

Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises

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Preface

Targeting corruption and improving integrity in state-owned enterprises (SOEs) is a clear policy imperative. Today, 102 of the world's largest 500 enterprises are state-owned, and the trend is clearly upward. The number has tripled since the turn of the century. As their role as global competitors continues to grow, it is more important than ever that SOEs operate with transparency and efficiency.

Research by the OECD and others shows that certain SOEs may be particularly exposed to corruption risk. State ownership is concentrated in high-risk sectors, such as the extractive industries and infrastructure, where public and private sectors intersect via valuable concessions and large public procurement projects. Strong and responsible state ownership is essential to effectively mitigate these corruption risks. At the same time, SOEs in many economies also continue to provide essential public services. The cost to the public purse and the perverse effects of misallocated resources by corruption in SOEs can dangerously undermine citizens' trust in public institutions.

The quality of corporate governance and the way in which the state exercises its ownership rights can help to address many of these issues. Some state-owned companies still operate as public institutions despite having economic objectives and competing in the market, and many lack the sophisticated risk-management and compliance mechanisms found in best-practice private firms. SOEs can also be subject to undue interventions by senior public officials or other third parties. The Recommendation of the Council on Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises (ACI Guidelines) can help states as owners to promote integrity and fight corruption in SOEs. They complement the already-existing OECD Guidelines on Corporate Governance of State-Owned Enterprises.

The ACI Guidelines represent a widely-held international consensus. They are broadly informed by the G20 High-Level Principles on Preventing Corruption and Ensuring Integrity in State-Owned Enterprises, endorsed by G20 Leaders in 2018. The ACI Guidelines reflect the OECD's position as the world's leading standard setter

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in the area of SOE governance, anti-corruption and integrity. They enrich the OECD toolkit and contribute to taking the international consensus to the next level, turning commitment into action.

I encourage all OECD and partner countries to make active use of the ACI Guidelines. In the corporate world of tomorrow, SOEs should lead by example in the public sector's efforts to prevent corruption. By disseminating and implementing these Guidelines, policy-makers can take an essential step in that direction.



Angel Gurría
OECD Secretary General

Foreword

The OECD Recommendation of the Council on Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises (ACI Guidelines) is the first international instrument to offer states, in their role as enterprise owners, support in fighting corruption and promoting integrity the enterprises they own.

These ACI Guidelines will serve as a companion instrument to the OECD Recommendation of the Council on Guidelines on Corporate Governance of State-Owned Enterprises (SOE Guidelines). The SOE Guidelines are similarly applicable to all SOEs pursuing economic activities, either exclusively or together with the pursuit of public policy objectives or the exercise of governmental authority or a governmental function.

Adopted at the OECD Council Meeting at Ministerial Level on 22 May 2019, the ACI Guidelines add another dimension to the OECD's toolkit for combating corruption and promoting integrity. They draw on and complement existing global standards including the SOE Guidelines, the G20/OECD Principles of Corporate Governance, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the OECD Recommendation of the Council on Public Integrity. As such, the ACI Guidelines also contribute to the implementation of the OECD Strategic Approach to Combating Corruption and Promoting Integrity.

Acknowledgements

These Guidelines were developed by the Working Party on State Ownership and Privatisation Practices, of the OECD Corporate Governance Committee, in co-operation with the OECD Working Group on Bribery in International Business Transactions and the OECD Working Party of Senior Public Integrity Officials.

The ACI Guidelines are indebted to the commitment and expertise of these bodies and the invaluable knowledge captured in their respective instruments. Their unique multi-year co-operation ensured that the ACI Guidelines build on, and are fully coherent with, existing international instruments related to corporate governance, anti-corruption and integrity. Delegates of the three bodies and their OECD Secretariats contributed significantly to the in-depth consultation process and will participate in the implementation of the ACI Guidelines.

The ACI Guidelines were made possible by input from OECD and Partner countries, the Business and Industry Advisory Committee (BIAC) and the Trade Union Advisory Committee (TUAC), actors in the business community including SOEs, international financial institutions and civil society representatives including Transparency International and the Natural Resource Governance Institute.

Earlier iterations of the ACI Guidelines were subject to stakeholder comment through an online public consultation, during OECD meetings and at international events, including the OECD Global Anti-Corruption and Integrity Forum (March 2018), the Asia Network on Corporate Governance of SOEs (September 2018), the Latin America Network on Corporate Governance of SOEs (November 2017) and the Special Roundtable on Integrity, the Fight against Corruption and Responsible Business Conduct in the SOE Sector (October 2017). The online public consultation was conducted between December 2018 and January 2019, promoted through various networks and newsletters.

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About the Guidelines

A significant and reportedly growing part of the world's largest companies are state-owned. State-owned enterprises are mostly concentrated in key sectors including public utilities, natural resource, extractive industries and finance. Moreover, the operations of SOEs have important fiscal implications and may give rise to liabilities, including in legal terms, to the government that may be ultimately responsible for their finances.

