Ethics and Business Integrity in Southern Africa

A handbook for governments as owners and state-owned enterprises
Ethics and Business Integrity in Southern Africa

A HANDBOOK FOR GOVERNMENTS AS OWNERS AND STATE-OWNED ENTERPRISES
ABOUT THE OECD-SOUTHERN AFRICA NETWORK ON THE GOVERNANCE OF STATE-OWNED ENTERPRISES

The OECD-Southern Africa Network on the Governance of State-Owned Enterprises (SOEs) (hereafter “SOE Network for Southern Africa”) is a forum aimed at improving the corporate governance of SOEs, and facilitates regional dialogue and co-operation among the economies in Southern Africa. It was launched in 2007, and is the first initiative of its kind to focus on SOE governance focusing mainly the member economies of the Southern Africa Development Community (SADC). Participating institutions represent entities which manage portfolios of SOEs or which oversee government policy vis-à-vis SOEs. Representatives from stakeholder institutions, regional and international organisations, development banks, and corporate governance practitioners participate in the Network.

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1 Network members include: Angola, Botswana, DR Congo, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.
Foreword

At its 5th meeting on 26-27 November 2014, the Network agreed to develop a Handbook focusing on anti-corruption and business integrity, and focusing on specific aspects for SOEs and their government owners. A Taskforce of of seven countries, representing a mix of 12 governmental and non-governmental institutions was established to guide the reflection process. The Taskforce received further input from two international organisations, namely the Africa Peer Review Mechanism and the New Partnership for African Development, acting as observers; and from a renowned South Africa-based law firm on issues related to anti-corruption compliance. The Taskforce was chaired by Jane Mugambi, Secretary of the State Corporations Advisory Committee in the Presidency and Cabinet Affairs Office of the Government of Kenya.

This final version of the Handbook represents inputs solicited following a public consultation process, during which members of the OECD SOE Network for Southern Africa were invited to comment. The Handbook was prepared by Sara Sultan Balbuena and Mary Crane-Charef, in the Corporate Affairs division of the OECD Directorate for Financial and Enterprise Affairs with input from AMDK Consult (based in Uganda) acting as consultants for the OECD. The preparation of the report received financial support from Norway.

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### Acronyms and abbreviations

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<th>Description</th>
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<tr>
<td>AfDB</td>
<td>African Development Bank</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<td>SADC</td>
<td>Southern Africa Development Community</td>
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<td>SOEs</td>
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Introduction

Some Southern African economies are among the fastest-growing in the world. Yet, perceived levels of corruption remain high, threatening to discourage much-needed foreign and domestic investment and to impede sustainable economic development. Given the role state-owned enterprises (SOEs) play in as vehicles for development across the region—both in terms of their economic significance and in terms of the responsibility governments have given them to set their country’s “business tone”—preventing and shielding SOEs from corruption is of utmost importance to meeting stated development goals.

Members of the SOE Network for Southern Africa have agreed to consider ways in which their governments can combat corruption and promote business integrity in the SOE sector. Evidence shows, that many Network member governments have worked to fulfil their obligations under international and regional anti-corruption instruments to which they are Party. This includes establishing in domestic legislation specific corruption offences and related provisions to facilitate law enforcement agencies’ ability to detect, investigate, prosecute, and punish corruption crimes. Authorities report that the anti-corruption frameworks in these countries should apply to enterprises that are controlled or wholly owned by the State, as well as employees of these enterprises.

Corruption, however, remains a challenge to the effective functioning of SOEs. The problem is less a matter of having the right laws in place—rather the problem lies both with governments’ having the political will, capacity, and resources to apply the law, as well as with SOEs’ willingness and ability to address their exposure to corruption by implementing appropriate internal controls, ethics, and compliance measures.

Although a number of international and regional commitments exist aimed at combating corruption and promoting ethical and responsible business conduct, there is still room for improvement and addressing such challenges necessarily starts with good governance practices at the level of the SOEs-themselves. A necessary framework for good corporate governance should provide effective oversight of, and assurances for addressing the risk of corruption and promoting business integrity, which is especially important for SOEs, which can serve as example-setters for other companies to emulate.

Overview of the Handbook

The guidance is meant to be a resource for those interested in strengthening anti-corruption and business integrity measures in the SOE sector. However, it should not be considered an exhaustive resource on these issues. The guidance builds on, but should be complemented by national, regional and international information resources on the legal, regulatory and policy framework for combating corruption and for the promotion of ethical business practices. (For examples of such resources, see the section below on anti-corruption policy frameworks in Southern Africa and beyond.)
Building on the 2014 *Guidelines on the Governance of State-Owned Enterprises for Southern Africa*, and an initial fact-finding study, this implementation Handbook is addressed to state ownership entities and state-owned enterprises for establishing and ensuring the effectiveness of internal controls, ethics and integrity programmes or measures for preventing and detecting corruption and for promoting business integrity in SOE business operations. The Handbook also recognizes the key role played by non-state actors, including business organisations, professional associations and the media, in assisting enterprises and drawing attention to these efforts.

This Handbook is intended to be a practical, user-friendly tool, tailored to the specific integrity challenges faced by commercially-run state-owned enterprises. It is intended for use by SOEs themselves, by the State exercising or coordinating the ownership function, and also other stakeholders with an interest in promoting transparency and ethical business conduct in the SOE sector, including business organisations and professional associations. It draws on background documentation, case studies, and examples of international, regional, national, and sectorial good practices and existing tools; and national and company examples in the Southern Africa region made available to the Taskforce.

The Handbook is intended to not only serve as a benchmark for regionally-agreed best practices; it can serve to create awareness among companies and governments in the region on these importance issues; and the role sound corporate governance can play in promoting corporate ethics and business integrity.

This document is organised as follows:

- **A background section** focusing on the “business case” for SOEs addressing these issues.
- **Chapter 1** addresses the role of the Board of Directors,
- **Chapter 2** addresses the role of Management,
- **Chapter 3** addresses the role of the government. It refers to the role of the “ownership entity” and other relevant parts of government, such as authorities responsible for anti-corruption investigation and enforcement.
- **Chapter 4** addresses the role of non-State Actors. This can include civil society organisations, business organisations, professional associations and independent media outlets.

Each chapter draws, to the extent possible, from existing international, regional and company/country practices. The Guidance is flexible, and is intended to be adapted by SOEs and Governments, according to their individual circumstances, to achieve good corporate ethics and business integrity.

**Defining corporate ethics and business integrity**

Corporate ethics and business integrity are concepts that are key elements to an effective corporate governance framework. Although there is no single definition, a number of key concepts fit into this framework and inform the use of these terms in this Guidance. These definitions are drawn from existing work of scholars, NGOs and international organizations. An overview is provided as follows:
• Business integrity, translates to ensuring the implementation and oversight of internal controls, ethics and compliance measures designed to prevent, detect or address serious corporate misconduct (OECD, 2015).

• Sullivan (2009), defines Business Ethics as, ‘an attempt to set out a standard by which all of the employees of a firm can know what is expected of them.’ It serves as a guide for expected standards of behaviour and for decisions.

• Integrity is a core value for any organization keen to espouse ethical business conduct and is according to Schoeman (2014), an essential for any anti-corruption, bribery or fraud policy. It is in fact an essential for good corporate governance.

• The OECD does not define corruption for legal use, however, a broad ranging definition for public policy use can be referred to as: ”abuse of public or private office for personal gain”. (OECD, 2008)

• Transparency International (TI) defines corruption as ‘the abuse of entrusted power for private gain diverting away from the intended use’. This definition, which encompasses unethical business conduct, is useful expansion of the previous definition.

  Responsible business conduct, also referred to as corporate social responsibility, is an important part of many company policies, corporate culture and in some cases corporate philanthropy activities. It is also increasingly required by shareholders as part of the company’s responsibility towards stakeholders and the communities/environments in which they operate. Such practices often cover social, health and environmental issues. Although interrelated, these particular aspects are not covered by this guidance, in so far as they are not covered by the anti-corruption legal framework to which SOEs are expected to comply with.

Scope and breadth of this Guidance

This guidance is intended for use by state-owned enterprises, their governing bodies and state-ownership entities (see Box 1). State-owned enterprises in this document are used to denote companies under central or sub-national state ownership using a distinct legal form (established according to Company or statutory laws). It may be wholly or partially owned, with the government having significant or minority level of controlling ownership.
Box 1. Defining Ownership Entity for the purpose of this Handbook

An ‘ownership entity’ in this document is defined as the part of government responsible for ownership or the exercise of ownership rights. The actual institution(s) involved will vary greatly by country and ownership model (i.e. centralized, decentralized, coordinated, dual, etc.). An ownership entity would typically involve a single state ownership agency, a coordinating agency or government ministry responsible for exercising or coordinating state ownership. The ownership entity would typically have the power, responsibility, or steering ability to:

1. Appoint boards of directors,
2. Set and monitor objectives SOEs (both commercial and non-commercial), and
3. To vote company shares on behalf of the government.

The ownership entity also plays an important role in terms of determining the government’s overall ownership policy, in rationalizing ownership; and in terms of setting company specific objectives. However depending on the ownership model, some aspects of exercising the ownership can be delegated to one or numerous state institutions, who are charged with communicating operational and financial performance objectives to individual SOEs (or classes of SOEs) and with monitoring their implementation.

In ownership models based on a coordinating agency, the agency is often involved in an advisory capacity to those bodies responsible for exercising the ownership rights. Their role can be characterized as follows:

- As specialised units they act largely in an advisory capacity to other shareholding ministries on technical and operational issues, and their most important mandate is to monitor SOE performance.
- Central unit often charged with producing quarterly and annual reports of the whole SOE portfolio. Thereby very transparently providing the public with the most invaluable information to judge whether an SOE is operating in a commercial and competitive environment.
- These entities may have more of a limited role in terms of exercising ownership rights (i.e. board appointments; voting company shares; or setting SOE objectives). However the coordinating units often maintain a notable influential position in terms of setting standards of practice to be adopted by those parts of government exercising the ownership rights.
Corporate ethics and business integrity: The SOE “business case”

As noted by the OECD 2015 *Stocktaking of anti-corruption and business integrity measures for Southern African SOEs*⁴, SOEs are uniquely exposed to the risk of corruption due to:

- Their proximity to government and *de facto* proximity to elected officials.
- Many SOEs also operate in industries with a higher corruption-risk incidence: These include the utilities, oil and gas, power generation and transmission, transportation, telecommunications, and banking and finance.⁵ Corruption risks may include the bribery of SOEs employees by other companies and their employees to obtain unfair business advantages. Or, SOEs and their employees may feel pressured to bribe or take advantage of their unique position in the market to win unfair advantages, especially where such practices are perceived to be commonplace among private competitors and in certain industries. SOEs may also be prone to corruption through privatisation or public procurement processes. In some jurisdictions, SOEs are held responsible for the corrupt acts of their employees.
- This is further enabled by the limited availability of information on SOEs (i.e. publicly available annual reports, including financial and non-financial disclosures) which frustrates due diligence and demands for accountability.

Corruption is not only problematic in terms of attracting investment – both foreign and domestic. The impacts might felt in other parts of the economy dependent on SOEs for goods or services, through downstream economic activities, or in the form of lost revenue intended to fund essential public services. The cost, therefore, is ultimately passed on to the customer, consumer, taxpayer and citizen. This has far reaching implications for the regional, and indeed continental, fight against poverty and the wider development goals.

Given their central role as providers of public services and revenue generators, clean and efficient SOEs are important to good governance and a well-functioning economy. Ethical conduct, underpinned by good governance, promotes sustainability, enhances reputation, attracts talent, opens doors for other business opportunities, which are crucial factors for any business.

Good governance applies at all levels from the board of directors, executive management, to the conduct of employees, shareholders and stakeholders. It is therefore and effective tool to improve, embed or change corporate culture. It frustrates offering, concealment of bribes through its transparency and accountability requirements. It provides clarity for decision making removing the ambiguity and loopholes that foster unethical conduct. For SOEs—given their role in Southern African economies—the potentially positive impact of doing business with integrity is even greater.
Anti-Corruption Policy Frameworks in Southern Africa and beyond

Addressing the issue of anti-corruption, ethics and responsible business conduct in the SOE sector is multidimensional. It includes governments having the right laws and rules in place and ensuring they are effectively enforced. This begins with having an overall legal framework to address anti-corruption, putting into place specific measures for SOEs to comply with, practices put into place by companies themselves.

