



# IMPLEMENTATION GUIDE

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



**Implementation Guide**  
**OECD Guidelines on Anti-Corruption and**  
**Integrity for State-Owned Enterprises**

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# Foreword

The Recommendation of the Council on Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises [[OECD/LEGAL/0451](#)] was adopted by the Council at Ministerial level on 22 May 2019. To support adherents in implementing the Guidelines, the Council instructed the Corporate Governance Committee, through its Working Party on State Ownership and Privatisation Practices (the Working Party) and in co-operation with the Working Group on Bribery in International Business Transactions (WGB) and the Working Party of Senior Public Integrity Officials (WPSPIO), to “develop, through an inclusive process, an implementation guide that helps Adherents implement the Recommendation”.

This Implementation Guide is the result of the ongoing co-operation between the Working Party, the WGB and the WPSPIO, benefitting from their invaluable guidance and provision of the many good practices contained herein. The Guide was prepared for those bodies by the Corporate Governance and Corporate Finance Division of the OECD Directorate for Financial and Enterprise Affairs, led by Hans Christiansen, co-authored by Alison McMeekin and Tanya Khavanska and designed by Katrina Baker with editorial support from Henrique Sorita Menezes. Colleagues in the Anti-Corruption Division of the Directorate for Financial and Enterprise Affairs and in the Public Sector Integrity Division of the Public Governance Directorate provided expert insight and commentary.



# Table of Contents

Foreword	3
Table of Contents	5
About the Implementation Guide	7
Highlights	11
Recommendation I. Establishing key definitions	12
Recommendation II. Integrity of the State	15
II.A. Apply high standards of conduct to the state	16
II.B. Establish ownership arrangements that are conducive to integrity	24
Recommendation III. Exercise of state ownership for integrity	31
III.A. Ensure clarity in the legal and regulatory framework and in the State's expectations for anti-corruption and integrity	32
III.B. Act as an active and informed owner with regards to anti-corruption and integrity in state-owned enterprises	41
Recommendation IV. Promotion of integrity and prevention of corruption at the enterprise level	51
IV.A. Encourage integrated risk management systems in state-owned enterprises	52
IV.B. Promote internal controls, ethics and compliance measures in state-owned enterprises	62
IV.C. Safeguard the autonomy of state-owned enterprises' decision-making bodies	75
Recommendation V. Accountability of State-Owned Enterprises and of the State	83
V.A. Establish accountability and review mechanisms for state-owned enterprises	84
V.B. Take action and respect due process for investigations and prosecutions	90
V.C. Invite the inputs of civil society, the public and media and the business community	97
References	103
Annex A. Other OECD legal instruments on promoting integrity in the private and public spheres	107



# About the Implementation Guide

The Implementation Guide aims to support state owners in implementing the provisions of the Recommendation of the Council on Guidelines on Anti-Corruption and Integrity in State-Owned Enterprise (“ACI Guidelines”). The Implementation Guide covers the four pillars of the ACI Guidelines, as shown below.

The ACI Guidelines, and thus the implementation guidance contained in this Guide, are addressed to government officials charged with exercising ownership of state enterprises on behalf of the general public. They are applicable to all SOEs pursuing economic activities, either exclusively or together with the pursuit of public policy objectives or the exercise of governmental authority of a government function. Given differing compositions of SOEs between countries, fact-specific inquiries about ownership, control, status and function, among others, can help to determine whether an entity is indeed an SOE. While entities may not fall cleanly into the above definition of an SOE, the state could consider whether they stand to benefit

from applying relevant provisions of the ACI Guidelines or examples in the Implementation Guide nonetheless.

The Implementation Guide also provides insights that may be useful for corporate management of SOEs and the broader community of stakeholders that can affect integrity of the state-owned sector.

The Implementation Guide does not introduce new recommendations, nor ask the state to go beyond the recommendations of the ACI Guidelines or beyond the OECD standards that the ACI Guidelines draw from. The country examples herein are drawn from experiences of Member and non-Member Adherents to the Working Party on State Ownership and Privatisation Practices, the Working Group on Bribery in International Business Transactions and the Working Party of Senior Public Integrity Officials. These examples demonstrate possible approaches to implementing the ACI Guidelines. They are not exhaustive and thus there are other means to implement the ACI Guidelines.

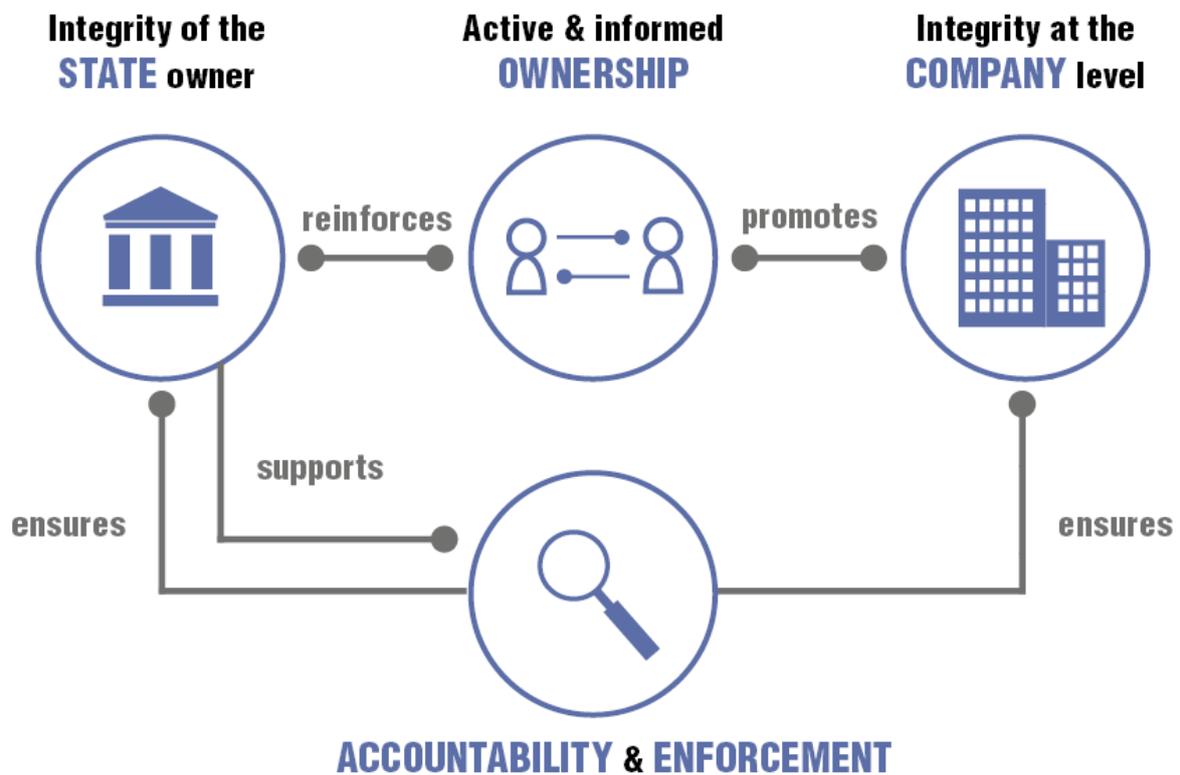
## What are the “ACI Guidelines”?

The [Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises](#) (“ACI Guidelines”) provide guidance to the state on fulfilling its role as an active and informed owner in the specific area of anti-corruption and integrity. They provide recommendations regarding the integrity of individual SOEs and of the state ownership entity, and regarding the overall ownership structure.

The ACI Guidelines complement and supplement the OECD [Guidelines on Corporate Governance of State-Owned Enterprises](#). They also draw on and aim to complement existing OECD legal instruments pertaining to anti-corruption, integrity and corporate governance, notably the [Convention on Combating Bribery of Foreign Public Officials in International Business Transactions](#) and its related legal instruments as well as the [Recommendation of the Council on Public Integrity](#).

Throughout the sections of the Guide the following caveat applies. How a state chooses to implement the ACI Guidelines' recommendations should depend on the legal and regulatory framework for SOEs and their owners, and take into account the country's particular challenges to integrity. The guidance and examples herein are meant to provide the state with implementation options, the pertinence of which may vary according to country and that may not be suitable to all national contexts. This Guide is moreover intended to be a "living document", which will be revised and updated as further practice develops and further challenges arise.

### The pillars of the "ACI Guidelines"



# Structure of the Implementation Guide

## How can the state implement this Recommendation?

Gives an overview of the approaches state owners can take, and the considerations they can make, to address the challenges mentioned

## Why is this Recommendation important?

Explains the challenges that the Recommendation seeks to address

## Questions & answers

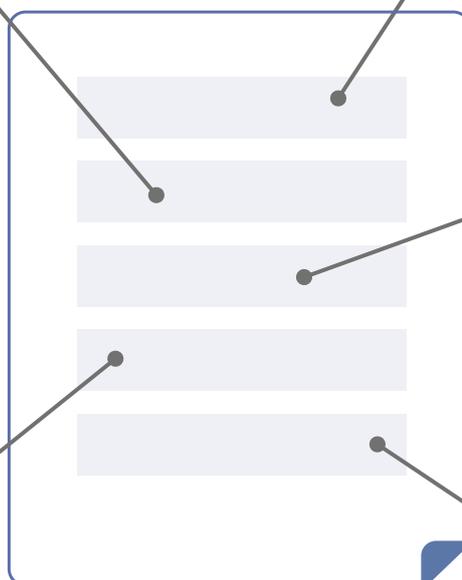
Answers common questions about this Recommendation

## Country examples

Provides real examples of different approaches to implementing the Recommendation

## What other sources might be useful?

Lists other OECD and non-OECD resources to support implementation





# Highlights

## I. Key definitions

### II.A. Apply high standards of conduct to the state

Setting the “tone at the top”; managing conflicts of interest; establishing reporting channels; hiring based on clear criteria.

### II.B. Establish ownership arrangements that are conducive to integrity

Preventing abuse of SOEs; separating ownership from regulatory functions; bringing transparency about which companies are state-owned; communicating with SOE boards.



### III.A. Ensure clarity in the legal and regulatory framework and in the state's expectations for anti-corruption and integrity

Clarifying the legal framework; establishing owner expectations on integrity; identifying and disclosing SOE objectives.

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

Monitoring SOE performance; integrating integrity into disclosure policies; making financial support to SOEs transparent; assessing risk exposure of the state.



### IV.A. Encourage integrated risk management systems in state-owned enterprises

Establishing risk management systems, that address, inter alia: responsibilities of boards; risk assessments; disclosure.

### IV.B. Promote internal controls, ethics and compliance measures in state-owned enterprises

Creating a ‘culture of integrity’; addressing subsidiaries; setting standards for conduct; training; establishing oversight and reporting and internal investigative procedures; building transparency.

### IV.C. Safeguard the autonomy of state-owned enterprises' decision-making bodies

Setting limits for politicians on boards; hiring independent board members; managing conflict of interests; conducting board evaluations; setting standards for conduct of executive management.



### V.A. Establish accountability and review mechanisms for state-owned enterprises

Being accountable to the legislature; reporting annually by SOEs and the state; ensuring external audit and, where relevant, state audit.

### V.B. Take action and respect due process for investigations and prosecutions

Enforcing rules; establishing penalties for corruption; protecting reporting persons; following due process for investigations; following-up with SOEs.

### V.C. Invite the inputs of civil society, the public and media and the business community

Engaging stakeholders and leveraging co-operation; providing for redress and liberties.



# Recommendation I.

## Establishing key definitions

**Recommendation I of the ACI Guidelines sets out definitions for the purposes of the Guidelines that are similarly applicable to this Implementation Guide.**

**State-owned enterprises (SOEs):** Countries differ with respect to the range of institutions that they consider as state-owned enterprises. Consistent with the SOE Guidelines, any corporate entity recognised by national law as an enterprise, and in which the state exercises ownership or control, should be considered as an SOE. This includes joint stock companies, limited liability companies and partnerships limited by shares. Moreover statutory corporations, with their legal personality established through specific legislation, should be considered as SOEs if their purpose and activities, or parts of their activities, are of a largely economic nature.

**Ownership and control:** The Recommendation applies to enterprises that are under the control of the state, either by the state being the ultimate beneficial owner of the majority of voting shares or otherwise exercising an equivalent degree of control. Examples of an equivalent degree of control would include, for instance, cases where legal stipulations or corporate articles of association ensure continued state control over an enterprise or its board of directors in which it holds a minority stake. Some borderline cases need to be addressed on a case-by-case basis, as provided by the SOE Guidelines.

**The Governance Bodies of SOEs (e.g. “Boards”):** Most, but not all SOEs, are headed by governance bodies commonly referred to as boards. Some SOEs have two-tier boards that separate the supervisory and management function into different bodies. Others only have one-tier boards, which may or may not include executive (managing) directors. In the context of

this document “board” refers to the corporate body charged with the functions of governing the enterprise and monitoring management.

**Independent board member:** Many governments include “independent” members in the boards of SOEs, but the scope and definition of independence varies considerably according to national legal context and codes of corporate governance. Broadly speaking, an independent board member is taken to mean independent from both the enterprise (non-executive board member) and from the state (neither civil servant, public official nor elected official). Independent board members, where applicable, are understood to mean individuals free of any material interests or relationships with the enterprise, its management, other major shareholders and the ownership entity that could jeopardise their exercise of objective judgement.

**Ownership entity:** The ownership entity is the part of the state responsible for the ownership function, or the exercise of ownership rights in SOEs. “Ownership entity” can be understood to mean either a single state ownership agency, a co-ordinating agency or a government ministry responsible for exercising state ownership. In cases where one government institution has not been assigned to play a predominant ownership role, this Recommendation should be implemented by the different government institutions responsible for the ownership function or the exercise of ownership rights in SOEs.

**Corruption:** While there is no internationally agreed definition, for the purposes of this Recommendation, corruption can be generally understood to cover acts of corruption within the scope of the UN Convention Against Corruption.

**Integrity:** The consistent alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interests.

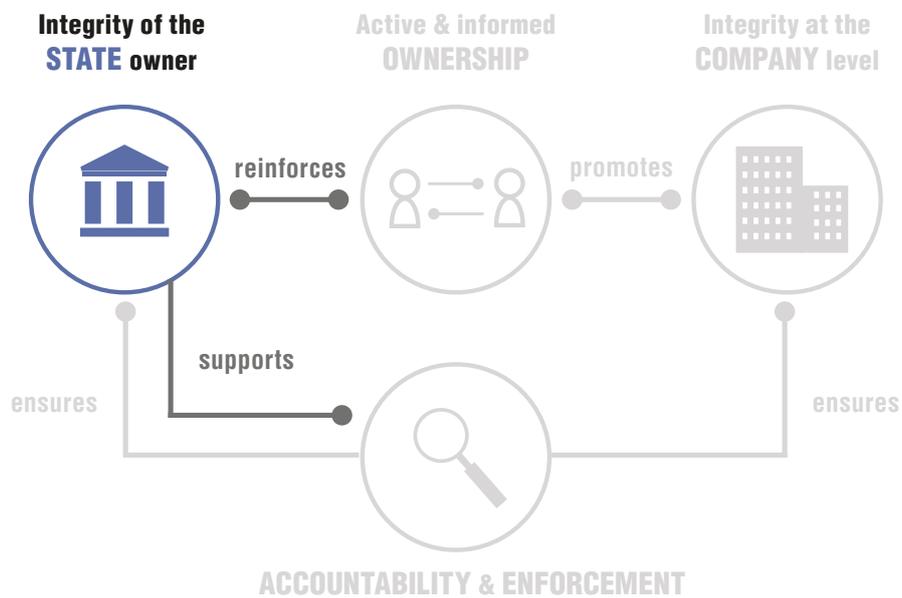
**Internal control(s):** The control activities, effected by an SOE's board, management and other personnel, designed to help the SOE meet its objectives relating to operations, reporting, and compliance, such that the incidence of fraud, waste, abuse or mismanagement is minimised.

**Internal audit:** The independent and objective assurance and consulting activity that helps an SOE to improve its operations and meet its

objectives. The internal audit function brings a systematic and professional approach to evaluating and improving the performance of risk management, internal control and governance, and reports to the board.

**External audit:** An audit by profit-making external auditors that reside outside of the SOE being audited, are independent of the SOE and of the state and are as a general rule appointed by the company's annual general meeting. The text is explicit when it instead refers to an "external audit" conducted by the national body that is mandated to oversee the execution of public budget and holds constitutional guarantees of functional and organisational independence (hereafter referred to as "Supreme Audit Institutions").

# Integrity of the state



# Recommendation II. Integrity of the State

## **The Council,**

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

**To this effect, Adherents, as appropriate acting via their ownership entities, should take the following action:**

**II.A. Apply high standards of conduct to the state**

**II.B. Establish ownership arrangements that are conducive to integrity**

## II.A. Apply high standards of conduct to the state

### Why is it important?

SOEs are overseen by high-level public officials and subject to the general rule of law in their countries of operation. Integrity in SOEs is contingent upon a more general commitment to good practices and high standards of conduct among policy makers like those espoused by the OECD Recommendation of the Council on Public Integrity.

A culture of ethics and integrity, which starts at the top with the state as enterprise owner, is the foundation for countering corruption. Promoting integrity, transparency and accountability of SOEs is not just a job of the ownership entity but requires a whole-of-government approach, whereby the government leads by example in good governance and ethics upheld through accountability and enforcement.

SOEs in countries with a stronger rule of law perceive fewer obstacles to upholding integrity in their companies. Conversely, a lack of integrity in the public and political sector is considered by SOEs to be a main challenge for integrity in their companies. In particular, SOEs associate this lack of integrity with increased risks of interference in decision-making and appointments of board members or CEOs, and of favouritism (including nepotism, cronyism and patronage). SOEs with a greater number of state representatives on boards or with fewer independent members consider their risks of corruption to be slightly higher. High-profile and ongoing cases of corruption in SOEs show that use of SOEs for political or private gain by representatives of the state remains a high-impact risk factor (OECD, 2018a).

The ownership entity is the main point of contact between the state and SOEs. Citizens as the ultimate owner of SOEs should have assurance that the ownership entity and its employees serve as an example of integrity and, at a minimum, do not act as a conduit for political interest that extends beyond their ownership activities or for political interference in the companies they oversee. The same applies to any state representatives, whether from the ownership entity or other, sitting on the boards of SOEs. This requires that state officials are sufficiently aware of their responsibilities for integrity and are able to discern when fellow representatives of state are not adhering to them.

Recommendation II.A of the ACI Guidelines seeks to address such challenges.

### How can the state apply its own high standards of conduct?

The Recommendation promotes three main ways the state can exemplify high standards of conduct (II.A).

First, the state should prioritise the public interest, be responsive to integrity concerns and promote a culture of transparency (II.1). To this end, the Adherents to the ACI Guidelines can also refer to the provisions of the Recommendation on Public Integrity [[OECD/LEGAL/0435](#)], which promotes these values across the whole of government.

In practice, the state could employ various communication strategies to disseminate public sector integrity values and standards internally, as well as externally – to the private sector, civil society and public – informing them of the standards and asking them to respect these rules when interacting with public officials. This can be done internally through newsletters, intranet pages, internal focus groups, and externally through public awareness campaigns, trainings and stakeholder engagement, among others, which consistently include state ownership representatives.

The state should promote an environment across government where integrity concerns, errors and ethical dilemmas are freely discussed and receive adequate, timely response and resolution from respective leadership. There is no one approach to implementing this recommendation; however, the state should take steps to demonstrate that concerns are given serious consideration and response by the state when

necessary. This could be done, for instance, through discussions at all levels, including public debates and consultations with external stakeholders when appropriate, by developing plans of remedial or preventative actions when misconduct or irregularities have been uncovered and by reporting on the follow-up actions taken by the state. This too could be communicated throughout the concerned public organisation, as well as externally to promote transparency and serve as deterrent for irregularities in the future (II.1).