Good governance of SOEs is critical for fair and open markets, for the functioning of their domestic economies where SOEs are active and for the delivery of public services to the general public. The *OECD Guidelines for State-Owned Enterprises* (SOE Guidelines) were revised in 2015, against the background of significant progress in a number of countries in professionalising the ownership of SOEs and improving the governance of individual companies.

However, corruption or other irregular practices that occur in and concerning SOEs remain a major obstacle to good corporate governance. Not only can they damage brand and company reputation and affect SOE performance, they can cause significant financial losses, lead to an erosion of public trust, degrade the national and international investment climate and directly impact the delivery of public services to citizens. Corruption in and concerning SOEs may not be a problem solely for the SOEs in question. In some cases it is endemic to or reflective of a lack of integrity in the public sector. Preventing corruption and promoting integrity in SOEs requires mutually-reinforcing approaches from the state and SOEs, relying first on the integrity of the state and its faithful execution of ownership responsibilities and, second, on good practices of the SOE sector that can both signal and support legitimate state ownership.

Risks of corruption in SOEs may or may not be qualitatively different from private firms, but high standards of integrity in SOEs may in practice depend on the manner in which the state exercises its ownership rights. A 2018 OECD study found that SOEs in some cases appear less able or less willing than private firms to avoid known high-

risk activities (OECD, 2018a). Moreover, analysis of concluded cases of bribery between 1999 and 2014 shows that SOE officials were bribed more often than other public officials (OECD, 2014). The risk of SOEs being deliberately used by high-level public officials as conduits for political finance, patronage, or personal or related-party enrichment must be considered. SOEs are at risk in the case of: (i) a general lack of integrity in the public sector; (ii) a lack of professionalism in the exercise of state ownership; (iii) risk management and corporate controls that are insufficient or ignored, and; (iv) weak enforcement or undue protection from legal enforcement and other disciplining forces.

The ACI Guidelines are intended to supplement and complement the SOE Guidelines, by providing guidance to the state on fulfilling its role as an active and informed owner in the specific area of anti-corruption and integrity. Key elements addressed by both the ACI Guidelines and the SOE Guidelines include: (i) professionalising state ownership; (ii) making SOEs operate with similar efficiency, transparency and accountability as best-practice private companies; and (iii) ensuring that competition between SOEs and private enterprises, where it occurs, is conducted on a level playing field.

The ACI Guidelines were developed with the understanding that the state, in its role as enterprise owner, should adhere to four fundamental principles similar to those espoused by the SOE Guidelines. The first principle is that state ownership is exercised in a rules-based economic environment, where each economic actor derives its authority from, and behaves in line with, applicable laws. The second principle is one of a strict separation of roles between the state as an owner and the management of the SOE (the state allowing SOEs full operational autonomy). The third premise is the need for a clear distinction between the state's role as an owner and its other roles (e.g. regulatory, policy-making and prosecutorial). Fourthly, SOEs should not receive unfair advantages due to their proximity to the state, nor should they be overburdened with regulations and controls compared to private firms.

The ACI Guidelines are applicable to all SOEs pursuing economic activities, either exclusively or together with the pursuit of public policy objectives or the exercise of governmental authority or a governmental function¹. Some of the detailed provisions

¹ Given the differing compositions of SOEs from one country to another, and due to the lack of one universally-accepted definition of an SOE, fact-specific inquiries can help to determine whether an entity is indeed an SOE. That analysis should include consideration of an entity's ownership, control, status, and function. While entities may not fall cleanly into the above definition of an SOE, the state could consider whether they stand to benefit from applying relevant recommendations in the Recommendation. Governments also differ in how they are structured and, in some cases, may have other instrumentalities of government carrying out

in the ACI Guidelines may go beyond what can be implemented for particularly small SOEs, in which case flexibility and proportionality may need to be exercised. As a guiding principle, those entities responsible for the ownership functions of enterprises held at sub-national levels of government should seek to implement as many of the recommendations in the ACI Guidelines as applicable.

While the ACI Guidelines are intended to complement and supplement the SOE Guidelines, it also draws on and aims to complement existing OECD legal instruments pertaining to anti-corruption, integrity and corporate governance, notably the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions [[OECD/LEGAL/0293](#)] and its related legal instruments as well as the Recommendation of the Council on Public Integrity [[OECD/LEGAL/0435](#)].

other governmental functions. Such instrumentalities must also be aware of heightened risks of corruption in the SOE sector. The Recommendation may be useful to those instrumentalities, whether or not entities in question are technically SOEs.