International, regional and national commitments to combating corruption

Efforts among Southern African economies are underway to enact or amend laws on bribery and corruption to meet international standards and best practice and thus improve standards of corporate ethics and business integrity and accountability. Specialized training of law enforcement officials in the investigation and prosecution of economic crimes is also on the rise. Some of these frameworks, to which Network member governments are party to, are described as follows:

- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
- African Union Convention on Preventing and Combating Corruption (AUC), a legally binding anti-corruption convention that addresses both public and private corruption. It provides for prevention, criminalization, co-operation and mutual legal assistance as well as recovery of assets.
- Southern Africa Development Community (SADC) Protocol against Corruption and its Implementation Mechanism provides for enforcement mechanisms at national level against corruption has been ratified by 9 SADC countries.

Virtually all Network member countries have established dedicated anti-corruption authorities; many countries also can also hold legal persons liable for corruption offences (Kenya, Mauritius, Malawi, South Africa, Tanzania and Zambia). Companies can therefore face serious legal risks by engaging in bribery, including criminal fines, imprisonment of their CEOs and employees, and damages.

Companies may also be debarred from bidding in domestic public tenders, as well as from contracts from the AfDB, World Bank and other international financial institutions. Still weak enforcement of anti-corruption laws contributes to and undermines deterrence, which is why more attention has been focused at the company-level to ensure better compliance. Once such initiative involves the African Development Bank AfDB/OECD Initiative to Support Business Integrity and Anti-Bribery Measures which has completed an Anti-Bribery Policy and Compliance Guidance.

Specific measures adopted by governments at the level of SOEs

Although a number of international, regional and national commitments exist aimed at combatting corruption and promoting corporate ethics and business integrity, few directly target SOEs. Network member governments recognize the seriousness of the effects and are therefore increasingly examining the issue of corruption and ethics in state-owned enterprises, including highlighting its importance in the recently endorsed Guidelines on the Governance of SOEs for Southern Africa (Box 2).
### Box 2. Guidelines on Governance of SOEs in Southern Africa: Excerpt

The *Guidelines on the Governance of State-Owned Enterprises in Southern Africa* specifically address the risk corruption poses to state-owned enterprises, and calls on SOE boards to work with stakeholders to combat corruption. The annotations to Chapter IV of the Guidelines state, in particular:

The fight against corruption is of paramount importance. State-owned enterprises, if not properly checked, can act as veritable poles of corruption, acting both as bribe solicitors and themselves engaging in bribery. Commercial SOEs may be under pressure to bribe to stay in business, especially where such practices are common place among private competitors in certain industries. SOE officials can be bribed by private companies to obtain lucrative contracts and other abusive business contracts. SOEs may also be prone to corruption through privatisation processes or in their public procurement practices. Likewise, SOEs can be victims of abuse and fraud by their own employees. Regardless of whether it is passive or active, bribery is deeply harmful to the corporate performance of the SOE. The benefits of a transparent enterprise culture are voided if corruption is tolerated, because corrupt practices are by nature non-transparent. Moreover, proper incentive structures, linked to operating performance, are key to motivating employees and executives. In a corrupt environment the State may find itself rewarding dishonesty rather than merit. The application of international and regional conventions on anti-corruption should also apply to the commercial activities of SOEs, regardless as to whether the SOE is an active or passive party.


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For this reason, there is a growing tendency for national governments to develop SOE-specific anti-corruption and business integrity initiatives to further ensure good governance practices at the level of the SOEs-themselves. (In all of the Network jurisdictions, SOEs are subject to the overall legal and regulatory anti-corruption framework and, in some jurisdictions, employees of SOEs are considered public officials and therefore subject to additional laws and regulations specific to the public sector.) In some countries, policies are guided by codes or Guidelines applicable to SOEs that specifically address ethics, from board responsibility, to the conduct of management and employees, and stakeholders affiliated with the SOE. In others, they may be guided by national Corporate Governance Codes, which also apply to SOEs (see Box 3 for some highlights).

These country examples provide useful references for the guidance included in this Handbook for SOE boards of directors (Chapter 1), SOE management (Chapter 2), the Government (Chapter 3) and non-state actors (Chapter 4).
Box 3. **Highlights: SOE-led anti-corruption and business integrity initiatives in Southern Africa**

**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.
- Some SOE boards have voluntarily included issues of ethics and codes of practice in their board charters, including whistleblowing policies.
- SOEs are encouraged to apply the Code of Conduct for the Private Sector, developed by the Botswana Chamber of Commerce and Industry, in collaboration with Botswana’s anti-corruption authority.

**DR Congo**
- A 2010 Business Code of Conduct for the Private Sector in the DRC. The Code states specifically that it can be applied to state-owned enterprises. A number of Congolese SOEs have also volunteered to implement measures to combat corruption and promote business integrity, including the adoption of corporate governance codes, codes of ethics, and whistleblowing systems.

**Malawi**
- All SOEs are required to have: anti-corruption policies and risk management guidelines that address corruption issues, as well as internal audit functions. Some of these policies were developed with the assistance of Malawi’s Anti-Corruption Bureau.
- 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.
- A number of SOEs have established Public Ethics Committees that are responsible for monitoring the implementation of the Public Probity Law.
- One SOE invited Mozambique’s anti-corruption authority to lecture managers on the content and scope of Mozambique’s anti-corruption framework.

**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.
- Several SOEs in the Seychelles have also adopted codes of conduct.
Box 3. **Highlights: SOE-led anti-corruption and business integrity initiatives in Southern Africa** (cont.)

**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.

- The electricity utility Eskom, for example, views its reporting and disclosure obligations as “an opportunity to deal with information management in a holistic and integrated manner”. Doing so, helps to ensure investors that investing in Eskom “is a good investment and a trusted, ethical, and well-governed company, highly rated by all its stakeholders”.

- The ‘King Code of Governance Principles’ (King III) which applies to SOEs, requires all companies to have Ethics Committees on the board.

**Zimbabwe**

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

- Some SOEs have developed procedural manuals in order to regulate the conduct of business transactions.

1. THE ROLE OF BOARDS OF DIRECTORS

Chapter 1. The role of boards of directors

The SOE Board is an intermediary between the State as a shareholder, the company and its executive management. As such, in its broader goals to ensure sound corporate governance, the board also plays a key role in preventing corruption and promoting integrity within a company. The Guidelines on Corporate Governance of SOEs for Southern Africa define some aspects of the role of the board (Box 2).

This section of the Handbook focuses on the role of the Board in the development of an ethical culture, deciding to establish and ensuring the effectiveness of internal controls, ethics and integrity programmes or measures for preventing and detecting corruption and for promoting business integrity in SOE business operations. It is divided into two sections: 1.1) Setting the “tone from the top”; and, 1.2) Oversight of the SOE’s commitment to integrity.

1.1 Setting the “Tone from the Top”

Board structures and procedures vary both within and among countries. No matter their shape, size, or structure, however, the board is responsible for guiding corporate strategy, chiefly monitoring managerial performance, and achieving an adequate return for shareholders. In this role, the Board should provide effective leadership, oversight, and direction by setting ethical standards and values such as honesty, fairness, integrity and openness which are a key to long term success. It should uphold and embody these values in its own conduct and in overseeing the conduct of affairs of the enterprise. It should ensure there is a sound, robust business integrity and corporate ethics framework to identify, assess, evaluate and control integrity and ethics related risks. The risks and corresponding frameworks should be assessed and reviewed.

1.1.1 Support and commitment from the board to preventing corruption and promoting integrity

Strong, explicit and visible support and commitment from the board and senior management to preventing corruption and promoting integrity are integral to the success of any internal controls, ethics and integrity programme. (See Chapter 2 below for more on the establishment and operationalization of anti-corruption and integrity programmes and measures.) In practice, this could include identifying key values that define how the SOE does business; formally stating the board’s commitment to the implementation of an SOE’s code of ethics and/or internal controls, ethics and integrity programmes or measures; or holding consultations with employees and other stakeholders on how to establish, implement and monitor the success of such programmes or measures. (See Box 4 below for considerations of what could be included in an SOE’s code of ethics.) Whatever the method, boards and senior management should communicate clearly and regularly on their commitment to ensuring that the SOE conducts its business operations with integrity.
Box 4. Considerations for developing a code of ethics

A Code of Ethics is important in fostering an ethical business environment. The Code should define and explain acceptable standards of behaviour. This should include clear definitions of offenses. It should lay down expected standards of ethical behaviour and values to which all employees must adhere in the conduct of business with internal and external stakeholders. An SOE’s code of ethics may be part of, or complement, an SOE’s overall approach to combating corruption and promoting business integrity.

A good code is more than a statement on a company’s moral beliefs. It describes operational processes, regulates behaviour for all employees, communicates values to external stakeholders and can serve as a source of pride in associating with a Company. There is the risk, however, that Codes are not always all encompassing and clarity should be provided on what is right or wrong and in the event of any doubt further sources of information should be provided.

The Code should be integrated into operations, and where applicable, should include a Code for agents, intermediaries and third parties. The Code should receive strong, explicit and visible support and commitment from the board and senior management.

Regularly review ethics programs, procedures and Codes for relevance and amend, correct where required. A program should be able to detect ethical lapses and have means for correcting them.

From the Values the organisation can create a code of ethics which will explain how the values should be reflected in the SOEs operations. Again it is important to get employee involvement in deciding the content of a code of ethics early on in the process. Some organisations pilot sections of a new code with different groups of employees to ensure it is really dealing with the dilemmas they face on a day to day basis. It is important for each organisation to develop its own unique code and not borrow someone else’s as each organisation is different and will deal with similar but not the same dilemmas.

Elements of a Code include but are not limited to:

- Expected standards of conduct of the Board, Management and employees based on the organisation’s Values.
- Commitment to obey the law, including upholding human rights, environmental regulations, etc.
- Relations with stakeholders: Employees; Consumers; Business partners; shareholders; the community at large (See also Box 14 on Stakeholder approaches)
- Business Integrity – includes anti-corruption, gift policies etc.
- Conflict of interest policy
- Compliance, monitoring and reporting under the Code

To demonstrate commitment to the Code the Board, Management and all employees should be asked to sign annually a copy of the code confirming their ongoing commitment to it.

1.1.2 Leading by example: Board-level duties to operate with integrity

There are various ways in which SOE board members could complement their support and commitment to the SOE’s overall commitment to integrity by making a personal commitment to fulfilling their functions with integrity, thereby setting “tone from the top. This can include, for example, ensuring that the board’s fiduciary duties
include acting in the best interest of the company and its shareholders. In SOEs, this means also balancing SOE’s commercial and non-commercial objectives (such as delivery of public services or goods), as well balancing expectations of the State with those of other, non-State shareholders. As such the following considerations should be made with regard to board members:

- Fiduciary duties should be clearly described in law, regulations, and/or SOEs articles of association and should reference directors’ duty to act according to high ethical standards in the conduct of board affairs and decision making. Political interference and influence can undermine the ability of the board to carry out its fiduciary duties.

- Boards should have the necessary authority, competencies and objectivity to carry out their functions of strategic guidance and monitoring of management. Independence of directors requires that they are free from any other relationships that may materially interfere with exercising an independent judgment on issues of strategy, performance, resources and standards of conduct.

In fulfilling their fiduciary duty, directors should be informed and aware of the relevant compliance obligations facing the SOE, to be aware of any risks related to corruption, and to ensure that management is conducting business in line with relevant laws and regulations (including those relating to anti-corruption, ethics and/or responsible business conduct). This might mean also being aware of the reach of anti-corruption laws that may extend to the SOE business operations, especially those emanating from other jurisdictions. Consideration of anti-corruption compliance should be a part of all policy and operational decisions of the board.

Boards may also express their personal commitment to fulfilling their function with integrity by signing a board charter (see example below). The Charter could take into account ethical responsibilities to build a culture of good governance that includes preventing corruption and promoting business integrity. The Charter could hold the board individually and collectively to a commitment to ensure that business strategy and operations are integrated and aligned with ethics values. (See Box 5) These commitments could also be expressed via SOEs’ articles of association or, in some jurisdictions, SOEs’ statutory legislation. Wherever it appears, such a commitment by the board could also serve as the basis for regular reviews of the board’s performance against the SOE’s anti-corruption and business integrity commitments.
Box 5. Possible Elements of a Board Charter

- Introduction: Acknowledgment of the SOE Board’s role in leadership (including ethical leadership) and oversight over management.
- Role and responsibilities of the Board, the CEO, Chairperson and Company Secretary, including in setting and implementing the enterprise’s commitment to business integrity.
- Types of Directors including: Executive, Non-Executive, Independent. Alternate Directors, where allowed by law, should be provided.
- Requisite Qualifications for Directors including integrity, professional skills, experience.
- Duties of Directors particularly to: Exercise independent judgment, act in the best interest of the SOE, avoid conflict of interest and declare related party interests.
- Measures guiding board Appointment and removal.
- Board Composition, size, and structure, including independence requirements and criteria and specialized committees.
- Conduct of Board Affairs including requirement for a Board Work plan, Meetings schedule.
- Power to delegate authority to Management, and to Board committees.
- List of matters reserved for the Board including: The most significant decisions, Appointment, performance management of executive management, procurement thresholds, approval of major contracts and investments, oversight over accounting, planning and internal control systems, compliance with applicable Codes, policies, laws and regulations, approval of the annual reports and accounts.
- Succession Planning for the Board and Executive Management.
- Induction of new Directors, continuous training & Development.
- Board Assessment (recommended annually).
- Periodic review of Charter, amendment where necessary (recommended annually).