Ideally, access to advice on ethical matters is easily available to the officials of the ownership entities and other stakeholders that engage with SOEs. Various models can be established to enable access to such advice. They could be provided at the central level by the national institution responsible for ethics, at the level of the ownership entity, at the level of various departments of the ownership entity or through combination of the above.

Second, representatives of ownership entities and others responsible for exercising ownership on behalf of the state should be fully bound by provisions of the national legal and regulatory framework that promote integrity. Naturally it would follow that there are limits and sanctions for non-compliance (II.2).

This could be achieved in a couple of ways, as elaborated upon in the Questions and Answers section below. More information on which standards should be included in the legal and regulatory framework for integrity are detailed in the recommendation (II.2.i-iii), the Questions and Answers section and in the aforementioned Recommendation on Public Integrity.

For ownership representatives to act capably on these high standards, they need unfettered access to the tools and measures available in the public sector for prevention, detection and eradication of corruption and integrity violations, such as awareness raising and training, ethical and anti-corruption advice, reporting channels and whistleblower protection, among others.

Third, the ownership entity should be accountable to the relevant representative body, including the national legislature (II.3). This could be done through obligatory written and oral reports done on a regular basis, for example annually. Good practice dictates that a policy of 'zero tolerance' for corruption and bribery is established among public officials, and promoted for adoption by SOEs.

## Questions and answers: ACI Guidelines' II.A



**The ACI Guidelines require that “high standards” of conduct be applied to the state. What do these high standards typically entail?**

The OECD promotes “a whole-of-government approach” for public sector integrity. Public officials should be subject to a comprehensive legal and regulatory framework setting standards of conduct that promote integrity in the fulfilment of their functions. The OECD’s Recommendation on Public Integrity (4) recommends that these standards serve as a basis for disciplinary, administrative, civil and/or criminal investigation and sanctions, as appropriate. Most often, representatives of state ownership entities are subject to the legal and regulatory framework applicable to public officials. Ideally it should be easy for public officials to know what is expected of them, and to know where to go when things go wrong. While legal and regulatory frameworks vary across countries, public integrity systems commonly address the 13 principles of the Recommendation on Public Integrity, built around three pillars:

- First, the system should create a coherent and interconnected set of policies and tools that are coordinated and avoid overlaps and gaps. This includes having a commitment from top-level management, establishing clear responsibilities and building on a strategic approach to integrity. This also includes ensuring that rules and public sector values are reflected in laws and organisational policies – including with regards to procedures to manage actual or perceived conflicts of interests, the receipt of gifts, post-employment restrictions and the like – and that they are effectively communicated to staff.
- The second pillar recognises that corruption prevention requires more than a strong system and effective accountability, and provides for cultivating a culture of integrity. The intention is to appeal to the intrinsic motivation of individuals. This includes principles like “leadership”, where managers lead with integrity within their organisations; “merit-based”, where professional and qualified people are employed and have a deep commitment to public integrity values, and; “capacity building”, where public officials receive the skills and training they need to apply integrity standards in their daily routine. It also looks at the benefits of creating an open organisational culture.
- Lastly, integrity systems need to rely on effective accountability, building upon strong risk management and control frameworks and robust enforcement mechanisms that can detect, investigate and sanction integrity violations. Effective accountability also includes enabling stakeholders’ participation at all stages of the political process and policy cycle, promoting access to information, and instilling transparency in lobbying activities and in the financing of political parties and election campaigns.

The ACI Guidelines apply particular principles of the Recommendation on Public Integrity specifically to the state as owner by requiring that the legal and regulatory framework provides, at a minimum (II.2.i-iv):

1. transparent, merit-based human resource management, with integrity being among criteria for hiring, promotion, remuneration, and dismissal of officials of ownership entities;
2. instruments to manage and prevent conflicts of interest that arise in the governance of SOEs or portfolios of SOEs, as a result of SOEs’ activities or related to their sector(s) of operation;
3. provisions on handling sensitive information by officials of ownership entities;
4. easily accessible and secure reporting channels, and;
5. protection of whistleblowers for officials of ownership entities.



## The ACI Guidelines require that state ownership entities be subject to high standards of conduct. How can the state ensure this?

This could be achieved through different approaches. In particular, the representatives of the ownership entity and others responsible for exercising ownership on behalf of the state could be included in the list of public officials covered by national anti-corruption and integrity legislation. In this case the full range of corruption-prevention measures and restrictions would apply to this category of public official. Further yet, good practice suggests that they be put on the list of positions exposed to heightened risks of corruption, and therefore subject to more stringent anti-corruption requirements and controls. Alternatively, specific ownership entity anti-corruption and integrity laws, rules and regulations can be implemented that would be comparable to those applied to other public officials, especially other officials similarly exposed to heightened risks of corruption.

### Country examples: ACI Guidelines' II.A

The below examples demonstrate how different countries implement (some of) these provisions in their national contexts.



*The state should... be responsive to integrity concerns in and concerning the SOEs they own [II.1]*

**Chile:** Chile's state ownership entity (SEP) participates in an organisation named the Anti-Corruption Alliance, composed of 32 public and private institutions, whose purpose is to help disseminate and implement among entities, including State-Owned Enterprises (EPPP-in Spanish), the principles contained in the United Nations Convention against Corruption. More information about the Alliance can be found [online](#).

**France:** There are several mechanisms that help with the implementation of this provision. Firstly, the French ownership entity (APE) has a dedicated ethics advisor under the supervision of the Ethics Committee. Among other things, the ethics advisor ensures that agents comply with the rules of ethics applicable to them in their capacity as public agents in particular.

In addition, SOEs, regardless of size, can refer to the French Anti-Corruption Agency (AFA) on any issue related to the detection and prevention of breaches of integrity. For example, the AFA has been able to assist SOEs on the methodology for implementing all or part of their anti-corruption compliance programmes and has answered many questions, including on the management of integrity risks within these structures.

Finally, all persons are required to submit their asset declarations to the High Authority for the Transparency of Public Life (HATVP), including the heads of state-owned enterprises. State ownership representatives may refer to the HATVP for confidential advice "on ethical matters they encounter in the course of their mandate or function" (Article 20 of the Law from 11 October 2013 relating to the transparency of public life). The advice given through these ethical opinions is twofold. The aim is both to prevent possible criminal violations and violations of conflicts of interest requirements.

“ *Those exercising ownership on behalf of the state should... undergo processes for hiring, retention, training, retirement and remuneration that are underpinned by ... integrity [II.2.i]* ”

**France:** Representatives of the French ownership entity (APE) must sign a Code of Ethics upon their arrival. The Code of Ethics includes provisions relating to the management of conflicts of interest, gifts and invitations offered by companies and the management of their financial instruments.

**United Kingdom:** There are various codes of conduct that apply to officials and employees at both the state and SOE level which are designed to promote integrity. At the state level, the employees of UK Government Investments (UKGI), which performs a shareholder role for a portfolio of government owned assets, are required under their contracts of employment to comply with the *UKGI Code of Conduct*. The Code includes provisions relating to disclosure of interests, personal dealings (i.e. in shares), gifts and hospitality and media handling. At the SOE level, board directors are required to adhere to the UK Cabinet Office *Code of Conduct for Board Members of Public Bodies*, which sets out the standards expected from those who serve on the boards of UK public bodies. The appointment of directors of SOEs is carried out in line with the principles set out in the UK Cabinet Office *Governance Code on Public Appointments*. The core principles are: Ministerial Responsibility, Selflessness, Integrity, Merit, Openness, Diversity, Assurance and Fairness.

“ *Those exercising ownership on behalf of the state should... be subject to conflict of interest rules [II.2.ii]* ”

**Chile:** There is a number of ways that Chile seeks to mitigate potential conflicts of interest in the SOE sector. Chile's ownership entity (SEP) has an [Ethics Code](#) for its advisers, officials, and directors. The Code reminds representatives that their job is to serve the state, putting general interest before that of individuals, performing work honestly and to the best of their abilities including being objective and transparent in decision-making. It disavows acceptance of any benefits that requires illegal or inappropriate behaviour, or non-compliance with established procedures, providing the explicit example of bribery. SEP representatives are obliged to note, and refuse to act on, any situation that could reduce their objectivity.

Moreover, government officials are prohibited from holding more than two other positions as advisers or members of the board of another public entity, including enterprises of the Administrative Statute ([article 87C](#)). The SEP [Information Management Manual](#) establishes 'locking' periods where SEP officials cannot acquire securities linked to SEP companies or goods whose value can be influenced by the information that is taken from a SEP company.

Finally, Lobby Law No. 20,730 is applicable to directors and authorities of the SEP, so they must record any meeting they hold with interested third parties, including on date, duration, who attends and subject matter, and they must also record in a public registry the trips they make and gifts they receive in the exercise of their functions.

**France:** Representatives of the French ownership entity (APE) are prohibited from taking interest in a company under APE's control, directly or through other individuals, which could compromise their independence. They are moreover required to fill in a declaration of interest and, in certain cases, an asset declaration (art. 25 of 'Loi Le Pors'). Declarations of interest are transmitted to the relevant authorities in the nomination process. In cases of doubt regarding potential conflict of interest, the declaration can be

transferred to the High Authority for transparency in public life to pronounce itself on the conflict. Representatives of the APE are obliged to keep declarations accurate throughout their servitude.

**Latvia:** The *Law on Prevention of Conflict Of Interest in Activities of Public Officials* prevents public officials from taking more than two other paid (or compensated) offices of other public entities. Combining of offices is only permissible if it does not entail a conflict of interest, is not in contradiction with ethical norms binding upon the public official and does not harm the performance of the direct duties of the public official.

**Switzerland:** There is a [Federal Administration Code of Conduct](#) (Code de comportement du personnel de l'administration fédérale visant à prévenir les conflits d'intérêts et l'utilisation abusive d'informations non rendues publiques), applicable to all federal employees. If federal employees are aware of information regarding SOEs that is not public knowledge and which is likely to influence the value of shares, these employees are not allowed to enter into transactions with such shares (Art. 94c OPers). Administrative units may issue further instructions to avoid conflicts of interest, the appearance of conflicts of interest and the misuse of information not publicly known. In particular, they may more strictly regulate or prohibit own-account transactions. Numerous administrative units, including ownership entities, have made use of this possibility. Based on this instructions, certain employees are not allowed at all to hold shares of SOEs.

**United Kingdom:** There are various policies and procedures that apply to officials and employees at both the state and SOE level which are designed to manage conflicts of interest. For example, the following codes of conduct all contain provisions relating to the disclosure and management of conflicts of interest: (i) the *UK Government Investments (UKGI) Code of Conduct* which applies to all employees of UKGI in their performance of a shareholder function for a portfolio of SOEs; (ii) the *Model Code for Staff of Executive Non-departmental Public Bodies* which applies to staff of SOEs, and; (iii) the *UK Cabinet Office Code of Conduct for Board Members of Public Bodies* which applies to board directors of SOEs.



*Those exercising ownership on behalf of the state should... be subject to provisions on handling sensitive information [II.2.iii]*

**Chile:** Representatives of the state ownership entity (SEP) must abide by the [Information Management Manual](#). The objective of the manual is to guide the actions of SEP's directors, officials and advisors on the management of information that they access in the carry out of their function, particularly information related to companies overseen by SEP. The Manual establishes rules related to the format, responsibilities, duties, limitations and restrictions related to handling of such information.

**Switzerland:** Article 142 of the Financial Market Infrastructure Act prohibits the exploitation of insider information is prohibited and criminalised (Art. 154 Financial Market Infrastructure Act).

**United Kingdom:** All civil servants, employees at UK Government Investments and employees and officers of SOEs need to comply with laws relating to market abuse and insider dealing in the performance of their work where handling information that is price sensitive. The Market Abuse Regulation (2016) prohibits insider dealing, unlawful disclosure of inside information and market manipulation. SOEs handling market sensitive/inside information will therefore implement bespoke policies and procedures depending on the types of activity they undertake to ensure their staff comply with the regulation. For example, one feature of the regulation is the requirement to draw up and maintain insider lists of individuals who have access to inside information (for example through the course of their employment).



*Those exercising ownership on behalf of the state should... have clear rules and procedures for reporting ... those reporting concerns should be protected in law and in practice [II.2.iv]*

**Chile:** The Ethics Code covering representatives of the ownership entity (SEP) establishes investigation procedures for complaints. Anonymous complaints can be made through a form available on the SEP intranet that initiates an investigation procedure.

**Peru:** The Peruvian ownership entity (FONAFE) continues to implement the ‘Gap Closure Plan’ – updating the whistleblower hotline for anonymous complaints and facilitating access to this channel through various means, developing a complaints investigation procedure and deploying the crime-prevention model for bribery within the ownership entity.

**Switzerland:** Article 22a of the Federal Personnel Act provides that all employees shall be obliged to report all crimes or misdemeanours to be prosecuted ex officio, which they have discovered in the course of their official duties or which have been reported to them, to the criminal prosecution authorities, their superiors or the Swiss Federal Audit Office (SFAO). Employees are entitled to report to the SFAO (e.g. via an online whistleblowing platform) other irregularities that they have discovered in the course of their official duties or that have been reported to them. Anyone who reports or reports in good faith or who has given evidence as a witness must not be disadvantaged in his professional position as a result. The Federal Office of Personnel has published a [guide](#). The whistleblowing platform is open and accessible for everybody.

**United Kingdom:** The Public Interest Disclosure Act 1998, which protects whistleblowers who make certain protected disclosures from detrimental treatment by their employer, is equally applicable to staff at the state level as it is to those working within SOEs. It is best practice in the UK for organisations in the public and private sector to have their own internal whistleblowing policies. For example, UK Government Investments (UKGI, which performs an ownership function) has its own whistleblowing policy applicable to its staff and expects the Board of its SOEs to regularly update their own whistleblowing policies. In addition, the UK Government has produced guidance (*Whistleblowing: guidance for employers and code of practice*) for employers to understand the law relating to whistleblowing, how to implement a whistleblowing policy and to recognise the benefits whistleblowing can bring to an organisation.



*The ownership entity should be held accountable to the relevant representative body, including the national legislature [II.3]*

**Canada:** Crown corporations (SOEs, in Canada) are accountable to Parliament through a Minister. Moreover, the Governor in Council, supported by the Privy Council Office, and the Treasury Board Secretariat approves corporate plans. This allows Ministers to review practices set out in Crown corporations’ planning documents, clarify expectations or impose conditions. Treasury Board Ministers can require corporate-plan reporting on specific issues where there may be concern of misuse (e.g. travel and hospitality expenses). Details of transactions, for instance of restricted property transactions, must be disclosed for approval to avoid abuse and conflict of interest. Submission templates include a risk analysis.

**Chile:** The Chilean ownership entity (SEP) must answer to the information requirements of the Congress, under the Organic Constitution of the National Congress (Article 9 Law No. 18,918), for which more information is available [online](#). SEP must report annually to the President of the Republic and to the Congress on economic and financial performance of its companies, as well as an Annual Report about

SEP's activities and the financials results of the companies. These requirements are contained in the Organic Norm of the SEP itself (Resolution No. 381, of 2012, of the Executive Vice President of CORFO), and can be found [online](#). SOEs with state guarantees must submit, in May of each year, a report on fulfilment of the goals agreed upon with SEP in order to access the guarantee, as required by the Organic Constitution (Article 2 Law No. 19,847), for which more information is available [online](#).

**United Kingdom:** UK Government Investments (UKGI) is held accountable for the performance of its ownership role (including as a centralised shareholder for a portfolio of SOEs) via its CEO who has been assigned by HM Treasury as UKGI's 'Accounting Officer'. As Accounting Officer, the CEO is personally responsible for safeguarding the public funds for which he/she has charge and for ensuring propriety, regularity, value for money and feasibility in the handling of those public funds. As Accounting Officer, the chief executive has specific responsibilities to account to Parliament (as set out in the Accounting Officer's letter of appointment and more generally in HM Treasury's policy guidance *Managing Public Money*), which include but are not limited to preparing and signing a governance statement to be included in the annual report and proper preparation of UKGI's accounts.

## Which other sources might be useful?

Relevant OECD instruments to draw from:

- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (esp. Art. 1) [[OECD/LEGAL/0293](#)].
- Recommendation of the Council on Guidelines on Corporate Governance of State-Owned Enterprises (esp. I.A, II.B, II.E, V.E) [[OECD/LEGAL/0414](#)].
- Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service [[OECD/LEGAL/0316](#)].
- Recommendation of the Council on Public Integrity (esp. 4, 9c) [[OECD/LEGAL/0435](#)].

Other relevant international sources to draw from:

- G20 Anti-Corruption Action Plan: Protection of Whistleblowers
- United Nations Convention Against Corruption (Art. 7.1, 8.4)

## II.B. Establish ownership arrangements that are conducive to integrity

### Why is it important?

The perceived threat of undue influence, conflicts of interest and favouritism in and around SOEs highlights the state's responsibility to minimise opportunities for undue influence or exploitation by the state, or politically connected third parties, in SOEs' management. By one count, more than one in 10 SOE representatives believes that the relations between their company and political officials pose an obstacle to integrity (OECD, 2018a). One way of limiting corruption in SOEs is to secure integrity of those responsible for exercising ownership (II.A), as discussed above. The other is to ensure that the organisation of the state ownership function, and the owners' methods of working, do not undermine SOEs' or the state's efforts towards compliance and integrity (II.B).

### How can states establish ownership arrangements that are conducive to integrity?

In order to establish ownership arrangements that are conducive to integrity (II.B), the state should undertake measures in two directions: (a) by establishing an appropriate legislative framework that prevents the abuse of SOEs for personal or political gain (II.4.), and (b) by setting up the ownership function in a way that facilitates integrity in the SOE sector (II.5.).

An important step in preventing exploitation of SOEs (II.4) is criminalising bribery of those considered public officials within the ownership entity or SOEs (II.4.i). In practical terms, the provisions of national criminal legislation on active and passive bribery, as well as other corruption crimes committed by public officials, would encompass any representatives of the governance bodies and management of SOEs that are directly appointed by the state, and, the employees of SOEs in jurisdictions where they are considered public officials. They can be either included in the definition of the public official itself, or explicitly listed as persons to which these provisions (articles) apply.

Recommendation II.4.iii calls on the state to prohibit the use of SOEs for political campaigns, including contributions and financing political activities in the national legislation. Such provisions can be introduced into political party financing laws, electoral codes and other election legislation, or be included in the laws governing SOEs. Such clauses would raise the profile and importance given to this principle by the state. In addition, advanced practice sees states encouraging SOEs to introduce such provisions in their Codes of Ethics or other similar documents. This can be done, for example, by including such clauses into templates for Codes of Ethics or anti-corruption programmes developed for SOEs as guidance.

The state may go further towards some countries' good practice of stating that SOEs should not be used for any purpose related to political parties. Such an interdiction may be stated in the ownership policy, anti-corruption policy documents or strategies for instance.

Many of the provisions on establishing ownership arrangements (II.5) reiterate those of the SOE Guidelines and should therefore be implemented following guidance and practice developed by the Working Party on implementation of the SOE Guidelines. Adherence and diligent implementation of the SOE Guidelines is in many respects an essential element of adherence to the ACI Guidelines.

However, several of the ACI Guidelines' provisions have a specific anti-corruption and integrity focus and introduce new elements in addition to the provisions of the SOE Guidelines, therefore requiring specific actions.

In particular, when separating ownership from other government functions, attention should be paid to preventing or minimising possibilities for political intervention that is non-strategic or operational in nature, and other undue influence by the state, serving politicians, and other politically connected serving parties. This would

require that such persons have no direct contact with SOEs, or that such interactions are limited, well regulated and made transparent or disclosed to both to the shareholders and the general public.

