for Financing Government Enterprise Activity (Peru)
GCC	Governance Coordination Centre (Lithuania)
GCG	Governance Coordination Commission (Philippines)
GLC	Government-Linked Company (Malaysia)
GOCC	Government-Owned or –Controlled Corporation (Philippines)
IACAC	Inter-American Convention against Corruption
IAS	International Accounting Standards
ICRS	Integrated Corporate Reporting System (ICRS) (Philippines)
IFRS	International Financial Reporting Standards
OAS	Organisation of American States
OECD	Organisation for Economic Co-operation and Development
MTMC	Ministry of Transparency, Monitoring and Control (Brazil)
PEMEX	<i>Petróleos Mexicanos</i> / Mexican Oil (Mexico)
SFP	<i>Secretaría de la Función Pública</i> / Office of the Comptroller General (Mexico)
SIGEN	<i>Sindicatura General de la Nación</i> / Office of the Comptroller General (Argentina)
SOE	State-owned enterprise
UNCAC	United Nations Convention against Corruption

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EXECUTIVE SUMMARY

This report discusses key sources of heightened corruption risk in state-owned enterprises. It also highlights measures that can be – and in some countries are – taken at the policy, institutional and enterprise levels to address those risks and promote ethical conduct by SOEs and their employees. It uses the term “corruption” to refer broadly to any conduct that is illegal and/or undertaken in the interest of constituencies other than the general public that constitute the ultimate “owners” of SOEs – and in whose interest SOEs are expected to operate efficiently and create value.

This report has found that, compared with private companies, state-owned enterprises can face particularly heightened corruption risk owing, among others, to underlying issues in their ownership, regulatory and corporate governance arrangements as well as shortcomings in the quality and credibility of corporate disclosure. Combatting corruption within SOEs should therefore be bolstered by broader efforts to address these issues, in line with the internationally agreed standards set forth in the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*. The following proposes a synthesis of key areas of increased corruption risk that are specific to SOEs and proposes some areas for further investigation.

Legal and institutional landscape for combatting corruption in SOEs

- *Prevailing anti-corruption legislation is not systematically applicable to SOEs and their employees.* SOEs are sometimes excluded from the application of legislation (where such is in place) making corporations liable for the corrupt acts of their employees. This can notably occur where SOEs are incorporated pursuant to statutory (enterprise-specific) legislation and not subject to general company law. Furthermore, in some cases, where public officials and “independent” board members serve simultaneously on boards, they are sometimes subject to different liability regimes. This can lead to challenges in assigning liability for misconduct and can ultimately undermine the board’s accountability for enterprise performance. The experience of countries that have taken measures to harmonise the liability regime applicable to SOEs’ corporate officers could be a fruitful area for further study and sharing of national practices.
- *Broader issues with enforcement of anti-corruption legislation can be exacerbated in the state-owned enterprise sector.* Even in countries with apparently sound legislation against corruption, applicable to SOEs and their employees, the state may in practice be under-inclined to bring cases against the SOEs it “owns”. Furthermore, in situations of weak public or corporate governance, corrupt public officials may be involved in SOEs’ daily operations, potentially shielding them from the scrutiny of entities responsible for detecting and sanctioning corruption. In this regard, further study into practices to improve institutional coordination in combatting corruption in the SOE sector – including regarding the respective roles of anti-corruption authorities, state auditors and ownership entities – could be useful.

Mandate, composition and independence of boards of directors

- *Limited mandates – in law or practice – often prevent boards from fulfilling key corporate oversight functions.* International good practice calls for boards to be mandated and empowered to set company strategy and oversee management, based on clear performance objectives defined by the state. In many countries, boards do not have this legal or *de facto* mandate. In some countries, for example, the state (often represented by elected officials) by-passes SOE boards of directors in appointing the CEO, who may then become “beholden” to the political powers. This can lead to confusion in the corporate chain of command and prevent the board from acting as a shield from (political or other) interference

in SOEs' daily operations. National experiences with strengthening SOE boards' mandates concerning strategy setting and management oversight is another potential area for further study.

- *Issues with board composition and qualifications prevent them from exercising independent judgement and acting in the interest of the enterprise.* The presence of politically-affiliated individuals on SOE boards is a persistent problem in many countries. This invariably leads to conflicts of interest and can also lead to situations where corporate decision-making is politically motivated rather than based on clear performance objectives. In this regard, further research could be undertaken to isolate elements of good practice in constituting qualified, independent and professional boards of directors. Such research could, for example, examine board nomination procedures at the level of the state or board practices at the level of individual SOEs.

Internal controls, ethics and compliance measures

- *SOEs are not systematically required to establish internal controls, ethics and compliance measures for preventing corruption.* Internal control practices vary depending on SOEs' degree of corporatisation and their legal or functional independence from the general government. In countries where SOEs are essentially run as extensions of the public administration, internal control measures that would normally be the purview of a board in a private company are generally undertaken and overseen by the state. In countries where SOEs are highly corporatised and operate under an autonomous board of directors, the internal control function (if in place) generally reports to the relevant board committee. There is scope for identifying the respective merits of both systems and distilling elements of good practice.
- *There is no harmonised regime for codes of ethics applicable to SOE executives and employees.* In some countries, SOE employees fall under the scope of public sector codes of ethics applicable to employees of the executive branch of government, with exceptions for certain SOEs owing to their statutory legislation. In other countries, there is no requirement for SOEs to develop codes of ethics. In both cases, in practice some SOEs develop corporate codes of ethics independently. Further research into the design, implementation and effectiveness of codes of ethics at the level of SOEs could be useful.

Disclosure and transparency

- *At the level of individual SOEs, significant issues persist concerning the quality and credibility of corporate disclosure.* SOEs are frequently not subject to the same accounting, auditing and reporting requirements as private incorporated companies, making it difficult to identify illicit or irregular financial transactions. In particular, SOEs' financial statements are not always subject to an independent external audit. In some cases, the state auditor performs the financial audit of SOEs, sometimes in addition to audits by an external auditor. This does not necessarily pose a problem, but it does point to possible scope in many countries for clarifying the respective remits of internal, external and state auditors, which is another potential area for further study of national practices.
- *At the level of the state, countries are increasingly undertaking aggregate reporting on SOEs, although this is not a universal practice.* Aggregate reporting cannot compensate for fundamental issues with the quality and credibility of disclosure at the level of individual SOEs. However, it can promote a culture of transparency at the level of the state and encourage improved reporting systems at the level of SOEs. Identifying elements of good practice in aggregate reporting – regarding both the content of reports and the process for obtaining information from SOEs and/or their oversight ministries – could be a fruitful area for future work.

1. INTRODUCTION

1.1 Background and structure of report

A preliminary version of this report was prepared as background material for the meeting of the Global Knowledge Sharing Network on Corporate Governance of State-Owned Enterprises held in Mexico City on 7-8 June 2016. It discusses issues and trends in national practices to prevent corruption within state-owned enterprises (SOEs), examining measures at the policy, institutional, legal and company-specific levels. It is based on desktop research as well as responses to a questionnaire developed by the OECD Secretariat. At the time of writing, questionnaire responses had been submitted by 13 countries: Argentina, Brazil, India, Korea, Lithuania, Malaysia, Mexico, Paraguay, Peru, the Philippines, Sweden, the United States and Viet Nam.

The paper builds on two recent stock-taking studies undertaken by the OECD, dealing respectively with (i) anti-corruption and business integrity measures for SOEs in Southern Africa (from which select examples are highlighted when considered useful) and (ii) corporate practices towards promoting business integrity, the latter undertaken in the context of the OECD's Trust and Business Project (Crane-Charef, 2015 and OECD, 2015). The questionnaire used to develop the present report was based largely on that used in the context of the aforementioned stocktaking undertaken in Southern Africa.

The report is by no means an exhaustive study of the myriad factors influencing the environment for corruption in SOEs. Rather, it seeks to draw out trends and challenges in corruption prevention measures, with a particular focus on the respective roles of relevant state organs (notably state ownership or coordinating entities, anti-corruption authorities, public auditors and others), SOE boards of directors and SOE management. National examples are provided as deemed relevant, with the aim of identifying common challenges as well as potential elements of good practice that might be useful for policy makers seeking to strengthen national corruption prevention efforts involving SOEs. The report does not propose a definition of "corruption" and uses the term to refer generally to conduct that is illegal and/or undertaken in the interest of constituencies other than the general public that constitute the ultimate "owners" of SOEs (and in whose interest SOEs are expected to create value and operate efficiently).

The report is organised as follows. The remainder of Section 1 offers introductory remarks on some of the main corruption risk factors in the state-owned enterprise sector, with a focus on those risks linked to SOEs' ownership and corporate governance arrangements, legal status and disclosure requirements. It also provides an overview of key internationally recommended ownership and corporate governance standards relevant for combatting corruption in the SOE sector. Section 2 highlights trends in the policy, legislative and institutional landscape for combating corruption involving state-owned enterprises. Section 3 discusses measures that can be taken by state-owned enterprise boards and management to implement anti-corruption and ethics measures throughout the corporate structures of SOEs. Section 4 examines disclosure practices for SOEs and underlines the role of strong transparency in promoting clean business practices. Section 5 concludes and proposes a number of areas for future research.

1.2 Key sources of increased corruption risk in state-owned enterprises

On the enterprise level, SOEs – just like private companies – can face severe reputational damage and legal costs owing to their participation in corrupt acts or other misconduct. But the costs of corruption go well beyond the level of individual SOEs. When corruption within SOEs is exposed, the consequences can also be devastating for the national government, the economy and society at large. It erodes the trust of citizens, companies and investors in public institutions and ultimately hinders the efficient functioning of markets. It can also cause lasting damage to the reputation of countries as "safe" destinations for foreign

investment. This is particularly relevant for economically important SOEs, which are often considered by foreign investors as relatively less risky investment destinations *because* they are state-owned. As such, when corruption involving such SOEs is uncovered, it can cause lasting reputational damage resulting in missed opportunities for needed capital investments and, ultimately, growth.

While concerns with corruption and other forms of corporate misconduct apply to all companies, they can be particularly heightened for state-owned enterprises (SOEs). Many corruption risks in the state-owned enterprise sector stem from underlying issues in their governance arrangements, their proximity to the state and their sometimes non-standard legal and regulatory arrangements. But even with what appear to be “good practice” governance arrangements (a central ownership entity without regulatory powers over SOEs, autonomous and qualified boards of directors and effective independent regulation), if corruption is a pervasive element of the economic and political landscape – and one that is condoned at the highest political levels – the risk is high that SOEs will become entangled in such practices. Similarly, even with apparently strong legislative and enforcement measures in place to combat corruption, the authorities might be unwilling to bring cases against SOEs or their employees. These issues are of course exacerbated when politicians or their appointees are directly involved in the management of SOEs, owing to the conflicts of interest involved.

Combatting corruption within SOEs must therefore be part of broader efforts to improve their ownership and corporate governance arrangements, notably through the establishment of qualified and independent boards of directors – responsible for overseeing corporate strategy based on clear objectives communicated by the state – as well as corporate disclosure practices of a high standard and subject to independent external audits. All of these elements need to be supported by effective regulation of SOEs as well as adequate independent oversight, including through periodic state audits.