1.1.3 Preventing conflicts of interest as part of a commitment to integrity.

Potential conflicts of interest and nepotism should be avoided in business dealings. This is particularly true for SOEs, given the close nexus between government and business and SOEs’ resulting exposure to the risk of corruption. Furthermore, in any material transactions with related entities of the company, board members [or executive management] should be subject to further review and that these matters are disclosed, as appropriate and as according to national regulations and laws. Board members with potential conflicts of interest should disinterest themselves from such transactions. It is good practice to have a conflicts of interest policy, which could be a part of the Board Charter or the Code of Ethics. In some jurisdictions where employees of SOEs are considered public officials, this conflict of interest policy could be complemented by
conflict of interest rules and regulations binding upon public servants. An SOE conflict of interest policy for members of the board could include (see also Box 6):

- Avoid conflict of interests, declare interests in any transaction or contract
- Refrain from undue influence or pressure on management to; award business, contracts for their personal gain to the detriment of the SOE, recruit, promote relatives, friends;
- Misuse of corporate assets such as credit cards, vouchers for any official spending contrary to company policy for personal gain
- Fraud, forgery for purposes of access to financial assets or other forms of false accounting for funds received
- Soliciting for gifts, benefits, allowances from the SOE, its stakeholders such as potential clients, suppliers, creditors in turn for a promise of a favorable decision.

1.1.4 Ensuring the board is equipped to fulfill its and the SOE’s commitment to integrity: Board composition, training, and evaluations

The Board should ensure that its members have the ability to exercise independence of judgment. Having a board made up of members who are there because of merit, expertise and who exercise independent judgment, can ensure that boards are sufficiently empowered to "set the tone from the top", especially in view of ethical behavior and culture. The Board, with shareholders, should also consider establishing a specialized committee that would be responsible for overseeing and regularly reporting to the board on the establishment, implementation and monitoring of the SOE’s internal controls, ethics and integrity programmes or measures. In this regard, the SOE, the board, and/or the SOE’s shareholders may consider specialized training for directors charged with oversight of the SOE’s integrity function. (For more on board composition and specialized board committees, see also section n1.2 below, as well as the Guidelines on Governance of State-Owned Enterprises for Southern Africa.)

To assess the effectiveness with which the board supervises and monitors these measures, the board should undergo regular performance evaluations. These evaluations should explicitly include a review of directors’ ability to fulfill their duties vis-a-vis the board’s and the SOE’s integrity commitments. The outcome of such evaluations could feed into board re-election. Although practices vary across jurisdictions, some companies find that bringing in an independent external evaluator can ensure a more objective assessment of board impact. Such evaluations would obviously look at more than just the ethical and integrity track-record of board decisions, the evaluations could also serve to evaluate the ability of the group to act as a collegial body, and of individual board members. See Box 7, below, for examples of how a board performance evaluation could include considerations of ethics and integrity.
Box 6. Possible Elements of a Policy against Conflicts of Interest

SOEs may consider having a policy and process in place for dealing with Conflicts of Interest, including at the level of the board. The elements below provide an overview of what could be included in such a policy.

I. In an Organisation

- There should be a policy on conflict of Interest. This may be included in the organisation's code of ethics or conduct and may be complemented by codes of ethics or conduct binding on public servants in jurisdictions where SOE employees are considered public servants under the law.
- The organisation’s constitution e.g. Articles of Association, may include guidance for how to deal with Conflict of interest at Board level. This may also be included in the Board charter, and explained as part of the board induction process.
- A register of all conflict of interests’ disclosures may be kept and regularly updated by the organization for internal use and reference, unless otherwise required by law. (In some jurisdictions, SOE employees that are considered public officials are required to publicly disclose their assets and financial interests.)

II. On Appointment: directors should be asked to declare on joining the Board existing interests: including in contracts; directorships; and shares.

III. During term of Office

- On-going training so that members of the Board are able to identify and deal with Conflict of Interest
- Directors should be asked to make an annual declaration of their interests. This is usually done as part of the year end annual audit and is usually included in the Board’s report to shareholders.
- Confirmation of position in Registers. Directors should also be asked to confirm the details in the statutory registers including the disclosure of interests, as part of the year-end audit.

IV. At a Board meeting

- When discussing a new issue, Directors should be reminded of their disclosure obligations and be given an opportunity to disclose any conflict. This can be done by the Chair or the company secretary at the beginning of the meeting.
- If a conflict exists, the Board has to decide whether the member of the Board has to be excluded or not from the meeting. Some constitutions require for any type interest conflict, that the member of the Board is excluded from the discussions.
- If a member of the Board is excluded, then the Secretary needs to ensure that there is a quorum still present at the meeting. If not, the Board cannot continue to make decisions and the meeting should be adjourned until a quorum can be obtained.
- A record should be made in the minutes of the declared conflict, and it should be recorded when the member of the Board leaves and returns to the meeting.
- The Secretary and Chair should ensure that the conflicted member of the Board does not receive papers on the matter and that minutes of meetings are redacted (i.e. the points should be excluded from the set of minutes received by the conflicted member of the Board).
- The Chair should ensure that the conflicted member of the Board is not present for any future discussions of the issue, if a decision was taken to exclude the director from the initial discussion.
1. THE ROLE OF BOARDS OF DIRECTORS

Box 7. Ethics and integrity as a part of the board evaluation process

The evaluation could take into consideration the following:

- Assess annually the performance of the Board and its committees, Chair, CEO and other relevant members of management charged with executing the integrity function on duties, responsibilities including contribution to ethical leadership.

- Evaluate Board performance prior to proposal for re-election to shareholders with consideration of individual integrity record with emphasis on;
  - Duty to promote the best interests of the company
  - Duty to exercise independent judgment,
  - Duty to avoid conflicts of interest, whether potential or actual

- Steps taken to declare and disclose conflicts of interest, related party interests

1.2 Oversight of the SOE’s commitment to integrity

The Board is ultimately responsible for ensuring that Executive Management implements the ethical policies, codes and values and ensuring compliance with anti-corruption laws and adherence to corporate governance best practice. This section describes the responsibilities of the board regarding its responsibility to supervise the establishment, implementation and monitoring of an SOE’s internal controls, ethics and integrity programmes, and measures. Section 2, below, further describes the role of senior management in executing these integrity functions. Box 8, provides a useful breakdown regarding the responsibilities of the board versus those of management in ensuring that an SOE does business with integrity.

The board is charged with oversight of business integrity including the formulation and implementation of business integrity policies, programs or measures. In order to fulfil this obligation, the board should consider assigning responsibility for integrity oversight to a specialized committee, for example an audit, ethics or risk committee, which regularly meets with management executing the integrity function (including, for example, human resources, legal, internal audit, etc.) and which reports to the board and shareholders. For example, Section 43 of South Africa’s Companies Act requires state-owned companies (as well as listed companies) to establish a social and ethics committee that is responsible for monitoring the enterprise’s progress and position relative to specific anti-corruption recommendations, including those of the OECD.
SOE boards and management must work as a team as part of a whole-of-enterprise approach to combating corruption and promoting integrity. However, for this effort to be effective in practice, it is useful to reflect upon the specific responsibilities of the board versus those of senior management in this overall effort. In non-exhaustive list of examples of this breakdown in responsibilities are included below.

<table>
<thead>
<tr>
<th>The board</th>
<th>Senior management</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Provide ethical leadership and set the tone from the top</td>
<td>• Manage day to day operations of the SOE</td>
</tr>
<tr>
<td>• Approve business integrity codes, policies, review effectiveness periodically</td>
<td>• Develop and implement, with Board approval the Business Integrity code, policy and programmes</td>
</tr>
<tr>
<td>• Designate, where necessary, oversight of business integrity to a Board committee</td>
<td>• Establish structures, systems, mechanisms to implement and monitor them</td>
</tr>
<tr>
<td>• Consider reports on implementation of the integrity policies, codes</td>
<td>• Training and raise awareness among employees, Board, Third parties</td>
</tr>
<tr>
<td>• Approve, and review effectiveness of an integrity risk management framework, robustness of the internal control system to detect integrity risk</td>
<td>• Set up effective Risk Systems, Internal Controls to prevent, minimize integrity risk</td>
</tr>
<tr>
<td>• Approve budgets for implementation, training</td>
<td>• Report to the Board on implementation of the SOE’s integrity programme or measures.</td>
</tr>
</tbody>
</table>

Where possible, specialized committees charged with oversight of the integrity function should include experts—including a sufficient number of independent directors—equipped with the skills necessary for fulfilling this specific oversight function. These committee should also be aware of the stakeholders affected by the SOEs business operations and should be taken into account when assessing various risks (Refer to Box 9, see also Chapter 2.)
Box 9. **Examples of roles played by ethics and risk committees**

**Ethics Committees.** The terms of reference of the Ethics Committee might include:

- To review the Ethics policies
- To consider and advise on Ethical dilemmas and cases reported
- To monitor and advise on ethics trends especially as far as they affect the SOE and possibly inform review of amendment of the policies in place
- To consider reports on implementation of ethics and integrity programmes, including training.
- To regularly report to the Board dependent on the frequency of meetings, ideally on a quarterly basis
- The Ethics Committee should meet regularly, on a quarterly basis, to enable it to feed into quarterly Board discussions and reporting requirements.
- Determine material integrity risks and extent of exposure with particular attention to:
  - Higher risk areas for SOEs such as procurement, recruitment, cash payments, and activities involving government approvals (for example license approvals, regulatory compliance that includes certifications, renewals, approvals of lucrative contracts) or involvement of third parties.
  - Levels of exposure arising from situation elements and triggers for unethical behaviour
  - The operation or business environment and identification of key players particularly the role of Government bodies and individuals, extent and necessity of contact.

**Risk Committees:** The terms of reference of the Risk Committee might include:

- An effective risk management process is in place to manage exposure to reputational, ethical and integrity risks and to mitigate risk.
- Internal control systems and procedures for example approval processes for payments, nomination procedures, separation of duties to allow oversight are put in place.
- Internal Audit should review and report on, the effectiveness of existent controls taking into account the identified high risk areas, past incidents and advise on areas requiring improvement based on the identified gaps.
- A system is in place for regular analysis of the effectiveness of mitigation plans. The Ethics committee, if in place or if none, the Board committee charged with risk oversight should review and report to the Board.
- A formal assessment process, sometimes referred to as an Integrity Due Diligence, should be conducted annually. The findings should be reported to the Ethics Committee and the Board for consideration.
- Assessments look beyond the quality of the internal control system to the quality of the individuals responsible for implementation.
Finally, in order for the board to effectively fulfill its oversight function, there should be regular means for the members of senior management charged with executing the integrity function to communicate effectively and regularly with the board.

The Board should ensure it is well informed on the internal and external ethical issues and the integrity risks facing the company and ensure there is a sound, robust risk management framework to identify, assess, evaluate and control these risks, including corruption risks. This includes: clear policies on risky transaction that can include but are not limited to: political contributions; charitable donations, gifts and hospitality, and sponsorships; and facilitation payments (where they are allowed). The company Secretary plays an important intermediary role in this regard, the roles and responsibilities of which are further outlined in the Box 11.

Box 10. Suggested elements of a public procurement policy or measures

The Board, in assessing the SOE’s overall approach to combating corruption and to doing business with integrity, should ensure that this approach includes policies or measures on public procurement. These policies or measures could address, at the minimum, the following:

- Clear structures, defined Board and Management responsibilities for Procurement approval
- A requirement for multi-sourcing for all procurements except in unusual circumstances where single sourcing would be allowed.
- Establishment of a Procurement Committee to oversee all procurements over a certain threshold at least three levels considering transaction size, nature of procurement, centrality to strategy, likelihood, impact of occurrence;
  - Procurements requiring decisions from the Board.
  - Procurements undertaken by Management but requiring attention to the Board for information
  - Procurements for Management decision
- Ensure, where possible, that originators of procurement requests are not involved in the procurement process.
- Development of, and adherence to an annual procurement plan in its decision making (this can also help minimise single source procurements).
- Clear provisions on emergency procurements, which should generally be discouraged, and only be allowable upon approval of either the Chair or CEO depending on threshold. Justification should be provided, approval documented and presented to the Board for ratification at the next meeting.
- Management procurements requests contain all relevant information and provide assurance that all relevant policies have been followed. Management should ensure;
  - Procurement approvals that require Board approval are included on the agenda
  - Management Reports on procurement according to the relevant threshold holds
  - Anti-bribery due diligence, incorporating background checks, to confirm the integrity track record of third parties.
For SOEs (and private sector companies also), public procurement represents another area where the risk of corruption is higher, given the government-business interface on these often large and lucrative contracts. Box 10, below, provides suggestions for measures SOEs could establish to prevent abuse in relation to public procurement, and which could be part of or complement the SOE’s overall approach to combating corruption and promoting integrity (also refer to Boxes 24 and 25 pertaining to due diligence practices when contracting with a third party supplier).