Similarly, the ACI Guidelines call on the state to make more information available – notably, on the ownership structure and linkages to the ownership entity. This can be made available by, for example, including SOEs in beneficial ownership registers. At a minimum, countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons – in this case SOEs – that can be obtained or accessed in a timely fashion by competent authorities (FATF, Recommendation 24).

The ACI Guidelines also require the state to expand monitoring of SOEs' performance to include compliance with applicable anti-corruption and integrity requirements. To do so effectively, the ownership entity needs to be provided with the mandate and resources (financial and human) that make it qualified to monitor, review and assess such integrity-related compliance. This capacity is also necessary to implement other provisions of the ACI Guidelines (III.5.). Specialised units or persons within the ownership entity can carry out such ownership functions. Alternatively, the ownership entity might engage persons with specialised skills from other agencies (e.g. anti-corruption or integrity bodies) on an ad hoc basis or through a designated support person.

Another new element includes encouragement of professional dialogue between the ownership entity and state authorities responsible for accountability and prevention of corruption. Such dialogue can be organised in various formats – through joint trainings, regular meetings, or joint bodies and taskforces – to build trust, promote understanding of respective roles and to bring familiarity to the legal channels of communication and formalities needed when irregularities have occurred or are suspected. Professional dialogue between the ownership entity and anti-corruption authorities could also be facilitated through a system of feedback on referrals to assist both sides in preventing future irregularities or corrupt conduct. Such feedback can be formally required or just established and promoted in practice.

## Questions and answers: ACI Guidelines' II.B



**The ACI Guidelines recommend separating the ownership from other government functions to minimise conflict of interest, and opportunities for political intervention (non-strategic or operational in nature). We see this in the SOE Guidelines – why is it repeated in the ACI Guidelines?**

Separation of functions is a fundamental principle of both the ACI Guidelines and the SOE Guidelines because of its importance for providing SOEs with operational autonomy and for mitigating risks of undue influence in SOEs. There should be a clear separation between the state's ownership function and other state functions that could influence SOEs' operating conditions. In particular, the ownership function should be separated from market regulators. In separating different functions, both perceived and real conflicts of interest should be taken into account.



**The ACI Guidelines suggest to clarify and make “publicly available the roles of other (non-ownership) state functions vis-à-vis SOEs that may interact, whether infrequently or frequently, with SOEs in the execution of their functions”. How should this be done?**

Good practice calls for the use of web-based communications to facilitate access by the general public (SOE Guidelines, VI.C). Ideally the state could use the website of the ownership entity, or another centralised web-

resource created specifically, to communicate information on state ownership and its SOEs portfolio. Good practice suggests that “the ownership entity could consider developing a website, which facilitates the public access to information... provides easy access and timely information about the performance of the state sector and can be regularly updated” (OECD, 2010a).

In addition to providing comprehensive information on the organisation of the ownership function and the general ownership policy, as well as information about the evolution, size, value of the state sector and performance, such websites can contain information describing the roles of other (non-ownership) state functions vis-à-vis SOEs, including regulatory agencies and audit or control institutions (II.5.iii-iv). For full transparency, it would indicate the agencies/institutions that carry out such functions, the frequency of their interaction with SOEs and the legal basis and procedures for such interaction. In the same way, it could include information on the interactions between these agencies/institutions with the coordinating or ownership entity. Good practice also suggests that the state consider publishing the reports, findings, recommendations and actions taken by these agencies vis-à-vis SOEs (e.g. report by the national audit office) as well as information on actions taken by the coordinating or ownership entity in response to such materials and actions. It would be good practice for the information to be regularly updated, as well as easy to find and peruse.



**The ACI Guidelines recommend setting “an appropriate framework for communication that includes maintaining accurate records of communication between the ownership entity and SOEs”. Much of the communication that happens between boards and the state owner is informal, so what constitutes “an appropriate framework”?**

Despite informalities in certain interactions, accurate record keeping and the transparency of communication between the ownership entity and the SOE is important for deterring illicit activities as well as for facilitating investigations if the case arises. According to the SOE Guidelines (VII.F) the Chair of the Board should, when necessary and in co-ordination with other board members, act as the liaison for communications with the state ownership entity. They should act as the primary point of contact between the enterprise and the ownership entity and should do so through an appropriate framework for communication, which would include maintaining accurate records of communication between the ownership entity and SOEs. Such framework for communication and record keeping is equally a responsibility of the ownership entity. A set of rules could be established, for example, making it mandatory to keep the copies of the written correspondence, minutes of telephone discussions and meetings between the ownership entity and the SOE by both the ownership entity and the SOE and make them available to the competent authorities on request.

### **Country examples: ACI Guidelines’ II.B**

The below examples demonstrate how different countries implement (some of) these provisions in their national contexts.



***Laws criminalising bribery of public officials apply equally to the representatives of SOE governance bodies, management and employees... [II.4.i]***

**Latvia:** Latvia’s *Law on Prevention of Conflict of Interest in Activities of Public Officials* names SOEs’ executive board members and supervisory board members as public officials. By law, public officials can be punished if: (i) they commit intentional acts using his or her official position, and; (ii) they fail to perform

acts which, according to law or his or her assigned duties, he or she must perform to prevent harm to State authority, administrative order or interests protected by law of a person, and/or substantial harm has been caused to a state power, administrative order or rights and interests protected by law of a person. It also envisages punishments for accepting a bribe, being an intermediary and giving or offering or promising of bribes.

**Chile:** The directors, managers and officials of state-owned enterprises created by law – that is, 20 of the 28 state enterprises in Chile – are considered to be government officials for purposes of probity standards and criminal legislation ([ruling](#) No. 16.164 of 1994 of the Comptroller General of the Republic). Directors, managers and officials of state-owned enterprises that were not created by law – that is, the remaining 8 state companies – are considered government officials for the purposes of criminal offences.

**United Kingdom:** The UK Bribery Act 2010 applies to the representatives of SOE governance bodies, management and employees. The main offences under the Act are: a general offence of bribing another person; a general offence of accepting a bribe; an offence of bribing a foreign public official; and a corporate offence of failing to prevent bribery by persons associated with relevant commercial organisations.



*Prohibit the use of SOEs as vehicles to engage in bribery of foreign and domestic public officials [II.4.ii]*

**Colombia:** Entities classified as parent companies under Law 222 of 1995, or the law that modifies or substitutes it, shall be liable and subject to administrative penalties in the event in which any of its subsidiaries engages in any of the activities listed in *Colombia's Administrative liability of legal persons for the bribery of foreign public officials in international business transactions* (Law 1778/2016). The provisions of this law shall also extend to branches of companies that operate abroad, as well as state owned industrial and commercial enterprises, companies in which the State has a share and mixed companies.

**Chile:** The SOEs can only make donations if they are framed within the CSR policy previously approved by the company's board of directors and these donations has to be related to the activities carried out by the company (CGR Rule No. 35.602 of 2009, <https://www.contraloria.cl/web/cgr/buscar-jurisprudencia> ).



*Prohibit use of SOEs as vehicles for financing political activities and for making political campaign contributions [II.4.iii]*

**France:** France's Electoral Code prohibits all public figures and state-owned enterprises from giving donations or other benefits to a candidate. Campaign accounts may be rejected on the ground that the candidate enjoyed the benefit within the meaning of these provisions.



*Minimise conflict of interest, and opportunities for political intervention (non-strategic or operational in nature) and other undue influence by the state, serving politicians or politically connected third parties in SOEs (II.5.ii)*

**Chile:** All the recommendations, opinions or instructions of the ownership entity (SEP) to its SOEs are made through written documents (e.g. minutes of the SEP Council, official letters or Agreements). In

addition, the Passive Transparency of Article 10 of Article One of [Law No. 20,285](#) on access to public information is also applicable to the SEP; consequently, any person can request a copy of the minutes of the Council or of the official letters.

**Croatia:** The Conflict of Interest Prevention Act regulates the prevention of conflict of interest in the exercise of public office, including setting restrictions on participation of state officials in the executive bodies or board of directors of companies, including SOEs. In particular, the Act stipulates that a state official may not be a member of executive bodies or a board of directors of any company (Article 14 (1)). Exceptionally, they may be members in boards of directors of extra-budgetary funds that are of special state interest, and shall be proposed to the general assembly of the company by the Government (Article 15).



### *Recording SOEs in beneficial ownership registers [II.5.iii]*

**Croatia:** Croatia adopted regulations to introduce the disclosure of beneficial owners, including those of SOEs. This is yet to be implemented in practice.

**United Kingdom:** SOEs that are UK private limited or unlisted public limited companies are required to maintain a register of ‘persons with significant control’ pursuant to *Part 21A of the Companies Act 2006*. Persons with significant control are individuals or registrable legal entities (RLE) which satisfy any of the following conditions: (i) an individual/ RLE who holds, directly or indirectly, more than 25% of the shares in a company; (ii) an individual/RLE who holds, directly or indirectly, more than 25% of the voting rights in a company; (iii) an individual/ RLE who holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of a company; (iv) an individual/RLE who has the right to exercise, or actually exercises, significant influence or control over a company; or (v) an individual/RLE who holds the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm which is not a legal entity, but would satisfy any of the first four tests if it were an individual/RLE.



### *Professional dialogue between the ownership entity and state authorities responsible for the prevention of corruption [II.5.v]*

**Argentina:** Argentina’s co-ordination council of SOEs, housed within the Office of the Cabinet of Ministers (JGM), has established an “Integrity Task Force” together with the anticorruption agency (OA) and the state control body (SIGEN). The group meets monthly to discuss different policies and actions for the public sector in general and SOEs in particular. It was initially set up to support companies in the establishment of integrity programs. It has since developed “Guidelines on the Good Governance of SOEs”. As a result, several companies have issued “Integrity and Transparency” programmes.

**Chile:** Through the participation in the Anti-Corruption Alliance, the ownership entity (SEP) maintains a constant dialogue and carries out joint work with different entities in charge of the fight against corruption in Chile. These entities include the Office of the Comptroller General (CGR) and The Financial Analysis Unit (UAF). The Alliance promotes integrity in SOEs through one stream of its work. More information could be found [online](#).

## “ *Setting an appropriate framework for communication... between the ownership entity and SOEs [II.5.vi]* ”

**Brazil:** Brazil’s ownership co-ordination body (SEST), located in the Ministry of Economy, has an area focused on the communication and orientation of members of the Board of Directors that represent the state to disseminate good management practices.

**Colombia:** A platform (SIREC) was created for state owners to interact with directors and receive on monthly basis information regarding corporate-governance related subjects, including risk management, from each company.

**United Kingdom:** For the SOEs that it oversees, the state ownership function (UK Government Investments, UKGI) enters into a framework document with each SOE and the related government department that sets out the broad corporate governance arrangements which apply to the UKGI-SOE relationship. A standard framework document will include wording on the expected flow of information between UKGI, the relevant government department and the SOE, which could include access to information on financial performance against plans and budgets, achievements against targets, capital expenditure and investment decisions, board appointments and remuneration and reports on key corporate risks. For SOEs that fall outside the UKGI portfolio, the relevant government department will enter into a framework document with the SOE in a similar manner.

## “ *Ownership entity is equipped... to oversee and monitor SOE compliance with applicable corporate governance standards – including those related to anti-corruption and integrity [II.5.viii]* ”

**Chile:** The SOEs must send to the SEP each year a self-evaluation against the guidelines contained in the SEP Code regarding Conflicts of Interest, Comprehensive Risk Management, Fraud Risk Management, Codes of Conduct, Transparency, Purchases and Acquisitions and internal audit. The SOEs’ submission is then evaluated by the SEP. In addition, the companies send to the SEP a scorecard (175 questions prox.) of fulfilment of guidelines of the SEP Code whose revisions are carried out by an external auditing company hired by the SEP.

### Which other sources might be useful?

Relevant OECD instruments to draw from:

- Recommendation on Guidelines on Corporate Governance of State-Owned Enterprises (esp. II, III) [[OECD/LEGAL/0414](#)].
- Recommendation of the Council on Public Integrity (esp. 2, 9) [[OECD/LEGAL/0435](#)].
- Recommendation of the Council on Principles of Corporate Governance [[OECD/LEGAL/0413](#)] (esp. I.E, III.D) [[OECD/LEGAL/0413](#)].

# Active & informed ownership



# Recommendation III.

## Exercise of state ownership for integrity

### **The Council,**

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

**To this effect, Adherents, as appropriate acting via their ownership entities, should take the following action:**

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

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

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

### Why is this important?

Clear laws and regulations provide less room for interpretation and discretionary decision making, and therefore reduce potential for exploitation of SOEs for private gain or in pursuit of political goals. Ambiguity in laws or regulations regarding the operation and accountability of SOEs can create opportunities for corrupt behaviour.

Moreover, the legal and regulatory framework should facilitate a level playing field in the marketplace where SOEs operate. SOEs undertaking economic activities should not be exempt from the application of general laws, tax codes and regulations, including, and in particular, those addressing anti-corruption, accounting and audit. At the same time, SOEs should not be disadvantaged by application of specific anti-corruption or integrity requirements. Ultimately, when rules for all market players are the same, SOEs and privately owned corporations will be striving to high integrity standards based on similar incentives, and their breach will be similarly sanctioned.

Among the main tools for active and informed ownership is the development of broad mandates and objectives for SOEs, including an appropriate balance between financial and non-financial objectives. Conflicting corporate objectives can pose a challenge to the integrity of some SOEs. Anecdotal evidence from a corruption case in an SOE showed how non-transparent changes to the SOE's objectives, motivated by private and political interests, spurred certain SOE representatives to engage in corrupt activity to compensate for the financial losses associated with the revised objectives.

The ACI Guidelines (III.A) promote clarity regarding the state's expectations for anti-corruption and integrity to avoid misconduct that stems from ignorance to the rules and to encourage reporting where misconduct occurs. Generally, state owners rely on the legal framework to communicate expectations to SOEs. In surveyed countries (OECD, 2018a), the majority of SOEs said regulations and state expectations regarding integrity were clear. Yet around half of SOE respondents reported that integrity in their SOE is somewhat hampered by "a lack of awareness among employees of the need for, or priority placed on, integrity" and "a lack of awareness of legal requirements". Cases of corruption in some SOEs and their involvement of all levels of the corporate hierarchy suggest that state expectations are not understood or implemented in practice.

This section provides practical guidance for states on how they can limit room for interpretation on what it expects of its SOEs.

### How can state owners bring clarity to the legal and regulatory framework and around their expectations?

To bring clarity to the legal and regulatory framework and around its anti-corruption and integrity expectations (III.1), the state should align laws regulating all aspects of SOEs' operations with the SOE Guidelines. Clarity is moreover achieved when the laws are easily accessible for those concerned, including the general public, and when they are established with as little room as possible for alternative interpretations.

To bring clarity around the ownership function, good practice suggests that all mandates and functions of the officials of the ownership entity and other state institutions, as well as procedures regulating interactions and communications between the state and the SOE, are embedded in law or in other publicly available regulations. This would ensure that any irregularities would be more easily identifiable by the representatives of the government, including ownership entities, the SOEs and the general public. It would

further empower civil society, or other interested parties to carry out a watchdog function, thereby contributing to the implementation of provisions under the ACI Guidelines section V.C.

Furthermore, SOEs should be covered by national legislation that holds legal persons responsible for bribery and other corrupt conduct, with no special treatment or additional requirements placed on SOEs as compared to privately owned entities (III.1). In implementing these provisions, the state should work to comply with requirements of the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Convention). Similarly, national legislation should provide penalties for omissions and falsifications in respect of the books, records, accounts and financial statements of SOEs in the same manner as they apply to privately owned corporations. At a minimum, the legislation should prohibit companies from establishing the following tools for the purpose of bribing of a foreign public official or attempting to hide it: the establishment of off-the-books accounts; the making of off-the-books or inadequately-identified transactions; the recording of non-existent expenditures; the entry of liabilities with incorrect identification of their object or; the use of false documents (OECD, 2009). Again, the Anti-Bribery Convention is the reference on the scope and application of such legislation.

The ACI Guidelines reiterate the provision of the SOE Guidelines with regards to clearly specifying SOE objectives and avoiding their redefinition in a non-transparent manner (III.2). Implementing the SOE Guidelines will support the state in ensuring that objectives are appropriately set and managed (II.B, II.F).

The ACI Guidelines also recommend that “when representatives of government, including those of the ownership entity, give instructions that appear to be irregular, SOEs are provided with established channels to seek advice and report such instances” (III.3). Such channels can be set up within the national anti-corruption or integrity body, with qualified persons who have knowledge of anti-corruption and integrity requirements, as well as corporate governance legislation, to provide the necessary advice or judgement as to whether reported information should be referred to responsible law enforcement institutions. Alternatively, such channels with specialised persons can be set up within the ownership entity.

Regardless of the approach that the state takes, the channels and relevant procedures of seeking advice and reporting should be made well known to the representatives of SOEs and of the ownership entities. The reporting channels should be made secure, providing for anonymity, and should provide timely response and feedback. Good practice further suggests that advice provided through this channel should have formal implications and safeguard the person or persons from adverse consequences.

The ACI Guidelines also recommend that anti-corruption and integrity be made part of a state’s formal expectations or requirements for SOEs (III.4). This can be done in various ways, for example by introducing relevant clauses in state policies (whether ownership or anti-corruption), strategies, programmes, plans or laws. These should be explicitly communicated (III.4) to SOE boards, which can be encouraged to disseminate expectations throughout the corporate hierarchy.

Good practice suggests that including such requirements into high-level policy documents raises their profile and gives them more visibility. The state should consider such an approach but decide on the form most appropriate in the national context.

Expectations about anti-corruption and integrity should, at a minimum, take into account and seek to address identified high-risk areas within or around SOEs (III.4.i). To identify such risk areas, a comprehensive risk analysis could be carried out by specialised anti-corruption or integrity agencies, by the ownership agency or by any other state institution that carries out analysis for development of state policy that includes the SOE-related provisions in question.

The ACI Guidelines contain examples of potential high-risk areas (III.4.i). These examples could be a good starting point, especially if analysis is done by the ownership entity (in contrast to the specialised anti-corruption or integrity body), which could build on its breadth of SOE-specific knowledge and data and rely on its experience in undertaking other SOE assessments.

From time to time, the state should review its anti-corruption and integrity expectations, taking into account assessments of corruption-related risks (III.4.ii). In cases where new risks emerge, the state's expectations should be modified accordingly. Thus, the state could conduct a review of its ownership expectations at the same time as conducting a risk assessment. This can moreover feed into the development or modification of anti-corruption policy documents.

## Questions and answers: ACI Guidelines' III.A



**The ACI Guidelines promote “clarity in the legal and regulatory framework and in the State’s expectations for anti-corruption and integrity”. What should the legal and regulatory framework for anti-corruption and integrity in SOEs cover? Does the state ownership entity need to do more?**

Countries’ legal and regulatory frameworks for SOEs, including their anti-corruption and integrity elements, differ greatly depending on national legal systems and types of ownership arrangements. However, the following components are common, but may be applied differently depending on the degree of state ownership:

- General framework for SOEs that provide rules of governance, accountability and transparency (e.g. Corporations Laws);
- SOE-specific legislation that sets out the mandate within which the SOE must operate, and tailored governance measures particular to that organisation;
- General public service legislation, including anti-corruption and integrity-related laws and provisions, that includes SOEs within scope;
- Legal directive powers may also convey specific enforceable anti-corruption and integrity expectations;
- National prioritisation of anti-corruption and integrity, with requirements embedded in, for instance, national anti-corruption plans. As well as international commitments taken up by states when signing international treaties and agreements, such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the EU directive (2014/95/UE) to improve transparency in non-financial information between EU members.