The Recommendation of the Council on Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Recommendation of the Council on Guidelines on Corporate Governance of State-Owned Enterprises [[OECD/LEGAL/0414](#)] (hereafter “SOE Guidelines”) for which this Recommendation sets complementary guidelines regarding the integrity of state-owned enterprises;

HAVING REGARD to the Declaration on International Investment and Multinational Enterprises [[OECD/LEGAL/0144](#)] and the Guidelines for Multinational Enterprises; the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions [[OECD/LEGAL/0293](#)]; the Recommendation of the Council on Guidelines for Managing Conflict of Interest in the Public Service [[OECD/LEGAL/0316](#)]; the Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions [[OECD/LEGAL/0378](#)], including its Annex II: Good Practice Guidance on Internal Controls, Ethics, and Compliance; the Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas [[OECD/LEGAL/0386](#)]; the Recommendation of the Council on Public Integrity [[OECD/LEGAL/0435](#)]; the Recommendation of the Council on Principles of Corporate Governance [[OECD/LEGAL/0413](#)]; the Recommendation of the Council on Public Procurement [[OECD/LEGAL/0411](#)], and the Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct [[OECD/LEGAL/0443](#)];

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RECOGNISING the important role that state-owned enterprises play in many economies, their increasing participation in international markets and the large benefits resulting from good corporate governance in state-owned enterprises;

RECOGNISING that state-owned enterprises face distinct governance challenges arising from the fact that their ownership is exercised by government officials on behalf of the general public;

RECOGNISING that state-owned enterprises face risks of corruption, both as bribe payer and recipient, as well as other irregular practices that may be heightened in instances of (i) a general lack of integrity in the public sector; (ii) a lack of professionalism in the exercise of state ownership; (iii) risk management and corporate controls that are insufficient or ignored, or; (iv) weak enforcement or undue protection from legal enforcement and other disciplining forces;

RECOGNISING that SOEs should not be operated as conduits for political finance, patronage or personal or related-party enrichment;

RECOGNISING the relevance of the G20 High-Level Principles for Preventing Corruption and Ensuring Integrity in State-Owned Enterprises, as well as the OECD's work on publicly-owned commodity trading and corruption in the extractive value chain;

CONSIDERING that preventing corruption and promoting integrity in state-owned enterprises requires mutually-reinforcing approaches from the state and state-owned enterprises alike, relying first on the integrity of the state and its execution of ownership responsibilities and, second, on good practices of state-owned enterprises and in their sectors of operation;

CONSIDERING that this Recommendation is applicable to all state-owned enterprises pursuing economic activities, either exclusively or together with the pursuit of public policy objectives or the exercise of governmental authority or a governmental function;

On the proposal of the Corporate Governance Committee, through the Working Party on State Ownership and Privatisation Practices and in co-operation with the Working Group on Bribery in International Business Transactions and the Working Party of Senior Public Integrity Officials:

I. AGREES that, for the purpose of the present Recommendation, the following definitions are used:

- *State-owned enterprises (SOEs)*: Countries differ with respect to the range of institutions that they consider as state-owned enterprises. Consistent with the SOE Guidelines, any corporate entity recognised by national law as an

enterprise, and in which the state exercises ownership or control, should be considered as an SOE. This includes joint stock companies, limited liability companies and partnerships limited by shares. Moreover statutory corporations, with their legal personality established through specific legislation, should be considered as SOEs if their purpose and activities, or parts of their activities, are of a largely economic nature.

- *Ownership and control*: The Recommendation applies to enterprises that are under the control of the state, either by the state being the ultimate beneficial owner of the majority of voting shares or otherwise exercising an equivalent degree of control. Examples of an equivalent degree of control would include, for instance, cases where legal stipulations or corporate articles of association ensure continued state control over an enterprise or its board of directors in which it holds a minority stake. Some borderline cases need to be addressed on a case-by-case basis, as provided by the SOE Guidelines.
- *The Governance Bodies of SOEs (e.g. “Boards”)*: Most, but not all SOEs, are headed by governance bodies commonly referred to as boards. Some SOEs have two-tier boards that separate the supervisory and management function into different bodies. Others only have one-tier boards, which may or may not include executive (managing) directors. In the context of this document “board” refers to the corporate body charged with the functions of governing the enterprise and monitoring management.
- *Independent board member*: Many governments include “independent” members in the boards of SOEs, but the scope and definition of independence varies considerably according to national legal context and codes of corporate governance. Broadly speaking, an independent board member is taken to mean independent from both the enterprise (non-executive board member) and from the state (neither civil servant, public official nor elected official). Independent board members, where applicable, are understood to mean individuals free of any material interests or relationships with the enterprise, its management, other major shareholders and the ownership entity that could jeopardise their exercise of objective judgement.
- *Ownership entity*: The ownership entity is the part of the state responsible for the ownership function, or the exercise of ownership rights in SOEs. “Ownership entity” can be understood to mean either a single state ownership agency, a co-ordinating agency or a government ministry responsible for exercising state ownership. In cases where one government institution has not been assigned to play a predominant ownership role, this Recommendation should be implemented by the different government

institutions responsible for the ownership function or the exercise of ownership rights in SOEs.