### Box 11. Role of the Company Secretary

In many companies, the Company Secretary (CS) is often described as the conscience of the company, working closely with the Chair of the Board and CEO. Although usually housed directly within the corporate structure, the CS is considered to play an intermediary role between the Board and management. Thus the integrity of the person is essential, and, in companies with a CS function, the CS can play a key role in making the board aware of issues in regulatory compliance as a minimum.

The role of the CS can be summarized as follows:

- Develop, with approval of the Board, and effectively manage:
  - A Schedule for meetings for the Board, including Committees and sub committees, to avoid ad hoc meetings which for SOEs sometimes perpetuate abuse of power, facilitate questionable decision making and approval.
  - Adherence to, a Board Charter including among other aspects; set up of committees, conduct of meetings, appointment of Directors
  - Advise on the structure of the Board including establishment of committees with oversight of ethics compliance and risk management and develop the relevant Terms of Reference for the same.
  - Set the agenda for meetings in consultation with the Board Chair and committee Chairpersons where relevant and ensure it is well managed.
  - Establish, and ensure discussion in accordance to, a list of matters reserved for decision making by the Board,
  - A Register of Directors’ interests is regularly updated and directors updated
  - Flow, and quality, of information to the Board to enable decision making
  - Arrange and facilitate performance evaluation of the Board, its committees, Directors

- Ensure compliance, with all the statutory and regulatory requirements including business integrity codes and policies, corporate governance best practice and anti-corruption legislation; and that whistleblowing procedures are implemented and monitored effectively.

- Ensure that new Directors are inducted and regularly trained in ethics related matters.
Chapter 2. The role of management

It is the role of executive management to implement and monitor policy and operational decisions of the board, including in relation to corporate ethics and business integrity. This section describes some of the ways SOE management—in cooperation with and in response to demands from the board—may consider establishing, implementing and ensuring the ongoing effectiveness of internal controls, ethics and integrity programmes or measures. To this end, this section focuses on the following:

2.1 Establishing integrity measures and policies.
2.2 Assigning responsibility for implementing the integrity function.
2.3 Operationalising the integrity function.
2.4 Monitoring and enforcing the integrity function; and
2.5 Reporting on and reviewing the effectiveness of the integrity programme or measures.

2.1 Establishing integrity measures and policies

Today, there is a plethora of advice publicly available to companies seeking to establish and implement integrity programmes or measures to prevent corruption and to promote business integrity. The elements in this section reflect, broadly, the basic elements of what international, regional, and national business principles agree should be the basis elements of an integrity programme for preventing corruption, as well as considerations for SOEs, which may face unique integrity risks in their business operations. (See Box 12 for a list of international and national anti-corruption guidelines for business. Box 13 includes a list of elements that could be included in an integrity programme.)
### Box 12. Examples of anti-corruption guidelines for business, including SOEs

#### Examples of international references

- **International Chamber of Commerce’s Rules on Combating Corruption**

- **OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance**

- **OECD/UNODC/World Bank Anti-Corruption Ethics and Compliance Handbook for Business**

- **Transparency International’s Business Principles for Countering Bribery**
  - [http://www.transparency.org/whatwedo/tools/business_principles_for_countering_bribery](http://www.transparency.org/whatwedo/tools/business_principles_for_countering_bribery)

- **World Bank Integrity Compliance Guidelines**

- **World Economic Forum’s Partnering against Corruption Initiative Principles for Countering Bribery**

#### Examples of national references

- **Botswana**
  - A Code of Conduct for the Private Sector (Botswana Confederation of Commerce Industry & the Botswana Directorate on Corruption & Economic Crime)

- **Democratic Republic of Congo**
  - Business Code of Conduct for the Private Sector in the DRC (Fédération des Entreprises du Congo, the Ethics Institute of South Africa, the African Institute of Corporate Citizenship (AICC), Business Action against Corruption (BAAC), and the United States Institute of Peace (USIP))
  - [http://www.baacafrica.org/w/ops_drc.php](http://www.baacafrica.org/w/ops_drc.php)

- **Malawi**
  - Malawi Business Code of Conduct for Combating Corruption (Malawi Business Action against Taskforce)
  - [www.track.unodc.org/LegalLibrary/pages/LegalResources.aspx?country=Malawi](http://www.track.unodc.org/LegalLibrary/pages/LegalResources.aspx?country=Malawi)
### Box 13. Suggested Elements of an integrity programme

- Risk assessment
- Standards of conduct/policies and procedures
- Compliance oversight, commitment and resources
- Education and training
- Monitoring and auditing
- Reporting and investigating
- Enforcement, discipline and incentives
- Response, prevention and improvement

Source: A Guide for Mid-Sized Companies in Emerging Markets, Center for International Private Enterprise

Beyond ensuring the support and commitment of the board and senior management, which is first and foremost (and described in Chap 1 above), SOEs should ensure that they develop a clearly articulated and visible corporate policy against corruption. In many organisations, these policies benefit from consultation with employees and other stakeholders. (Box 14 is on involving stakeholders in developing an integrity policy.)

### Box 14. Engaging stakeholders in elaborating an SOE’s approach to integrity

SOEs engaged in elaborating an approach to combating corruption and promoting integrity should do so with input from stakeholders. Stakeholder engagement is important to building sustainable and financially sound enterprises.

The definition of stakeholders will depend on each company, the legal status of various stakeholders, and regulations and agreements granting stakeholders specific rights. There may also be variations in how these are defined according to the sector and types of transactions the SOE is involved in.

The company’s governing organs (the board with agreement from the annual general meeting) would take care to elaborate a given company’s understanding of stakeholders. A very broad list of stakeholders (although non-exhaustive) can encompass: customers; suppliers; contractors; employee representatives, trade union representation or works councils; consumer organisations; local communities in which SOEs operate; environmental or social organisations; and the public at-large.

### 2.2 Assigning responsibility for implementing the integrity function

The board and senior management, together, should clearly assign responsibility for implementing and enforcing the SOE’s anti-corruption, ethics and integrity programme or measures. The person or team assigned this responsibility should have an adequate level of autonomy from management, resources, and authority. Some SOEs may choose to establish a stand-alone integrity function, such as a chief compliance, risk, or sustainability officer or unit. Others may assign the function across several operations,
including legal, internal audit, and/or human resources. (See Box 15, below, for an example of a “business integrity unit”.)

However responsibility for the integrity function is assigned, the board and senior management should also take care to establish clear reporting channels and procedures for reporting integrity matters directly to independent monitoring bodies, such as specialized board committees, such as an audit, risk or ethics committee (see Chapter 1).

<table>
<thead>
<tr>
<th>Box 15. An example of a &quot;business integrity unit&quot;</th>
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<tbody>
<tr>
<td><strong>Key Roles and responsibilities could include the following:</strong></td>
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<tr>
<td>- Oversight of ethics and integrity programmes or measures</td>
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<tr>
<td>- Carry out integrity-related checks, investigations</td>
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<tr>
<td>- Advise various units on ethics-related risks</td>
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<tr>
<td>- Develop, implement/co-ordinate the integrity training programme</td>
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<tr>
<td>- Report on integrity performance to the board, management</td>
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<tr>
<td>- Carry out regular organization-wide assessment of ethics and integrity risks, and conduct at least annually an integrity risk assessment</td>
</tr>
<tr>
<td>- Consider and advise on ethical dilemmas and cases reported</td>
</tr>
<tr>
<td>- Monitor, advise on SOE-specific trends and propose areas of review of policies in place</td>
</tr>
<tr>
<td>- Work closely with internal audit and other key business units like finance, public procurement, legal, or human resources, which could provide key information on areas of vulnerability in SOE operations, and potential red flags</td>
</tr>
</tbody>
</table>
| - Act as custodian of evidence of compliance. (See also Obligation to maintain a risk matrix – See Box 20.)

**Responsibilities should be clearly assigned to;**

- A designated senior officer(s) with sufficient authority, autonomy to act
- An officer or Unit within Legal, Compliance, Head of Audit. In some cases the function may fall under the Company Secretary department, where one exists.

**Key considerations on structure include:**

- Cost
- Size
- Efficiencies
- SOE specific ethics risks to determine the function with the expertise to oversee the unit

The Unit or Officer should have a direct reporting line to the Board or its designated board committee, which should ensure adequate resourcing, both, financial and skills, to enable effective performance, (financial and skills) and autonomy from management.

The unit should ideally have only integrity-related deliverables to enable focus, dedication to the role.
2.3 Operationalising the integrity function

An integrity policy is only as effective as the organisation’s commitment to applying that policy in its daily operations. There is no one-size-fits all approach to establishing and operationalizing an integrity function. In practice, however, guidance available on this topic and company experiences generally indicate that the following steps, below, may be considered by SOE management.

2.3.1 Compliance with the integrity policy or measures

Compliance with the integrity policy should be a requirement for all individuals at all levels of the company. This requirement should include compliance with all related internal controls, ethics and integrity programmes or measures adopted by the SOE. It should also extend to third parties (such as agents and other intermediaries, such as consultants, contractors, suppliers, business partners, etc.), since a company may be held legally responsible for the actions undertaking by these parties on behalf of the company.

2.3.2 Codes of conduct and/or ethics

The code of ethics or conduct can be an important part of the SOE’s overall integrity and risk-management efforts. The code of ethics helps set the expectations and commitment of the SOE in terms of ethical behaviour, at all levels of the company.  In some SOEs, the codes of ethics or conduct may be more aspirational or values-driven than an anti-corruption, ethics and integrity programme or measures. In other companies, these are one and the same. Regardless, stating the SOE’s values expectations, and communicating on this commitment, is important to setting an ethical culture within the enterprise. (See Box 16 below for examples of how SOE managers can help develop a code of ethics.)

Box 16. Management role in developing a code of ethics

Develop a clear and visible Code of Ethics together with the Board. Management should consult employees throughout the reporting chain, and relevant departments.

Setting the tone from the top. Management, both executive and middle level, should demonstrate commitment to the SOE code of ethics and lead by example. Making use of the complementary conflict of interest and declaration of interests policies, when necessary, would show a demonstrated commitment and compliance with the code.

Publicly launch the Code and ensure an understanding of its importance. For example, at a staff meeting, attended by the CEO, all Executive Management and possibly the Chair of the Board. The code should also be made available to third parties, including suppliers and clients who transact with or on behalf of SOE.

Recruit employees with an ethical track record. Recruitment process should be transparent, competitive, and merit-based. The integrity track record of candidates might be highlighted. Background, reference checks should be undertaken, questionable ethical record should lead to automatic disqualification.

Communicate ethical values.

- Display values prominently across the premises on noticeboard, website, upload along with the Code onto intranet, website of the SOEs.
2. THE ROLE OF MANAGEMENT

Box 16. Management role in developing a code of ethics (cont.)

- Provide the Code in leaflet form to all employees including new ones and at induction.
- Compile Frequently Asked Questions (FAQs) to educate employees, Third parties including relevant examples of ethical dilemmas and guidelines on how to handle them. These could be appended to the Code, uploaded onto the SOE intranet, website where one exists.
- Organize interactive forums such as periodic meetings, intranet chats, toll free help lines and publicize widely and popularize through incentivizes such as prizes for best response, number of engagements. Responses should be timely to encourage use.

Reinforce the Code

The SOE ethical culture is dependent on the personal integrity of its employees which requires that Management should cascade and instill ethical values among employees. The code could be reinforced with the following areas of action:

- Appoint Ethics champions in various departments, especially for larger SOEs.
- Develop, and conduct an Ethics Training programme, at least annually, for employees with the assistance of the Business Integrity Unit which should include;
  - Communication of contents, compliance requirements of Ethics related Policies, Codes, values, expected standards and responsibilities of the employees
  - Whistleblowing, reporting procedures for disclosure, tips on non-compliance, breach
  - Details of systems and mechanisms in place for compliance such as declaration requirements on the SOEs ethics policies and procedures
  - A brief on performance on ethics including rewards and disciplinary actions undertaken throughout the year to serve as an encouragement and deterrent respectively.
  - Relevant examples of how to deal with ethical dilemmas that might come up in day to day operations; and examples that are tailored to various sectors of activity, or departmental areas (i.e. audit, procurement, etc.).