Given that SOEs will by nature always have a close relationship to the state, preventing their involvement in corrupt practices also requires a credible commitment at the highest political levels, underpinned by adequate institutional resources, to detect and prosecute corruption in both the public and private sectors. With this as a backdrop, the section below discusses in more specific detail some notable potential sources of increased corruption risk involving SOEs. This is followed by an overview of relevant good practice guidance contained in the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* to ensure that SOEs’ ownership, legal and corporate governance arrangements facilitate clean business practices.

SOEs are often prevalent in sectors with high corruption incidence

SOEs frequently operate in sectors where bribery and other forms of corruption are simply more likely to occur (e.g. the extractive industries, electricity and gas, transportation and telecommunications). Illustrating the prevalence of SOEs in instances of corruption, the 2014 *OECD Foreign Bribery Report* found that the employees of SOEs represented nearly one third (27%) of all individuals promised, offered or given bribes in the 427 concluded cases of foreign bribery since the entry into force of the OECD Anti-Bribery Convention (OECD, 2014). This most likely indicates situations where private companies (and their employees) bribe SOE employees – who can often also be considered as public officials, possibly also acting in parallel in a regulatory capacity – in order to obtain profitable supply contracts and other benefits. Of course bribery can also go the other way, in that the employees of SOEs operating in sectors with high corruption incidence might also offer bribes to public or private officials in order to obtain licenses, contracts or other advantages. This type of corruption is less germane to the purpose of the report, since, in most cases, it does not concern corruption risks *specific* to SOEs.

Proximity to the government increases risk of political capture

Where SOEs operate in close proximity to the government, public officials involved in their oversight or management may be faced with conflicts of interest and use SOEs and their assets for political ends (or other ends that depart from clearly defined performance objectives). This risk is exacerbated when SOEs are not equipped with autonomous, professional and independent boards responsible for ensuring an arms-length relationship between the SOE and the government. The autonomy and independence of SOE boards can notably be weakened if there is a predominance of state representatives on boards and/or if board members are nominated according to political motives, rather than by transparent and competitive processes. In some cases, the state may by-pass boards of directors in making key corporate decisions, for example to appoint the CEO, who may then be perceived as being “beholden” to the political powers. All of these situations can potentially increase the risk that SOEs be captured by political interests and used to funnel resources – be they obtained illicitly or through normal commercial transactions – away from productive activities. In a recent alleged case of corruption in a state-owned company, funds were apparently diverted from the SOE to finance a political campaign, under the watch of the politically-appointed CEO.

Weak disclosure allows corruption to go unnoticed

Strong disclosure standards, bolstered by effective internal controls as well as external audits of SOEs’ financial statements are all crucial elements for monitoring SOEs’ operations and detecting irregular transactions. If SOEs are not subject to high standards of transparency and disclosure, this can increase the risk that corrupt practices take place unnoticed and, therefore, unchecked. In practice, SOEs may be subject to weak disclosure standards either because they are not fully corporatised – and thus not subject to the same accounting, auditing and reporting requirements as private incorporated companies – or because the government does not impose similarly stringent alternative requirements. In a similar vein, in many cases the quality and credibility of SOEs’ disclosure may be limited by the absence of strong internal control systems, which are important for monitoring compliance with laws and regulations and reporting any irregularities to the board. Furthermore, in some cases SOEs’ financial statements are not subject to an independent external audit, which can be another important channel for detecting, and ultimately preventing, irregular transactions.

Strong and independent boards of directors are another important element to ensure high quality and credible disclosure by SOEs. Boards of directors can, and should, play a key oversight role regarding SOEs’ operations and reporting practices. Transparency issues can notably arise if SOEs are run so closely to the public administration that the government is involved at many – or all – levels of corporate decision making. Without proper checks in place, the scope for corruption increases, particularly when SOEs operate in weak public governance environments with lax oversight.

SOEs and their employees are not uniformly held liable for corruption offenses

There are often gaps in liability for corruption offenses committed within state-owned enterprises. In some cases SOEs may operate under a distinct legal form that excludes them from the application of legislation (where such is in place) making corporations liable for the corrupt acts of their employees. Such legislation can be useful in that it places the onus on companies – including SOEs – to establish strong internal control systems to proactively prevent corrupt practices in their ranks. Another concern relates to the public officials employed by SOEs, who in many cases cannot be held personally liable for corrupt acts committed while performing their state duties. Both of these situations highlight potential weaknesses in anti-corruption legislation that are specific to SOEs. On a more general basis, even with strong anti-corruption legislation in place, state institutions responsible for enforcement may be under-inclined to pursue investigations against enterprises that are owned by the state.

1.3 Relevant internationally recommended ownership and corporate governance practices

The *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (SOE Guidelines) are the international standard for ensuring that SOEs operate transparently, efficiently and on equal footing with private companies. They are not specifically focused on combatting fraud and corruption within SOEs. However, implementing their high standards – and notably those related to ownership, regulation, corporate governance and disclosure – can significantly reinforce broader policy and legislative efforts to fight corruption, by supporting their implementation within the state-owned enterprise sector.

Figure 1 provides an overview of the governance “model” underpinning the SOE Guidelines, according to which all decision-making impacting SOEs should take place at the appropriate level within the governance “chain of command”. This helps ensure a clear division of responsibility, and its concomitant accountability, among the multitude of state and corporate organs involved, respectively, in regulating, overseeing and managing SOEs. Clarification of roles is crucial to ensuring that state actors are not faced with conflicting objectives, or interests, while fulfilling their functions related to SOEs. Of particular importance here is the establishment of independent regulation – not housed within the same administrative unit responsible for exercising the state ownership function – to ensure adequate oversight of SOEs and to level the regulatory playing field between SOEs and their private competitors.

Figure 1. Good practice governance ‘model’ for SOEs



The SOE Guidelines make a number of more specific recommendations for ensuring that SOEs are not involved in corrupt practices. Those considered most relevant are reproduced in Table 1 along with their related explanatory annotations. As an overarching principle, the SOE Guidelines embody an international consensus that SOEs should (i) be subject to the same laws and regulations applicable to private companies (including notably those related to criminalising and sanctioning corruption) and (ii) implement high standards of responsible business conduct, in line with related international commitments made by the state. This naturally includes any commitments made by the state with respect to combatting corruption, but also concerning human rights, labour, environmental and tax standards. Concerning corruption risks specific to state-owned enterprises, the SOE Guidelines also explicitly prohibit the use of SOEs as vehicles for financing political campaigns, given the inherent conflicts of interest involved. They also call for procurement procedures involving SOEs to be non-discriminatory and transparent.

According to the SOE Guidelines, the primary role of the ownership entity is to establish reporting systems that allow it to monitor, audit and assess SOE performance. Reporting systems can also be important channels for detecting irregular transactions or corrupt practices. It naturally follows from this that the ownership entity should diligently, in its role as owner, monitor any corruption-related risks within

SOEs. The ownership entity is also encouraged, in the annotations to the SOE Guidelines, to “require SOE boards of directors to establish internal controls, ethics and compliance programmes and measures for detecting and preventing violations of the law”. SOE boards of directors are in turn responsible for establishing and implementing those measures.

Table 1. Select SOE Guidelines’ provisions related to anti-corruption and business integrity

Recommendation from the SOE Guidelines	Excerpts from relevant explanatory annotations
<p><u>Establishing reporting systems to monitor SOE performance</u></p> <p>Chapter II.F. The state should act as an informed and active owner and should exercise its ownership rights according to the legal structure of each enterprise. Its prime responsibilities include:</p> <p>[...]</p> <p>II.F.4. Setting up reporting systems that allow the ownership entity to regularly monitor, audit and assess SOE performance, and oversee and monitor their compliance with applicable corporate governance standards</p>	<p>Effective monitoring of SOE performance can be facilitated by having adequate accounting and audit competencies within the ownership entity to ensure appropriate communication with relevant counterparts, both with SOEs’ financial services, its internal audit function and specific state controllers. The ownership entity should also require that SOE boards establish adequate internal controls, ethics and compliance measures for detecting and preventing violations of the law.</p>
<p><u>Establishing internal controls, ethics and compliance measures</u></p> <p>Chapter V.C. The boards of SOEs should develop, implement, monitor and communicate internal controls, ethics and compliance programmes or measures, including those which contribute to preventing fraud and corruption. They should be based on country norms, in conformity with international commitments and apply to the SOE and its subsidiaries.</p>	<p>SOE boards, like private company boards, should apply high ethical standards. This is in the long term interest of any enterprise as a means to make it credible and trustworthy in day-to-day operations and with respect to its longer term commitments. SOEs may be subject to particular pressures given the interaction of business considerations with political and public policy ones. Moreover, as SOEs can play an important role in setting the business tone of the country, it is also important for them to maintain high ethical standards.</p> <p>SOEs and their officers should conduct themselves according to high ethical standards. SOEs should develop internal controls, ethics and compliance programmes and measures, committing themselves to comply with country norms and in conformity with broader codes of behaviour. This should include a commitment to comply with the <i>OECD Anti-Bribery Convention</i> and to implement the recommendations of the <i>OECD Good Practice Guidance on Internal Controls, Ethics and Compliance</i>.</p> <p>Codes of ethics should apply to the SOEs as a whole and to their subsidiaries. They should give clear and detailed guidance as to the expected conduct of all employees and compliance programmes and measures should be established. It is considered good practice for these codes to be developed in a participatory way in order to involve all the employees and stakeholders concerned. These codes should benefit from visible support and commitment by the boards and senior management. SOEs’ compliance with codes of ethics should be</p>

Recommendation from the SOE Guidelines	Excerpts from relevant explanatory annotations
	<p>periodically monitored by their boards.</p> <p>Codes of ethics should include guidance on procurement processes, as well as specific mechanisms protecting and encouraging stakeholders, and particularly employees, to report on illegal or unethical conduct by corporate officers. In this regard, the ownership entities should ensure that SOEs under their responsibility effectively put in place safe-harbours for complaints for employees, either personally or through their representative bodies, or for others outside the SOE. SOE boards could grant employees or their representatives a confidential direct access to someone independent on the board, or to an ombudsman within the enterprise.</p>
<p><u>Respecting high standards of responsible business conduct</u></p> <p>Chapter V.D. SOEs should observe high standards of responsible business conduct. Expectations established by the government in this regard should be publicly disclosed and mechanisms for their implementation be clearly established.</p>	<p>SOEs have a commercial interest in minimising reputational risks and being perceived as “good corporate citizens. SOEs should observe high standards of responsible business conduct, including with regards to the environment, employees, public health and safety, and human rights. Their actions should be guided by relevant international standards, including: the <i>OECD Guidelines for Multinational Enterprises</i>, which have been adopted by all OECD member countries and reflect all four principles contained in <i>the ILO Declaration on Fundamental Principles and Rights at Work</i>; and the <i>UN Guiding Principles on Business and Human Rights</i>. The ownership entity can communicate its expectations in this regard and require SOEs to report on related performance. SOE boards and management should ensure that they are integrated into the corporate governance of SOEs, supported by incentives and subject to appropriate reporting and performance monitoring.</p>
<p><u>Preventing the use of SOEs for political financing</u></p> <p>Chapter V.E. SOEs should not be used as vehicles for financing political activities. SOEs themselves should not make political campaign contributions.</p>	<p>SOEs should not under any circumstances be used as sources of capital to finance political campaigns or activities. Where SOEs have been used in the past for party financing this has not necessarily taken the form of direct disbursements. In some cases, the use of transactions between SOEs and corporations controlled by political interests, through which the SOEs were effectively put at a loss, were alleged.</p> <p>Moreover, although it is in some countries a common practice for private companies to make political campaign contributions for commercial reasons, SOEs should abstain from doing so. The ultimate control, including through regulation, over SOEs is the responsibility of politicians who belong to political parties that benefit from the largesse of corporate sponsors. Thus, the risk of conflicts of interest – already present in private sector companies – is greatly amplified in the case of SOEs.</p>

Source: OECD (2015), Guidelines on Corporate Governance of State-Owned Enterprises, OECD, Paris.