- *Corruption*: While there is no internationally agreed definition, for the purposes of this Recommendation, corruption can be generally understood to cover acts of corruption within the scope of the UN Convention Against Corruption.
- *Integrity*: The consistent alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interests.
- *Internal control(s)*: The control activities, effected by an SOE's board, management and other personnel, designed to help the SOE meet its objectives relating to operations, reporting, and compliance, such that the incidence of fraud, waste, abuse or mismanagement is minimised.
- *Internal audit*: The independent and objective assurance and consulting activity that helps an SOE to improve its operations and meet its objectives. The internal audit function brings a systematic and professional approach to evaluating and improving the performance of risk management, internal control and governance, and reports to the board.
- *External audit*: An audit by profit-making external auditors that reside outside of the SOE being audited, are independent of the SOE and of the state and are as a general rule appointed by the company's annual general meeting. The text is explicit when it instead refers to an "external audit" conducted by the national body that is mandated to oversee the execution of public budget and holds constitutional guarantees of functional and organisational independence (hereafter referred to as "Supreme Audit Institutions").

A. Integrity of the State

II. RECOMMENDS that all Member and non-Member governments having adhered to this Recommendation (hereafter the “Adherents”) bear in mind that state-owned enterprises are autonomous legal entities overseen by governments and high-level public officials and subject to the general rule of law in their countries of operation. Adherents should establish and adhere fully to good practices and high standards of behaviour, on which integrity in SOEs is contingent. To this effect, Adherents, as appropriate acting via their ownership entities, should take the following action:

Apply high standards of conduct to the state

1. The state should prioritise the public interest and be responsive to integrity concerns in and concerning the SOEs they own. This includes, inter alia, encouraging a culture of transparency across the whole of government, where ethical dilemmas, public integrity concerns, and errors can be discussed freely and where leadership is responsive and committed to providing timely advice and resolving relevant issues.
2. High standards of conduct should be applied to the state, setting an example for conduct in SOEs and exhibiting integrity to the public as the ultimate owner. To this end, representatives of the ownership entity and others responsible for exercising ownership on behalf of the state should:
 - i. Undergo processes for hiring, retention, training, retirement and remuneration that are underpinned by principles of efficiency, transparency, and pre-determined criteria such as merit, equity, aptitude and integrity.
 - ii. Be subject to conflict of interest rules that sufficiently address conflicts that may arise directly in the governance of particular SOEs or portfolios of SOEs, or that may arise as a result of activities conducted by the SOE or matters relating to the sector in which the SOE operates. Such rules may restrict the ability of certain public servants, such as employees of the ownership entity, to hold shares in an SOE or in the sector of SOEs’

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operations (e.g. competitors or suppliers), or to become involved in the corporate governance of private sector companies.

- iii. Be subject to provisions on handling sensitive information to mitigate risks of insider trading.
 - iv. Have clear rules and procedures for reporting concerns about real or encouraged illegal or irregular practices that come to their notice in the performance of their ownership functions. Procedures should include, as needed and where appropriate, reporting to competent authorities that are removed from the ownership function and that have the mandate and capacity to conduct investigations free from undue influence. Those reporting concerns should be protected in law and in practice against all types of unjustified treatments as a result.
3. The ownership entity should be held accountable to the relevant representative bodies, including the national legislature.

Establish ownership arrangements that are conducive to integrity

4. Appropriate steps should be taken by the state to prevent the abuse of SOEs for personal or political gain, including by:
- i. Taking the measures necessary to establish that applicable laws criminalising bribery of public officials apply equally to the representatives of SOE governance bodies, management and employees where these are legally considered as public officials.
 - ii. Taking the measures necessary to prohibit the use of SOEs as vehicles to engage in bribery of foreign and domestic public officials.
 - iii. Taking the measures necessary to prohibit use of SOEs as vehicles for financing political activities and for making political campaign contributions.
5. Ownership arrangements should be conducive to integrity, which implies:
- i. Clearly identifying the exercise of ownership rights within state administration as centralised in a single ownership entity or, if impossible, by a co-ordinating body that has the capacities and competencies to effectively carry out its duties.
 - ii. Separating ownership from other government functions to minimise conflict of interest, and opportunities for political intervention (non-strategic or operational in nature) and other undue influence by the state, serving politicians or politically-connected third parties in SOEs. Where ownership functions are vested in ministries with other functions related to SOEs, adequate measures should be taken to separate the two.

- iii. Clarifying and making publicly available information about the ownership structure, including linking the SOEs to the ownership entity responsible for said SOEs. This could include, for instance, recording SOEs in beneficial ownership registers.
- iv. Clarifying and making publicly available the roles of other (non-ownership) state functions vis-à-vis SOEs that may interact, whether infrequently or frequently, with SOEs in the execution of their functions – including, *inter alia*, regulatory agencies and audit or control institutions.
- v. Encouraging professional dialogue between the ownership entity and state authorities responsible for the prevention of corruption or other irregular practices, when appropriate and permitted by the legal system.
- vi. Setting an appropriate framework for communication that includes maintaining accurate records of communication between the ownership entity and SOEs.
- vii. Maintaining high standards of transparency and disclosure when SOEs combine economic activities and public policy objectives regarding their cost and revenue structures, allowing for an attribution to main activity areas.
- viii. Ensuring that the ownership entity is equipped to regularly monitor, review and assess SOE performance, and oversee and monitor SOE compliance with applicable corporate governance standards – including those related to anti-corruption and integrity.