2.3.3 Employee training

SOEs should require all employees at all levels to receive induction and regular training on the anti-corruption, ethics and integrity programme or measures. This can be done, in practice, through a signing by all employees of the Code of ethics and relevant policies, for example, and by ensuring there is a system of regular communication to remind employees about anti-corruption policies and ethical conduct. Some companies even extend this training requirement to third parties. The integrity function should also consider developing specific or tailored integrity training for at-risk business departments, such as public procurement, sales, etc. A well-structured training could include examples of ethical lapses, practical application to day-to-day operations, solutions and steps on how to confront ethical dilemmas. Finally, many companies and SOEs may find it useful
to communicate regularly with employees as part of their training efforts, for example by publishing “Frequently Asked Questions” brochures for employees and third parties on the enterprise’s integrity programmes or measures. (Box 17)

**Box 17. Sample elements of an integrity training programme**

The design of an integrity training programme will vary depending on each SOE’s integrity risks and the profile of the trainees. That said, the following elements may be useful additions to the training programme:

- Communication of contents and requirements of ethics-related policies, codes, values, expected standards and responsibilities of employees.
- Whistleblowing reporting procedures and protections.
- Details of systems and mechanisms in place for compliance, such as declaration requirements on the SOE’s ethics policies and procedures.
- A brief on ethics-related performance, including rewards and disciplinary actions undertaken throughout the year to serve as an encouragement and deterrent respectively.
- Relevant examples of ethical lapses from day-to-day operations.
- Ethical dilemmas experienced, application of the Code.
- Trends in the business environment, including changes in the anti-corruption legal framework, governance best practice and effect on ethics compliance. Management should keep abreast by subscribing to ethics related newsletters, forums, keeping track of media reports.

Participants could specifically include representatives from the following units: Business Integrity Unit, Procurement, Contracts, Finance, Internal Audit, Compliance, Legal, Human Resource, Company Secretariat, Ethics queries department/help line officer.

**2.3.4 Internal controls and financial accounting**

SOEs should also ensure that the SOE’s approach to integrity is in line with, and is established as an integral part of, procedures for internal controls and financial accounting. The SOE’s financial and accounting procedures should be reasonably designed to ensure that the maintenance of fair and accurate books, records and accounts cannot be used for corrupt purposes or to hide corrupt acts. These procedures should include mechanisms for monitoring and controlling of the financial system, in accordance with internationally recognized accounting standards. SOEs, especially large ones, should be subject to regular independent external audit based on international standards. (See Box 18 for more on internal audit.)
Box 18. Internal Audit

Internal Audit provides independent assurance to the Board, Management of the appropriateness, and provides assurance that control systems are in place.

A risk based approach to auditing should be adopted. Areas for improvement should be identified, recommendations made as to corrective measures.

Internal Audit should be monitored by and report to the Board or its Audit Committee with a dotted reporting line to the Chief Executive Officer on administrative matters. It should be sourced with qualified professionals, where necessary, in consultation with the relevant professional bodies, if existent, in the jurisdiction.

An annual independent external audit should also be required, based on international reporting standards. The existence of specific state control procedures should not substitute for an independent external audit.

The following elements may be considered as part of an effective internal controls system:

- Establishing financial and accounting procedures to facilitate maintenance of fair and accurate book keeping, keep accounting records. This could include mechanization of systems to reduce manipulation
- Identify all financial transactions, ensure they are fairly recorded in appropriate books, and accounting records which should be available for inspection, audit
- Preparation of Accounts and Financial Statements to required international standards, national laws and regulations.
- Ensure independent audit, internal and external takes place and take corrective measures for recommendations resulting from this. As part of the external audit, request for a Management Letter to facilitate this.
- Put in place, implement effective systems for cash management including; clear approval procedures for payments are in place.
- Segregate Duties for requisition, procurement, approval, reconciliation, cash management to allow for sufficient checks
- Undertake regular checks, reconciliation

2.3.5 Human resources practices

Similarly, an SOE’s human resources practices should reflect the enterprise’s overall commitment to preventing corruption and promoting integrity. SOEs should therefore aim to integrate their integrity commitments into the regular procedures for recruiting, promoting, evaluating, and rewarding employees. As part of this process, SOEs should make it clear that no employee should suffer any negative consequences (such as a demotion or other disciplinary action) for refusing to participate in, or reporting in good faith, suspected violations of the enterprise’s integrity policy, programme or measures. (See also below on whistleblowing.)

2.3.6 Whistleblowing channels and protections

Clear reporting channels and protections should be made available to those who raise in good faith suspected violations of the integrity programme or measures, laws, or
regulations. Management’s conduct should visibly demonstrate and reaffirm support towards employees who have confronted bribe solicitation, refused to engage in business on such grounds, and reported the incident, in good faith, to management. This commitment should flow naturally from an anti-corruption policy, the Code of Ethics or the equivalent.

Box 19. Suggested elements of a Whistleblowing Policy

As part of an effective whistle blowing system, management should establish systems and procedures to facilitate confidential (and if possible anonymous) reporting, clearly communicated policies and procedures both internally and externally and create a safe environment for it, act upon and provide feedback on implementation. Assurances of confidentiality, safety, anonymity are crucial.

Legal protections for whistle-blowers should be provided. One of the challenges in introducing such mechanisms is dealing with grievance/revenge reporting. A policy for misuse of the Whistleblowing system should also be introduced in these cases.

- Establishment of an internal reporting channel. This can be done through oral or written communication, a telephone hotline or intranet system.
- Designation of a person or body of undisputable reputation to manage and administer the mechanism. In larger companies, this can be done by a business integrity unit committee or other internal control committee, such as audit.
- Encouragement of employees, shareholders, suppliers, contractors, the public or any other interested party to report bribery.
- Promotion of the whistleblowing hotline on the company’s website, intranet, office circulars and other means of communication with employees.
- Regular training provided on the whistleblowing mechanism.
- Protection against all forms of retaliation and discrimination, including through the confidential treatment of the information received, and, where appropriate, allowing for the anonymity of the whistleblower to be retained.
- Prompt reaction to, and investigation of, the information received.
- Regular communication with the whistleblower on the steps being taken in response to the report made.
- The maintenance of adequate and auditable documentation of all reports received.

2.4 Monitoring and enforcing the integrity function

2.4.1 Risk assessments and due diligence

In reality, undertaking a risk assessment to better understand the SOE’s corruption risks is a necessary precondition to the establishment of any integrity programme or measures. Once established, however, the integrity programme or measures should be regularly held up against an in-depth risk assessment to ensure that it has the capacity to continue to prevent and mitigate corruption risks. The results of such risk assessments
should be regularly reported to the board. It should also inform any changes to the integrity framework within the enterprise.

While corruption risks vary according to each SOE’s size, legal status, jurisdiction or sector, there are certain “key” risk areas that should form the basis of any risk assessment. Box 20, below, includes examples of steps that could be included in undertaking a risk assessment. Box 21 includes risk areas highlighted in many of the international anti-corruption guidance for business. Boxes 22 and 23 provide further examples of specific policies on gifts and hospitality and on conflicts of interest, which may be two risk areas particularly pertinent to the operations of SOEs.

**Box 20. Suggested elements of a risk assessment**

- Establish the context in which the SOE operates e.g. identify the major operations of the SOE
- Identify the key integrity risks in each of those areas, determine the likelihood, possible impact of the risks identified
- Generate an integrity risk matrix based on likelihood and impact
- the significant risks, determine probability
- Develop responses, measures to control and manage occurrence
- Agree and implement a risk management plan
- Regularly, at least annually, review and evaluate that management plan in line with the results of review of the ethics compliance programme, ethics policies
- The plan should be specific and address key risk indicators in the areas as mentioned below to serve as red lights on likelihood of occurrence. The presence of any of the following risk areas requires special attention

**Box 21. Common areas of corruption risk for commercial enterprises**

The following corruption risk areas have been highlighted in international anti-corruption guidance for business (see Box 12 for a list of guidance):

- Charitable contributions.
- Conflicts of interest.
- Facilitation payments (where such payments are legal).
- Political contributions.
- Charitable contributions and sponsorships.
- Facilitation payments.
- Gifts, hospitality, entertainment and expenses.
- Solicitation and extortion.
Box 22. Suggested elements of a policy on gifts and hospitality payments

- Define what amounts to a gift including non-tangible gifts such as hospitality, entertainment. Aspects such as such as hospitality, appreciations, donations, travels, sponsorships should be taken into account.
- Set out what gifts are acceptable, if any, in what circumstances including aspects such as size, value of the gift. Cash gifts should be discouraged.
- Set a monetary limit and thresholds that include Management approval, through sign off, for defined limits.
- Develop indicators to guide acceptability for example motivation for the gift, size, value, timing, circumstances of the gift with regard to the effect on independent judgment. Nature of the recipient. In the event it is a public official, if accepted, strict limits should be set.
- Disclosure requirements, processes should be clear e.g. who to disclose to, which may be Business Integrity Unit/Function, Human Resource Department.
- Clear prohibition of giving or receiving gifts as a bribe or a mechanism for improper advantages of any form including, business financial or other personal gain.
- Require accurate recording in accounting books and records of all gifts, hospitality expenses, consider setting up a register.
- The policy should extend to third party dealings or any persons performing services on behalf of SOEs.

Box 23. Suggested elements of a conflict of interest policy for management and employees

Develop a conflict of interest policy to manage conflicts that:

- Define what amounts to conflict of interest with examples to make it relevant and easily understood. It may arise where a person stands to benefit personally in conflict with the interest of the SOE from; exploitation of property, information or opportunity arising from their position, authority or connection to the SOE.
- To declare any arising conflicts of interest in a proposed transaction, contract, business venture. The procedures for formal declaration should ensure that at the time of appointment management can declare any specific conflicts; this should be updated annually. This includes updating of any Registers of Interests; Requirement that declaration of interests, or arising conflicts should be on-going. The Board should be made aware.
- The company should have a policy with regard to related party transactions where the SOE deals with a company, business, individual who is a relation, business partner of a director, manager, or employee.
- A Register of all interests, conflicts of interests disclosed should be maintained by the SOE corporate secretariat and by the Business Integrity Unit can provide oversight to ensure ethical compliance.
The SOE’s overall approach to identifying, mitigating and managing corruption risk should include conducting effective due diligence in identified “risky” areas, including working with third parties. Management should know who their business partners are, and to the extent possible, ensure that they abide by the SOE’s integrity programmes, measures, and commitments. Box 24 includes a list of possible due diligence practices. Box 25 highlights the use of integrity pacts as one way some companies aim to mitigate corruption risks posed by third parties.

**Box 24. Suggested due diligence practices for mitigating corruption risk associated with third parties**

- Carry out background checks on integrity track record of the service provider (i.e. check out senior management/directorships, shareholding & corporate history to verify submitted information);
- Check the reputation of the third party, implications in any bribery allegations (arrests, litigation, prosecution), blacklisted or terminations of contracts;
- Check for any special relationships with public officials, whether fulfilment of duty by a public official is conditional upon use of a specific Third Party;
- Investigate the contracts award process and check for red flags including:
  - Related Party relations including SOE employees who may have conflict of interest
  - The manner and circumstances of award of the contract (review documentation for example emails, communication), how were they identified
  - Justification for the process used for example single sourcing, emergency
  - Rationale for the person/firm contracted
  - What does the offering include? Does it tally with what is desired and justify the selected provider?
  - Gaps, opportunities in the process that could allow for bribes to be built into the process for example price, payment method- is it by commission, is amount payable justified and in line with standard policy, any discounts applied, monetary penalties agreed
Box 25. **Contracting with third parties - Integrity Pact and Public procurement practices**

These are often attached to a specific public tenders or bids for a certain project. They are usually at the pre-tender phase and comprise of a formal written contract between the contracting public entity and all bidders, committing to refrain from all corrupt practices, including the demand and supply of bribes. Sanctions would normally apply in the case of violation of the contractual terms, which can include exclusion from the collective action initiative or from engaging in future bids. A third party, independent external monitor is appointed to oversee compliance with the Integrity Pact.

Public procurement is an area identified for heightened risk of corruption especially with regards to Tendering, bidding, pre-qualification for lucrative contracts.