The SOE Guidelines call for the state ownership entity and SOE boards of directors to either commit to, or be guided by, relevant international standards related to combatting corruption and doing business responsibly. This includes notably the following international standards. This is by no means a complete list of relevant standards addressed to enterprises, but rather a snapshot of those that figure most prominently in the SOE Guidelines. In many respects, the full content of these standards extends well beyond acts of corruption or gross misconduct (the primary topic of this report), for example to include principles on the need to respect the environment, to protect consumer interests and otherwise to conduct business “responsibly”. Combatting corruption can be considered one important component, among many others, of doing business responsibly.

- The *OECD Good Practice Guidance on Internal Controls, Ethics and Compliance*, which form an integral part of the *OECD Anti-Bribery Convention*. The guidance relates to the establishment within companies of internal control measures to prevent and detect one specific form of corruption, namely the bribery of foreign public officials. Their guidance is equally relevant for detecting other forms of corruption or gross misconduct. The content of the guidance addressed to companies is reproduced in Box 1. Of essence is that company internal control measures should benefit from explicit visible support from senior management, should feature independent oversight (for example by the board’s internal audit committee) and should include disciplinary measures to address violations of the law at all levels of the company.
- The *OECD Guidelines on Multinational Enterprises* (“MNE Guidelines”), which are recommendations addressed by governments to multinational enterprises that are either from, or operating in, adherent countries. They outline expected standards of responsible business conduct in the following nine policy areas: (1) disclosure; (2) human rights; (3) employment and industrial relations; (4) environment; (5) combatting bribery, bribe solicitation and extortion; (6) consumer interests; (7) science and technology; (8) competition; and (9) taxation. In line with the standards of the SOE Guidelines, state ownership entities should give due regard to the content of the *MNE Guidelines* when communicating their expectations for responsible business conduct to the SOEs under their purview. Those standards related to disclosure and combatting bribery are perhaps the most relevant for the purpose of the present report.
- The *UN Guiding Principles on Business and Human Rights*, which are guidelines addressed to both governments and businesses, outlining standards to prevent and remedy human rights violations that occur during the conduct of business operations. SOEs should be guided by these principles when undertaking business activities. Their content is not directly relevant to combatting corruption. However, they embody a principle that is arguably equally relevant to preventing corruption in SOEs, notably that SOEs should not be exempt from the application of governments’ commitments concerning the conduct of businesses operating in their jurisdictions.

Box 1. OECD Good Practice Guidance for Internal Controls, Ethics and Compliance

The OECD Good Practice Guidance on Internal Controls, Ethics and Compliance is the only guidance of its kind for companies adopted at the inter-governmental level. It was adopted by the States Parties to the 1997 OECD Anti-Bribery Convention in 2010 as Annex II to the 2009 Recommendation on *Further Combating Bribery of Foreign Public Officials in International Business Transactions*, which complements the OECD Anti-Bribery Convention.

Under the Guidance, companies should consider, *inter alia*, the following good practices for ensuring effective internal controls, ethics, and compliance programmes or measures for the purpose of preventing and detecting foreign bribery:

1. strong, explicit and visible support and commitment from senior management to the company’s internal controls, ethics and compliance programmes or measures for preventing and detecting foreign bribery;
2. a clearly articulated and visible corporate policy prohibiting foreign bribery;

3. compliance with this prohibition and the related internal controls, ethics, and compliance programmes or measures is the duty of individuals at all levels of the company;
4. oversight of ethics and compliance programmes or measures regarding foreign bribery, including the authority to report matters directly to independent monitoring bodies such as internal audit committees of boards of directors or of supervisory boards, is the duty of one or more senior corporate officers, with an adequate level of autonomy from management, resources, and authority;
5. ethics and compliance programmes or measures designed to prevent and detect foreign bribery, applicable to all directors, officers, and employees, and applicable to all entities over which a company has effective control, including subsidiaries, on, *inter alia*, the following areas:
 - i) gifts; ii) hospitality, entertainment and expenses; iii) customer travel; iv) political contributions; v) charitable donations and sponsorships; vi) facilitation payments; and vii) solicitation and extortion;
6. ethics and compliance programmes or measures designed to prevent and detect foreign bribery applicable, where appropriate and subject to contractual arrangements, to third parties such as agents and other intermediaries, consultants, representatives, distributors, contractors and suppliers, consortia, and joint venture partners (hereinafter "business partners"), including, *inter alia*, the following essential elements:
 - i) properly documented risk-based due diligence pertaining to the hiring, as well as the appropriate and regular oversight of business partners; ii) informing business partners of the company's commitment to abiding by laws on the prohibitions against foreign bribery, and of the company's ethics and compliance programme or measures for preventing and detecting such bribery; and iii) seeking a reciprocal commitment from business partners.
7. a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts, to ensure that they cannot be used for the purpose of foreign bribery or hiding such bribery;
8. measures designed to ensure periodic communication, and documented training for all levels of the company, on the company's ethics and compliance programme or measures regarding foreign bribery, as well as, where appropriate, for subsidiaries;
9. appropriate measures to encourage and provide positive support for the observance of ethics and compliance programmes or measures against foreign bribery, at all levels of the company;
10. appropriate disciplinary procedures to address, among other things, violations, at all levels of the company, of laws against foreign bribery, and the company's ethics and compliance programme or measures regarding foreign bribery;
11. effective measures for:
 - i) providing guidance and advice to directors, officers, employees, and, where appropriate, business partners, on complying with the company's ethics and compliance programme or measures, including when they need urgent advice on difficult situations in foreign jurisdictions; ii) internal and where possible confidential reporting by, and protection of, directors, officers, employees, and, where appropriate, business partners, not willing to violate professional standards or ethics under instructions or pressure from hierarchical superiors, as well as for directors, officers, employees, and, where appropriate, business partners, willing to report breaches of the law or professional standards or ethics occurring within the company, in good faith and on reasonable grounds; and iii) undertaking appropriate action in response to such reports;
12. periodic reviews of the ethics and compliance programmes or measures, designed to evaluate and improve their effectiveness in preventing and detecting foreign bribery, taking into account relevant developments in the field, and evolving international and industry standards.

Source: OECD (2010), Good Practice Guidance on Internal Controls, Ethics and Compliance, <https://www.oecd.org/daf/anti-bribery/44884389.pdf>

2. LEGAL AND POLICY LANDSCAPE FOR COMBATING CORRUPTION

This section gives a brief overview, in the surveyed countries, of national anti-corruption legislation, discusses its applicability to SOEs and highlights challenges with enforcement. It then examines policy and institutional measures – in particular those taken by state ownership entities – to prevent and sanction corruption and other forms of misconduct specifically in the state-owned enterprise sector.

2.1 National legislation against corruption and applicability to SOEs

The majority of countries reviewed in this report have adhered to (or, as the case may be, signed, ratified or acceded to) relevant international and/or regional instruments on combatting corruption. In so doing, they have committed to bring their national anti-corruption legislation in line with agreed standards. (Examining the extent to which these commitments constitute a legal obligation to enact national implementing legislation goes beyond the scope of this report.) The international and regional anti-corruption conventions most relevant to the countries contributing to this report are as follows:

- *United Nations Convention against Corruption.* The United Nations Convention against Corruption (UNCAC) provides for a range of legally binding and voluntary measures to prevent, criminalise and punish corruption offenses. States that are parties to UNCAC are notably required to criminalise a number of specific corrupt acts in their national legislation. They are also legally bound to co-operate internationally, including in the provision of cross-border legal assistance in investigating and prosecuting corruption. The UNCAC was adopted in 2003 and entered into force in 2005. 178 countries or jurisdictions are parties to UNCAC.
- *OECD Anti-Bribery Convention.* The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention) establishes legally binding standards to criminalise one form of corruption: the bribery of foreign public officials. It entered into force in 1999. Its signatory countries are all 34 OECD member countries as well as Argentina, Brazil, Bulgaria, Colombia, Latvia, Russia and South Africa.
- *Inter-American Convention against Corruption.* The Inter-American Convention against Corruption (IACAC) is a voluntary instrument established by the Organisation of American States (OAS) to promote measures in signatory countries to prevent, detect and punish corruption offenses. It also seeks to encourage international co-operation, notably by calling for signatory countries to provide cross-border legal assistance for corruption investigations. The IACAC was adopted by OAS member countries in 1996 and came into force in 1997. It was the first international convention dedicated to combating corruption. Unlike the UNCAC and the OECD Anti-Bribery Convention, none of its provisions are binding.

Table 2. National adherence to relevant international and regional anti-corruption instruments

Country	UN Convention Against Corruption	OECD Anti-Bribery Convention	Inter-American Convention against Corruption
	<i>Ratification</i>	<i>Deposit of instrument of acceptance/ approval/ratification/ accession</i>	<i>Ratification</i>
Argentina	28 August 2006	8 February 2001	4 August 1997
Brazil	15 June 2005	24 August 2000	10 July 2002
India	9 May 2011	-	-
Korea	27 Mar 2008	4 January 1999	-
Lithuania	21 December 2006	-	-
Malaysia	24 September 2008	-	-
Mexico	20 July 2004	27 May 1999	27 May 1997
Paraguay	1 Jun 2005	-	29 November 1996
Peru	16 Nov 2004	-	4 April 1997
Philippines	8 November 2006	-	-
Sweden	25 September 2007	8 June 1999	-
United States	30 Oct 2006	8 December 1998	15 September 2000
Viet Nam	19 August 2009	-	-

Sources: Organisation of American States Secretariat for Legal Affairs (<http://www.oas.org/juridico/english/FightCur.html>), OECD (<http://www.oecd.org/daf/anti-bribery/WGBRatificationStatus.pdf>); United Nations Office on Drugs and Crime (<https://www.unodc.org/unodc/en/treaties/CAC/signatories.html>).