B. Exercise of State Ownership for Integrity

III. RECOMMENDS that Adherents act as active and engaged owners, holding SOEs to high standards of performance and integrity, while also refraining from unduly intervening in the operations of SOEs or directly controlling their management. Ownership entities should have the legal backing, the capacity and the information necessary to hold SOEs to high standards of performance and integrity. Adherents should make their expectations regarding anti-corruption and integrity clear. To this effect, Adherents, as appropriate acting via their ownership entities, should take the following action:

Ensure clarity in the legal and regulatory framework and in the State's expectations for anti-corruption and integrity

1. There should be clarity in the legal and regulatory framework regarding the operation and accountability of SOEs, whereby private sector best practices in areas such as corporate liability, accounting and audit apply to SOEs. The legal and regulatory framework should facilitate a level playing field in the marketplace where SOEs undertake economic activities.
2. The state should clearly specify SOE objectives and avoid redefining these objectives in a non-transparent manner. The state's broad mandates and objectives for SOEs should be revised only in cases where there has been a fundamental change of mission.
3. The ownership entity should be assigned a role for executing ownership. When representatives of government, including those of the ownership entity, give instructions that appear to be irregular, SOEs should be able to seek advice or to report it through established reporting channels.
4. The state should clearly set and consistently communicate high expectations regarding anti-corruption and integrity through, amongst others, the processes of:

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- i. Identifying and expressing their expectations related to high-risk areas that could include, inter alia: investment and divestment by the state; human resource management; procurement of goods and services; board and senior/top management remuneration; conflict of interest; political contributions; facilitation payments, solicitation and extortion; favouritism, nepotism or cronyism; offering and accepting gifts; hospitality and entertainment, and; charitable donations and sponsorships.
- ii. Periodically reviewing state expectations regarding anti-corruption and integrity, based on a comprehensive analysis of existing and emerging corruption-related risks.

Act as an active and informed owner with regards to anti-corruption and integrity in state-owned enterprises

5. The state should act as an active and informed owner with regards to anti-corruption and integrity in the companies they own. Its respective and prime responsibilities regarding anti-corruption and integrity in SOEs should include, but are not limited to:
 - i. Setting up reporting systems that allow it to regularly monitor and assess SOE performance against established objectives and pre-determined benchmarks, assess SOE compliance with applicable corporate governance standards and assess their alignment with the state's expectations with regards to integrity and anti-corruption. Sources used in monitoring and assessment should facilitate an adequate understanding of SOEs' corruption-risk management.
 - ii. Developing capacity in the areas of risk and control in order to best monitor and assess SOEs' application of relevant standards and owner expectations, and engaging in discussions about corruption-risk mitigation efforts with SOE boards.
 - iii. Developing a disclosure policy that identifies what information SOEs should publicly disclose, the appropriate channels for SOE disclosure and SOE mechanisms for ensuring quality of information. With due regard for SOE capacity and size, the types of disclosed information should follow as closely as possible to those suggested in the SOE Guidelines, and could additionally include integrity-related disclosures. The state should consider developing mechanisms to measure and assess implementation of disclosure requirements by SOEs.
 - iv. Disclosing all financial support by the state to SOEs in a transparent and consistent fashion.
 - v. Using, as appropriate, benchmarking tools to assess the overall risk exposure of the state through its ownership of SOEs. Where appropriate, such tools should also be used to encourage improvements in corruption-risk management amongst SOEs.

C. Promotion of Integrity and Prevention of Corruption at the Enterprise Level

IV. RECOMMENDS that Adherents ensure that their ownership policy fully reflects that a cornerstone of promoting integrity and preventing corruption in and concerning SOEs is effective company internal controls, ethics and compliance measures that prevent, detect and mitigate corruption-related risks, and enforce rules. Adherents should ensure that SOEs are overseen by effective and competent boards of directors that are empowered to oversee company management and to act autonomously from the state as a whole. To this effect, Adherents, as appropriate acting via their ownership entities, should take the following action:

Encourage integrated risk management systems in state-owned enterprises

1. The state should encourage that SOE boards and oversight bodies oversee, and that management implements, risk management systems commensurate with state expectations and where appropriate in line with requirements for listed companies. To this end, the state, acting via the ownership entity, should encourage SOEs to take a risk-based approach and to adhere, to the extent feasible, to good practices, such that:
 - i. The risk management system is treated as integral to the SOE's strategy and the achievement of pre-determined objectives. It thus embodies a coherent and comprehensive set of internal controls, ethics and compliance measures that are developed and maintained in response to regular and tailored risk assessments.