Together, these instruments will generally address the following topics: taxation, access to information, conflicts of interest, conduct of public officials, anti-money laundering and counter-terrorist financing, audit, accounting, whistleblowing, public procurement, remuneration, (criminalisation of) bribery and other corrupt conduct, disclosure and transparency, internal control and risk management, as well as other integrity-related aspects of corporate governance, capital market and stock exchange requirements.

Countries’ legal and regulatory frameworks vary in how they promote integrity and anti-corruption in SOEs. Some state-ownership entities see their expectations as adequately communicated through reading of such laws. Other countries have aimed to provide a degree of centralisation by extracting and highlighting relevant guidelines in one spot, or by taking a stance on the approach SOEs should take. However, if governments do not communicate and highlight the importance of such laws and regulations and fail to provide guidance on the implementation, in whichever form, there is a risk that their importance is not fully grasped and implementation suffers. Therefore, the state could and should go beyond simply embedding these requirements in the legislative framework, seeking to implement the ACI Guidelines in full.



**According to the ACI Guidelines, “the legal and regulatory framework should facilitate a level playing field in the marketplace where SOEs undertake economic activities”. What does a level playing field mean in this context?**

Regulatory frameworks and legal forms of SOEs differ by country. As a guiding principle, SOEs undertaking economic activities should not be exempt from the application of general laws, tax codes and regulations. Laws and regulations should not unduly discriminate between SOEs and their market competitors. SOEs’ legal form should allow creditors to press their claims and to initiate insolvency procedures (SOE Guidelines, III.E). For instance, when SOEs engage in public procurement, whether as bidder or procurer, the procedures involved should be competitive, non-discriminatory and safeguarded by appropriate standards of transparency (see the annotations of the SOE Guidelines, III.G). Where an SOE is fulfilling a governmental purpose, or to the extent that a particular activity allows an SOE to fulfil such a purpose, the SOE should adopt government procurement guidelines that ensure a level playing field for all competitors, state-owned or otherwise. State-owned monopolies should follow the same procurement rules applicable to the general government sector.



**The ACI Guidelines require the state to “clearly specify SOE objectives and avoid redefining these objectives in a non-transparent manner. The state’s broad mandates and objectives for SOEs should be revised only in cases where there has been a fundamental change of mission”. SOEs operating environments are changing. Why should they be revised only in cases of fundamental changes of mission?**

The same principle should apply to holding corporations accountable to anti-corruption, accounting and audit rules regardless of their ownership. In this case, for example, if a corporation has engaged in bribery – it should be held accountable based on the national legislation, regardless of its ownership form. Similarly, accounting and auditing rules applicable to privately owned corporations should be applicable to SOEs.

Opaque objectives reduce accountability, and may leave the SOE vulnerable to corruption and undue interventions. In addition, while it may sometimes be necessary to review and subsequently modify an SOE’s objectives, the state should refrain from modifying them too often and should ensure that the procedures involved are transparent. Setting objectives is a responsibility of the state owner as per the SOE Guidelines, and the ACI Guidelines reiterate its importance to avoid change of operational direction for illicit purposes. Objectives should be clear from inception to avoid confusion later.

## Country examples: ACI Guidelines' III.A

The below examples demonstrate how different countries implement (some of) these provisions in their national contexts.

“ *Private sector best practices in areas such as corporate liability, accounting and audit apply to SOEs. [III.1.]*

**Chile:** All the rules applicable to private companies, including [Law No. 20,393](#) on criminal liability of legal persons, are also applicable to the SOEs. They are also subject to the same accounting regulations as open stock companies (Article 10 Law No. 20,285 makes the rules on information of open stock companies applicable to SOEs).

**Colombia:** Entities classified as parent companies (under Law 222 of 1995, or the law that modifies or substitutes it), shall also be liable and subject to administrative penalties in the event that any of its subsidiaries engages in any of the activities listed in *Colombia's Administrative liability of legal persons for the bribery of foreign public officials in international business transactions* (Law 1778/2016). The provisions of this law shall also extend to branches of companies that operate abroad, as well as state owned industrial and commercial enterprises, companies in which the State has a share and mixed companies.

**France:** France's Loi Sapin II (Article 17 of Law No. 2016-1691) requires managers of companies, groups of companies and public establishments employing at least 500 employees and whose turnover is more than 100 million euros to take measures and procedures to prevent and detect the commission of acts of corruption and influence peddling. The legal anti-corruption compliance obligations apply to all economic actors, both public and private, that meet the thresholds mentioned above. In addition, article 3 of the Sapin II law requires State administrations, local authorities and their public establishments and semi-public companies, associations and foundations recognized as being of public utility to adopt procedures to prevent and detect breaches of probity. By analogy with what the law provides for economic players, public players are expected to put in place an anti-corruption system comprising the eight measures and procedures applicable to large companies, adapting them to their specificities. The French Anti-Corruption Agency (AFA) monitors the quality and efficiency of the devices deployed.

“ *Clearly defining, communicating, and reporting on SOE objectives “Clearly specify SOE objectives” [III.2]*

**Brazil:** the “SOE Statute” (Law 13,303/2016) requires SOEs' boards to publish an annual letter publicising its public policy objectives, and those of subsidiaries, in line with the objectives that were established to justify SOEs' creation. The letter must clearly specify the resources applied in the fulfilment of the objectives, as well as the economic and financial impacts of the pursuit of these objectives. The ownership co-ordination unit, SEST, makes available online a model Annual Letter, along with others documents and manuals to assist and support managers of SOEs.

**Chile:** Once an SOE's budget has been established by The Budget Directorate (DIPRES), the ownership entity (SEP) establishes financial objectives for the SOE through 3 instruments: the Annual Management Plan (PGA), for State Port Companies; the Programming Agreement for companies that have acceded to the state guarantee, namely, Metro, EFE, ENAER and TVN, and; the Goal Agreement for the remaining SEP companies. All agreements are signed by both SOE chairmen and SEP. Fulfilment of the PGA is

audited by an external auditing company and approved by the Ministry of Transportation and Telecommunications through a Supreme Decree. The SEP informs the President of the Republic and Congress, in May of each year, on the fulfilment of the programming agreements and prepares a report of compliance with the goal agreements.

**Colombia:** Colombia's Directorate for SOE's at the Ministry of Finance has developed IT tools to interact with SOEs and monitor their performance. Firstly, the Ministry of Finance sets specific objectives for strategic and majority-owned companies that include financial goals, public policy impact, disclosure of information regarding international standards and the prevention of corruption. The objective-setting process is based on the Ministry's assessment of, inter alia, valuation and financial due diligence of SOEs, KPIs, SOEs' annual reports and corruption prevention plans. The objectives are conveyed to boards, which have to include them in the strategic plans and follow-up indicators.

**United Kingdom:** Government departments affiliated with the relevant SOEs will develop clear objectives for the SOE, on an annual or multi-year basis, in accordance with the SOE's business-planning cycle, which shall dictate the SOE's strategy, operations and business plan. UKGI (the body responsible for oversight of the state ownership function) will review the SOE's internal procedures to ensure this objective-setting exercise is conducted efficiently and will encourage the SOE to establish robust and meaningful Key Performance Indicators against which the SOE can monitor its performance. Government departments will also issue an annual Chair's letter to its affiliated SOEs setting out the strategic priorities of the department and UK Government Investments (performing an ownership role for a portfolio of state owned assets) for the SOE for the coming year and how the Chair is expected to undertake these.

“ *SOEs should be able to seek advice or to report [instructions given by representatives of government, including those of the ownership entity, which appear to be irregular] through established reporting channels” [III.3]*

**Chile:** The Comptroller General has a unit for State Companies through which they can make inquiries. There is also a complaints channel available for SOEs to use as needed. More information is [available](#) on the website of the Office of the Comptroller General.

“ *Set and consistently communicate high expectations regarding anti-corruption and integrity in SOEs [III.4]*

**Canada:** Central agencies (Treasury Board Secretariat) provide guidance to Crown corporations (SOEs, in Canada) on the range of legislation and guidelines applicable to the organisation generally, and its employees, and promote good practices in line with federal and international standards. This includes encouragement of take-up on a voluntary basis of standards developed for departments and agencies that are not automatically applicable to Crown corporations (e.g., Integrity Regime).

These actions should be outlined in the corporate plan to reassure Ministers of the implementation of ethical practices in these organisations. In particular, description of risk would include that associated with corrupt or unethical behaviour. Guidance incorporating elements obligations and expectations for public sector employees around ethics and integrity sensitizes Crown corporation employees at all levels to these issues.

**Chile:** Chile's ownership entity, SEP, developed Corporate Governance Guidelines for the SOEs that fall directly under their watch, which cover internal and external audit, risk management, conflicts of interest, fraud, codes of conduct, transparency and prudential accounting policy.

**Croatia:** has responded to integrity and corruption challenges by developing a comprehensive anti-corruption policy framework, which defines state's expectations on integrity and anti-corruption towards the ownership entities and the SOEs, and aims to establish high integrity standards applied to the state across the board. In particular, the Anti-corruption programme for companies under majority state ownership for 2019-2020 (Official Gazette no. 48/19) was developed and adopted in 2019 in the framework of the overall Anti-Corruption Strategy for the period 2015–2020. In order to monitor implementation of the Anti-Corruption Programme and regularly improve and adjust measures aimed at its implementation, all majority-owned SOEs are required to prepare internal anti-corruption action plans that serves as a control mechanism determining whether a specific action from the Programme has been fully implemented or if it should be redefined according to new needs.

**Denmark:** The ownership policy (Statens ejerskabspolitik) sets out guidelines on corporate social responsibility including anti-corruption. It recommends that SOEs follow the OECD Guidelines for Multinational Enterprises regarding, among other topics, anti-corruption and the UN Global Impact Initiative, and it advises SOEs to consider establishing a whistleblower policy. In some cases, the expectations and rationales are stated in a law that regulates the specific SOE or articles of association.

**Finland:** Tackling corruption is the responsibility of the SOE under Finnish law. In addition, the 'government's resolution on state-ownership policy' expects SOEs to integrate corporate social responsibility into their business operations and efficient CSR management based on the identification of the issues essential to the company. The state ownership entity considers corruption and integrity matters to be a part of this responsibility managed by each company and its management. The state ownership entity considers it favourable that SOEs utilize internationally recognized guidelines and principles for corporate social responsibility in their activities. These include, for example, the OECD Guidelines for Multinational Enterprises, the UN Global Compact initiative, the ISO 26000 Social Responsibility Guidance Standard and the UN Guiding Principles on Business and Human Rights.

A dialogue about the state's anti-corruption and integrity ownership expectations between the representatives of the state ownership entity and the Chairs of the boards takes place on a company-by-company basis at least once a year.

**Italy:** Italy's Ministry of Economy and Finance and anti-corruption authority (ANAC) set up a dedicated working group to create guidelines for partly or wholly owned SOEs, at the central and local level. Upon completion in 2015, the Ministry released a directive addressed to the companies controlled or partly owned by the Ministry itself. The directive illustrates the basic contents of the measures that should be adopted: introduction of codes of conduct or the integration of ethical codes already in force and establishment of a sanctions system; transparency; mechanisms to verify incompatibility and/or ineligibility for management; measures to protect whistleblower protection and avoid "revolving doors"; bans for employees who cease their positions, and; employee training and job rotations.

**Netherlands:** The Dutch Corporate Governance code is applicable to Dutch listed companies and takes a "comply or explain" approach. The purpose of the Code is to facilitate – with or in relation to other laws and regulations – a sound and transparent system of checks and balances within Dutch listed companies and, to that end, to regulate relations between the management board, the supervisory board and the shareholders. According to the authorities, compliance with the Code contributes to confidence in the good and responsible management of companies and their integration into society.

**New Zealand:** Shareholding Ministries expect Crown Company boards to adhere to the 'no surprise policy' and be informed well in advance of everything considered potentially contentious in the public arena,

whether the issue is inside or outside the relevant legislation and/or ownership policy. Examples of information that fall within the “no surprise” policy include: changes in CEOs; potential or actual conflicts of interest; potential or actual litigation by or against the company or its directors or employees; fraudulent acts; breaches of corporate social responsibility obligations; the release of significant information under the Official Information Act, and; imminent media coverage of activities that could raise criticism and beg for a response from shareholding ministries (OECD, 2018).

**Norway:** The Norwegian State has, in its capacity as an owner, several expectations for companies with state ownership regarding both sustainability and responsible business conduct in general and more specific key-areas including anti-corruption (Meld. St. 8 (2019-2020) Report to the Storting “white paper”). The government expects that companies with state ownership lead the field in their work on responsible business conduct. This imply, among other things, that the work is supported by the board and that the companies follow internationally recognised guidelines, principles and conventions, such as the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights.

With regards to anti-corruption, the government expect that the company:

- leads the field in its work.
- works to prevent economic crime, including corruption and money laundering.
- has a well-founded tax policy that is publicly available.
- conducts due diligence based on recognised methods.
- is transparent about material areas, goals and measures relating to its work.

Additionally, Norway’s Ownership Department in the Ministry of Trade, Industry and Fisheries engaged PWC to elaborate (i) current anti-corruption law according to Norwegian law, the UK Bribery Act and US Foreign Corrupt Practices Act, (ii) a best practice anti-corruption programme for companies and (iii) different issues of current interest regarding the state’s role as a shareholder. The resulting report included examples on best practice anti-corruption programmes, with related questions for companies. The report was distributed to all companies in the Ministry’s portfolio and followed up with meetings with all companies.

The Minister of Trade, Industry and Fisheries had in recent years two meetings with board chairs both to enhance the state's expectations in this area (setting the "tone at the top") and for the companies to share experiences regarding anti-corruption practices. The purpose of the meetings is to create an arena for exchange of experience on good board practices in this area and to increase knowledge about the state’s expectations in this area and the role of the state as an owner. The Ministry of Trade, Industry and Fisheries has also in recent years arranged two workshops for compliance officers in the SOEs with the same purpose of creating an arena for exchanging good anti-corruption practices.

In addition, the Ownership Department annually has meetings with board members regarding adherence to expectations on sustainability and responsible business conduct. In advance and annually, the Ownership Department develops guidelines for preparation of the dialogue. The guidelines contain advice regarding what material to look at prior to the meeting and suggests questions for companies, among others. State assessments of what is important to discuss at the meeting for each company takes into account the state's expectations, information from previous meetings where responsible business conduct has been discussed, the company's annual report and sustainability report, websites and any other relevant information. The dialogue is risk-based, and focuses on material risks for each company.

**Portugal:** Principles of good governance applicable to state-owned enterprises were integrated in a legal diploma (Decree Law 133/2013 of 3 October). In 2014, a Code of Corporate Governance (article 229 of Código dos Valores Mobiliários) was issued, requiring that all entities belonging to the public enterprise sector have a benchmark of good governance, regardless of their scope.

**Sweden:** Owner expectations and requirements regarding anti-corruption and integrity aspects are formally included in the State's ownership policy. According to the State's ownership policy State-owned enterprises should act as role models within the area of sustainable business and should otherwise behave in a manner that promotes public confidence. Exemplary conduct includes working strategically and transparently with a focus on co-operation. These efforts are guided by international guidelines that include provisions on anti-corruption, such as the ten principles of the UN Global Compact and the OECD guidelines for Multinational Enterprises.

The ownership policy sets out that it is particularly important that SOEs among other things work towards high standards of business ethics and active prevention of corruption. The board of directors has according to the ownership policy a duty to integrate sustainable business in the company's business strategy and business development and to set strategic targets for sustainable business. Such targets are to be set for the most relevant areas and sustainability challenges for each company and a number of companies have set targets relating to anti-corruption.

**United Kingdom:** UK Government Investment (UKGI), which performs an ownership role for a portfolio of state owned assets, challenges SOEs with regards to their views of the adequacy of their core internal policies including policies on whistleblowing, anti-corruption, anti-slavery and anti-money laundering on a regular basis, often at regular shareholder meetings. UKGI will discuss and propose any significant alterations to the core internal policies with the SOE and its affiliated government department where it deems this appropriate. However, responsibility for internal policies and compliance lies with the SOE (usually under the Chief Compliance Office or similar) and the SOE Board. It is the responsibility of the SOE Board (or through the Audit Committee of the SOE Board) to review all core internal policies and update them as appropriate at least once a year.

## Which other sources might be useful?

Relevant OECD instruments to draw from:

- Recommendation on Guidelines on Corporate Governance of State-Owned Enterprises (esp. II, III.C) [[OECD/LEGAL/0414](#)].
- Recommendation of the Council on Public Integrity (esp. 2) [[OECD/LEGAL/0435](#)].

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

### Why is this important?

The risk of corruption increases both if the state acts too passively as an enterprise owner and if it intervenes directly in the management of SOEs. Unless the state acts as an active and engaged owner, holding SOEs to high standards of performance and integrity is notoriously difficult. If the state interferes in the operations of SOEs, or directly controls their management, there is a risk of state capture or a lack of accountability among corporate agents.

An OECD study in 2018 highlighted weaknesses in SOEs' risk management. Ownership entities often rely on disclosure from SOE boards, and on the objectivity and professionalism of internal and external audit, as inputs to monitoring and evaluation. One-third of state owners review their SOEs' internal risk management systems directly through its own reviews and almost another one-third does so through SOE activity reports. Yet, aside from ownership entities that undertake compliance assessments, few ownership entities employ individuals with anti-corruption and integrity-related skillsets.

The interpretation of how active the ownership entity should be in the area of anti-corruption and integrity will differ according to the country context. Yet some of the state owner's fundamental activities, as found in the SOE Guidelines, can be applied to the anti-corruption space in order to promote not only integrity but enhanced performance.

This section elaborates on what it means for the state owner to be active and informed regarding integrity without unduly intervening in the operations of SOEs, pursuant to ACI Guidelines' Recommendation III.B.

### How can states be active and informed owners with regards to integrity and anti-corruption?

The ACI Guidelines outline five ways that the state can be an active and informed owner with regards to integrity (III.5). In particular, it should (i) set up reporting system to monitor and assess performance, including against anti-corruption and integrity standards, (ii) develop its own capacity to carry out such monitoring, (iii) develop a disclosure policy that would include integrity-related disclosures, (iv) disclose financial support and (v) use benchmarking tools to assess its own exposure to corruption risk due to its SOE ownership.

In practical terms, to monitor and assess performance of SOEs (III.5.i), including with regards to meeting state's expectations on anti-corruption and integrity, the state might find it pragmatic to build on existing tools used to assess the performance of its SOEs by adding elements that would allow for assessments of anti-corruption and integrity as well. In this case, the state could develop and include anti-corruption and integrity benchmarks or indicators in existing reporting systems. Or, it could add anti-corruption and integrity-related questions into the list of questions that need to be addressed by SOEs in their reports, if the owners' assessment is conducted based on those SOE reports. The Questions and Answers section provides tips on what to consider when assessing SOEs on implementation of anti-corruption and integrity standards.

While the state may consider developing a stand-alone reporting system on anti-corruption and integrity benchmarks, a few considerations should be made. Caution should be exercised to avoid overburdening or confusing SOEs with multiple reporting systems related to performance. The costs of developing and operating such a system could also be taken into account. Finally, it may send the wrong signal: that integrity and corruption-risk management is unrelated to performance or is of different importance than other performance indicators against which SOEs are already being assessed.

In order to assess compliance with the above-mentioned benchmarks effectively, the state needs to: (i) conduct the assessments regularly, in the same way it is expected under the SOE Guidelines in the framework of general performance assessment of SOEs, and; (ii) ensure that the capacity to do so is in place. Such assessments depend on qualified staff that are well versed in subjects of anti-corruption, integrity and corporate governance and, in some cases, that have knowledge of the specific sectors in which SOEs are operating. Tips on obtaining and cultivating such a capacity are provided in the Questions and Answers section.