As shown in Table 3, a number of corruption offenses enumerated in the UNCAC are addressed by national implementing legislation, although gaps remain in several countries. In some countries, there has been a proliferation of legislative acts declaring specific corrupt acts as unlawful and providing for penalties. For example, in the **Philippines**, the bribery of national public officials is prohibited and sanctioned in the Revised Penal Code in addition to being addressed in four other pieces of legislation. In countries where SOEs, or certain categories of SOEs, are incorporated according to separate statutory legislation (rather than general company law), such legislation sometimes includes specific additional legal provisions concerning anti-corruption in SOEs. For example in **Lithuania**, the Law on State and Municipal Enterprises, which applies to about half of the country's SOEs, explicitly prohibits certain persons – e.g. those that have been found guilty of criminal acts, or who have a conflict of interest – from serving as CEOs (“general managers” by national nomenclature) of SOEs. The appointment process of CEOs is reportedly an area of heightened corruption risk in this country.

Examining the robustness of national legislation to combat corruption involving SOEs goes beyond the scope of this report. However, two overarching conclusions in this respect suggest themselves: (i) all of the surveyed countries have taken steps to improve national anti-corruption legislation, in particular since the adoption of the UNCAC in 2003 and (ii) a thorough investigation of how this legislation applies to SOEs and their employees in practice would be fruitful for identifying its practical impact on the state-owned sector. Although most countries report that SOEs are not excluded from the application of broader anti-corruption legislation, exemptions may nonetheless exist for SOEs incorporated via specific statutory legislation rather than according to general company law. Furthermore, there are instances where the employees of SOEs, if also public servants, are subject to different legal treatment than individuals in the private sector. This is the case for example in **Mexico**, where public servants employed in SOEs are subject to the Federal Law of Administrative Responsibilities of Public Servants, while independent board members are not. The fact that the board members of SOEs are not subject to a harmonised regime of legal responsibility points to potential issues with assigning liability for corporate misconduct. This issue merits further investigation, including in other countries.

Table 3. National implementing legislation for specific UNCAC corruption offenses

	Bribery of national public officials (UNCAC Art. 15)	Bribery of foreign public officials (UNCAC Art. 16.1)	Embezzlement, misappropriation or other diversion of property by a public official (UNCAC Art. 17)	Trading in influence (UNCAC Art. 18)	Abuse of functions (UNCAC Art. 19)	Illicit enrichment (UNCAC Art. 20)	Bribery in the private sector (UNCAC Art. 21)
Argentina	Penal Code	Penal Code	Penal Code	Penal Code	Penal Code	Penal Code	○
Brazil	○	Law 10.467 Amending the Penal Code and Provisions on Corruption	○	○	○	○	○
India	Prevention of Corruption Act	○	○	○	Prevention of Corruption Act	Prevention of Corruption Act	Prevention of Corruption Act
Korea	Criminal Act	<ul style="list-style-type: none"> • Act on Combating Bribery of Foreign Public Officials in International Business Transactions • Regulation of Punishment of Criminal Proceeds Concealment 	<ul style="list-style-type: none"> • Criminal Act • Act on the Aggravated Punishment 	Criminal Act	Criminal Act	Public Service Ethics Act	<ul style="list-style-type: none"> • Criminal Act • Act on the Aggravated Punishment
Lithuania	Criminal Code	Criminal Code	Criminal Code	Criminal Code	Criminal Code	Criminal Code	Criminal Code
Malaysia	Malaysian Anti-Corruption Commission Act	Malaysian Anti-Corruption Commission Act	<ul style="list-style-type: none"> • Malaysian Anti-Corruption Commission Act • Penal Code 	<ul style="list-style-type: none"> • Malaysian Anti-Corruption Commission Act • Penal Code 	Malaysian Anti-Corruption Commission Act	Malaysian Anti-Corruption Commission Act	Malaysian Anti-Corruption Commission Act

	Bribery of national public officials (UNCAC Art. 15)	Bribery of foreign public officials (UNCAC Art. 16.1)	Embezzlement, misappropriation or other diversion of property by a public official (UNCAC Art. 17)	Trading in influence (UNCAC Art. 18)	Abuse of functions (UNCAC Art. 19)	Illicit enrichment (UNCAC Art. 20)	Bribery in the private sector (UNCAC Art. 21)
Mexico	<ul style="list-style-type: none"> • Federal Penal Code • Federal Constitution • <i>Ley de Migración</i> 	Federal Penal Code	Federal Penal Code	Federal Penal Code <i>Ley de Migración</i>	Federal Penal Code	Federal Penal Code	Federal Penal Code
Paraguay	Penal Code	Penal Code	<i>Ley "Que reprime hechos punibles contra el patrimonio del Estado" (1996) (Ley 2880)</i>	<i>Ley que tipifica sanciona y previene el Enriquecimiento Ilícito en la Función Pública y el Tráfico de Influencias. (2004) (Ley 2523)</i>	<ul style="list-style-type: none"> • <i>Ley 2523</i> • Penal Code 	<i>Ley 2523</i>	○
Peru	Penal Code	○	○	Penal Code	Penal Code	<ul style="list-style-type: none"> • Penal Code • Law No. 27482 	○
Philippines	<ul style="list-style-type: none"> • Revised Penal Code • Anti-Red Tape Act • Anti-Graft and Corrupt Practices Act • Code of Conduct and Ethical Standards for Public Officials and Employees • Administrative Code 	○	<ul style="list-style-type: none"> • Revised Penal Code • Act defining and penalising the crime of plunder 	<ul style="list-style-type: none"> • Anti-Graft and Corrupt Practices Act • Code of Conduct for Relatives and Close Personal Relations of the President, Vice-President and Members of the Cabinet 	<ul style="list-style-type: none"> • Anti-Graft and Corrupt Practices Act 	<ul style="list-style-type: none"> • Act Declaring Forfeiture in favour of the State any property found to have been unlawfully acquired by any public officer or employee and providing for the proceedings • Code of Conduct and Ethical Standards for Public Officials and Employees 	○

	Bribery of national public officials (UNCAC Art. 15)	Bribery of foreign public officials (UNCAC Art. 16.1)	Embezzlement, misappropriation or other diversion of property by a public official (UNCAC Art. 17)	Trading in influence (UNCAC Art. 18)	Abuse of functions (UNCAC Art. 19)	Illicit enrichment (UNCAC Art. 20)	Bribery in the private sector (UNCAC Art. 21)
Sweden	Penal Code	Penal Code	Penal Code	Penal Code	Penal Code	○	Penal Code
United States	Title 18, United States Code	<ul style="list-style-type: none"> • U.S. Foreign Corrupt Practices Act (FCPA) • Titles 15 and 18, United States Code 	Title 18 United States Code	Title 18, United States Code	Titles 18 and 41, United States Code	○	<ul style="list-style-type: none"> • Travel Act • Title 18, United States Code
Viet Nam	Penal Code	Penal Code	Penal Code	Penal Code	Penal Code	○	○

Source: Questionnaire responses provided by the national authorities and legal library of the UNODC (<http://www.track.unodc.org/LegalLibrary/Pages/home.aspx>).

2.2 Enforcement and institutional coordination

As shown above, many countries have made steps in legislating against corruption, first by adhering to relevant international or regional conventions and then by adopting national legislation to criminalise and punish specific corrupt acts. However, having the right legislation in place is not enough: it also needs to be enforced. This clearly continues to be a challenge in many countries, as notably evidenced by a number of recent high profile corruption cases involving SOEs, including in countries that have established anti-corruption legislation and regulations that also apply to SOEs and their employees.

The challenge of enforcing anti-corruption laws is by no means specific to state-owned enterprises. By way of illustration, roughly half of the 41 countries party to the OECD Anti-Bribery Convention had not concluded a single enforcement action related to foreign bribery as of end-2014¹. While weak enforcement is not a challenge specific to SOEs, it can certainly be exacerbated owing to their state ownership. For example, it might be politically difficult to bring corruption cases against SOEs or their employees, particularly where powerful line ministries are responsible for their oversight. This is exacerbated if the institutions are responsible, respectively, for investigating corruption cases and overseeing SOEs that are “beholden” to the same political masters.

The anti-corruption challenge involving SOEs – which is arguably inherent to the exercise of state ownership – only underscores the need for high level and credible political commitment to combatting corruption in SOEs. This should be supported by strong and independent investigative and enforcement institutions and robust inter-agency co-operation. Public auditors have a role to play as well, notably in undertaking assessments of how well state ministries fulfil their ownership and monitoring responsibilities in the SOEs under their purview.

Information provided by surveyed countries points to two overlapping enforcement-related issues regarding SOEs, namely: (i) the need to further clarify the respective responsibilities of the state institutions involved in overseeing (or exercising some degree of control or regulation over) SOEs; and (ii) the need to enhance inter-agency co-operation in the fight against corruption. Recent constitutional reforms in **Mexico** offer an illustrative example of what countries are doing to promote such inter-agency co-operation. Constitutional amendments passed by the Mexican Congress in 2015 notably set the stage for the creation of a National Anti-Corruption System, which is an instance of coordination among federal, sub-national and local agencies responsible for detecting, investigating and sanctioning corruption in the public administration (Box 2).

Box 2. Enhancing inter-agency cooperation in the fight against corruption: Example from Mexico

In 2015, the Mexican Congress passed a constitutional amendment laying the groundwork for the establishment of an Anti-Corruption National System, an instance of coordination between the agencies in charge of detecting, investigating and punishing corrupt administrative and criminal conduct. The reform also paves the way for establishing a Citizen Participation Committee composed of five members whose chair is to preside over the Anti-Corruption National System. The secondary legislation necessary to implement the constitutional reform is currently under consideration by the Senate. The reform notably entails the following:

- Mandates the Congress to issue a general law (i) outlining the basis for coordination of the Anti-Corruption National System and (ii) establishing the administrative responsibilities of public servants;
- Transforms the Federal Court of Fiscal and Administrative Justice into the Federal Tribunal of Criminal Justice, with powers to (i) settle disputes between the Federal Public Administration and individuals; (ii) impose sanctions on public servants for administrative corruption (separate from the criminal process); and (iii) set fines arising from damages affecting public finances or federal public entities;
- Accords greater powers to the Congress Federal Audit Office as the organ responsible for overseeing the allocation and use of federal resources.

Source : Information provided by the national authorities of Mexico

2.3 Policy and institutional measures specific to SOEs

This report makes no judgement regarding the soundness or effectiveness of “targeted” policy and institutional measures to combat corruption in the state-owned enterprise sector. In some cases, the existence of such measures – e.g. guidelines or mechanisms elaborated by the state ownership entity to detect and sanction corruption in the SOEs under its purview – may reflect an effort to compensate for broader gaps in the policy and institutional landscape for combatting corruption more generally. Targeted measures may also reflect a decision by the government to address SOEs (or a specific group of SOEs) separately owing to an assessment of their higher corruption risk profile. In other cases, even in the presence of what the state deems a “robust” policy and institutional landscape for combatting corruption and an adequate applicability to the SOE sector, it may consider communicating its related policies and expectations to SOEs – e.g. via additional policy guidelines or awareness-raising tools – an integral part of its role as an active “owner”.