- Develop and implement a procurement policy and Manual;
- Establish clear procedures for procurement of goods and services particularly;
  - Public procurement taking into account the role of the Public Procurement Body when required
  - Emergency procurements (only to be allowed in urgent circumstances and with Board or Committee Chair approval);
- Establish procurement Structures and processes that include;
- A procurement department to handle the operational aspects of procurement such as documentation, receipt of and tendering for bids;
- A Management procurement committee to consider bids, procurements, this should have a Chair with independent oversight and be constituted of at least; Business Integrity Unit, Internal Audit as observer, Legal & Compliance, contracts Department;
- Establish Transparent Procurement processes that require;
  - Competitive bidding, Advertising,
  - Prequalification, Multiple Source Procurement (Single Source Bidding should be justified).
- Establish Thresh holds for necessary approvals taking into consideration size/importance;
- Regularly monitoring and review the Procurement processes, policies for relevance, effectiveness;
- The SOE's Anti-Bribery policy and (code of conduct) should be shared with business parties;
- Anti-Bribery clauses should be inserted in all contracts with third parties (as is evidence that the SOE prohibited bribery by the third party);
- In respect of high risk third parties the following further measures should be considered:
  - Anti-Bribery Training of high risk business partners
  - The SOE reserves the right to audit the books and records of the business partner
- The SOE should consider securing annual anti-bribery certifications from business partners.
2.4.2 Ensuring compliance with integrity programmes or measures

Those charged with implementing an SOE’s integrity function should also be equipped with the resources to ensure compliance, including access to appropriate disciplinary measures and incentives for compliance.

On the former, disciplinary measures—including termination—should address, among other things, violations, at all levels of the SOE, of anti-corruption laws, and the enterprise’s anti-corruption, ethics, and integrity programmes or measures. Some SOEs, especially large SOEs and SOEs exposed to an especially high risk of corruption, have found it useful to introduce a designated ethics committee at the level of management. This committee, which should include representatives from human resources, would be involved in reviewing and deciding on disciplinary cases and reporting such cases to the board.

Incentives for compliance include, as noted above (section 2.3), integrating integrity commitments into the SOE’s procedures for recruiting, promoting, evaluating and rewarding employees. Incentives may also be less tangible, such as public recognition of ethical behaviour in company newsletters, awards ceremonies, or celebrations. The aforementioned management-level ethics committee could play a role in ensuring these incentives are applied fairly, consistently, and transparently. When considering incentives for compliance, SOEs should carefully weigh the balance between performance-related incentives (such as commissions) and compliance-related incentives, which may not always be aligned.

2.5 Reporting on and reviewing the effectiveness of the integrity programme or measures

Throughout the process of establishing, implementing, and monitoring an SOE’s integrity programme or measures, special attention should be paid to establishing clear reporting lines and procedures to the board. Those assigned the integrity function should report to the board or the responsible specialized committee any identified risks, instances of bribery, and the remedial steps taken in response. The board should regularly receive the business integrity reports by executive management, or equivalent bodies (independent or other) that are tasked with overseeing compliance.

Management should also be asked by the board to undertake and report on evaluations of the effectiveness of the SOE’s integrity programme or measures. These reviews should take into account relevant developments in the field of preventing corruption and promoting business integrity, and evolving international and industry standards in this regard. The board or the specialized committee charged with oversight of the integrity programme or measures should also consider undertaking an independent assessment of the adequacy of the programme or measures and disclose its findings in the annual report to shareholders.
Chapter 3. The role of government owners

This section of the Handbook focuses on the role of government owners in addressing corporate ethics and business integrity in the SOE sector. The fight against corruption necessarily requires a whole of government approach that can involve anti-corruption commissions, public service commissions, law enforcement and the judiciary. Ownership entities, responsible for coordinating or overseeing ownership policies, have an important role to play in communicating the state’s expectations on anti-corruption, contributing to effective anti-corruption enforcement, and setting expectations for effectiveness of internal controls, ethics and compliance programmes or measures for preventing and detecting corruption and for promoting business integrity in SOE business operations. Many of these measures relate to the broader issue of SOE corporate governance, and are required by ownership entities to raise governance practices which can also help to shield SOEs from the risks of corruption. Some examples include developing codes of corporate governance for SOEs with specific anti-corruption provisions; or encouraging SOE to adopt codes of conduct (see also earlier chapters). In some cases these are developed in collaboration with other parts of governments. These examples and others are discussed in this chapter which is organised around four sections covering:

3.1) Political will and high-level commitment to tackling corruption
3.2) Role of the ownership function contributing to effective anti-corruption enforcement.
3.3) Exercising its ownership rights and communicating the state’s expectations on anti-corruption;
3.4) Integrity of the ownership function itself.

3.1 Political will and high-level commitment to tackling corruption

One of the first steps towards tackling corruption is for governments, together with the private sector and civil society to first acknowledge the importance of the issue and secondly to commit to addressing it. Most governments have demonstrated high-level political will to fight corruption in the public and corporate sectors, this includes addressing the corruption risks that may be faced by SOEs. (See box 26). This can also send a clear message about the standards against which the government will hold companies to and the expectations they will have for the practices of all types of business - foreign, domestic, public or private.
3. THE ROLE OF GOVERNMENT OWNERS

Box 26. Political will and high-level commitment to tackling corruption

Democratic Republic of Congo. The President launched a “zero-tolerance” policy against corruption, which included establishing a Financial Intelligence Unit to combat misappropriation of public funds.

Kenya. The Code of Governance for State Corporations was endorsed by the President and the Office of the President has taken action against SOE officials for misuse public funds.

South Africa. The Anti-Corruption Task Team reports to the Anti-Corruption Inter Ministerial Committee established by the President which has oversight of State Organs charged with anti-corruption duties including the public sector. It is convened and chaired by the Minister in Presidency.

Zimbabwe. Corporate Governance Delivery Agency sits under the Office of the President and Cabinet promotes good corporate governance practices in SOEs.

Almost all Southern African economies have developed an overall framework for combating corruption and have demonstrated high-level commitment through the signing of legally binding international instruments, covered under the SADC Protocol against Corruption; the African Union Convention on Preventing and Combatting Corruption; the UN Convention against Corruption; and/or the OECD Convention Combating Bribery of Foreign Public Officials.14 Anti-corruption frameworks. Beyond these agreements almost participating countries have enacted laws via national implementing legislation to ensure conformity with these commitments and have put into place other elements as a part of a national corruption framework, which is in most cases supported by institutional capacity (Box 27). Some elements of an anti-corruption framework could include:

- Enacting enabling National Anti-corruption Legislation that includes deterrent sanctions, penalties. Good practice would have it that SOEs should be as liable as private companies for corruption offences under corporate liability regimes.
- Develop Codes, to increase accountability, and facilitate implementation;
- Enactment, or adoption of whistle-blower procedures and protections;
- Facilitating enforcement, as legislation is effective only when enforced through for example fair, impartial judicial prosecution of officials suspected of breach;
- Enforcement of deterrent sanctions by an independent judiciary, which should then exercise the law without fear or favour for example issue warrants for public officials, conduct speedy, fair trials;
- Cooperation across parts of government to aid investigations for example by facilitating access to information;
- Equipping the mandated anti-corruption bodies through appropriate allocation of resources, competent human resource with a proven integrity track record.
Box 27. Examples of Anti-Corruption Frameworks in select jurisdictions

**Botswana.** A Corruption and Economic Crime Act is in place. The Directorate on Corruption and Economic Crime (DCEC) an operationally autonomous law enforcement agency carries the mandate to: (1) investigate allegations of corruption, suspicious transactions, share investigative results with the Directorate of Public Prosecutions (DPP) for possible prosecution; (2) prevent corruption in the public sector by auditing government and state-owned institutions; and (3) to raise awareness of the risks of corruption through public education activities.

DCEC works to establish Corruption Prevention Committees (CPCs) in government ministries, departments and anti-corruption units in ministries considered especially prone to corruption risks.

**Malawi.** A Corrupt Practices Act is in place. A National Anti-Corruption Strategy, charged to the Anti-Corruption Bureau and, supported by a National Integrity System (NIS) requires Government, SOEs to establish Institutional Integrity Committees, develop and implement sector-specific anti-corruption plans, monitored by a multi-stakeholder National Integrity Committee. This extends to the civil society, private sector, media. All stakeholders are required to develop and implement ethical codes of conduct.

**South Africa.** The Minister of Public Service and Administration, mandated by the Public Service Act establishes the norms and standards of ethics, integrity. A Public Service Integrity Management Framework regulates ethical conduct by; requiring financial disclosures, restriction of public servants conducting business with government, prohibiting gifts, hospitality or private benefit of any value for fulfillment of official duties. It requires strict management of remunerative work performed outside public service.

Government departments are required to establish anti-corruption mechanisms, systems and processes under the Minimum Anti-Corruption Capacity (MACC) including whistleblowing mechanisms, and address corruption issues.

An Anti-Corruption Task Team (ACTT), an interdepartmental body established in 2010 to fast-track high-priority and high-profile corruption cases operationalizes the Government’s anti-corruption agenda. Its Principal Committee includes the head of the Directorate of Priority Crime Investigation (DPCI), the National Director of Public Prosecutions, and the Head of the Special Investigating Unit.

**Implementation capacity.** However, the effectiveness of such efforts will rely on implementing and enforcing the anti-corruption laws and regulations. In particular, efforts of law enforcement in bringing corruption cases involving SOEs to court might be difficult due to the public-sector status of a company, the involvement of public officials or politicians. Beyond a lack of willingness to prosecute SOEs and their employees there may also be a lack of capacity to properly investigate allegations of corruption and collect sufficient evidence. As such, a whole of government approach, relying on cooperation with the entities responsible for the oversight of SOEs is an important factor in addressing implementation gaps and subjecting SOEs to additional binding and non-binding laws, regulations and policies on the broader issue of corporate governance which can complement and support efforts to combat corruption in the SOE sector.

### 3.2 Role of ownership entity in supporting effective anti-corruption enforcement

**Awareness of the risks and applicable frameworks.** The ownership entity can play an instrumental role in assisting the broader effort to combat corruption involving state-owned enterprises. As mentioned in the introductory section, although both public and
corporate sector activities are all at risk for being exposed to corruption, according to the *Joint OECD-AfDB Initiative to Support Business Integrity and Anti-Bribery*. SOEs may be at specific risks that the ownership entity should consider when formulating its policies and practices towards SOEs. Some ways in which ownership entities can contribute to preventing corruption and promoting business integrity in the SOE sector include:

- *Raising awareness of the anti-corruption framework vis-à-vis SOEs.* The State should ensure that SOEs are aware of the appropriate laws, regulations, standards and codes place and of the anti-corruption framework as it applies to SOEs and their employees. The body responsible for exercising ownership rights and oversight should ensure that its own policies vis-à-vis SOEs are consistent with existing requirements and put into place additional measures to build compliance capacities within SOEs to address the additional risks that SOEs may be exposed to. One way to address these particular risks is to create further awareness of them, for example through meetings, forums, roundtable discussions bringing together relevant parts of government, and SOEs to participate in collective discussion on implementation, enforcement of anti-corruption, and challenges that might remain with regard to implementation by SOEs.

- *Consideration of the status of SOE employees vis-à-vis legislation.* In most jurisdictions SOEs are subject to corporate liability and can therefore be held liable for acts of bribery committed by employees. However, the status of employees as *public officials* should be carefully considered by authorities. A number of countries and a growing number of international treaties apply a broad definition, for instance to define public officials as including those working public companies and public enterprises. The status of whether an employee of a SOE is considered a public official can be a factor when considering what type of corruption offence could apply to a corrupt transaction. However, the status may differ depending on the SOE employee’s functions within the SOE, as well as on commercial or non-commercial orientation of SOEs. Bribery of or by SOE employees of commercially oriented SOEs, especially in jurisdictions where SOE employees are not considered public officials under the law, may be classified as “private bribery”.

- *Taking extra measures when operating in high-risk sectors.* In many countries, SOEs operate in high-risk sectors, such as the extractive industries, utilities, power generation, infrastructure, defence and telecommunications. These sectors are considered high-risk because they tend to be heavily regulated by the state and require the government’s issuing of licenses, concessions and/or certificates in order to operate. The award of licenses and concessions in these sectors, for example, are particularly vulnerable to bribery in the procurement process. Companies must interact with public officials who have extensive discretionary powers over lucrative contracts, often with little oversight. Bribery risks can therefore occur any time a decision is being made in the procurement cycle, ranging from the decision to contract, the details of the contract and drafting of the bid, the tendering process and the award of the contract.