Moreover, the ACI Guidelines recommend that the state engage in discussions with SOEs boards about corruption-risk mitigation efforts (III.5.ii). There is no one approach on how this could be best organised – some countries may decide on holding regular (for example, annual) meetings while some may organise such discussions on an ad-hoc basis. Each state should decide on the most appropriate model of doing so. However, these meetings should be well prepared with the board members and state representatives knowing ahead what issues will be discussed and with materials for discussion made available to participants of these meeting well in advance to ensure substantive discussions. These meetings could be used by the ownership entity for collecting and disseminating good practices amongst various SOEs that the state owns.

Another core activity of an active and informed state owner is the development of a disclosure policy. To this end, the ACI Guidelines reiterate provisions of the SOE Guidelines (VI). The state should thus begin by implementing the good practices of the SOE Guidelines, and go beyond by also requiring high-quality, integrity-related disclosures.

When developing a disclosure policy (III.5.iii) the state must (a) identify what integrity-related information should be disclosed. Examples of integrity-related disclosures are provided in the Questions and Answers section below. Among these disclosures should be any financial support from the state, as well as information about material integrity-related risks, the risk management system and measures taken to mitigate them, as is also recommended to SOEs in Recommendation VI (VI.1.vi). Moreover, the state should (b) identify the channels through which such information should be disclosed. Statements about compliance with anti-corruption laws or with the state's expectations on integrity are most commonly published in SOEs' annual reports. In addition, SOEs may also publish certain information in publicly available anti-corruption programmes or policies, or alongside information about internal control and ethics measures of the company. Finally, the disclosure policy should (c) prescribe that the SOE should have mechanisms for ensuring quality of disclosed information. As per the SOE Guidelines however, disclosure requirements should not compromise essential corporate confidentiality.

This Recommendation also suggests that the state should consider developing mechanisms to measure and assess SOEs' implementation of its disclosure requirements. There is no one mechanism that fits the needs of all countries. It is important that each country develop its own methodology, which would set benchmarks corresponding to disclosure requirements and would suggest a reasonable way of measuring the level of meeting these benchmarks by SOEs. Guidance on how the state might assess implementation of the disclosure policy is included in the Questions and Answers section.

The ACI Guidelines encourage the state to be informed not only about SOEs' risks and risk management but also of the state's own risk exposure due to its ownership of SOEs (III.5.v). Naturally, this would include assessment of exposure to corruption risk. The ACI Guidelines recommend that the state uses benchmarking tools to assess its overall exposure to risks. Good practice would suggest that the state then use the results when appropriate for corruption-risk management amongst SOEs. The state can implement this provision by either developing such tools anew or expanding existing risk management tools to cover specific corruption-related risks. In doing so, it could again involve the expertise of anti-corruption and integrity bodies and audit institutions and that of state ownership representatives. All those involved should be guided by good practice developed by the Working Party in identifying and managing risks, particularly

those related to compliance, responsible business conduct obligations, conflict of interest and related party transactions (SOE Guidelines V.C, V.D, V.E and VI.A.8).

The state owner could share its risk management tools and methods with SOEs in the event they would be useful for building up SOEs' own risk management, without neglecting the ACI Guidelines' call for SOEs' risk management systems to be, where appropriate, in line with requirements for listed companies. Moreover, training seminars and guidance on these tools could be developed by the state for its own purpose and then shared with SOEs as appropriate.

### Questions and answers: ACI Guidelines' III.B



**How can we be sure, in practice, to hold SOEs to high standards of performance and integrity while refraining from unduly intervening in SOE operations of directly controlling management? In other words, how can state owners ensure a balance between active and passive ownership?**

This is a challenging but important balance. In Canada, for instance, it is a challenge for the Treasury Board to promote integrity and fight corruption in Crown corporations with the arm's length nature of the relationship that is required to achieve the desired public policy goals with independence. However, there is a robust accountability framework in place to ensure that any potential issues of corruption or ethical practices are avoided or identified and addressed at an early stage. These include audit, monitoring and evaluation functions of central agencies, access to information laws, annual public board meetings and an open and merit-based appointments process.



**What should the state keep in mind when developing tools to assess SOEs' implementation of anti-corruption and integrity requirements?**

When developing anti-corruption and integrity benchmarks, indicators or modules of the monitoring systems it is important to utilise anti-corruption and integrity expertise available. Specialised anti-corruption and integrity agencies, which develop reporting or monitoring systems on anti-corruption requirements of general nature, could be invited to take part in development of the anti-corruption and integrity benchmarks, or of the relevant reporting system modules for SOEs, or their advice and input could be sought for the development of the benchmarks and systems by the ownership entity. In sum, it is key that these reporting systems draw on knowledge of specialists in anti-corruption and integrity, specialists in corporate governance, and those familiar with operation of SOEs. Such multi-subject expertise will ensure that performance benchmarks are at a minimum relevant, achievable, indicative and measurable, or "SMART", i.e. Specific, Measurable, Achievable, Result-oriented and Time-based and will help develop appropriate systems for collection of accurate and reliable data necessary for their assessment.



**How can the state ownership entity develop or acquire the capacity to effectively monitor implementation of anti-corruption and integrity requirements?**

These persons could be from specialised anti-corruption, integrity or audit institutions, which would be vested with the mandate to review compliance of SOEs with anti-corruption and integrity expectations of

the state. The state can also consider creating specialised persons or units if the amount of work merits numerous persons within teams responsible for monitoring of SOEs performance in the ownership entity. Anti-corruption and integrity bodies may second specialists to the ownership entity regularly or when needed to perform monitoring and evaluation. Finally, the state may decide to organise joint task forces or working groups, for instance – permanent or ad-hoc in nature.

Specialised staff and others working on anti-corruption and integrity in SOEs need to undergo continuous training to keep abreast of developments in legal requirements and good practice. This includes regular training, development of guidelines, manuals, instructions, etc. Good practice suggest that joint capacity involving representatives of ownership entities, specialised anti-corruption integrity and audit institutions, and SOEs is beneficial.



**The ACI Guidelines ask the state owner to develop a disclosure policy, following as closely as possible to disclosures recommended in the SOE Guidelines and “additionally include integrity-related disclosures”. What are some examples of integrity-related disclosures?**

Disclosure is an important tool for improving transparency and accountability. The SOE Guidelines suggest the disclosure policy could include:

- A clear statement to the public of enterprise objectives and their fulfilment (for fully-owned SOEs this would include any mandate elaborated by the state ownership entity);
- Enterprise financial and operating results, including where relevant the costs and funding arrangements pertaining to public policy objectives;
- The governance, ownership and voting structure of the enterprise, including the content of any corporate governance code or policy and implementation processes;
- The remuneration of board members and key executives;
- Board member qualifications, selection process, including board diversity policies, roles on other company boards and whether they are considered as independent by the SOE board;
- Any material foreseeable risk factors and measures taken to manage such risks;
- Any financial assistance, including guarantees, received from the state and commitments made on behalf of the SOE, including contractual commitments and liabilities arising from public-private partnerships, and;
- Any material transactions with the state and other related entities.

Additional integrity-related disclosures could include information about: SOE beneficial ownership; SOE fully consolidated subsidiaries and partly consolidated holdings (associates, joint ventures), including percentage owned in each such subsidiary/holding, countries of their incorporation and operation; asset disclosures; donations, and; anti-corruption programmes, internal controls, ethics and compliance measures (or programmes). The latter would ideally include information about codes, policies and monitoring reports on their implementation; risk management systems; commitments to comply with the law; leadership support and zero-tolerance statements; anti-corruption training; confidential reporting channels and prohibition of retaliation for reporting, and, disclosure of the identities of the SOE's major contractors and partners, including the beneficial ownership of such entities.

As provided in the SOE Guidelines, the state owner should give some consideration to the size and commercial orientation of SOEs when deciding on reporting and disclosure requirements for SOEs. SOEs

of a smaller size, for instance, should not have disclosure requirements so high as subjecting them to a competitive disadvantage. Conversely, for large SOEs or those oriented mainly towards public policy objectives, particularly high stands of transparency and disclosure should be applied. Disclosure requirements for SOEs should be the same as listed companies and should not compromise essential corporate confidentiality nor put SOEs at a disadvantage in relation to its private competitors (SOE Guidelines' Chapter VI Annotations).



**The Guidelines ask the state to consider developing mechanisms to measure and assess implementation of disclosure requirements by SOEs. What could the assessment look like?**

In addition to the country examples provided in this section, examples of similar undertakings by the non-governmental sector can be of interest to the state in seeking to develop assessment mechanisms and methodologies. For example, Transparency International has spearheaded Transparency in Corporate Reporting initiative, whereby the data is collected from the corporate websites of companies (both privately and state-owned) and embedded links and submitted to the assessed companies for verification. Such a basic method may merit consideration as it would allow the state to assess whether outsiders can find disclosed data and whether it is easily accessible and user-friendly. Another source for borrowing of possible practices could be various Open Government Data (OGD) initiatives implemented by many OECD and non-OECD countries. The state may wish to consult methodology of the OECD 2017 Open-Useful-Re-Usable Government Data Index (OURdata Index), including its data collection and verification processes. A set of metrics and indicators developed by OECD on open government data is more complex and includes, in addition to openness, indicators of usefulness and reusability of published data.

### Country examples: ACI Guidelines' III.B

The below examples demonstrate how different countries implement (some of) these provisions in their national contexts.



***Setting up reporting systems to regularly monitor and assess SOE performance... and assess their alignment with the state's expectations with regards to integrity and anti-corruption [III.5.i]***

**Argentina:** the ownership co-ordination unit of Argentina regularly monitors and assesses the financial and operational performance of SOEs. Companies submit information monthly to JGM and the National Budget Office. Information is downloaded to a web link, from which both institutions can access information. The accuracy of this information is verified according to the execution of the budget approved by Congress. Both the Anti-Corruption Office and the control body, SIGEN, conduct the assessment and audit of corruption in SOEs.

**Brazil:** The Office of the Comptroller General of the Union (CGU) is tasked with auditing, monitoring, and assessing the maturity level of SOEs' integrity and anti-corruption measures, which includes evaluating internal controls and risk management; which allows making comparisons and benchmarks of SOEs by publishing individual reports for each assessed SOE. In 2015, CGU developed a methodology for such assessment.

The auditing process consists of evaluating the following five dimensions: the development of the integrity program's management environment; risk analysis; the design and implementation of the integrity program's policies and procedures; communication and training; and monitoring, remediation measures, and disciplinary actions. Each dimension has a comprehensive set of sub-dimensions (e.g. codes of conduct and whistleblowing) that are evaluated for their existence (referring to the presence of each element), their quality (referring to suitability according to best practices) and their effectiveness (refer to its proper functioning).

These evaluations play an important role in promoting integrity since the reports are made public and contain recommendations for each company's integrity programme based on good practices. Furthermore, after receiving the final report, each SOE approves an Action Plan to implement the recommendations, which are subject to follow-up by CGU.

**Colombia:** In Colombia, a private sector initiative led to the development of the Secretariat of Transparency's *Register of Active Companies in Anti-Corruption* (Empresas Activas Anticorrupción - EAA). The EAA assesses compliance programmes of companies (including SOEs) based on a set of international ethical standards, through 10 different categories: (i) corruption risks identification, (ii) organization and responsibilities, (iii) detailed policies for specific sensitive areas, (iv) compliance program's implementation, (v) financial and internal controls implementation, (vi) communication and training, (vii) human resources policies, (viii) complaints procedures, (ix) compliance program audit system and (x) collective actions.

The register aims to promote good corporate practices in compliance and corruption prevention and generates a set of standards aligned with the current regulation, including Law 1778 of 2016 (also known as Anti-bribery Law). The register has two different editions for large companies and SMEs.

**Korea:** In Korea the following tools are used: (i) A Public Sector Integrity Assessment (conducted by the Anti-Corruption and Civil Rights Commission); (ii) Anti-Corruption Measures Evaluation (conducted by the Anti-Corruption and Civil Rights Commission), and; (iii) Guidelines on the Enforcement of Anti-Corruption and Integrity Measures (defined by the Anti-Corruption and Civil Rights Commission). Two public sector entities, the Anti-Corruption and Civil Rights Commission and the Board of Audit and Inspection are more directly committed to anti-corruption and integrity issues in the public institutions than the Ministry of Economy and Finance (MoEF) that oversees SOEs.

The MoEF controls the anti-corruption and integrity through the Performance Evaluation by mirroring the audit results and exposures by the abovementioned entities, in addition to developing laws and guidelines associated with anti-corruption and integrity in public institutions.

**Slovenia:** SOEs with over 500 employees during the fiscal year are required to report in annual business reports on environmental, social and human resources matters, as well as on respect for human rights and the fight against corruption and bribery.

**Sweden (sustainability analysis tool):** A sustainability analysis tool that sheds light on relevant areas of sustainable business, including corruption and business ethics, has been developed for state-owned companies by the Government Offices corporate management organisation. The analysis increases the owner's awareness of companies' risks and opportunities and how these are managed. This includes a review of the sector, country and company sustainability-related risks linked to the value chain and the corporate governance framework for these aspects.

**Sweden (sustainability reports):** All state-owned enterprises must prepare a sustainability report in accordance with Global Reporting Initiative Standards (GRI) or another international framework for sustainability reporting. Sustainability reporting is a tool for driving sustainable development activities by working systematically with clear reporting and monitoring, with a focus on transparency. Boards are responsible for ensuring that the report is published on the company's website in conjunction with the company's annual report. Together with other financial reports, they form an integrated basis for

assessment and monitoring by the state owner. The sustainability report must be quality assured through independent review and assurance by the auditor appointed by the general meeting as the company's statutory auditor.

When preparing sustainability reports, state-owned enterprises must comply with the rules on sustainability reports in the Swedish Annual Accounts Act that apply to large companies. This means, for example, that the sustainability report must contain the information necessary to understand the company's development, position and results, as well as the consequences of its operations. In particular, the sustainability report must provide information on matters related to the environment, labour and social conditions, respect for human rights and prevention of corruption where these are judged material to the company or its stakeholders.

### Developing capacity



*Developing capacity [of the ownership entity] in the areas of risk and control...engaging in discussions about corruption risk mitigation efforts with SOE boards [III.5.ii]*

**Canada:** The Treasury Board Secretariat and Finance Canada employ individuals with various types of financial management expertise who provide advice in the context of a challenge function on corporate information and submissions. Individuals in all central agencies are assigned to perform challenge functions of particular organisations – they are knowledgeable and have access to expert advisors in different areas dealing with financial management, good governance, ethics, conflict of interest, etc. For all of the subject areas described above, central agencies have an associated policy centre that employs individuals equipped to advise on related issues.

**Chile:** Since the ownership entity (SEP) joined the international Anticorruption Alliance (2017), meetings of directors, managers and compliance officers of the SOEs have been held through this instance where various matters related to prevention of corruption and promoting integrity have been addressed.

**Korea:** The Ownership Steering Committee may have a member who is a certified public accountant with at least 10 years of experience in audit and accounting. Each year, the Minister of Economy and Finance (MoEF) forms a Performance Evaluation Group comprised of professors, doctors from government-funded research institutes, and certified public accountants, lawyers and management consultants with at least five years of experience.

**Norway:** The Norwegian Ownership Department has sufficient skills for assessing integrity and corruption risks in SOEs. The skills are based on the employees' previous experiences and competence built up in the Ownership Department through different initiatives on anti-corruption and integrity.

**Poland:** The Department of Treasury of the Chancellery of the Prime Minister employs people with many years of experience in corporate governance and strategic analysis. One of the first training sessions that each of the Chancellery of the Prime Minister employees undergoes is on preventing corruption.

**Slovenia:** For the needs of establishing and implementing a performance and integrity compliance system, the Slovenian Sovereign Holding (SSH) hired a compliance officer. The compliance officer is responsible for preparing a draft integrity plan with proposals for its implementation and other measures of internal control. These measures are meant to detect and prevent risks of corruption, conflict of interest, unauthorised non-public political and interest influence on decision-making and other unlawful and unethical conduct. This applies to actions within the SSH as well as in relation to companies in which the SSH has a majority share or prevailing influence, and in relation to external stakeholders. The Commission

for the Prevention of Corruption may supervise the implementation of the integrity plan in order to eliminate individual or general risks of corruption and conflicts of interest. Based on a proposal from the management board of the SSH or the supervisory board of the SSH, the Commission for the Prevention of Corruption may issue a decision ordering an SOE to draft an integrity plan.

**Sweden:** In 2015, the Swedish Anti-Corruption Institute introduced the State ownership entity, including the investment directors also serving as board members of the state-owned enterprises, to the Code regarding gifts, rewards and other benefits in business. The network for all corporate legal counsels of state-owned enterprises were invited to a similar seminar.

### Engaging in discussions with SOEs boards



*...additionally include integrity-related disclosures... consider developing mechanisms to measure and assess implementation of disclosure requirements by SOEs [III.5.iii]*

**Sweden:** Cabinet ministers and political leadership of relevant ministries regularly meet with chairs and management of state-owned enterprises. The aim of these owner dialogues is, in part, to assess companies' performance against financial, public policy and sustainability targets. In addition, the result of the sustainability analysis is communicated to the board of the SOE. The result is also taken into account in the Government's regular dialogue with the company in monitoring the company's development, and in the recruitment and nomination of board members.

**Korea:** The Performance Evaluation Group formed by the Ministry of Economy and Finance checks the accuracy and timeliness of the disclosure of the information including the financial statements and management information disclosed online. In case of inaccuracies, the evaluation penalises SOEs by subtracting points in the scoring.

**Russia:** the Russian Federation, based on Order No. 530n of the Ministry of Labor of the Russian Federation dated October 7, 2013, requires state-owned corporations and other organisations that are established on the basis of federal laws to publish and fill in anti-corruption subsections on their official websites. Among other things, these requirements provide for the obligation to publish information about the activities of the commission on official conduct compliance and competing interests' settlement, including that about the decisions taken by such a commission with the key details of the issue considered.

**Thailand:** The Office of the National Anti-Corruption Commission (NACC) introduced in 2017 an "[Integrity and Transparency Assessment](#)" (ITA) to assess the integrity, transparency and disclosure for government agencies and SOEs. All government entities are required to partake in the ITA for fiscal years 2018-2021. The assessment is based on surveys of internal and external stakeholders and empirical evidence of state agencies and SOEs, around three categories:

- 1) Internal Integrity and Transparency (IIT), focusing on the perception of internal stakeholders on performance, budgeting, exercising of power, asset utilisation and tackling corruption within the organisation;
- 2) External Integrity and Transparency (EIT), focusing on the perception of external stakeholders such as customers on quality of services and performance, efficiency, effectiveness and development of administration process of state agencies and SOEs; and
- 3) Open Data Integrity and Transparency (OIT), focusing on information disclosure and evidence on the website for basic information, administrative information, budget appropriation, human resource management and development and overall promotion of transparency.

The ITA assessment results in a score that aims to incentivise entities to improve their transparency and integrity practices. Thailand's state ownership entity (SEPO) plays a key role as a coordinator between the NACC and SOEs and helps the NACC monitor SOEs' participation in the ITA. In addition, under the SOEs' Performance Evaluation System, SEPO sets many KPIs that are along the lines of those of ITA, such as information disclosure, quality of service delivery, efficiency and effectiveness and tackling corruption, and integrity.