- ii. The risk management system is regularly monitored by the board, re-assessed and adapted to the SOEs' circumstances, with a view to establishing and maintaining the relevance and performance of internal controls, policies and procedures.
- iii. There is a segregation of duties between those that take ownership of and manage risks, those that oversee risks and those that provide independent assurance within the SOE.
- iv. The risk management system includes risk assessments that: (i) are undertaken regularly; (ii) are tailored to the SOE; (iii) take into account inherent internal and external risks for their likelihood of occurrence and the impact of occurrence on the achievement of SOE objectives, as well as residual risks; (iv) explicitly treat a comprehensive set of corruption-related risks, considering high-risk areas and intra- and inter-personal aspects (e.g. human behaviour and interactions between the SOE board and government); and (v) integrate different perspectives, including those from within the company and key stakeholders (representing different levels of authority in the company, jurisdictions and different parts of the business).
- v. SOE representatives responsible for risk assessments within the company should have sufficient authority to gather meaningful contributions, to identify risks, to select appropriate risk responses and to react in a measured way in face of problematic findings.
- vi. SOEs, wherever possible, should publicly disclose information about material integrity-related risks, the risk management system and measures taken to mitigate risks.

Promote internal controls, ethics and compliance measures in state-owned enterprises

2. The state should, without intervening in the management of individual SOEs, take appropriate steps to encourage integrity in SOEs, expecting and respecting that SOE boards and top management promote a “corporate culture of integrity” throughout the corporate hierarchy through, inter alia: (i) a clearly articulated and visible corporate policy prohibiting corruption; (ii) facilitating the implementation of applicable anti-corruption and integrity provisions through strong, explicit and visible support and commitment from boards and management to internal controls, ethics and compliance measures (hereafter referred to as “integrity mechanisms”); (iii) encouraging an open culture that facilitates and recognises organisational learning, and encourages good governance and integrity and protects reporting persons (also known as “whistleblowers”), and; (iv) leading by example in their conduct.

3. The state should encourage that integrity mechanisms are made applicable to all levels of the corporate hierarchy and all entities over which a company has effective control, including subsidiaries. In line with state's expectations and applicable legal provisions, and to the extent feasible, integrity mechanisms should:
- i. Require high standards of conduct through clear and accessible codes of conduct, ethics or similar policies that address, in particular, the procurement of goods and services as well as, *inter alia*, board and senior/top management remuneration, conflicts of interest, hospitality and entertainment, political contributions, charitable donations and sponsorships, gifts, favouritism, nepotism or cronyism, and facilitation payments, solicitation and extortion.
 - ii. Ensure that high standards of conduct are supported, incentivised and implemented through human resources policies and procedures, where processes are adequately designed to ensure hiring, retaining and firing of employees based on a set of objective, pre-determined criteria.
 - iii. Be linked to the system of financial and accounting procedures, supported by the risk management system and related internal controls and reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts.
 - iv. Ensure that SOEs do not seek or accept exemptions not previously contemplated in the statutory or regulatory framework, including related to human rights, environment, health, safety, labour, taxation and financial incentives.
 - v. Be applied to engagement with agents and other intermediaries, consultants, representatives, distributors, contractors and suppliers, consortia, and joint venture partners (hereinafter "business partners"), reinforced by properly documented risk-based due diligence pertaining to their hiring or contracting, as well as the appropriate and regular oversight of business partners. SOEs may *inter alia*, establish clear screening criteria, inform business partners of the company's commitment to anti-corruption and integrity and seek a reciprocal commitment in writing from business partners.
 - vi. Be monitored by the board and other corporate bodies, where existing, that are independent of management.
4. The state should encourage that corporate measures exist to provide positive support for the observance of integrity mechanisms by all levels of the corporate hierarchy and to mitigate opportunistic behaviour. This includes training for all levels of the company, and subsidiaries, on relevant legal provisions, state expectations and on company integrity mechanisms, with the possibility of measuring the degree of understanding throughout the hierarchy.

5. The state should encourage appropriate channels for oversight and reporting at the enterprise level. This would, to the extent feasible, include:
 - i. Expecting that internal audit, where it exists, has the capacity, autonomy and professionalism needed to duly fulfil its function.
 - ii. Encouraging the establishment of specialised board committees where appropriate, particularly in the areas of risk management, audit, remuneration and public procurement when relevant, each with a minimum of one and ideally a majority of independent board members.
 - iii. Encouraging that there are effective measures for providing guidance and advice to directors, officers, employees, and, where appropriate, business partners, on complying with the company's integrity mechanisms, including when they need urgent advice on difficult situations.
 - iv. Encouraging the establishment of clear rules and procedures for employees or other reporting persons to report concerns to the board about real or encouraged illegal or irregular practices in or concerning SOEs (including subsidiaries or business partners). In the absence of timely remedial action or in the face of a reasonable risk of negative employment action, employees are encouraged to report to the competent authorities. They should be protected in law and practice against all types of unjustified treatments as a result of reporting concerns.
6. The state should expect that SOEs apply high standards of transparency and disclosure akin to good practice listed companies, or to firms in like circumstances, and in line with the state's disclosure policy. In addition, the state could encourage disclosure of the organisational structure of the SOE, including its joint ventures and subsidiaries.
7. Where applicable, the state should expect that SOEs adhere to laws related to lobbying, for example declaring a meeting in the appropriate registry.
8. The state should expect that corporate investigative and disciplinary procedures exist to promote compliance and to address, among other things, violations, at all levels of the company, of relevant laws or company's integrity mechanisms.