The sections that follow give an overview in the surveyed countries of anti-corruption policies and measures that are targeted to the SOE sector and describe the institutional arrangements for overseeing their implementation. Box 6 at the end of the section highlights SOE-specific policy and institutional measures undertaken in several Southern African countries, based on a recent stock-taking of related practices in this region. Throughout this section, the text references state ownership “models” in an attempt to identify trends between the institutional arrangements for state ownership and the institutional arrangements for fighting corruption in the SOE sector. The state ownership models referenced are based on a recent OECD study of national practices in 35 countries and are recalled in Box 3.

Box 3. An overview of the five models for state ownership

Recent OECD analysis has identified five state ownership “models”, based on which institution(s) exercise(s) the following three ownership functions: (1) voting shares on behalf of the government; (2) appointing SOE boards of directors; and (3) setting and monitoring objectives.

Centralised model: One government institution carries out the state ownership function in all SOEs. This institution can be either a specialised ownership agency or a designated government ministry. Financial targets, technical and operational issues and the process of monitoring SOE performance are all conducted by the central body. Board members are appointed in different ways but instrumental input comes from the central unit.

Dual model: Two government institutions – in practice often one line ministry per SOE plus the ministry of finance - share in exercising the state ownership function. Typically, one ministry sets financial objectives and the other ministry formulates operational strategy.

Twin track: This is functionally equivalent to the centralised model, but with two different government institutions each overseeing a separate portfolio of SOEs. This model differs materially from the dual model in that for each SOE only one government body exercises ownership.

Decentralised: No one single institution or state actor exercises the ownership function. Usually individual ministries responsible for sectoral regulatory functions exercise the ownership function of SOEs in that same sector. Line ministries are perceived to be *de facto* running SOEs as an extension of their ministerial powers.

Co-ordinating agency: A specialised government unit acts in an advisory capacity to shareholding ministries on technical and operational issues, with SOE performance monitoring frequently being its most important mandate. The more limited role of these co-ordinating agencies, coupled with the autonomy that line ministries thus maintain, leads to considerable overlap with the decentralised model. The co-ordinating agency model could be considered a sub-set of the decentralised model.

Source : OECD (2016b) *State-owned enterprises: A comparison of national ownership models*, OECD, Paris, forthcoming.

Countries with a centralised or centrally co-ordinated ownership model

In countries where the state ownership function is centralised, or subject to strong central co-ordination, the state ownership or co-ordinating entity generally develops targeted policies and measures related to fighting corruption in SOEs, which complement any existing measures applicable to the general government or corporate sectors. For example, in the **Philippines**, the Governance Coordination Commission (the state ownership coordinating entity) has elaborated a number of guidelines and rules bearing on integrity in SOEs’ operations. Recently this has included a whistle-blowing policy and mechanism applicable to the SOEs under its purview (Box 5). In **India**, the Department of Public Enterprise (the state ownership coordinating entity) sets expectations concerning the ethical conduct of SOE officials in its corporate governance guidelines applicable to SOEs, which also fall under the scope of anti-corruption policies and measures applicable to the general government sector. In **Peru**, the state ownership entity FONAFE develops targeted corporate governance and transparency requirements for the SOEs under its purview, including notably ethics guidelines applicable to SOE employees as well as guidelines on SOEs’ internal control system. In **Sweden**, the state ownership policy explicitly sets an expectation that SOEs act as corporate “role models” for doing business responsibly, including with respect to anti-corruption and business ethics, as well as regarding the environment, human rights, working conditions, equality and diversity (Box 4).

Box 4. Setting expectations in the state ownership policy: Example from Sweden

The Swedish state ownership policy explicitly lays out the state's expectation that SOEs "act as role models with regard to sustainable business", including in the areas of anti-corruption and business ethics (Swedish state ownership policy, section 3.2 entitled "Act as role models"). The text notably states the following.

"The state-owned companies shall act as role models with regard to sustainable business, meaning, in particular, that they shall:

- Work strategically, integrating these issues into their business strategies and establishing strategic sustainability targets;
- Act transparently in matters involving material risks and opportunities and pursue an active dialogue with the company's stakeholders in society;
- Cooperate with other companies and relevant organisations;
- Comply with international guidelines in the area".

The state ownership policy further elaborates that "One way of acting as a role model within the areas of anti-corruption and business ethics is to comply with the Code regarding gifts, rewards and other benefits in business established by the Swedish Anti-Corruption Institute."

Source : Questionnaire response submitted by the authorities of Sweden and Government of Sweden (2014), "Annual report state-owned companies", <http://www.government.se/contentassets/0126b664c843479d8696d1be546fe4b6/annual-report-state-owned-companies-2014>.

Practices in **Korea** and **Lithuania** differ somewhat in that the central state ownership or coordinating entities do not develop targeted anti-corruption policies or measures applicable to the SOEs under their purview. In **Korea**, where state ownership is primarily exercised by the Ministry of Strategy and Finance, all SOEs are considered public institutions and as such they fall under the scope of anti-corruption policies and measures applicable to the public sector. SOEs are notably included in the government's extensive financial monitoring and disclosure system for public institutions (published online at www.alio.go.kr). SOEs are also subject to an annual evaluation of anti-corruption policy enforcement and an annual "public institution integrity measurement", both undertaken by the Anti-Corruption and Civil Rights Commission within 268 public institutions. The results of these evaluations are incorporated into the annual performance evaluations for SOEs and senior executives, which in principle can result in executive sanctions, e.g. in cases of code of conduct violations. In **Lithuania** – where state ownership is decentralised but subject to central co-ordination – the coordinating entity (Governance Coordination Commission) does not undertake any additional policy or institutional measures concerning anti-corruption or business integrity in SOEs. SOEs reportedly fall under the scope of broader government policy measures to fight corruption in the business sector. However, some sectoral ministries do elaborate anti-corruption programmes for the SOEs under their purview on an *ad hoc* basis. For example, the Ministry of Environment has developed an action plan to enhance transparency in state-owned forestry enterprises, which includes measures to strengthen accounting rules and thus facilitate the identification and prevention of irregular or illicit transactions.

Box 5. Whistle-blowing policy and system for SOEs in the Philippines

The Governance Coordination Commission (GCG) of the Philippines, which is responsible for exercising state ownership in Government-Owned or –Controlled Corporations (GOCCs), issued Memorandum Circular No. 2014-04, or the “Whistleblowing Policy on the GOCC Sector.” The circular provides for a mechanism by which any potential whistle-blower may report corruption or irregularities in the GOCC sector, the GCG included. The move to institutionalise a whistleblowing policy in the GOCC sector is consistent with the state’s policy that the governance of GOCCs should be carried out in a transparent, responsible and accountable manner.

On 6 June 2014, the GCG officially launched a Whistleblowing Policy System. Since then, the GCG has been receiving complaints via different whistleblowing channels, including a website feedback link, confidential meetings with authorised GCG officers, email, regular mail, short messaging system and telephone. Incidents reportable under the Whistleblowing Policy pertain to acts or omissions that are of serious and sensitive character. The GOCC Integrity Monitoring Committee (GIMC) was also created to implement the policy and handle the whistleblowing reports. The whistleblowing reports have included complaints about delays in official actions of GOCCs, complaints about service delivery and reports about irregularities in big-ticket procurements of certain GOCCs. The GCG is reportedly working to continually improve the whistleblowing system in accordance with international good practice. The Philippines Office of the General Counsel has notably enlisted the support of USAID to strengthen implementation of the system.

Source : Information provided by the national authorities of the Philippines

Table 4. Anti-corruption and business integrity policies or measures applicable to SOEs

	Perceived areas of corruption risk in SOE sector	General policy framework for fighting corruption in the SOE sector
Argentina	Public procurement	SOEs included in scope of anti-corruption policies and measures applicable to the general government sector.
Brazil	Public procurement, significant state investments in SOEs, concessions of public services to private entities, SOEs’ prevalence in sectors with high risk of corruption (e.g. electricity, oil, gas, telecommunications)	SOEs included in scope of anti-corruption policies and measures applicable to the general government sector. Ministry of Transparency, Monitoring and Control (the state auditor) supervises internal audit units established in all SOEs.
India	Public procurement	SOEs included in scope of anti-corruption policies and measures applicable to the general government sector. All SOEs have a Central Vigilance Officer reporting to the Central Vigilance Commission, the anti-corruption authority.
Korea	Public procurement, improper solicitation (i.e. attempts to bribe a public official), particularly for obtaining construction contracts	
Lithuania	Public procurement, CEO appointment	SOEs included in scope of broader business sector anti-corruption policies and legislation. SOE ownership ministries also elaborate targeted anti-corruption policies and measures on an <i>ad-hoc</i> basis.
Malaysia	Public procurement, conflicts of interest arising when politically affiliated individuals serve on the boards of SOEs, insufficient clarity about an SOE’s mandate or objectives	SOEs included in scope of broader anti-corruption policies and legislation. However, in practice the application of prevailing legislation to SOE board members and management is highly dependent on “political” decisions.

	Perceived areas of corruption risk in SOE sector	General policy framework for fighting corruption in the SOE sector
Mexico	Public procurement	SOEs included in scope of broader anti-corruption policies and legislation. Two SOEs (PEMEX and CFE) subject to special regime concerning the responsibilities of public servants.
Paraguay	Personnel management, public procurement	SOEs included in scope of broader anti-corruption policies and legislation as well as additional SOE-specific policies, for example governmental decrees and resolutions concerning procurement procedures involving SOEs.
Peru	State regulations for fighting corruption are reportedly not sufficiently adapted to SOEs with business activities. Below market remuneration rates for SOE board members and senior management makes it difficult to ensure efficiency and professionalism.	The state ownership entity FONAFE elaborates targeted guidelines on corporate governance, transparency and ethics of the SOEs under its purview. These complement broader anti-corruption policies that are also applicable to SOEs.
Philippines	Public procurement, public-private partnerships, executive remuneration and government subsidies	SOEs subject to specific legislation and formal requirements by the ownership coordination entity (GCG) bearing on business integrity.
Sweden	Not specified	SOEs included in scope of broader anti-corruption policies and legislation. State ownership policy also sets the additional expectation that SOEs act as corporate role models, including with regard to anti-corruption and business ethics.
United States	Not specified	Not specified
Viet Nam	Not specified	No policy or legal measures specific to SOEs. SOEs subject to inspections and audits by the Government Inspectorate and the State Audit Office.