“ *...benchmarking tools to assess the overall risk exposure of the state through its ownership of SOEs...such tools should be used to encourage improvements in corruption-risk management amongst SOEs [III.5.v.]* ”

**Lithuania:** Lithuania's Special Investigation Service (the anti-corruption agency) examined in 2019 and later published an analysis of main corruption risks amongst municipal SOEs. The 40 page methodological tool contains an outline of the main corruption risks relating to public procurement, conflicts of interests and administration/management and makes recommendations on how to reduce these risks. Among other relevant information, it includes also an overview of recent research on the subject. This analysis is one of the annual methodological tools prepared by the Special Investigation Service. The [publication](#) is available online in Lithuanian.

## Which other sources might be useful?

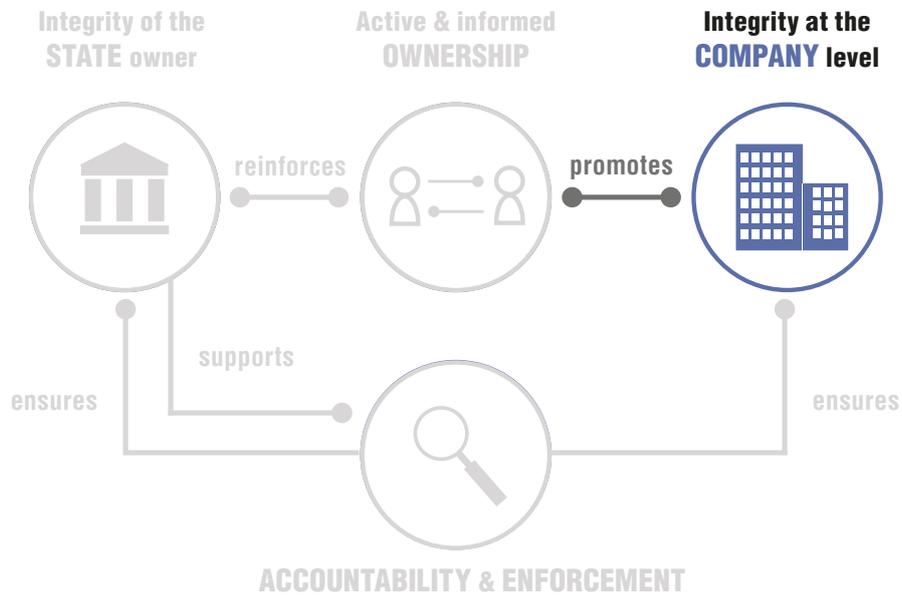
Relevant OECD instruments and sources to draw from:

- Recommendation on Guidelines on Corporate Governance of State-Owned Enterprises (esp. II.F) [[OECD/LEGAL/0414](#)].
- Recommendation of the Council on Public Integrity (notably, 4) [[OECD/LEGAL/0435](#)].
- OECD OURdata Index 2017: Methodology and results.

Other relevant international sources to draw from:

- International Open Data Charter (notably 6 key principles).

# Integrity at the company level



# Recommendation IV. Promotion of integrity and prevention of corruption at the enterprise level

## **The Council,**

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

**To this effect, Adherents, as appropriate acting via their ownership entities, should take the following action:**

**IV.A. Encourage integrated risk management systems in state-owned enterprises**

**IV.B. Promote internal controls, ethics and compliance measures in state-owned enterprises**

**IV.C. Safeguard the autonomy of state-owned enterprises' decision-making bodies**

## IV.A. Encourage integrated risk management systems in state-owned enterprises

### Why is it important?

A company's risk management system is the pillar of corporate governance from which all internal controls should be derived, monitored and adjusted. Yet ineffective internal control and risk management is still considered by some SOEs as an obstacle to integrity.

An OECD study (OECD, 2016c) sheds light on room for improvement in the area of corruption-risk management in SOEs. It showed that half of surveyed state owners require SOEs to establish risk management systems. Fewer than half of state owners require large SOEs or certain categories of SOEs to establish specialised board committees to oversee risk, but the evidence suggests there is good reason to implement this good practice. SOEs with specialised board committees on risk perceive a lower risk of corruption in their companies.

Most SOEs consider risks of corruption or other irregular practices explicitly as part of risk analyses: most often categorised as compliance risk, followed by strategic risks. SOEs that consider corruption risks as compliance risks may be missing an important point: that corruption risks are risks to the achievement of SOE objectives. SOEs are less likely than private companies to see the allocation of operational budget to integrity measures an investment or asset – and more likely as a cost or expense.

Decision-makers within an SOE – namely, the Board and Executive management – are privy to or exposed to different types of information related to company risks. These groups also have different experiences than other levels of the corporate hierarchy with respect to corrupt or other irregular practices. On the one hand, both can be implicated in cases of corruption and, on the other hand, both are responsible for oversight of those who can be involved. Any asymmetry of information within the company should be natural to the specific responsibilities and roles, but should not be symptomatic of ignorance to corruption risks, perceived or real, or to a lack of needed information sharing. Internal controls will not be sufficient to mitigate risks to achievement of objectives if risk assessments do not adequately capture risks to the company at each level.

This section focuses on what the state as owner can do to catalyse improvements in SOEs' corruption risk management, without unduly intervening in the operations of SOEs (Recommendation IV.A).

### How can state owners encourage the adoption of integrated risk management in SOEs?

The state owner should encourage the adoption of integrated risk management systems in SOEs. As a starting point, the state should seek to implement the SOE Guidelines' provisions on risk management by SOEs and their ownership entities (VI.A, VII.B, and VII.H). The ACI Guidelines provide the state with more detail to ensure that due attention be paid to corruption and integrity-related risks by the risk management system.

There are multiple ways that the state can encourage SOEs to adopt good practice risk management within their companies - and they are not mutually exclusive. First, the state can explicitly include the good practices contained in the ACI Guidelines in law – for instance by introducing provisions in overarching legislation that would cover SOEs in addition to other public sector entities, or by extending existing requirements for listed companies to apply to SOEs as appropriate in the national legal framework. Relevant provisions could also be introduced into SOE-specific legislation or regulation.

Second, the state could provide incentives to SOEs to introduce integrated risk management systems voluntarily. A well-functioning risk management system, for example, containing all elements recommended in the ACI Guidelines, could qualify as mitigating factor in prosecutions and settlements. References to risk assessment can be included in guidance to national law enforcement bodies or be part of the guidance issued in national anti-corruption laws.

Finally, adoption of effective risk management systems should be promoted by the board of directors. The state can, in its interactions with boards, make clear that it expects that SOEs have these systems in place. This is another way for the state to set a constructive and professional ‘tone from the top’.

The ACI Guidelines outline good practices in the area of risk management that the state could recommend as the components of SOEs’ risk management systems (IV.1.i-vi). The state could include these good practices in the legislation or guidance, or communicate and encourage implementation of these standards in other less formal ways – through awareness raising and capacity building activities, for instance.

These minimum standards, recommended under the ACI Guidelines and related good practice guidance, are described below. More details are provided in the Questions and Answers section with further guidance and practical advice as to what they mean and how they can be implemented.

- Risk management systems should be treated as integral to achieving SOE’s objectives and its strategy (IV.1.i). The degree of integration can be deduced, among other things: by the level of explicit support of the management and supervisory board; in the resources allocated to risk management; in the status and mandate of the head of this function; in the level of coordination between those responsible for various internal control mechanisms, and; in the degree of consultation by responsible managers of all levels of the organisation when conducting a risk assessment.
- The set of internal controls, ethics and compliance measures should be developed and updated based on risk assessments (IV.1.i). Corruption risks should be assessed as part of the broader risk assessment – that is, alongside the assessment of all risks to the company. In the recent years, private and public sector practice has evolved. There is a vast array of guidance prepared by international organisations on how to assess corruption risks and how to use the results to inform decision-making. In particular, the state could consult the Anti-Corruption Ethics and Compliance Handbook for Business (Ethics and Compliance Handbook), jointly prepared by OECD, UNODC and the WB, and the UN Global Compact Guide for Anti-Corruption Risk Assessment (UNGC Risk Assessment Guide). The Handbook elaborates on the basic steps of how to prepare, conduct and present the results of an anti-corruption risk assessment, including establishing the process for risk assessment, identify risks, rating the inherent risks, finding and rating the mitigating controls, calculating the residual risks, and developing an action plan – all of these with practical suggestions for each step.
- The board should regularly monitor, re-assess and adapt risk management system, including to emerging and changing corruption and integrity-related risks (IV.1.ii). In short, board members should be aware of the corruption risks that threaten the SOE as well as the SOE’s plan to mitigate those risks. Their role is to drive the risk-based approach – that is, to stimulate, challenge and learn from the risk management process – which is implemented by the management. The board can be encouraged to get involved directly or through establishing a special risk management, audit, governance or other such committee.

- The ACI Guidelines recommend that duties of (a) those who oversee the risks, (b) those who take ownership and manage the risks and (c) those who provide independent assurance within the SOE should be segregated (IV.1.iii). The ACI Guidelines suggest that principles of segregation of these functions be incorporated into national guidance or regulatory framework for SOEs.
- In line with the ACI Guidelines (IV.1.iv), risk assessment should be conducted regularly and with inputs from across the company, be SOE-tailored, assess inherent internal, external and residual risks, and take into account interactions between SOE representatives and the ownership entity, among other things (IV.1.iv). Most importantly in the context of the ACI Guidelines, corruption and integrity-related risks should be covered explicitly as part of risk assessment exercises; these should look into all corruption-prone areas and review how an SOE complies with anti-corruption and integrity expectations set by the state.
- Qualified individuals should carry out the risk assessment process. However, it is equally important that the persons responsible for risk assessment in the SOEs have sufficient authority to do so efficiently (IV.1.v). In practice, this means they would normally be of a senior management level and have necessary access to various parts of the SOE in order to engage easily with the wide range of stakeholders within the enterprise. The UNGC Risk Assessment Guide recommends that functions that might appropriately have responsibility for leading the anti-corruption risk assessment include compliance, legal, ethics or risk management functions. However, the input from the internal audit, accounting/finance, procurement, sales and marketing, supply chain, human resources and corporate affairs functions is key in helping determine the unique risks of the company with regards to corruption exposure. The UNGC Risk Assessment Guide also recommends that for larger enterprises it is desirable to have operating units or regions take ownership of performing anti-corruption risk assessment activities for their local unit and region. Again, if the risk assessment is conducted centrally, the persons responsible for this exercise should have easy access to staff at all levels to seek information and input.
- The state should encourage SOEs to publicly disclose information about material integrity-related risks, the management system and the measures taken to mitigate the risks (IV.1.vi). Ideally, this requirement would be included into the disclosure policy adopted by the state for SOEs, as already suggested under Section III.B.

Risk management is often a subject of audit – be it an internal audit, an external audit or an audit by the supreme audit institution where mandated. Auditors provide an important check on the effectiveness, efficiency and economy of risk management. The supreme audit institution may audit the state owner's supervision of risk governance in the SOE sector, recalling that the ACI Guidelines also recommend that the state auditor could audit the exercise of ownership functions (V.2.v). They may be further empowered to audit governance of SOEs' risk management. The ACI Guidelines provisions could be included in audit planning, training and guidance materials.

## Questions and answers: ACI Guidelines' IV.A



**There are international standards on risk management, such as ISO and COSO. How do the ACI Guidelines' provisions compare?**

The ACI Guidelines provide good practices for corruption-risk management in SOEs that are an amalgamation of relevant provisions of various international standards, such as ISO, COSO and other OECD guidance. They are specifically tailored to corruption-risk management in SOEs. When recommending integrated risk management systems, the state may instead, or in addition, choose to require explicitly that SOEs implement other international standards in their entirety – noting that these are not SOE-specific. There is also a common practice of obliging companies, including SOEs, to introduce certified risk management systems. The state may decide to go this route having considered financial and other practical implications in regard to set up of such certification, as well as who will run and own the process to ensure its quality and integrity.



**What are the components of an “integrated risk management system” for SOEs?**

The ACI Guidelines lay out in detail the types of good practices that states could encourage their SOEs to follow. They were tailored to SOEs and expanded from common elements of corporate risk management, including those aggregated in the Anti-Corruption Ethics and Compliance Handbook for Business (OECD, 2013) and Transparency International's 10 Anti-Corruption Principles (TI, 2017). Common industry standards include: the Committee of Sponsoring Organisations of the Treadway Commission *Enterprise Risk Management – Integrated Framework* and International Organisation for Standardization (COSO, 2017), *ISO 31000 – Risk Management* (2018). See recommendation IV.1.1.

In basic terms, the integrated risk management system should include regular and tailored risk-assessments (performed in line with requirements outlined under the ACI Guidelines IV.1.iv.) and a set of internal controls, ethics and compliance measures (containing all elements of the ACI Guidelines IV.2-8), which are developed and maintained in response to the findings of the risk assessments and which inform risk assessments in turn.

The risk management system should be treated as integral to achieving an SOE's objectives and strategy, instead of simply mitigating possible sanctions for non-compliance with laws. An integrated risk management system is just that – integrated with company strategy, corporate governance, communication with stakeholders and performance measurement. Taking a risk-based approach to management means that risk management is not simply a function or department. Rather, it is the “culture, capabilities and practices” that the company integrates with its strategy and applies when carrying out that strategy, “with a purpose of managing risk in creating, preserving and realising value” (COSO, 2017). It is a set of consistent principles and processes that the SOE can use to establish internal controls, monitor, learn and improve performance. Its principles apply at all levels of the company and across all functions.

Finally, OECD's Good Practice Guidance on Internal Controls, Ethics and Compliance recognises that, to be effective, corruption risk management is interconnected with a company's overall compliance framework (i.e. legal, IT, financial, corruption and integrity, etc.) to provide for a holistic outlook on risks and their management.

A key component of an integrated risk management system is risk assessment. Risk assessments are best conducted in a coordinated manner. Coordinated risk assessments save time and money and avoid “risk assessment fatigue”. For example, it should be possible to use consistent definitions and methodologies to estimate inherent and residual risk across different risk assessments. There is no one model of corruption risk assessment; the idea is that proper risk assessment can be done only through knowledge from within the company, its environment and its interactions with the government and other actors in the market. The UNGC Risk Assessment Guide provides for general structure and elements that can be adopted with various templates and examples of tools that can be used with explanation on how they can be adopted by individual companies. The state could use the UNGC Risk Assessment Guide and the Ethics and Compliance Handbook when preparing training, where applicable, or developing guidance for SOEs.



**The Guidelines recommend that “the risk management system is regularly monitored by the board, re-assessed and adapted to the SOEs’ circumstances, with a view to establishing and maintaining the relevance and performance of internal controls, policies and procedures”]. How is this done in practice?**

According to Committee of Sponsoring Organisations of the Treadway Commission (COSO), “Monitoring is accomplished through ongoing management activities, separate evaluations, or both”. In particular, it suggests that the board should discuss with senior management the state of company’s system of risk management and provide oversight. The board needs to set up its policies and expectations on how members should provide oversight of the companies risk management system. It should be regularly apprised of the risks, the assessments of internal controls deficiencies, management actions to mitigate such risks and deficiencies and management’s assessment on effectiveness of internal controls. The board should challenge management and ask tough questions, as necessary, and seek input and professional support from internal auditors and external auditors. Committees and sub-committees of the board can often assist the board in addressing some of these oversight activities (COSO, 2017).



**The Guidelines recommend “a segregation of duties between those that take ownership of and manage risks, those that oversee risks and those that provide independent assurance within the SOE.” What does that mean in practice?**

In principle, these functions should be naturally separated, as they should ideally be carried out by three sets of persons whose responsibilities do not overlap.

- The oversight of anti-corruption risk management should be the responsibility of the board, or, as discussed above, a board committee designated with this role. The board should ensure that the SOE pays adequate attention to corruption risks. The audit or ethics committee should obtain periodic updates from management on anti-corruption risk assessment processes, and review and approve the results of the risk assessment.
- Management should perform the risk assessment, report on this assessment to the board and implement risk mitigation action plans.

- Once the risk assessment process has been completed, the audit committee should assign the internal audit department, another designated person, or an external party, to monitor and test the key controls identified to mitigate corruption risks. This is why it is important that the internal audit department does not conduct the risk assessment and that the internal audit function remains sufficiently independent to be able to perform its role of evaluating of the key internal controls objectively.



**The Guidelines recommend that “the risk management system includes risk assessments that: (i) are undertaken regularly”. What constitutes “regularly”?**

Ideally, risk assessments are conducted on at least an annual basis to ensure they are up to date. Regularly-updated risk assessments allow for consistent discussion between the board and the state.

There also may be triggering events such as entry into new markets, significant reorganisations, mergers and acquisitions that will create opportunities and incentives for refreshing the risk assessment. While it may not be necessary to conduct a comprehensive risk assessment more often than annually, it is imperative to monitor continuously the riskier aspects of the enterprise and to remain vigilant for the events, relationships and interactions that may increase or create new risks.



**The ACI Guidelines provide elements of risk assessments. How can SOEs set out to ensure those aspects are included?**

There are some key questions that SOEs can ask themselves prior to undertaking risk assessments, or on an ongoing basis in order to adjust as needed. They could include (OECD, 2013):

- Who owns the process, and who are the key stakeholders?
- How much time will be invested in the process?
- What type of data should be collected, and how?
- What internal and external resources are needed?
- What framework will be used to document, measure, and manage the corruption risk?

Good practice suggests that it is useful to raise awareness with key SOE stakeholders that will be involved in the process. An introductory workshop prepared by the owner of the anti-corruption policy/programme (e.g. legal, risk management, ethics and compliance) — and, if possible, senior management — might be considered to explore corruption risks in more detail and to prepare for the risk assessment process.

## Country examples: ACI Guidelines' IV.A

The below examples demonstrate how different countries implement (some of) these provisions in their national contexts.



*...encourage that SOE boards and oversight bodies oversee, and that management implements, risk management systems commensurate with state expectations and where appropriate in line with requirements for listed companies. ... encourage SOEs to take risk-based approach and adhere, to the extent possible, to good practices... [IV.1.]*

**Austria:** SOEs must file a quarterly report to their owner under the investment controlling regulation for majority participations of the Austrian state, which also includes information on their risk management, to which the supervisory board also has access. The reports include information on the risks to which the company is exposed, whether they may be avoided or not, a valuation of the risks, the probability of their occurrence, and a comparison with the recent period. Furthermore, the SOEs report whether the risk management is conducted in compliance with a certified risk management system.

**Brazil:** Law 13.303/16 and Resolutions 12 and 18 of Brazil's SOE standard-setting body, the Inter-sectorial Commission for Corporate Governance and Property Administration (CGPAR), require SOEs to have an independent audit committee and an internal area responsible for risk oversight, which reports directly to the board and management, respectively. The Secretary of Coordination and Governance of State Enterprises (SEST) also created a unit to evaluate SOEs in a broad sense, including financial results, public policies, governance practices, and also risk management. Brazil's CGU also developed a Guidebook of Compliance for State-Owned Companies to help SOEs address fraud- and corruption-related compliance risk, as well as a companion Evaluation of the Compliance of State-Owned Enterprises.

**Chile:** The Chilean ownership entity (SEP) encourages its companies to use internationally recognised standards, such as standards set by the International Organization for Standardization (ISO) and by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), in the preparation of SOE reports. In addition, all SEP companies have risk committees and prevention models for risks such as bribery, money laundering, terrorist financing, corruption between individuals, as required by law No. 20.393. The SEP Code establishes guidelines, among other matters related to risks, which is the responsibility of the board of directors to establish the company's risk policy and its supervision, the constitution and functions of the Audit Committee. The Code also instructs that the internal audit unit of the SOEs must report directly to the Board of Directors (Chapters 4 and 6).

**Colombia:** Colombia's Law 1778 of 2016 (*Ley Antisoborno*, or Anti-Bribery Law), adopted as result of the recommendations from the Working Group on Bribery, requires any company in the pharmaceutical, infrastructure, mining, energy, manufacturing and information and communication technology (ICT) sectors—as well as any other company meeting certain levels of gross income, total assets, or employees—to undertake an anti-corruption compliance risk assessment and then adopt a compliance programme. Failure to do so can subject a company to financial penalties. About 1000 companies are currently required to comply with this requirement, including SOEs.