Safeguard the autonomy of state-owned enterprises' decision-making bodies

9. It is a prime responsibility of the state to ensure that boards have the necessary authority, diversity, competencies and objectivity to autonomously carry out their function with integrity. The corporate governance framework should ensure the board is accountable to the company and to the shareholders and, where legislated, subject to parliamentary control, recognising citizens as the ultimate shareholder. This includes, inter alia, that:
- i. Politicians who are in a position to influence materially the operating conditions of SOEs should not serve on their boards. Civil servants and other public officials can serve on boards under the condition that qualification and conflict of interest requirements apply to them. A pre-determined “cooling-off” period should as a general rule be applied to former politicians.
 - ii. An appropriate number of independent members – non-state and non-executive – should be on each board and sit on specialised board committees.
 - iii. Any collective and individual liabilities of board members should be clearly defined. All board members should have a legal obligation to act in the best interest of the enterprise, cognisant of the objectives of the shareholder. All board members should have to disclose any personal ownership they have in the SOE and follow the relevant insider trading regulation.
 - iv. Members of SOE boards and executive management should make declarations to the relevant bodies regarding their investments, activities, employment, and benefits from which a potential conflict of interest could arise.
 - v. Board members should be selected on the basis of personal integrity and professional qualifications, using a clear, consistent and predetermined set of criteria for the board as a whole, for individual board positions and for the chair, and subject to transparent procedures that should include diversity, background checks and, as appropriate, mechanisms aimed at preventing future potential conflicts of interest (e.g. use of asset declarations).
 - vi. Mechanisms should exist to manage conflicts of interest that may prevent board members from carrying out their duties in the company's interest, and to limit political interference in board processes. Potentially conflicting interests should be declared at the time of appointment and the declarations should be kept up to date during board tenure.

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- vii. Mechanisms to evaluate and maintain the effectiveness of board performance and independence should be in place. These may include, amongst others, limits on the term of any continuous appointment or the permitted number of reappointments to the board, as well as resources to enable the board to access independent information or expertise.
10. The state should express an expectation that the board apply high standards for hiring and conduct of top management and other members of the executive management, who should be appointed based on professional criteria. Special attention should be given to managing conflict of interest and, relatedly, movement of actors between public and private sectors (also known as “revolving door” practices).

D. Accountability of State-Owned Enterprises and of the State

V. RECOMMENDS that Adherents ensure proper detection of corruption, as well as investigation and enforcement, and that key processes are entrusted to institutions that are insulated from influence or suppression of said processes or dissemination of public information regarding their conduct. Strong, transparent and independent external auditing procedures are means of ensuring financial probity, informing shareholders about overall company performance and engaging stakeholders. To this effect, Adherents, as appropriate acting via their ownership entities, should take the following action:

Establish accountability and review mechanisms for state-owned enterprises

1. Where legislation allows, SOEs may be summoned to report to the national legislature or similar elected bodies of the state. Annual reports on the performance of SOEs and including audited financial statements should be published by SOEs, and the state as an owner should engage in aggregate reporting on its SOE portfolio that is made public.
2. The state should encourage SOEs' financial statements to be subject to annual independent external audit based on internationally recognised standards for listed companies. The external auditor(s) should have the capacity, professionalism and independence to provide an objective assessment of company accounts, financial statements and internal controls. The following considerations can apply:
 - i. External auditors should be accountable to the shareholders and owe a duty to the company to exercise due professional care in the conduct of the audit.
 - ii. Procedures should be developed for the selection of external auditors, in line with the SOE Guidelines. It is crucial that the external auditors are

independent from the SOE and large shareholders, i.e. the state in the case of SOEs.