Source: Questionnaire responses by the national authorities

Countries with a decentralised ownership model

In countries where the ownership of SOEs is decentralised (exercised primarily by sectoral line ministries), corruption prevention measures are generally not specific to the state-owned enterprise sector. Rather, SOEs fall under the scope of broader public sector integrity policies and rules. This usually also reflects the fact that in such situations, SOEs are operated as part of the general government and thus subject to the same audit and internal control systems as state agencies. For example in **Argentina**, the *Sindicatura General de la Nación* (SIGEN, or Office of the Comptroller General) undertakes the internal control function for public sector entities, including SOEs. SOEs in Argentina are also subject to financial and management audits undertaken by the supreme audit institution under the legislative branch (the *Auditoria General de la Nación*, or General Audit Office). Similarly, in **Viet Nam**, SOEs are subject to audits by the State Audit Office as well as inspection by the Government Inspectorate, a ministry-level body responsible, among others, for investigating alleged corruption. In the **United States**, SOEs with the status of government agency fall under the scope of the internal control system of the executive branch of the federal government.

In **Mexico**, SOEs are not the subject of any specific policy to combat corruption in the state-owned enterprise sector, but rather fall under the scope of related regulations applicable to the general government sector. However, two economically important SOEs – *Petróleos Mexicanos* (PEMEX) and *Comisión Federal de Electricidad* (CFE) – are subject to a special regime, outlined in their respective statutory legislation, concerning the legal responsibilities of public servants in case of damages caused to the

enterprises. The implementation of this special regime is undertaken by internal units established within each SOE, rather than (as is the case for other SOEs) via the internal control function of the general government. In **Malaysia**, as the ownership of SOEs is decentralised across line ministries, so too are policy measures to combat corruption within SOEs. However, a recent Government-Linked Company (GLC) Transformation Programme resulted in the elaboration of a number of governance manuals dealing with corruption prevention, including notably guidelines on public procurement, corporate ethics, whistleblower protection and disclosure practices. Importantly, the principles embodied in these manuals are only applicable to 20 of the country's largest SOEs.

Countries with hybrid models

Brazil differs somewhat from the other countries examined in this report in that national state ownership arrangements do not readily fall into one of the five “models” proposed above. The state ownership function in Brazil is shared between sectoral ministries, the Ministry of Finance and the Department of Co-ordination and Corporate Governance of State Enterprises (DEST) within the Ministry of Planning, Budget and Management. SOEs are also subject to oversight and control by a number of other government agencies, including notably the Ministry of Transparency, Monitoring and Control (formerly the Office of the Comptroller General) which is the state audit office. The MTMC develops targeted policies and institutional measures for fighting corruption in SOEs. It is notably responsible for overseeing internal audit units established in individual SOEs, which are discussed in greater detail in the following section on internal control.

Box 6. Spotlight on Southern Africa: SOE-specific policy measures to combat corruption

The text that follows provides a snapshot in several Southern African countries of SOE-specific policy measures which either explicitly seek to combat corruption or other forms of misconduct in the SOE sector, or could reasonably be expected to contribute to this objective by strengthening SOEs' corporate governance, monitoring and disclosure arrangements. It is based on a stocktaking undertaken under the aegis of the OECD-Southern Africa SOE Network in 2015.

Botswana. The 2012 Guidelines for Shareholder Oversight over Parastatals provide line ministries advice on defining state ownership objectives, drawing up “shareholder compacts” between the state shareholder and the SOE board chair and board charters, undertaking board evaluations, and implementing internal control systems.

Malawi. SOEs are encouraged to apply the Sector Guidelines for Parastatal Organisations and State-Owned Enterprises, which adapts Malawi's National Code of Governance to SOEs, as well as the Malawi Business Code of Conduct for Combating Corruption (BCCC), developed by the Malawi Business Action against Corruption Taskforce.

Mozambique. SOEs are encouraged to apply the Government's Guide on Corporate Governance Best Practices in State Shareholding Enterprises and to reference the private sector's Toolkit on Combating Business Participation in Corruption in Mozambique.

Seychelles. Since 2013, SOEs must submit performance audited financial reports to the body coordinating the state enterprise ownership function. The board of each SOE must also submit a statement of corporate intent, updated regularly.

South Africa. The Department of Public Enterprises (DPE), which oversees six of South Africa's largest SOEs, introduced three years ago a data analytics system to monitor SOE performance on a continual basis, complementing existing disclosure requirements under laws applicable to private and public entities.

Zimbabwe. The Government is currently codifying the SOE corporate governance framework.

Source : Adapted from Crane-Charef, Mary (2015), "Stocktaking of Anti-Corruption and Business Integrity Measures for Southern African SOEs", OECD Corporate Governance Working Papers, No. 18, OECD Publishing, Paris.

3. MEASURES AT THE LEVEL OF THE ENTERPRISE

SOE boards of directors can play a key role in preventing corruption. When equipped to operate autonomously, they can act as safeguards against political capture. They also set the “tone from the top” and can contribute to creating an ethos of integrity by communicating corporate values down the chain of command. Finally, boards can oversee and monitor the effectiveness of measures implemented within SOEs to identify and prevent corruption and other forms of corporate misconduct, including anti-corruption ethics and compliance programmes and measures. This section discusses the importance of SOE board mandates and composition in promoting integrity in SOEs’ business operations. It then provides an overview in the surveyed countries of the extent to which SOEs implement – either due to government requirements or in an *ad-hoc* manner – internal controls, ethics and compliance measures, including those which seek to prevent fraud and corruption.

3.1 Board mandates, composition and independence

In countries with highly corporatised SOE sectors operating at arms-length from the general government, the board of directors acts as the intermediary between the state as shareholder and management. It can also play the crucial role of safeguard against political capture, if given the autonomy to effectively fulfil the functions of setting strategy – based on clear objectives communicated by the state – and monitoring management. Strong and independent boards of directors can ensure that the state as owner is not involved in the day-to-day operations of SOEs, thereby limiting opportunities for corruption involving public officials.

In practice, the mandates and composition of SOE boards do not always confer upon them this de facto level of autonomy. In many cases, state representatives are the predominant forces within boards, making them unable to really act as “intermediaries” between the state and management. This can create confusion in the corporate chain of command and increase the scope for conflicts of interest. Furthermore, in many countries, boards are by-passed by the state in the undertaking of key functions such as CEO hiring and dismissal, rendering them essentially ineffective as safeguards against political capture. In the worst of cases, politically-affiliated individuals serve on the boards of SOEs, a practice that is explicitly discouraged by the international good practice embodied in the SOE Guidelines. Efforts to fight corruption within SOEs should therefore be underpinned by broader reforms to strengthen and reinforce the independence of SOE boards, as measured both by their mandate and their composition.

Issues with SOE boards’ mandate and independence were specifically cited as areas of increased corruption risk in a few of the surveyed countries. For example, in **Malaysia**, the presence of politically-affiliated individuals, including former high-ranking politicians, on the boards of SOEs is reportedly an important source of conflict of interest and heightened corruption risk. In **Lithuania**, where representatives of line ministries in practice often fulfil key “board” functions, the authorities identify CEO appointment as an area of increased corruption risk. In **Peru**, below-market remuneration levels for board members and senior management were cited as a challenge to ensuring efficiency and professionalism in the oversight and operations of SOEs.

3.2 Internal controls, ethics and compliance measures

The SOE Guidelines call for the boards of SOEs to “develop, implement, monitor and communicate internal controls, ethics and compliance programmes or measures, including those which contribute to preventing fraud and corruption” (Chapter V.C.). This should include at minimum the elements contained in the OECD Good Practice for Internal Controls, Ethics and Compliance (reproduced in Box 1), which, although focused on preventing the bribery of foreign public officials, is equally relevant to preventing

fraud and corruption more generally. Based on information provided by contributing countries, the following overarching conclusions in this regard suggest themselves: (i) SOEs are not systematically required to establish internal controls, ethics and compliance measures (including those related to combatting fraud and corruption); and (ii) further research on the respective merits of public sector internal control versus corporate (board-level) internal control would be fruitful in identifying elements of good practice applicable to SOEs.

Codes of conduct or ethics

Among the countries surveyed, the development and dissemination of corporate codes of ethics by SOE boards of directors does not appear to be a systematic practice, pointing to the potential for further action in this domain. Practices in **India** and the **Philippines** offer examples of how the government can promote action at the board level through requirements in the SOE ownership or governance guidelines. The SOE governance guidelines in **India** explicitly require all SOE boards to elaborate an internal code of conduct applicable to board members and senior management and include a suggested list of items to be incorporated in the code of conduct (Box 7) as well as a model code. Whether SOE boards respect this requirement is furthermore explicitly factored into the annual performance evaluation system. In the **Philippines**, the Code of Corporate Governance of GOCCs requires all SOEs to develop a corporate governance manual, which must include (among others) a formal “charter of expectations” that all directors must sign as well as a list of penalties in case directors omit to carry out their legal duties. In **Peru**, the state ownership entity FONAFE has elaborated ethics guidelines concerning the conduct of employees of the SOEs under its purview. In **Korea**, SOEs are required to develop, implement and communicate internal codes of ethics, which are regularly reviewed by the Anti-Corruption and Civil Rights Commission.

In countries where the majority of SOE board members are civil servants, they are generally expected to comply with public sector codes of conduct applicable to public officials. For example, in **Argentina** all board members and employees of SOEs fall under the scope of the Code of Ethics of the Public Function. Similarly, in **Korea**, SOE employees are considered public officials and are thus expected to comply with the Code of Conduct of Public Officials as well as the Public Service Ethics Act (while SOEs are additionally required to develop company-level codes of ethics, as mentioned above). In **Mexico**, the 2013-2018 National Development Plan establishes a commitment to elaborate a National Code of Ethics which would be applicable to public servants, including those who are employees or board members of SOEs. In the **United States**, the employees of SOEs with the status of government agency fall under the scope of public sector codes of ethics. Some SOEs, however, are excluded from the coverage of such government-wide rules, either by virtue of their statutory legislation (e.g. Amtrak) or because they have the status of “Government Sponsored Enterprises” and are operated with a certain degree of independence from the federal government (e.g. Fannie Mae and Freddie Mac).

Box 7. List of suggested items for codes of conduct of Indian SOEs

The below is an extract of the government of India’s suggested list of items to be included in the codes of conduct that the boards of all Central Public Sector Enterprises (CPSEs) are required (as per the Guidelines on Corporate Governance for CPSEs) to establish for board members and senior management.

The Board of Directors of the company will formulate the code of conduct for the Directors and senior Management Personnel and while doing so the code of conduct would, inter alia, include the following:

1. Act in the best interests of, and fulfil their fiduciary obligations to the Company
2. Act honestly, fairly, ethically and with integrity;
3. Conduct themselves in a professional, courteous and respectful manner and not take improper advantage of

the position of Director;

4. Act in a socially responsible manner, within the applicable laws, rules and regulations, customs and traditions of the countries in which the Company operates;
5. Comply with communication and other policies of the Company;
6. Act in good faith, responsibly, with due care, competence and diligence, without allowing their independent judgment to be subordinated;
7. Not to use the Company's property or position for personal gain;
8. Not to use any information or opportunity received by them in their capacity as Directors in a manner that would be detrimental to the Company's interests;
9. Act in a manner to enhance and maintain the reputation of the Company;
10. Disclose any personal interest that they may have regarding any matters that may come before the Board and abstain from discussion, voting or otherwise influencing a decision on any matter in which the concerned Director has or may have such an interest;
11. Abstain from discussion, voting or otherwise influencing a decision on any matters that may come before the board in which they may have a conflict or potential conflict of interest;
12. Respect the confidentiality of information relating to the affairs of the Company acquired in the course of their service as Directors, except when authorised or legally required to disclose such information;
13. Not to use confidential information acquired in the course of their service as Directors for their personal advantage or for the advantage of any other entity;
14. Help create and maintain a culture of high ethical standards and commitment to compliance;
15. Keep the Board informed in an appropriate and timely manner any information in the knowledge of the member which is related to the decision making or is otherwise critical for the company.
16. Treat the other members of the Board and other persons connected with the Company with respect, dignity, fairness and courtesy.