**Croatia:** The Corporate Governance Code for SOEs states that the board of directors shall ensure that there are effective structures, policies and procedures in place to identify, report, manage and monitor the risks facing the enterprise and to ensure the independence and effectiveness of internal and external audit functions. It also states that the company shall maintain an efficient risk management system that is adequate for its objectives, size and scale of activities. The system must include procedures that ensure

reliable risk identification, risk measurement, risk response, etc., and it must include external risks, as well as financial and operational risks.

Similarly, the Code of Corporate Governance for listed companies requires establishing efficient internal controls and accountability mechanisms. In particular, it obliges companies to adopt policies related to assessing and managing risks, preventing and sanctioning bribery and corruption, and it requires the commitment of the board of directors and management board to identify key stakeholders for these purposes.

**France:** While risk management is primarily an SOE's responsibility, in conjunction with their audit committee, the ownership entity (APE) remains vigilant on the subject in conjunction with the representatives of the State on the audit committees of the portfolio companies. Notably, the latter support the systematisation of risk mapping, the creation of ethics and compliance policies or the creation of ethics charter within companies.

**Germany:** The *Federal Government Directive Concerning the Prevention of Corruption in the Federal Administration*, applicable to SOEs, requires identification and analysis of areas of activity especially vulnerable to corruption. The Directive continues in requiring "in all federal agencies, measures to identify areas of activity which are especially vulnerable to corruption shall be carried out at regular intervals and as warranted by circumstances. The use of risk analysis shall be considered for this purpose. The results of the risk analysis shall be used to determine any changes in organization, procedures or personnel assignments" (Federal Ministry of the Interior).

**Ireland:** The Code of Practice for the Governance of State Bodies provides that SOEs should develop a risk management policy and that SOE boards should approve the risk management framework and should monitor its effectiveness. The Code enumerates some of the key ways that the Code can be applied in practice, including: how often the board should review the SOE's risk management; advice on board composition and organisation in order to address the SOE's risk position, and; the establishment, implementation, and supervision of the SOE's approach to risk management, including the appointment of a Chief Risk Officer or a member of management with a direct reporting line to the board.

**Israel:** A 2009 circular on risk management, prepared by the Israeli ownership entity (GCA), assigns SOE boards responsibility for risk management, including the establishment of risk management policies, approving rules for risk management reporting, reviewing the company's risk management system at least once yearly, commissioning comprehensive risk surveys and overseeing updates to the risk management plan.

**Kazakhstan:** Risk management and internal control systems must ensure the procedures of identification, assessment and monitoring of all existing risks, also adoption of well-timed and adequate measures on reducing the level of risks (in accordance with paragraph 120 of the Model Code). For comprehensive and clear understanding of risks in SOEs there should be annual identification and assessment of risks, which are reflected in the register of risks, risk map, action plan on addressing the risks (improving the processes, strategy of minimization), approved by the board of directors. The board of directors, in considering the register of risks and risk map, is expected to understand the importance of including risks that could actually affect the implementation of strategic tasks and, in considering the action plan, should be convinced of the usefulness of subsequent action. The board of directors and senior management of SOEs should regularly receive information on key risks, including findings on their impact on the company's strategy and business plans.

**Mexico:** The General Guidelines provide instructions both at the level of the board and at the level of management. SOE boards of directors are responsible for examining documents related to risk management (i.e., the institutional risk management matrix, institutional risk map, work programs on risk management, and annual report of risk behaviour), updating the risk system and, if applicable, addressing

comments by the Organisation for Internal Control (Órgano Interno de Control, OIC). SOEs must also establish as part of their management structure a Committee of Control and Institutional Performance, whose main duties relate to the implementation of the SOE's internal controls and risk management systems.

**Peru:** The Corporate Governance Code under the purview of Peru's state ownership entity (FONAFE) seeks comprehensive management of risks and ethical values. The "effective risk analysis system" requires that:

- SOEs must have systems and procedures that allow timely identification of the different risks it faces and measure the potential effects that they could have on its operation and financial situation;
- In addition, the tools used by the SOE to reduce or manage these risks must be clearly identified and operational, and;
- The Board of Directors is responsible for establishing the policies for monitoring, control and risk management, for which purpose it may require the reports it deems pertinent.

In addition, FONAFE takes a risk-based approach to management. Its matrix of corruption and money laundering risks is the basis for action plans for 2020-2021. The risk-based approach allows prioritising risks according to their criticality and impact.

**Russia:** The Federal Agency for State Property Management (Rosimushchestvo) issued methodological recommendations for board members that represent the interests of Russia in joint-stock companies with the organisation of risk management and internal control with respect to preventing and combatting corruption (Order No. 80 dated 02.03.2016). The document determines the roles and powers of the compliance department or manager in the risk management process, and the interaction between participants of risk management and control activities. It makes proposals on basic principles for the organisation of the risk management and internal control processes and on procedures for monitoring the effectiveness of risk management and internal control, among others.

**Slovenia:** The Slovenian Sovereign Holding (SSH) Corporate Governance Code for Companies with State Capital Investment recommends that management report to the supervisory board on all significant risks and ways to manage them on a regular basis, and twice a year in non-public companies. The management should inform the Supervisory board about the risk management system at least once a year.

**Switzerland:** According to Art. 961c of the Swiss Code of Obligations, the management report must in particular provide information on the conduct of a risk assessment. However, the management report is not part of the annual financial statements and, as such, is generally not audited by the auditors. SOEs must provide information on the conduct of risk assessment in their management report as well. Unlike the information provided by private owned companies, the information provided by SOEs must be examined by the external auditor. Where applicable, inconsistencies between the management report and the financial statements must be disclosed by the auditor.

**United Kingdom:** The UK Ministry of Justice published Guidance to the Bribery Act in April 2011. The Guidance set out six principles, including one for Risk Assessment, which the government considered should inform the procedures to be put in place by commercial enterprises wishing to prevent bribery. Principle 3, Risk Assessment, states: "The commercial organization assesses the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented". In addition, the UK's British Standard 10500, Specification for Anti-bribery Management Systems (ABMS), states that an enterprise should establish procedures to assess the risk of bribery in relation to its activities and also whether its policies, procedures and controls are adequate to reduce those risks to an acceptable level.

**United States:** The US Department of Justice (“DOJ”) and US Securities and Exchange Commission (“SEC”) published second edition of A Resource Guide to the Foreign Corrupt Practices Act in July 2020. It notes that risk assessments are a fundamental part of the compliance programme and “when assessing a company’s compliance program, DOJ and SEC take into account whether and to what degree a company analyses and addresses the particular risks it faces.” (US, 2020) This Guide suggests enterprises should avoid a one-size-fits-all approach to an anti-corruption risk assessment since the level of effort should be proportionate to an enterprise’s risk profile and that identifying risks by level is key to determining the resources to allocate to different anti-corruption compliance programme elements. The Guide also suggests that factors to consider when assessing corruption risk include industry, country, size, nature of transactions and amount of third party compensation, the business opportunity, potential business partners, level of involvement with governments, amount of government regulation and oversight, and exposure to customs and immigration in conducting business affairs.

## Which other sources might be useful?

Relevant OECD instruments to draw from:

- Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009), and Annex II: Good Practice Guidance on Internal Controls, Ethics, and Compliance [[OECD/LEGAL/0378](#)].
- Recommendation on Public Integrity (esp. 10) [[OECD/LEGAL/0435](#)].

Other relevant international sources to draw from:

- Committee of Sponsoring Organizations of the Treadway Commission Enterprise Risk Management Framework
- GAO Fraud Risk Management Framework
- International Organisation for Standardisation (ISO), ISO Risk Management Standards 31000:2009 and 31000: 2018
- Institute of Internal Auditors 3 lines of Defence
- OECD, UNODC, and World Bank, Anti-Corruption Ethics and Compliance Handbook for Business (2013)
- United Nations Global Compact (UNGC), A Guide for Anti-Corruption Risk Assessment (2013)

## **IV.B. Promote internal controls, ethics and compliance measures in state-owned enterprises**

### **Why is it important?**

In SOEs as in other companies, a cornerstone of ensuring integrity and fighting corruption is effective company-internal practices designed to mitigate identified risks. Essential elements include corporate codes of conduct, compliance functions, integrated risk management and internal control systems and external controls. Elements of such good practices are most commonly integrated into SOEs' general corporate governance structures or may be incorporated into specific "integrity programmes" (OECD, 2016).

As is the trend towards business integrity in the private sector, SOEs have a range of integrity policies or mechanisms, allocating some degree of operational budget to the prevention and detection of corruption and other irregular practices. Many SOEs have specialised board committees, a form of merit-based criteria for appointment of members, internal audit and complaints or whistleblowing channels. SOEs most often disclose, at a minimum, financial results. Despite this investment, SOEs are losing annual corporate profit to corruption or other irregular practices.

Corruption or other irregular practices may be representative of an absence or an override of controls, or both. Where internal controls exist, there may be a need for improving their relevance and the effectiveness, while simultaneously seeking to make a culture of integrity synonymous with company culture. SOEs consider that a lack of awareness of SOE officials to the importance of integrity is one of their greatest obstacles to integrity.

The ACI Guidelines' Recommendation IV.B seeks to tackle some of these challenges.

### **How can state owners promote internal controls, ethics and compliance measures?**

Previous sections have elaborated on how state ownership entities and the state more broadly use the legal and regulatory framework to set rules and expectations regarding integrity and anti-corruption. This section provides examples of how the state can promote translation of particular provisions into company practice. The previous sections also elaborated on ownership efforts to monitor and assess implementation, which remains highly relevant here.

The state can promote internal controls, ethics and compliance measures firstly by highlighting their importance in its high-level policy documents, such as an anti-corruption programme, ownership policy and the like. These can be communicated and highlighted to SOE boards.

Again, the state may wish to require that such measures be introduced in SOEs, or are at least mandatory in large SOEs. Such requirements could be introduced through laws and regulations, which apply specifically to SOEs, clauses in anti-corruption and integrity legislation, or laws and regulations applicable to listed companies encompassing SOEs. Appropriate guidance and advice on what constitutes effective internal controls, ethics and compliance measures, how to meet the minimum requirements, how to develop and implement various measures, should be provided to SOEs. This can be done by anti-corruption and integrity bodies, state ownership bodies, or ideally as a joint effort of both.

Measures should, when appropriate and to the extent feasible, include the minimum identified in the ACI Guidelines under IV.2-8. These elements include promotion of: a "corporate culture of integrity" from the top; a code of conduct, ethics or other similar policies; transparent and merit-based human resources policies that incorporate integrity requirements; maintenance of fair and accurate books, records and

accounts; channels for oversight and reporting, including internal audit, specialised board committees; measures to protect whistleblowers; ethics and integrity advice, guidance and training, and; corporate investigative and disciplinary procedures to address violations.

The ACI Guidelines also recommend that these elements should apply to all levels of corporate hierarchy and all entities over which SOE has effective control, including subsidiaries, and be monitored by the board or other corporate bodies that are independent of management. They should also be applicable to engagement with agents and other intermediaries, consultants, representatives, distributors, contractors, suppliers, consortia and joint venture partners, through due diligence and oversight (IV.3.v). The latter provision encourages that high standards are propagated throughout company groups and subsidiaries – which can shed light on the often-opaque network in which an SOE can operate. ‘Integrity Pacts’ and other commitments, as elaborated upon in the Questions and Answers, can be useful tools for engaging with agents and other third-parties.

The state may wish to create direct incentives for companies that establish adequate internal control, ethics and compliance measures (or an anti-corruption programme) or, if existing, extend such incentives to SOEs. This could mean that SOEs would get “credit” if they ever come under investigation for corrupt conduct, if the company (or its anti-corruption programme) has the minimum elements as required under the ACI Guidelines. Of course, when a company or its representatives have engaged in corrupt conduct, this creates a powerful incentive for the company to develop or strengthen its anti-corruption controls, not only to avoid repeating the offence but also to show law enforcement authorities that the company is taking the issue seriously. In some cases, enforcement authorities may also require a company to hire a compliance monitor to assist it in establishing or improving its programme. This is usually part of regime of liability of legal persons for corrupt offences, which, as discussed in previous sections, should cover all companies irrespective of their ownership.

The state can consider creating other incentives. For example, the state may offer to provide methodological support and advice on development of the internal controls, ethics and compliance measures to the SOEs wishing on voluntary basis to introduce integrity mechanisms, which would be in line with the ACI Guidelines. The state may wish to promote integrity collective actions of the business, and encourage their SOEs to join such initiatives. Such initiatives can have elements of integrity certification and the state may consider recognising in one way or another companies’ anti-corruption and integrity efforts if they pass such certification.

In addition to all of the above, the state could in any case promote the importance of internal controls, ethics and compliance measures in the SOEs through educational campaigns, including by organising joint training activities (IV.4). The state may also support or help connect its SOEs around integrity issues – by creating platforms for exchange of information and good practice, for instance. Learning and experience-exchange initiatives between the private sector and SOEs can also be encouraged and supported by the state.

To comply further with ACI Guidelines, the state should follow good practice on transparency and disclosure (IV.6), as promoted by the SOE Guidelines, and in particular, encourage disclosure of the organisational structure of the SOE, including its joint ventures and subsidiaries. This was discussed in the previous sections of this Guide.

## Questions and answers: ACI Guidelines' IV.B



**The ACI guidelines suggest that states expect and respect that SOE Boards and top management promote a “corporate culture of integrity”, that includes a policy prohibiting corruption, explicit and visible support from boards and managers, and for them to lead by example, among others. How can this be realised in practice?**

The ACI Guidelines call on the state to encourage integrity at the SOE level, expecting and respecting autonomy of boards and top management in promoting a corporate culture of integrity. Boards could do so through, inter alia:

- (i) a clearly articulated and visible corporate policy prohibiting corruption. SOEs' board members and senior management commonly articulate a zero-tolerance approach to corruption;
- (ii) facilitating the implementation of applicable anti-corruption and integrity provisions through strong, explicit and visible support and commitment from boards and management to internal controls, ethics and compliance measures. These measures should facilitate the zero-tolerance approach to corruption where existing;
- (iii) encouraging an open culture that facilitates and recognises organisational learning, and encourages good governance and integrity and protects reporting persons (also known as “whistleblowers”). To this end, many SOEs have been successful in seeking to go beyond complying with the law, to provide SOE representatives with insights into ethical dilemmas and ‘doing the right thing’, and;
- (iv) leading by example in their conduct.

A corporate culture of integrity remains challenging for SOEs to instill, in large part because it can require a change in perspective and attitude of individuals throughout the corporate hierarchy. Indeed, Colombia's state owner recognised that, while there exist many laws and controls, efforts are needed not only on monitoring against those laws but also in promoting a change of attitude towards managing public resources.

A corporate culture of integrity can also be difficult for state owners to promote, as it is inherently the responsibility of the company and the state cannot to intervene in the operations of the SOE. The French ownership entity (APE), for their part, emphasises the use of ongoing training. Peru's ownership entity (FONAFE) offers an anonymous corporate complaints channel. Other country examples are provided below.

As part of its dialogue with the board or through evaluating performance of SOEs, or by including these into the performance indicators of the board members or of the top management, the state might consider asking questions to assess effectiveness of companies' tone from the top regarding anti-corruption and integrity (OECD, 2013):

- Is active commitment and visible support given by management?
- Has there been clear, practical and accessible communication of the compliance programme and standards to employees?
- Has management established a trust-based organisational culture, adopting the principles of openness and transparency?
- Are appropriate levels of oversight of subsidiary operations established?

- What structures and processes are in place to enable oversight?
- What information is required by management in real-time or for periodic reporting?



**The ACI Guidelines recommend that “the state should, without intervening in the management of individual SOEs, take appropriate steps to encourage integrity in SOEs...” It elaborates on key “integrity mechanisms”.**

**(i) Are these integrity mechanisms the same as the components of an anti-corruption programme?**

**(ii) How can the state or SOE determine whether integrity mechanisms have been implemented and if they are effective?**

The ACI Guidelines’ provisions on “promoting internal controls, ethics and compliance measures in SOEs” expanded upon, and were tailored from, common elements found in corporate control systems of anti-corruption and integrity programmes, such as those aggregated in the OECD Anti-Corruption Ethics and Compliance Handbook for Business (OECD, 2013). The provision is without prejudice to how an SOE organises such measures within the company. In many instances, relevant integrity mechanisms are implemented as part of a company’s anti-corruption programme. However, in this case, it is important that risk management and control activities are truly integrated into company strategy and processes, not siloed in a stand-alone programme.

Those responsible for overseeing implementation of integrity mechanisms (or anti-corruption programmes) in SOEs may draw inspiration from the following questions, provided in the US Department of Justice’s “Evaluation of Corporate Compliance Programs” (US DOJ, 2017):

- **Autonomy** – Have the compliance and relevant control functions had direct reporting lines to anyone on the board of directors? How often do they meet with the board of directors? Are members of the senior management present for these meetings? Who reviewed the performance of the compliance function and what was the review process? Who determines the compensation, bonuses, pay rises, hiring, or termination of compliance officers? Do the compliance and relevant control personnel in the field have reporting lines to headquarters? If not, how has the company ensured their independence?
- **Empowerment** – Have there been specific instances where compliance raised concerns or objections in the area in which the wrongdoing occurred? How has the company responded to such compliance concerns? Have there been specific transactions or deals that were stopped, modified, or more closely examined as a result of compliance concerns?
- **Stature** – How has the compliance function compared with other strategic functions in the company in terms of stature, compensation levels, rank/title, reporting line, resources, and access to key decision makers? What has been the turnover rate for compliance and relevant control function personnel? What role has compliance played in the company’s strategic and operational decisions?
- **Experience and Qualifications** – Have the compliance and control personnel had the appropriate experience and qualifications for their roles and responsibilities?
- **Funding and Resources** – How have decisions been made about the allocation of personnel and resources for the compliance and relevant control functions in light of the company’s risk profile?

Have there been times when requests for resources by the compliance and relevant control functions have been denied? If so, how have those decisions been made?

- Outsourced Compliance Functions – Has the company outsourced all or parts of its compliance functions to an external firm or consultant? What has been the rationale for doing so? Who has been involved in the decision to outsource? How has that process been managed (including who oversaw and/or liaised with the external firm/consultant)? What level of access does the external firm or consultant have to company information? How has the effectiveness of the outsourced process been assessed?



**The Guidelines recommend that SOEs apply their integrity mechanisms to their subsidiaries and in their engagement with business partners (e.g. intermediaries, consultants, contractors). What are company practices in this regard?**

States can consult the OECD’s Due Diligence Guidance on Responsible Business Conduct for internationally agreed standards on how companies can ensure due diligence in their operations, notably when seeking engagement with business partners or other third parties. In addition, the following existing SOE practices could be considered (OECD, 2018a):

- Seeking out fair trade partners when possible;
- Screening, audits or risk assessments of third parties that include: analyses of legal, financial and corporate background of contractors; cross-checking owners, directors and representatives (using different databases); sending questionnaires to supplier candidates, and; using “know your customer” software or other IT tools;
- Undertaking risk assessment of proposals;
- Seeking independent professional advice;
- Using “Integrity agreements”, integrity pacts, or integrity or anti-corruption clauses built into contracts;
- Attaching a Code of Conduct to supplier agreements or employees' contracts;
- Training on compliance and ethics with important third parties to clearly explain the company's expectations;
- Setting related controls for approvals and payments, including checks and balances, procedures to approve contracts and payments to suppliers, and;
- Undertaking systematic reviews, such as annual reviews of third-party engagements, ex-post risk assessments in high-risk sectors, nightly screenings of suppliers and customers, and audit and risk committee review of all procurements following a single tender process.