- Ownership entities can mitigate these risks by ensuring SOEs are made aware of the anti-bribery policy and including the anti-bribery policy as part of any bid presentation. An additional risk factor may be in the privatisation of state assets, for which specific mechanisms should be set-up by the ownership entity. (See section 3.3)

- *Preventing abuse of political influence.* A related issue to the status of SOE employees as public officials is the risk posed by the composition of SOE boards. In a number of
jurisdictions, civil servants (and sometimes Ministers or other persons related to the Executive) sit on the boards of SOEs. The proximity of such persons to the government creates a heightened bribery risk in that they can be bribed by companies seeking to gain political favours and influence. Steps should be taken to help shield SOEs from these risks by ensuring sufficient professionalism and independence of the board, for example through open and transparent procedures for board nominations and appointments and on board composition. (See section 3.3)

- **Strengthening reporting and accountability systems.** Inadequate reporting, accountability and monitoring systems as well as complexity in the accountability chain can shield SOEs from the misuse of public money and corruption. Bribery risks are also heightened in such environments where there is little or no oversight, as payments can be easily made and concealed.

- **Working with law enforcement, justice ministries, anti-corruption commissions.** The ownership function should cooperate with anti-corruption authorities/agencies to coordinate their efforts in raising governance standards and compliance capacities by SOEs. These initiatives vary, but would necessarily involve the relevant anti-corruption authorities and the ownership entity to jointly develop anti-corruption initiatives tailored to SOEs. Such initiatives could range from binding requirements for SOEs, to guidelines or recommendations that clarify the state’s expectations and obligations vis-à-vis but leave it up to the SOE in the way that it can be implemented. Some examples, drawing from existing national practices, are provided as follows:
  - Jointly developing a compliance programme, with a capacity-building component: this can include offering trainings, assisting companies in establishing codes of ethics/conduct consistent with applicable laws; ensuring fulfillment with laws relating to declaration of assets; and assisting SOEs to design policies, procedures, implementation plans for Anti-Bribery measures (see Box 28 on practices in Mozambique)
  - Guidelines for the implementation of anti-corruption legislation by SOEs: This can consist of specifically clarifying expectations for SOEs in view of applicable anti-corruption legal and regulatory frameworks. (see Box 29 on practices in Italy)
  - Establishing recommendations for how SOEs board and management can to put into place mechanisms intended to prevent corruption and to follow-through with reporting obligations.
Box 28. Mozambique: Cooperation between ownership entity and anti-corruption/law enforcement to combat corruption

In Mozambique, IGEPE, the centralised ownership entity, has effectively partnered with the Central Office for Combating Corruption, GCCC resident in the Office of the Attorney General to;

- Create Public Ethics Committee in all SOEs
- Train managers on Public Probity Law
- To encourage managers to declare annually, assets, through Heritage statements. The penalty for non-compliance includes possible forfeiture of undisclosed salary, loss of employment as a public officer which has been effective in fighting corruption
- Assist SOEs to design policies, procedures, implementation plans for Anti-Bribery measures

GCCC adopts a proactive integrity risk prevention approach as follows;

- Investigates, prosecutes and has power to; require production of documentation, information, demand explanations from SOEs
- Participates in formulation of policies through Ministry of Justice
- Co-ordinates activities of prevention, including with ministries
- Advises and guides on how to prevent corruption
- Lectures to SOEs on public probity, content and scope of the anti-corruption framework. SOEs proactively consult GCCC to avoid being non-compliant

- Working with other parts of government. The ownership entity is likely to coordinate with other parts of government in broader anti-corruption efforts. These can include:
  - Parliament: In some jurisdictions parliamentary commissions to enquire on SOE corruption allegations. The ownership entity may also be called upon to respond to parliamentary inquiries or to testify in parliamentary hearings.
  - Ministries of Finance. The ownership entity (it not represented by the Finance Ministry) may submit an aggregate report on SOE financial and non-financial performance.
  - State audit institutions. SOEs may be subject to state audit procedures, although this should not replace both internal and external independent auditing by SOEs themselves.
  - Public procurement office. Where authority may lie with this institution to commence legal proceedings in corruption practices in procurement.
Box 29. Italy: Guidelines for the implementation of anti-corruption legislation for the prevention of corruption by SOEs

The Ministry of Economy and Finance in Italy is among a minority of countries that has issued Guidelines, in the form of a Directive, specifically addressed to state-owned enterprises and their subsidiaries to ensure they are compliant with the relevant anti-corruption legislation. The overall aim of the Guidelines is to create awareness of SOEs’ obligations vis-à-vis existing legalisation on anti-corruption and to prevent and combat corruption within the public administration. The Directive is a result of a joint effort among the Ministry of Economy and Finance and the National Anti-Corruption Commission to clarify how to apply standards to state-owned entities, especially where the state by virtue of its controlling shares in some companies, is exposed to corruption risks.

The Directive clarifies government expectations as follows:

- Establish anti-corruption prevention plans and make such plans public, and applicable to subsidiaries of the SOE;
- The Plan should include call for:
  - Identification and management of corruption risks
  - System of controls
  - Code of conduct
  - Transparency requirements
  - Responsibilities of board and management
  - Expectations on the conduct of members of the board and management
  - Measures taken to prevent employment of civil servants (employed by the public service in the last three years)
  - Training policies
  - Protection of whistle-blowers
  - Separation or rotation of competencies responsible for investigation
  - Identify means to monitor the implementation of the plan
- Name a non-conflicted person responsible, internal to the company, for implementation of the Plan
- Establish a number of transparency and disclosure practices consistent with the regulatory framework applicable to the company’s operations – including with respect to activities carried out in the public interest; with regarding to board and managerial positions; and remuneration practices.

Source: Guidelines for the implementation of the legislation on prevention of corruption and transparency in SOEs or subsidiaries, Ministry of Economy and Finance, 2015.
3.3 Exercising its rights and communicating the state’s expectations on anti-corruption

In exercising its ownership rights, the State should also seek to align its ownership objectives with broader integrity objectives. This can permeate all aspects of the State’s role as owner, which are described in more detail below:

- Setting the ownership policy and setting specific objectives for SOEs;
- Exercising voting rights in a transparent way;
- Publishing aggregate reporting on the State portfolio and performance monitoring;
- Development of corporate governance codes or other policies vis-à-vis SOEs;
- Establishing standards for financial and non-financial reporting;
- Establishing transparent board practices (i.e. appointment, nomination, composition and remuneration);
- Facilitating capacity building for directors or SOE management (where relevant); and,
- Establish procedures for transactions involving public procurement or assets sales/disposal.

Alignment of national ownership objectives with integrity objectives. According to the agreed Guidelines on Governance of State-Owned Enterprises in Southern Africa, the government should develop and issue an ownership policy that defines the overall objectives and rationale for state ownership and the state’s role in the governance of SOEs. The policy should be backed by credible implementation mechanisms. (See also Box 30). The ownership entity could align national anti-corruption/integrity objectives into its ownership policy.

Clarifying overall and specific objectives for SOEs. In some jurisdictions “shareholder compacts” are drawn up between the state, shareholder, and the SOE board chair. This sets out the state’s expectations from the company, clarifies any specific public policy objectives SOEs are expected to carry out and allows for transparent monitoring and evaluation of the SOE’s performance vis-à-vis the compact. This tool is a means from which to ensure SOEs are also insulated from corrupt practices, and can serve to detect any deviations from agreed areas of intervention. If corruption is a strong preoccupation for the State owner such a tool might also be useful way for the government to set integrity related implementation objectives for the SOEs as well.

Exercising ownership rights in a transparent way. Ownership rights should be exercised in a transparent and accountable way. A representative of the ownership function should attend and/or vote at general meetings of the SOE (especially in cases of mixed ownership). The ownership entity should not require special treatment except as provided for by law or agreement with full knowledge and disclosure to other shareholders. The State should communicate its expectations to the entire board, and not through instructions given to state-appointed directors.
Box 30. Ownership Policy

An ownership policy helps the government avoid the usual pitfalls of either passive ownership or excessive interference that occur when SOEs are tasked with multiple or contradictory objectives. It can also serve as an effective tool for public communication, and it provides companies, market participants and the general public with an understanding of the state’s objectives as an owner and its longer-term commitments.

The ownership policy is usually a short, high-level policy document, which may also summarise the most important elements of all other documents related to the state’s overall strategy for its SOEs. It normally touches upon aspects of the government’s ownership function (e.g. mandate and main functions), as well as the main principles underpinning the government’s exercise of its ownership rights. It also outlines the main policies, laws, regulations and Guidelines applicable to SOEs.

Issues covered could include guidance on the nominations of directors, the role of general meetings, the role and functions of boards of directors, the appointment of external auditors, remuneration policies, etc. The ownership policy should clearly specify which government bodies are in charge of its implementation and what evaluations of implementation must be applied.

Inclusive process. The process of developing an ownership policy should be inclusive. To gain public acceptance of the state’s role as an owner, consultations with all concerned parties are recommended, including the social partners, public servants and representatives of all parts of the political landscape.

Plans for privatisations, or restructuring. Where relevant, the state should also include information on its policy and plans regarding the privatisation to create further transparency around these planned transactions.

Public policy objectives. The ownership policy should also disclose the nature and extent of public policy obligations, as well as about their overall impact on the SOEs’ resources and economic performance.


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**Annual aggregate reporting by ownership entities.** The ownership function should develop consistent and aggregate reporting on SOEs. The aggregate report should be based on continuous performance monitoring, and can be a useful tool to hold SOEs accountable and to ensure a certain level of performance. Most governments across Southern Africa have developed performance monitoring systems which – the most sophisticated of facilitate continual, real time monitoring and supervision of SOE performance. The performance of individual companies and the entire State portfolio should be published in an annual aggregate report, which could also include reporting on effectiveness and robustness of business integrity policies with in relation to business ethics and integrity risk.

**Engraining integrity and ethics into SOE Governance Codes, Guideline or equivalent.** Develop, or amend, Guidelines SOE specific Corporate Governance Codes SOEs to include business integrity standards such as implementation of a business integrity policy. Some countries’ require SOEs have specific ethics committees. In Mozambique, this is enshrined in the *Public Probity Law*, which also requires Executive Managers to declare assets annually to the General Attorney’s office. In South Africa,
SOEs are subject to the Companies’ Act which requires all companies to have an Ethics Committee. Corporate governance codes and/or guidelines applicable to SOEs exist in Botswana, DR Congo, Kenya, Malawi, Mauritius, Mozambique, South Africa and Zimbabwe. In most cases, these codes and guidelines have specific sections dealing with ethics which SOEs (boards and executive management) are expected to comply with.

Developing minimum standards on financial and non-financial disclosure. Weak reporting and monitoring systems enables disguise of misuse of public funds and shields SOEs from accountability and transparency. Proper accountability entails accountability for the management of public money and for the performance of the organization in relation to clearly defined objectives. Reporting on non-financial information disclosure on aspects such as remuneration, related party transactions, and corporate governance practices is also recommended. The ownership entity should require all SOEs, under its control to have effective accounting structures and systems, including audit systems in line with internationally agreed standards, national laws and regulations. It should ensure that SOEs:

- Establish financial and accounting procedures to maintain fair and accurate books and records including ‘off-budget’ assets and liabilities.

- Develop efficient audit procedures, carried out by an established Internal Audit function, to check internal controls, operational and strategic risk of corruption and governance culture among others. The Internal audit function should report directly to the Board or designated committee. SOEs should be subject to an annual independent external audit based on international standards. The existence of specific state control procedures should not substitute for an independent external audit.

Board nomination, appointments and composition. There should be consistency and transparency in practices for nominations and appointments to ensure the competence of SOE boards, enhance independence to underpin the board’s commitment to business integrity and corporate ethics. More about board nomination and appointments, in addition to the role of the board, in general, can be found in the endorsed Guidelines on the Governance of State-Owned Enterprises for South Africa. At the point of nomination or recruitment, the ethical record of directors and managers should be taken into account.

With respect to board nominations, there should be standards of behavior/conduct, consequences of non-compliance which may include penalties similar to disqualification of directors where ‘non-compliant’ officials are barred from any involvement in management, directorship of SOEs, in addition to any legal penalties, and dismissals. Cases of ‘disqualification’ should be made public. Some basic considerations to be made with regard to board composition and nomination/appointment processes:

- Clarify the role of Ministers and government vis-à-vis the board and executive management of SOEs to provide independence from undue interference. The participation of ministers and other elected politicians on boards should be disallowed. Boards should also be left to oversee integrity risk mitigation practices by the company (see also Chapter 1).

- Nomination and/or appointment of Board members and senior management, should be transparent and subject to a competitive process:
- Undertake, and ensure, a competitive, transparent process on the basis of skill, professionalism with consideration of integrity track record. This could be done in consultation with professional associations.

- Compile and maintain, through transparent process, a database of potential directors from which suitable candidates can be picked for nomination, appointment and to facilitate a merit-based, integrity-centred appointment system.