Source : Government of India Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises (2010), Guidelines on Corporate Governance for Central Public Sector Enterprises, New Delhi. http://dpe.nic.in/sites/upload_files/dpe/files/gcgcpsc10.pdf .

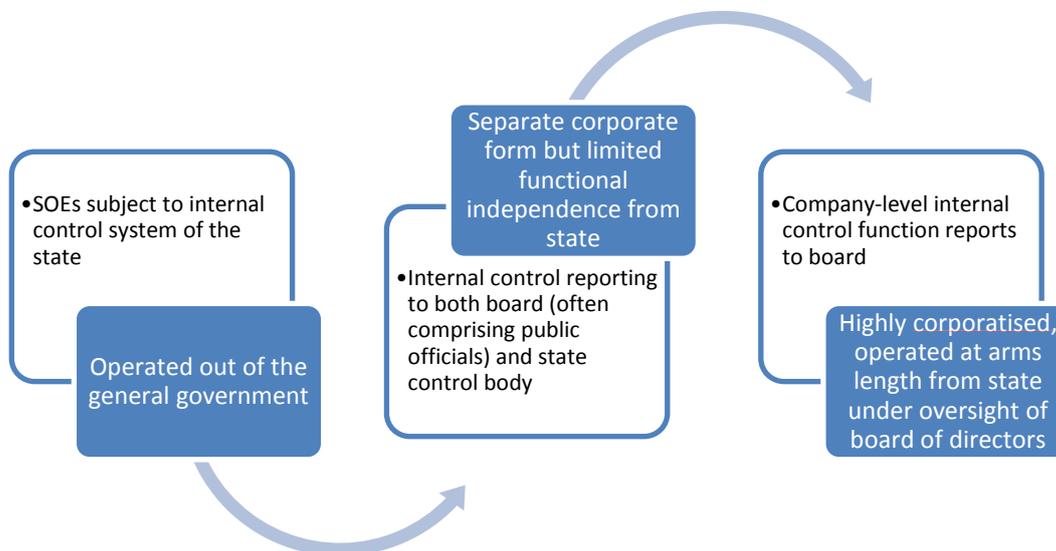
Source : Questionnaire response submitted by the authorities of India

Internal control

Concerning internal control measures, practices vary depending on SOEs' degree of corporatisation and their legal or functional independence from the general government. Internal control practices can be divided into three broad groups depending on how closely SOEs are operated out of the general government sector. In countries where SOEs are essentially run as extensions of the public administration, internal control measures that would normally be the purview of a board in a private company are generally undertaken and overseen by the state. (In such cases, the internal control system is essentially internal to the state rather than to the company.) In countries where SOEs are highly corporatised and operate under an autonomous board of directors, the internal control function (if in place) generally reports to the relevant board committee. In between these two extremes are countries where SOEs have an internal

control function reporting to the board but subject to ultimate oversight by a state control body. Figure 1 proposes a simplified schema to illustrate this “spectrum” of internal control models.

Figure 2. Spectrum of internal control models depending on SOEs’ functional independence



India offers an illustrative example of SOE control systems that are internal to the state. All SOEs are required to establish a Vigilance Department overseen by a Central Vigilance Officer (CVO) who reports to the Central Vigilance Commission (CVC) of the central government. Similarly, in **Mexico**, all SOEs are subject to the internal control system of the federal government, which is implemented via Internal Control Bodies (*Órganos internos de control*) within each SOE, reporting to the Ministry of the Public Function. In **Argentina**, the Office of the Comptroller General (SIGEN) undertakes internal audits of public sector entities, including SOEs, supporting implementation by appointing non-voting representatives to SOEs’ boards of directors. In **Brazil**, the state audit office undertakes financial, operational and investigative audits of some SOEs. It also recommends that SOEs fulfilling certain criteria adopt anti-corruption compliance programmes. In December 2015, the Ministry of Transparency, Monitoring and Control elaborated guidance to support SOEs in implementing internal integrity programmes (Box 8).

Box 8. Government guidance on instituting integrity programmes in Brazilian SOEs

In December 2015, the Ministry of Transparency, Monitoring and Control of Brazil elaborated and published a “Guide for the Establishment of Integrity Programmes in State-Owned Enterprises”. The guide outlines that SOE-specific integrity programmes should be developed following an assessment of the main areas of increased corruption risk in the concerned SOE. The guide notably proposes elements of policies and controls to mitigate risks of fraud and corruption specifically linked to public procurement.

The guide complements already existent rules on public procurement applicable to the general government sector in Brazil, which are also applicable to SOEs. It suggests additional controls for SOEs, for example: requiring the rotation of personnel responsible for public procurement; rules requiring that more than one employee of an SOE participate in meetings with prospective or current suppliers; and periodic monitoring of increases in the personal properties or wealth of SOE staff involved in public procurement.

Source : Questionnaire response by the Brazilian authorities

Sweden offers an illustrative example of SOE internal control practices that more closely mirror practices in the private corporate sector. The Swedish state’s “Guidelines for External Reporting by State-Owned Companies” notably call for all SOEs to develop a publically available statement on internal control, in line with the disclosure requirements placed on listed companies.

These findings on internal control are in line with those of a recent OECD study on risk management practices for SOEs in 32 countries, which found that there is scope for strengthening related requirements and practices. The study notably found that SOEs are required to establish internal risk management systems in only about half of the 32 surveyed countries and to establish specialised board committees to oversee risk management in less than half of the surveyed countries (OECD, 2016d). Together these findings point to the potential for further developing and harmonising internal control measures within SOEs, whether they take the form of state internal control or company internal control.

4. DISCLOSURE AND TRANSPARENCY REQUIREMENTS AND PRACTICES

Disclosure regarding SOEs' operations and funding arrangements is essential to detecting and preventing the misuse of funds. International good practice calls for SOEs to keep accounts in accordance with internationally-agreed accounting standards and to subject their financial statements to an independent external audit. This section gives a general overview of the extent to which SOEs are subject to international accounting and auditing standards. It also highlights remaining issues in the institutional arrangements for ensuring the credibility of SOEs' financial statements. Finally, it discusses the role of aggregate reporting – disclosure by the state on the activities and performance of the entire SOE sector – in driving greater transparency. Disclosure and aggregate reporting practices in the surveyed countries are examined in greater detail in a separate stocktaking report (OECD, 2016c).

4.1 Quality and credibility of SOEs' corporate disclosure

Transparency surrounding how SOEs are funded – and what they do with those funds – is an important pillar for detecting and discouraging misuse of resources. It is also an integral element of the good practice ownership and corporate governance standards set forth in the SOE Guidelines. An overarching trend in state ownership over the past couple of decades has been a stronger corporatisation of SOEs, accompanied with improved (legally mandated) accounting and disclosure practices. Today, many government business operations that were previously conducted from the general government sector are undertaken by incorporated entities with their own legal personality and separate financial accounts. Similarly, many of the world's largest SOEs are listed on stock exchanges and thus required to disclose audited financial statements of a high standard.

As governments seek to increase the commercial orientation of SOEs – in many cases concurrently with introducing competition to previously monopolised markets – this corporatisation trend and the resultant improvements in disclosure can be expected to continue. Nonetheless, a number of economically important and commercially operating SOEs around the world are still not subject to international accounting and auditing standards. Gaps in reporting and auditing practices often exist because SOEs operate in a sort of “grey zone” between the general public administration and the corporate sector. This gives rise to concerns regarding the ability of relevant state and corporate organs to assess how funds are used within those SOEs and, ultimately, to prevent and detect irregular transactions. Therefore measures to prevent corruption in the state-owned sector should be accompanied by broader reforms to improve the quality and credibility of corporate disclosure.

In the countries having contributed to this report, two apparent overarching concerns are that: (i) SOEs are not always mandated to establish an internal audit function, raising concerns regarding the quality of internal control; and (ii) SOEs' financial statements are not systematically subject to an independent external audit, pointing to potential issues regarding the credibility of corporate disclosure. In many cases, the audit of SOEs' financial statements is undertaken by the comptroller general, the state supreme audit institution or similar body, rather than by an external auditor as called for by international good practice (Table 5). In at least one country (**India**), SOEs are subject to state audits as well as statutory audits of their financial statements by an external auditor, pointing to potential issues regarding the respective remits of these bodies. Further research on effective auditing arrangements – including on the specific roles of internal, external and state auditors – is an area for potential future study.

Table 5. SOE auditing and reporting arrangements in surveyed countries

	Is an internal audit function mandated in SOEs?	Are SOEs subject to the same accounting and auditing standards as listed companies?	Does the state produce an annual aggregate report on SOEs?
Argentina	Yes, as part of the internal control system of the state executive branch, internal audit units report to the Office of the Comptroller General (SIGEN).	No, audits of unlisted SOEs are carried out either by the supreme audit institution (AGN) or by private auditors.	No. SOE reporting is included in the annual state budget reporting to the legislature.
Brazil	Yes. SOEs are required to establish an internal audit function which reports to the board and to the audit committee, if in place. Internal audit units are subject to ultimate oversight by the Ministry of Transparency, Monitoring and Control.	No	No
India	No. SOEs are subject to both a constitutional audit by the supreme audit institution and a statutory audit of their financial statements, but they are (according to available information) not explicitly mandated to establish an internal audit function.	Yes	Yes, the DPE publishes an Annual Public Enterprises Survey with information on financial and non-financial performance. It is presented to Parliament each year.
Korea	Yes	Yes	No, however extensive information on SOEs' financial situation and performance is available via an online portal (www.alio.go.kr)
Lithuania	Only SOEs that are subject to special statutory legislation (not general company law) must establish an internal audit division which usually reports to the relevant line ministry.	No, the state's disclosure standards for SOEs, although of a high standard, are voluntary and their degree of implementation varies.	Yes, the Governance Coordination Centre (GCC) produces an annual aggregate report on SOEs' financial and non-financial performance. It includes information on corporate governance practices and board composition.
Malaysia	No	Only SOEs with the status of Government-Linked Company (GLC) that are listed on the national stock exchange. Auditing and accounting practices for unlisted SOEs vary depending on the requirements of the relevant line ministry.	No
Mexico	Yes, as part of the internal control system of the state executive branch, internal control bodies report to the Office of the Comptroller General (SFP). Additionally, CFE, PEMEX and state-owned Development Banks have internal audit functions that report to their respective boards of directors.	No	No. SOE reporting is included in aggregate form in the Federal Public Treasury Report.