- iii. When supreme audit institutions play a role in monitoring SOEs, the state should require that SOEs be additionally subject to annual external audits that are carried out in accordance with internationally recognised standards. Supreme audit institutions should not substitute for an external auditor. Where additionally present, the supreme audit institution should avoid overlap, fragmentation or duplication with the scope of audits conducted by external auditors.
 - iv. External auditors of SOEs should be subject to the same criteria of independence as for external auditors of private sector companies. This requires the close attention of the audit committee or the board and generally involves limiting the provision of non-audit services to the audited SOE as well as periodic rotation of auditors or tendering of the external audit assignment.
 - v. The supreme audit institution, where mandated, could additionally and periodically audit: (i) financial transactions, including subsidies and asset transfers, between the state and SOEs; and (ii) the state's exercise of ownership functions. For SOEs with policy objectives, the supreme audit institution may also assess the adequacy of risk management and integrity measures established to achieve said policy objectives. Audit findings should be deliberated by the legislature in a timely manner that accords with the budgetary cycle and be made public.
 - vi. External auditors should not be expected to investigate corruption or irregular practices as part of the audit scope, unless mandated to do so. However, external auditors should be required to report real or suspected illegal or irregular practices to the relevant corporate monitoring bodies and, as appropriate, to competent authorities independent of the company.
3. The role of external oversight and control within the public integrity system should be reinforced, in particular through ensuring that oversight bodies, regulatory enforcement agencies and administrative courts are responsive to information on suspected wrongdoings or misconduct received from third parties with regards to SOEs or the state as their owner (such as complaints or allegations submitted by businesses, employees and other individuals).

Take action and respect due process for investigations and prosecutions

4. The legal and regulatory requirements that affect corporate governance practices should be enforceable. Ensuring this mostly falls outside the authority of those

exercising ownership rights over SOEs, but the ownership entity should co-operate fully with relevant authorities and under no circumstances take steps to hinder ongoing proceedings.

5. Civil, administrative or criminal penalties for corruption or other unlawful acts should be effective, proportionate and dissuasive. They should be applicable to both natural and legal persons including SOEs.
6. Persons willing to report real or encouraged illegal or irregular practices in and concerning SOEs, including related to the state owner, should be offered protection in law and practice against all types of unjustified treatments as a result of reporting.
7. Adherents should encourage SOEs that receive reports of real or suspected illegal or irregular practices from an external auditor to actively and effectively respond to such reports.
8. Transparent procedures should be developed to ensure that all detected irregularities, in and concerning SOEs are investigated and prosecuted when necessary in accordance with domestic legal procedures. Enforcement of provisions in the legal framework should be rigorous and systematic, and ensure that SOEs are not given unfair advantage or protected by their ownership. Furthermore:
 - i. Supervisory, regulatory and enforcement authorities should have the authority, integrity and resources to fulfil their duties in a professional and objective manner while guaranteeing due processes and respecting fundamental rights. Moreover, their rulings should be without undue delay and, as appropriate, transparent and fully explained.
 - ii. Investigation and prosecution of cases of corruption or related unlawful acts involving SOEs should not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.
 - iii. Relevant state bodies should co-operate fully with investigations involving SOEs or the state as enterprise owner, and they should encourage SOEs to do likewise.
9. When corruption or irregular practice has been detected, the ownership entity should have processes for follow-up with SOEs to support the mitigation of recurrence. This could include, inter alia, encouraging the SOE to develop an action plan based on a root-cause analysis, and to communicate lessons learned throughout the SOE hierarchy. The state should consequently assess need for reforms within SOEs or in the exercise of its duties.

Invite the inputs of civil society, the public and media and the business community

10. Transparency and stakeholder engagement should be encouraged at all stages of governmental decision-making processes to promote accountability and the public interest. This includes that the state leads by example with regards to transparency, actively seeking to improve public knowledge about SOEs.
11. Relevant state bodies should be encouraged to co-operate with stakeholders, trade unions, private sector representatives and the public and media in facilitating the analysis of disclosed information and, where appropriate, highlighting and addressing problems of corruption in and concerning SOEs.
12. The state may encourage SOEs to consider engagement with civil society, business organisations and professional associations that may serve to strengthen the development and effectiveness of integrity mechanisms.
13. Stakeholders and other interested parties, including creditors and competitors, should have access to efficient redress through unbiased legal or arbitration processes when they consider that their rights have been violated.
14. Representatives of the state and SOEs should refrain from actions that serve to repress or otherwise restrict the civil liberties, including liberties to criticise or investigate, of civil society organisations, trade unions, private sector representatives, the public and media.

Additional Provisions

VI. INVITES the Secretary-General to disseminate this Recommendation.

VII. INVITES Adherents to disseminate this Recommendation.

VIII. INVITES non-Adherents to take due account of this Recommendation and, where appropriate, adhere to it subject to a review by the Working Party on State Ownership and Privatisation Practices.

IX. INSTRUCTS the Corporate Governance Committee, through its Working Party on State Ownership and Privatisation Practices and in co-operation with the Working Group on Bribery in International Business Transactions and the Working Party of Senior Public Integrity Officials, to:

1. serve as a forum to exchange information on experiences with respect to the implementation of this Recommendation;
2. develop through an inclusive process an implementation guide that helps Adherents implement the Recommendation;
3. monitor the implementation of this Recommendation, and; report to the Council on the implementation of this Recommendation no later than five years following its adoption and at least every ten years thereafter.

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