- Require the SOEs to provide a skills and experience matrix to identify gaps in board composition which might inform future nominations.

- Some jurisdictions have also developed guidance on selection and appointment of SOE Directors.

Director training. Regular Directors’ ethics training should be arranged which should include key management officials with relevant implementation or reporting obligations including but not limited to: Finance, Internal Audit and Compliance, Legal, Human Resource, Head of Sales, the Company Secretariat or its equivalent function. Possible subjects to cover would include; Fiduciary duties, key risks, key laws that govern the company operations including company law, insider trading in addition to any others.

Privatisation, public procurement or asset disposal. Establish transparent, open, and competitive public procurement and privatization processes, systems and implement, enabling framework including enactment, alignment of existent laws. (See box 31 below)

**Box 31. Specific procedures to address transactions at risk for corruption**

Establish appropriate procurement structures for example a dedicated central body to oversee public procurement for example In Botswana the Public Procurement and Asset Disposal Board (PPADB) and public regulatory body check SOE operations for proper governance and compliance. In Malawi, the Office of the Director of Public Procurement is authorized to commence legal proceedings against any person or institution suspected of engaging in corrupt practices in procurement.

Facilitate fast public procurement: i.e. remove unwarranted bureaucracy through simplification of advertising, sourcing requirements, approval timelines with due consideration of the reality of the competitive market in which SOEs compete. In Kenya “fast-track” approvals, online methods have been introduced.

Provide clear Guidelines on role, responsibilities of SOEs such as establishment of internal control systems, procurement policies, etc. In South Africa, the Department of Public Enterprise includes a ‘significance and materiality framework’ to guide the Board on when shareholder approval is necessary for approval contracts which is 20% of total assets).

Consider introduction of Integrity Pacts for key public tenders for specific projects at pre-tender phase. These should be in the form of written contract between the contracting public entity and all bidders, committing to refrain from all corrupt practices, including the demand and supply of bribes. Sanctions for violation should include exclusion from engagement in future bids. A third party, independent external monitor is appointed to oversee compliance with the Integrity Pact.
3.4 The integrity of the ownership entity

Officials of the ownership entity should adhere to the Public Service Code of Conduct where one is in existence, in its absence, the ownership function should develop its own to guide to public service employees in terms of ethical conduct, both in terms of their individual conduct and their relationship with other stakeholders. The Code should set out how the ownership function should relate to the SOE to ensure ethical conduct and integrity in all of its dealings with the SOE. Such a code might also be applicable to employees of SOEs depending on whether such employees can be considered public officials (see section 3.1).

Awareness-raising. Some areas of awareness-raising could be useful in the ownership entity itself. This can include:

- Training employees on the national anti-corruption policy, legal, regulatory and governance framework, national integrity objectives, the SOEs’ anti-corruption obligations, their role as state owners – this training should include those members of ownership entities that may be state-appointed members of boards of directors;

- Regularly communicating on the issue for example through periodic newsletters featuring corruption, integrity related issues, meetings with emphasis on the role of the state owner in ensuring business integrity in the SOEs, the need for service above self, detriment of corruption, importance of personal integrity;

Role of the Public Service Commission or its equivalent. Officials recruited to the ownership entity, should be recruited by the public service commission (or equivalent) with a proven integrity track record. Public officials should be rewarded and incentivized based on performance and merit.
Chapter 4. The role of non-state actors

The State should partner with stakeholders to raise awareness of measures for combating corruption and promoting business integrity in the SOE sector. The ownership entity and SOEs (by their own accord) should undertake joint actions with non-State stakeholders to take collective action and collaborate on anti-corruption initiatives. This can also demonstrate the government’s high level of prioritization of combating corruption and promoting corporate ethics and business integrity issues. It can also help serve to create awareness of the issues. This includes not only creating broad awareness of with the greater on the commitment to ensuring a corruption-free public administration and in the SOE sector; but also on concrete measures taken that serve to combat corruption and address areas where corruption risks might be high.

This Chapter focuses on the role of non-State actors in facilitating, promoting business integrity in the broader corporate environment, and in relation to SOEs, or governments acting as owners. This section also touches upon how ownership entities can leverage the role of non-state actors in upgrading SOE business practices, beyond the activities carried out directly by itself or other parts of the public administration. Non-state actors are a necessarily broad concept and can extend to civil society, media, non-governmental organisations, the private sector and the general public. The chapter is organized around three sections covering:

4.1) Awareness-raising initiatives with civil society and non-governmental organisations;

4.2) Engagement with the private sector; and,

4.3) Working with media organisations.

4.1 Awareness-raising initiatives with civil society, non-governmental organisations and private sector industry and professional associations

Civil society and non-governmental organisations play a positive role in raising awareness of the need to prevent corruption especially among the broader public and through collective action. Collective action can involve like-minded companies operating in the same sector to join forces with other stakeholders to commit to prohibiting bribery and ensuring transparency in business. This can be in the form of Networks of forming industry-specific collective action measures; or among stakeholder groups such anti-corruption civil society organisations. Collective action can take the form of media campaigns and public awareness seminars, town hall discussions as a means for the general public to take part, themselves, in preventative action (i.e. to refraining from solicitation, offering of bribes for business, favours, and duties to report any solicitations).

More substantively, organizations can also serve as watchdogs against corruption; can push for higher standards in transparency and government accountability; and in the
spread of good practices (for example guidance or tools) that can be useful input to reform programmes.\textsuperscript{20}

This type of awareness-raising can serve to complement individual actions taken by SOEs, and through broader government initiatives, and can be especially useful where law enforcement capacities might be weak and where bribe solicitation is widespread.\textsuperscript{21}

4.2 Engagement with the private sector

Consideration should be given to working with professional organisations, chambers of commerce, industry associations, institutes of directors or other stakeholders who could serve as effective partners and allies in the efforts to improve ethical practices within the public sector particularly SOEs. These institutions can be effective partners for sharing knowledge and information on awareness of updates in legal requirements or even broader trends and risks; and on upgrading practices and training within and by SOEs (via boards or management practices); and to ensure appropriate procedures are in place, in line with best practices in the private corporate sector, to address any risks. (See box 32 for examples from across the Southern Africa region) Some governments have established partnerships with Institute of Directors (IOD), professional associations and law practices on long-term training programmes in all the various types of initiatives that the board and SOE management can undertake (seek Chapters 1 and 2).

\begin{quote}
Box 32. Engagement with private sector associations - Practices in Southern Africa

**Botswana:** SOEs are encouraged to apply the Code of Conduct for the Private Sector, developed by the Chamber of Commerce and Industry, in collaboration with Botswana’s anti-corruption authority.

**DR Congo:** A multi-stakeholder private sector group representing the Fédération des Entreprises du Congo, the Ethics Institute of South Africa, the African Institute of Corporate Citizenship (AICC), Business Action against Corruption (BAAC), and the United States Institute of Peace (USIP) developed a Business Code of Conduct for the Private Sector which can be applied to state-owned enterprises.

**Malawi:** The National Anti-Corruption Strategy adopts a collaborated effort of the Anti-Corruption Bureau, Business sector and Civil Society which forms a National Anti-corruption Forum (NACF). A Business Code of Conduct for Combating Corruption (BCCC) was developed by a multi-sector steering committee and SOEs are encouraged to apply it in addition to SOE Sector Guidelines.

**Mozambique:** SOEs are encouraged to reference the Public Probity Law, which establishes principles of ethics and integrity for public servants, including SOEs. The State-Share Management Agency is also working with the Institute of Directors to develop a draft integrity pact; SOEs have been invited to join the initiative to encourage transparency in their practices.

**South Africa:** The Public Service Anti-Corruption Strategy 2002 advocates an integrated approach to the fight against corruption. The Department of Public Service and Administration has partnered with Business Unity South Africa to implement awareness programmes on anti-corruption measures.
\end{quote}
4.3 Working media organisations

The media can be key stakeholder in fighting corruption and partnerships can be actively sought by government bodies in charge of SOE ownership and anti-corruption agencies to exchange information. The media can serve as an effective partner in ensuring accountability by SOEs. The media can play a role in highlights system failures, lapses and to puts pressure on different parts of the public administration to act. The authorities also follow the media to get tipped off, in view of assisting their own investigations. In Mozambique, for example, the Attorney General and Anti-Corruption Bureau meet with the press quarterly to disclose institutional activities and to disseminate prevention messages, including raising awareness in SOEs; these meetings also serve to brief the press on corruption cases. In South Africa, the Department of Public Enterprises has developed a media strategy whereby it ensures a regular communication with media organisations to raise awareness of its actions.

In some cases the media actively runs independent whistleblowing mechanisms, which not only serve to create awareness of the broader issues, but to expose incidents of corruption or other breaches of corporate ethics and integrity, which may not have been reported directly to a public authority or through and SOE’s own whistle blowing mechanism.22
Notes


2. State-Owned Enterprises in this document are those companies under central or sub-national state ownership using a distinct legal form (established according to company or statutory laws). It may be wholly or partially owned, with the government having significant or minority level of controlling ownership.


See also: OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance, and the draft Anti-Bribery and Compliance Guidance for the AfDB/OECD Initiative

4. See FN 1.

5. According to Transparency International’s 2011 Bribe Payers Index, companies in these business sectors are more likely to be involved in bribery. (See online here: www.transparency.org/research/bpi/overview)

6. In some countries, the application to SOE employees may vary depending on the status of SOE employees as public officials. The only Southern African economy part to the OECD Convention is South Africa.

7. A number of national laws were under debate at the time this document was drafted.

8. In the sub-Saharan region, 61 firms and individuals were debarred as of December 2014, there were on the World Bank’s debarment list. As of February 2015, the list was at 37 firms and individuals. No data was available on the number of cases involving SOEs or officials serving a state-owned company or as a public official involved in his/her capacity as it relates to the SOE.

9. The Guidance is a tool, tailored to the specific corruption risks across the African continent, and serves as a guidepost for companies in member countries when seeking to prevent, detect and effectively address corruption risks in their business transactions and, in turn, help curb the supply side of bribery. The Guidance is also intended to assist awareness-raising measures with the private sector in the region and provide a basis upon which the OECD/AfDB Joint Initiative will undertake more practical training and implementation work in the future.

10. See online here: www.baacafrica.org/w/ops_drc.php

11. OECD Principles of Corporate Governance, Principle VI.

12. For example, any employee of the SOE who wishes to engage in high risk activities should be required to get pre-approvals from line management, legal and compliance. Those pre-approval documents must be maintained and filed by the Integrity Unit. The Integrity Unit will also be the custodian of records of the Anti-Bribery Due Diligence checks performed on third parties.
In some jurisdictions, SOE employees are legally considered public officials. As such, these individuals may also be subject to laws, regulations or policies setting forth codes of conduct or ethics for public servants.

Currently only South Africa is the only SADC member that is Party to the OECD Convention.

This section draws directly from the Joint OECD-AfDB Initiative to Support Business Integrity and Anti-Bribery Efforts in Africa. At the time of drafting, the joint Initiative had issued draft Guidance entitled, *Anti-Bribery Policy and Compliance Guidance for African Companies*, which were still under consideration by the members of the Initiative. The Guidance is derived from an Anti Bribery and Business Integrity Course of Action that was jointly agreed by member countries of the Initiative. For more information see: [http://www.oecd.org/daf/anti-bribery/businessintegrityandanti-briberyeffortsinafricaoecdafdbinitiative.htm](http://www.oecd.org/daf/anti-bribery/businessintegrityandanti-briberyeffortsinafricaoecdafdbinitiative.htm)

SOEs can be on both the receiving (passive) or giving (active) side of bribery; the offering, promising or giving of a bribe to an employee of an SOE, as well as the solicitation or acceptance of a bribe by an SOE employee, can be a criminal offence. Therefore SOEs should be alert to this status of SOE employees in developing company-specific anti-bribery policy. It can also be a factor to consider for other companies that conduct business with such entities in their bribery risks assessments.


For further reading also refer to the OECD Recommendation on Improving Ethical Conduct in the Public Service including Principles for Managing Ethics in the Public Service. See: [http://www.oecd.org/gov/ethics/publicsectorintegrityreviews.htm](http://www.oecd.org/gov/ethics/publicsectorintegrityreviews.htm)

World Bank (2010), *Collective Action in the Fight Against Corruption*.

Some examples include: Transparency International’s Guidance or the Business Anti-Corruption Portal.

AfDB/OECD Initiative to Support Business Integrity and Anti-Bribery Measures which has completed an *Anti-Bribery Policy and Compliance Guidance*.

For an example refer to Crime Line in South Africa.
Ethics and Business Integrity in Southern Africa: A handbook for governments as owners and state-owned enterprises

www.oecd.org/daf/ca/soe-africa.htm