	Is an internal audit function mandated in SOEs?	Are SOEs subject to the same accounting and auditing standards as listed companies?	Does the state produce an annual aggregate report on SOEs?
Paraguay	No. However, in practice most SOEs do reportedly establish an internal audit function, reporting either to the board or to the state auditor.	No, SOEs are required to respect the same accounting rules as other public sector entities.	No. SOE reporting is included in annual public expenditure reporting undertaken by the Ministry of Finance.
Peru	Yes, as part of the internal control system of the executive branch of government, internal audits of SOEs are carried out by the state internal control body (<i>Organo de Control Institucional</i> under the Ministry of Economy and Finance), which reports to the Comptroller General.	No, although SOEs are required to have their financial statements audited. They are also required to submit annual and quarterly financial and operational reports to FONAFE.	No
Philippines	Yes, as part of the internal control system of the state executive branch. This is mandated by a circular of the Department of Budget and Management, which specifies that the internal audit function in GOCCs should report to their governing boards.	No, SOEs are audited by the supreme audit institution which conducts audits in accordance with relevant international standards.	Yes, the CGC produces an annual aggregate report on the activities and performance of GOCCs.
Viet Nam	Yes, 2005 Enterprise Law mandates SOEs to establish an internal audit function reporting to the CEO and the supervisory board.	Yes, in general SOEs are subject to the same accounting and auditing standards, but disclosure is reportedly lacking in practice.	No

Source: Questionnaire responses submitted by the national authorities. The United States is excluded because questionnaire responses did not report on disclosure and transparency requirements and practices for SOEs.

4.2 Aggregate reporting and transparency

In countries where the coverage and quality of company-specific disclosure is lacking, regular aggregate reporting can be a means to encourage a culture of greater transparency and accountability on the part of the state as “owner”. International good practice notably calls for governments to publish an annual aggregate report on the activities and performance of state-owned enterprises. In practice, countries with a centralised ownership or co-ordinating entity generally do undertake some form of aggregate reporting (among the surveyed countries, this applies to **India**, **Lithuania** and the **Philippines**). One apparent emerging trend among these countries is the use of online portals to provide publically available information on the SOE sector. For example, in the **Philippines** an integrated corporate reporting system serves as a central online repository for SOEs’ financial and non-financial information (Box 9). **Lithuania** has undertaken a similar approach with its online portal on state-owned enterprises (<http://vkc.vtf.lt/en>), which includes both aggregate and company-specific financial information as well as details on the composition and remuneration of SOE boards of directors. In **Korea**, where the state does not produce an aggregate report *per se*, extensive information on the financial situation and performance of all SOEs is available via an online portal on public institutions called ALIO (www.alio.go.kr). The portal notably includes SOEs’ financial statements, audit reports and information on the average annual salaries of executives and employees.

In countries with a more decentralised exercise of the ownership function – for example in Latin America – aggregate reports are a much less common practice. Among the countries surveyed herein, **Argentina**, **Mexico**, **Paraguay**, **Peru** and **Viet Nam** do not undertake aggregate reporting, although the

first three include information on SOEs in the annual reporting on the state budget. Aggregate reporting is arguably an area where further action could lead to strengthened accountability.

Box 9. Integrated corporate reporting system for SOEs in the Philippines

The Integrated Corporate Reporting System (ICRS) is created to serve as the central source of relevant information on Government-Owned and –Controlled Corporations (GOCCs) not only for the Governance Commission for GOCCs (GCG) but also for various concerned agencies, the general public and the media. As the GOCC Governance Act mandates GOCCs to disclose pertinent information on their operations, finances, and management, the ICRS shall be the main portal for all of this information and the tool for ensuring transparency within the GOCC sector. The ICRS contains GOCCs' financial information including their financial statements, assets, liabilities, net worth and corporate operating budgets, as well as non-financial information such as GOCC Charters and information on their Governing Boards and Management. It also serves to simplify various reporting requirements of the GOCCs.

Source : Excerpt from questionnaire response provided by the national authorities of the Philippines and website of the Governance Commission for GOCCs (<http://www.icrs.gcg.gov.ph/ICRS/about.php>)

5. CONCLUSIONS AND WAY FORWARD

This report has found that, in the surveyed countries, corruption and other forms of corporate misconduct pose a challenge to the efficient functioning of the state-owned enterprise sector. Compared with private companies, state-owned enterprises can face particularly heightened corruption risk owing, among others, to underlying issues in their ownership, regulatory and corporate governance arrangements as well as shortcomings in the quality and credibility of corporate disclosure. Combatting corruption within SOEs should therefore be bolstered by broader efforts to address these issues, in line with the internationally agreed standards set forth in the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*. The following proposes a synthesis of key areas of increased corruption risk specific to SOEs and identifies some potential areas for further investigation.

Legal and institutional landscape for preventing corruption in SOEs

Many countries have taken steps to legislate against specific acts of corruption, notably those enumerated in relevant international commitments such as the UNCAC. Beyond the need to strengthen enforcement of such legislation more generally, some overarching concerns with respect to SOEs relate to: (i) the applicability of prevailing anti-corruption legislation to SOEs and their employees; and (ii) the risk that enforcement issues are exacerbated for SOEs, either because the state is unwilling to bring cases against the SOEs it “owns” or because corrupt public officials are involved in SOEs’ daily operations, increasing opportunities for misuse of corporate assets and shielding SOEs from anti-corruption enforcement efforts.

While most countries report that SOEs are not excluded from the application of prevailing legislation to criminalise and penalise corrupt acts, there are instances where the corporate officers of SOEs, if also public servants, are subject to different legal treatment than private individuals. This can notably pose a problem when both public servants and independent directors serve on boards. If SOE board members are not subject to a harmonised regime of legal responsibility, it can create problems with assigning liability for corporate misconduct and thus weaken the board’s accountability for enterprise performance. In this regard, two potential areas for further investigation include: (i) measures to harmonise the liability regime applicable to SOEs’ corporate officers, particularly when independent directors and public servants serve on boards; and (ii) mechanisms to strengthen institutional coordination in enforcing legislation against corruption, including in the state-owned enterprise sector.

Professionalism and independence of boards of directors

In many countries, the mandates and composition of SOE boards do not in practice allow them to fulfil the key functions of setting corporate strategy and overseeing management, based on clear objectives communicated by the state. This can lead to confusion in the decision-making process, unclear attribution of accountability and, ultimately, corporate inefficiencies or even misconduct. Key issues in this respect include (i) their limited mandate, either in law or practice (e.g. if public officials by-pass boards in appointing the CEO) and (ii) the presence of politically-affiliated individuals on boards. The latter can present significant conflicts of interest, leading to situations where corporate decision-making is based on political motivations rather than clearly defined performance objectives. This goes against the international

good practice of the SOE Guidelines which calls for board members to be nominated in a transparent manner based on clearly defined qualifications criteria, as well as equipped to exercise independent judgment in the interest of the enterprise. Improving the professionalism and independence of SOE boards of directors is a priority in many countries and a clear candidate for more in-depth research and sharing of good practices.

Internal controls, ethics and compliance measures within SOEs

International good practice calls for SOE boards of directors to establish internal controls, ethics and compliance programmes, including those which contribute to combatting fraud and corruption. In practice, SOE boards are not uniformly required to establish such measures, pointing to the need for further action in this domain. Concerning internal control, national practices vary depending on whether SOEs are fully corporatised or, alternatively, operated closely to the general government and thus subject to the internal control system of the state. The respective merits and good practice elements of both systems warrant further study, in particular concerning how governments strike an appropriate balance between maintaining adequate oversight and avoiding state interference in SOEs' daily operations. Concerning corporate codes of ethics, in some countries SOEs (or certain categories of SOEs) and their employees fall under the scope of public sector codes of ethics, while in others SOEs are under no requirement to develop such codes. Regardless of government requirements, some SOEs develop codes of ethics on an *ad-hoc* basis.

There is potential scope for identifying elements of good practice in these areas, notably by: (i) examining the experiences of countries that do require SOEs to establish internal controls, ethics and compliance measures, including how they ensure implementation by SOEs; and (ii) gathering information from individual SOEs on their approaches to designing and implementing such measures.

Disclosure and transparency requirements and practices

Low standards of disclosure and transparency remain a significant issue both at the level of individual SOEs and at the level of the state. In practice, SOEs are often subject to weak disclosure standards either because they are not fully corporatised – and thus not subject to the same accounting, auditing and reporting requirements as private incorporated companies – or because the government does not impose similarly stringent alternative requirements. The fact that in many countries, SOEs' financial statements are not systematically subject to an independent external audit points to persisting fundamental issues with the quality and credibility of corporate disclosure. This in turn makes it difficult to identify illicit or irregular financial transactions. In many countries, there also appears to be scope for clarifying the respective remits of state auditors, internal auditors and external auditors. Examining national practices in this regard could be fruitful.

Concerning disclosure at the level of the state, some countries have taken steps to encourage a culture of greater accountability by publishing aggregate reports on the activities and performance of state-owned enterprises, although this is not a universal practice. Identifying elements of good practice in aggregate reporting – regarding both the content of reports and the process for obtaining information from SOEs and/or their oversight ministries – could provide useful insights for countries seeking to strengthen efforts in this domain. The publication of aggregate reports cannot compensate for fundamental underlying issues with disclosure at the enterprise level, but they can be a useful starting point for improving performance monitoring systems and instituting a culture of greater transparency.

BIBLIOGRAPHY

- Crane-Charef, Mary (2015), *Stocktaking of Anti-Corruption and Business Integrity Measures for Southern African SOEs*, OECD Corporate Governance Working Papers, No. 18, OECD, Paris.
- OECD (2016a), *Ethics and Business Integrity in Southern Africa: A Handbook for Governments as Owners and State-Owned Enterprises*, OECD-Southern Africa SOE Network, OECD, Paris.
- OECD (2016b) *State-owned Enterprises: A Comparison of National Ownership Models*, OECD, Paris, forthcoming.
- OECD (2016c), *Transparency and Disclosure Measures for State-Owned Enterprises: Stocktaking of National Practices*, Issues paper prepared for the meeting of the Global Knowledge Sharing Network on Corporate Governance of State-Owned Enterprises (7-8 June 2016, Mexico City), OECD, Paris.
- OECD (2016d), *Stocktaking of Risk Management by SOEs and their Ownership*, OECD Working Party on State Ownership and Privatisation Practices, forthcoming.
- OECD, (2015), *Corporate Governance and Business Integrity: A Stocktaking of Corporate Practices*, OECD, Paris. <http://www.oecd.org/daf/ca/Corporate-Governance-Business-Integrity-2015.pdf>
- OECD (2014), *The Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, OECD, Paris.
- OECD, UNODC and World Bank (2013), *Anti-Corruption Ethics and Compliance Handbook For Business*, OECD, Paris. <http://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf>

¹ For more information on the implementation of the OECD Anti-Bribery Convention, visit <http://www.oecd.org/corruption/Fighting-the-crime-of-foreign-bribery.pdf>