**The Guidelines recommend that SOEs’ should “Require high standards of conduct through clear and accessible codes of conduct, ethics or similar policies...” What should these codes entail?**

Codes of conduct clarify expected standards and prohibited situations, whereas codes of ethics identify the principles that guide behaviour and decision-making. Good practice with public sector integrity

suggests combining the two. Such combinations find a balance between formulating general core values and offering a framework to support day-to-day decision-making (OECD, 2020b).

As provided for in the SOE guidelines (VI.C annotations), such codes should apply to the SOEs as a whole and to their subsidiaries. They should give clear and detailed guidance as to the expected conduct of all employees and compliance programmes and measures, which are applicable. It is considered good practice for these codes to be developed in a participatory way in order to involve all the employees and stakeholders concerned. These codes should benefit from visible support and commitment by the boards and senior management. SOEs' compliance with codes of ethics should be periodically monitored by their boards.



**According to the ACI Guidelines, “the state should encourage that corporate measures exist to provide positive support for the observance of integrity mechanisms by all levels of the corporate hierarchy and to mitigate opportunistic behaviour” [IV.4]. What constitutes “positive support for the observance of integrity mechanisms”?**

The OECD's Good Practice Guidance (2013) [A.9] calls for companies to provide positive support for the observance of ethics and compliance programmes or measures against foreign bribery. Positive support is meant to foster employee confidence in the SOE and provide clear understanding of the rules and expectations placed on employees throughout all levels of hierarchy in respect to anti-corruption and integrity through training and other communication channels. This could include, inter alia, fair pay scales, awareness-raising campaigns and recognition of good behaviour. This should be coupled with secure reporting channels and adequate protection of whistleblowers. In addition, as the ACI Guidelines suggest, integrity should be promoted via training for all levels of the company and subsidiaries. Such training could contain elements of certification and be obligatory, especially for persons in risk positions, its successful completion could be also rewarded by the company.



**The ACI Guidelines recommend “training for all levels of the company, and subsidiaries, on relevant legal provisions, state expectations and on company integrity mechanisms.” It also recommends that there be a possibility “of measuring the degree of understanding throughout the hierarchy”].**

**(i) What should training entail?**

**(ii) How can SOEs (or the state owner where relevant) assess the degree of understanding?**

(i) Training should aim to foster understanding of relevant legal provisions that apply to an SOE and its employees, anti-corruption and integrity expectations of the state and integrity mechanisms of the company, including rules and procedures to seek advice and report unethical, corrupt or other irregular behaviour and practices. Training could illustrate how objectives are to be met and how integrity

mechanisms are to be implemented by the persons undergoing training. It should be adaptable to evolving circumstances (e.g. new business operations or partners) and to emerging risks (e.g. new digital innovations or cybersecurity threats).

(ii) The degree of understanding could be measured, for instance, with entrance and exit evaluations and other testing methods, such as self-assessments. This is the case in one UK-based international company, which uses self-assessment as one way to monitor compliance. When the self-assessment tool is applied to test employee awareness and effectiveness of training and communication, the unit head seeks to affirm the following: “My staff are aware of and understand the group AB&C policy, Code of Conduct and processes regarding gifts, hospitality and entertainment and have completed any required compliance training:

1. My staff are aware of the identity of their Local Compliance Officer, Divisional Compliance Officer (if different) and the Group Compliance Officer and when and how to contact them for advice or guidance.
2. My staff are aware of and understand [company]’s policy on facilitation payments and their duty to report such immediately to the Legal Department.
3. My staff are aware of and understand their duty to report promptly any concerns they may have whether relating to their own actions or the actions of others and how and when to use the group gifts and entertainment register and "whistleblowing" facility.
4. My staff are aware that there must be no retaliation against good faith "whistleblowers".”

The ACI Guidelines suggest that it should be possible to measure understanding throughout the hierarchy. Obviously, some methods as described above would be more applicable to the employees and perhaps mid-level management. For senior management and boards members other methods might be more appropriate – for example, they could be asked to provide feedback on what was clearly or effectively covered.



**The Guidelines suggest that the state expect “that internal audit, where it exists, has the capacity, autonomy and professionalism needed to duly fulfil its function”. Should all SOEs have internal audit?**

The Guidelines take it as a given that internal audit exists in large SOEs (at minimum) in line with the SOE Guidelines (VII.J) which calls for SOEs to “develop efficient internal audit procedures and establish an internal audit function that is monitored by and reports directly to the board and to the audit committee or the equivalent corporate organ.”

This provision builds on the OECD’s 2010 Good Practice Guidance on Internal Controls, Ethics and Compliance [A.11.I]. Urgent advice could be sought from Ombudsman either internal to the company, if existing, or at the state level.



**The Guidelines encourage “that there are effective measures for providing guidance and advice ... including when they need urgent advice on difficult situations”. Where can someone seek such urgent advice?**

There are various models of how to make anti-corruption and integrity advice available within the company, and when appropriate to business partners. Firstly, ethics officers or advisors could be placed within units

responsible for internal control, ethics and compliance – both centrally and, depending on the size of the SOE, in various departments or subsidiaries. These officers and advisers can be tasked with providing advice to all levels of the company hierarchy or to specific types of persons (e.g. directors, senior management level). As suggested above, an Ombudsman office or other such similar structure could be established within the company to receive and review various complaints and requests for advice and guidance. There are also various tools that can be used to make such advice easily and quickly available – for example, an SOE may establish a designated hotline or hotlines.

Ideally, the first instance of seeking such advice should be from within the company, and should build on knowledge of internal integrity mechanisms and requirements of the company, in addition to legal provisions, which apply to SOEs. The next step if the ethics or integrity advisor failed to respond in a satisfactory or timely manner could be to reach out to the Chief Compliance Officer or a person of similar position (e.g. a person who is in charge of integrity mechanisms of the SOE) and, if appropriate, to reach out to ethics, risk management, audit or other such similar committees of the board. If such advice was not provided within the SOE, either an anti-corruption or integrity institution should in principle be the next place to seek such advice. The ownership entity may also consider establishing integrity and ethics advisors or integrity officers, which could be made available to the personnel of the SOEs, and especially to the senior management level of SOEs. However, external channels would be less likely to be as rapid and as situation-specific as might be necessary, and would serve more as a reporting channel.

The state can also draw on extensive guidance provided to the public sector in making such advice available and functional. In particular, using forms of written communication – such as mail or e-mail or through an online portal – to contact integrity advisors can support clarity in the response and avoid the risk of misinterpreting oral advice. Setting out clear procedures for contacting the advisory body, including contact details, hours of operation and expected response times, can help facilitate access. Moreover, specifying the limits of integrity advice (e.g. it does not necessarily equal a legal opinion) can protect both the integrity advisors and employees from misusing or misinterpreting the advice. Specific attention should be given to respecting confidentiality of the exchanges between the advisor and the public officials (e.g. dedicated and/or encrypted email address, limited access to a specific platform or webpage) (OECD, 2020b).



**The ACI Guidelines encourage “the establishment of clear rules and procedures for employees or other reporting persons to report concerns to the board about real or encouraged illegal or irregular practices in or concerning SOEs... They should be protected in law and practice”. What does this look like in practice?**

SOEs could offer multiple reporting channels. They should be managed by individuals or units that are adequately staffed to operate the protected reporting framework and to take appropriate action in response to such reports. Common practice amongst SOEs is that reporting channels allow for anonymity, at minimum, and confidentiality of reporting. The existence and ways to utilise these channels should be made known to the employees of the company and should be easy to access and use.

## Country examples: ACI Guidelines' IV.B

The below examples demonstrate how different countries implement (some of) these provisions in their national contexts.

### “ Encourage integrity in SOEs [IV.2]

**Argentina:** An "SOEs Integrity Network" was created in 2016, composed of representatives of the Chief of the Cabinet of Ministers' Office, the General Internal Audit Office, the Anticorruption Office, and SOEs officials with responsibility in the areas of auditing, ethics and compliance (Directors, General Managers, Internal Audit Managers, Compliance Officers, Legal Counsels, HR Managers, and Procurement and Supply Managers, among others).

The Network meets every two months. Usually, the first half of the meeting is dedicated to discussing the implementation of integrity legislation and related practices, and the second half is dedicated to the dissemination of best practices elaborated by a guest speaker. The Network's main objectives are to:

- Raise awareness on the relevance of transparency and integrity in SOEs;
- Promote the design and implementation of integrity and compliance programs;
- Generate a community of practices where practitioners exchange views and best practices on integrity issues, and;
- Conduct training with a "train the trainers" perspective, with the purpose of replicating training activities within SOEs.

**Brazil:** Pro-Ethics (Empresa Pró-Ética) is an initiative that aims at recognising companies committed to the prevention and fight against corruption, fraud, and illicit activities, that have developed and implemented robust integrity programs. Pro-Ethics was created and has been used by CGU and Ethos Institute since 2011. Since 2015, at least five SOEs have completed the survey annually. One of the objectives of the Pro-Ethics is raising awareness about the relevant role that enterprises have in fighting corruption. The initiative is based on the premise that taking affirmative action to prevent and combat illegal practices reduces the risks of fraud and corruption in public-private sector relations.

**Croatia:** In Croatia, the Anti-Corruption Programme for companies under majority state ownership for 2019-2020 requires that all majority state-owned enterprises adopt a Code of Ethics, which obligates companies to define the procedure for implementing ethical policies, including rules and procedures for reporting corruption and other integrity violations.

**Lithuania:** The Special Investigation Service, in co-operation with a number of partners, has prepared two anti-corruption manuals for private and public sectors. Both manuals contain comprehensive information and useful guidelines for implementing anti-corruption and integrity measures at an organisational level. In particular, its annexes are full of various real-life examples or models of various policies and approaches, such as a gift policy and anti-corruption and integrity statement. In line with good practice in transparency, the manuals are available online [here](#) and [here](#).

**Peru:** In 2019 Supreme Decree No. 002-2019-JUS (regulating Law No. 30424) established that, in cases where a judicial investigation is initiated against a company that has a model for bribery-prevention, it is the responsibility of the Superintendence of the Securities Market (SMV) to issue a Technical Report that gives its opinion on the effectiveness and implementation of said prevention model. The latter is important, since these rules state that if a company has an effective prevention model, it will be exempted from liability,

and consequently, the Technical Report and opinion of the SMV is relevant to exempt the company from liability or not.

**Sweden:** Sweden established a network for sustainable business to discuss relevant sustainability issues and to facilitate exchange of SOEs experiences. At one of their meetings, companies discussed the international guidelines with which they are expected to comply. The state ownership entity also conducts regular workshops on different sustainability topics, including one on whistleblowing.

**Turkey:** The government's decree, the 2015 Annual General Investment and Financing Program, required SOEs to establish an internal control system by the end of 2016.

“ *Expecting and respecting that boards and top management promote a corporate culture of integrity [IV.2]* ”

**Greece:** Greece requires listed and unlisted SOEs to appoint at least two independent board members – one having sufficient knowledge in accounting (under ch. A of L.3429/05) in order to reinforce the composition of Audit Committee.

**Korea:** The Guidelines on the Management and Innovation of Public Corporations and Quasi-Governmental Institutions require these entities to define and promulgate an ethics charter and code of conducts. It also requires an Integrity Agreement between a public institution and its executive officers.

**Italy:** SOEs are also required to comply, directly and indirectly, with the guidelines issued by the Italian Anti-Corruption Authority (ANAC), even if the organisational and management model required by the Legislative Decree n. 231/2001 has already been implemented. Each SOE is asked to identify the person “Responsible for preventing corruption” in its company and the person is appointed by the Board of directors, with main area of responsibility consisting of drafting the action plan to tackle both illegal and hidden behaviour that could be put into practice by managers and employees. Finally, the Board of directors must adopt this plan. The “responsible person” in each SOE, stated in the specific Decrees passed in 2001 and 2013, must have precise skills and characteristics, in terms of independence and professionalism, along with defined organizational role and position.

**Thailand:** Thailand's State Enterprise Policy Office (SEPO) is developing ethical standards for SOEs' Board of Directors, according to the Act on Ethical Standards, B.E. 2562 (2019). These ethical standards include adherence to the main institutions, having a good conscience, honesty, integrity and responsibility, determining to act properly, fairly and lawfully, acting in pursuance of public interests, aiming to achieve outcomes, acting non-discriminatory, and acting as a role model to others.

“ *Encourage that integrity mechanisms are made applicable to all levels of corporate hierarchy and all entities over which a company has effective control, including subsidiaries [IV.3]* ”

**Chile:** Chile: SOEs must include in their annual reports information about operations with related parties, their main suppliers and customers, subsidiaries and associates and their main shareholders.

**Croatia:** The Anti-Corruption Programme prescribes SOEs to adopt a Code of Ethics, which should define the ethical policies and the procedure for implementing them, disciplinary actions to be taken in the case of their violation, as well as other mechanisms on its implementation. One of the key requirements is that

management board members, executives of the company and all other employees of the company at all levels and positions must adhere to this Code in the performance of their duties. Its primary purpose should be to integrate these principles within the company's business processes and work environment, so that these principles become regular behaviour for all employees of the company, in line with ethical and professional standards and the generally accepted societal values.

**France:** In France, public companies, meeting the thresholds provided for in article 17 of the Sapin II Law, are required to implement measures intended to prevent and detect the commission, in France or abroad, of acts of corruption or influence peddling. When the company prepares consolidated accounts, the legal anti-corruption compliance obligations apply to the company itself as well as to all of its subsidiaries or the companies it controls. These obligations include procedures for assessing the integrity of customers, first-rate suppliers and intermediaries (e.g. due diligence procedures). Third-party assessment procedures include, on the basis of corruption risk mapping, assessments of specific risk induced by an existing or potential relationship with a third party. These assessments do not exclude the company from taking other prudential measures elsewhere.

“ *Encourage that integrity mechanism...be applied to engagement with business partners [IV.3.iii]* ”

**Thailand:** Thailand uses the Integrity Pact Initiative as a main way to tackle corruption in public procurement. An Integrity Pact, originally conceptualised by Transparency International, “is both a signed document and approach to public contracting that commits a contracting authority and bidders (including the winning bidder) to comply with best practice and maximum transparency. A third actor, usually a CSO, monitors the process and commitments made. Monitoring organisations commit to maximum transparency and all monitoring reports and results are made available to the public on an ongoing basis” (Transparency International, 2018d).

The use of Integrity Pacts was introduced for fiscal year 2015 and codified under Section 18 of the Procurement Act (2017), which applies to SOEs as well. Thailand's state ownership entity (SEPO) is a member of the Anti-Corruption Committee under the Procurement Act. Integrity Pacts should be applied to procurement projects that: (i) meet or exceed the budget threshold (1000 Million Baht); (ii) are in the public interest, such as large infrastructure projects; (iii) the Anti-Corruption Committee approves to be in the Integrity Pact programme, such those with complex procurement process or high susceptibility to corruption. SOEs and other procuring entities may voluntarily propose for procurement projects to be included in the programme.

“ *...encourage positive support for the observance of integrity mechanisms... training for all levels of the company, and subsidiaries, on relevant legal provisions, state expectations and on company integrity mechanisms [IV.4]* ”

**Chile:** The state owner, SEP, organises seminars and training programmes for board members and executives of the SOEs on a regular basis, covering some of the topics tackled in the SEP Guidelines or related corporate governance issues. The efforts are co-ordinated with the assistance of professional training bodies, such as Universities or other public institutions related to the SOEs corporate governance, such as the General Audit Bureau (Contraloría General de la República), or the Financial Analysis Unit

(UAF). Examples of these are the diploma in Corporate Governance for Board members, and the workshops on compliance and training for internal audit.

**France:** In France, the public enterprises referred to in Article 17 of the Sapin II law are required to set up training systems for executives and personnel most exposed to the risk of corruption and influence peddling. In addition, as part of its advisory mission, the anti-corruption agency (AFA) organises training activities on anti-corruption issues for public and private companies.

**Lithuania:** Since the beginning of 2019, the Special Investigation Service, (a main national anti-corruption institution in Lithuania), has held regular meetings with anti-corruption compliance officers from SOEs on questions relating to anti-corruption and integrity. During these quarterly meetings, either the Special Investigation Service, or SOEs themselves present their own experience, best practices, examples and solutions with regards to topics such as building an anti-corruption environment, whistleblowers' protection, anti-corruption analysis of legal acts and gifts policies. Such form of partnership and assistance is foreseen in the annual plans of the Investigation Service.



*Encourage appropriate channels for oversight and reporting at the enterprise level... [IV.5]*

**France:** The board must set up an audit committee, which is responsible for controlling management and verifying the reliability and clarity of the information that will be provided to shareholders and the market. The general management can also decide itself to create such committees, corresponding to a particular concern. Accordingly, some French SOEs have created ethics committees attached to the company's general management or board of directors. Some companies in the state portfolio have entrusted the responsibility for implementing the company's anti-corruption policy to specific personnel.

**Greece:** In Greece, support and training is given to all independent internal auditors appointed in unlisted SOEs, regarding the legal framework and areas of control (e.g. legal compliance and specific areas of control). Moreover, the government evaluates internal auditors' reports and if needed proposes further actions on behalf of the State, prior to their approval at the shareholders' meetings.

**Peru:** Through the Management Directive, Peru's ownership entity (FONAFE) has designed a monitoring procedure for control actions. It states that the General Manager of the Company, or equivalent, must send FONAFE, semi-annually, a copy of the report that the Institutional Control Body (e.g. the SOE's relevant internal control body) sends to the Comptroller General of the Republic. This report outlines the status of implementation of recommendations of past internal and external audit reports, and thus allows for further follow-up.

**Switzerland:** According to Art. 728a of the Swiss Code of Obligations, the auditor examines whether there is a system of internal control. Most SOEs not organised in a private legal form are subject by special legislation to an ordinary audit as well. Furthermore, at least large SOEs must establish a compliance management system in accordance with ISO 19600. For all other SOEs, similar measures are under currently review.

**United Kingdom:** With respect to the assets within UK Government Investments' (UKGI's) portfolio, SOEs enter into a framework document with UKGI and their affiliated government department which sets out the corporate governance relationship between the parties. The template framework document issued by the UK Treasury applicable to SOEs (found in *Managing Public Money* guidance) contains a requirement that the SOE shall set up an audit committee of its board in accordance with the Code of Good Practice for Corporate Governance and the Audit and Risk Assurance Committee Handbook (or be represented on the

sponsor department's Audit Committee). The Audit and Risk Committee is tasked with setting the SOE's risk appetite and ensuring that the framework of governance, risk management and control is in place to manage risk within this.

“ *...encourage disclosure of the organisational structure of the SOE, including its joint ventures and subsidiaries [IV.6]*

**Chile:** Among the information that SOEs must publish by law on their electronic sites are those of their subsidiaries and affiliates and any other entity in which they have participation, representation and intervention, whatever their nature (Article X.E of Law No. 20,285, on access to public information).

“ *Where applicable... SOEs adhere to laws related to lobbying... [IV.7]*

**France:** State-owned enterprises are covered by the lobbying regulation; they are required to register their lobbying activities on a register managed by the High Authority for transparency in public life, and are bound by ethical rules set out in the Law on transparency, the fight against corruption, and modernisation of the economy (2016).

## Which other sources might be useful?

Relevant OECD instruments to draw from:

- Decision of the Council on the Guidelines for Multinational Enterprises [[OECD/LEGAL/0307](#)].
- G20/OECD Principles of Corporate Governance (esp. V, VI.D.7) [[OECD/LEGAL/0413](#)].
- Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009), and Annex II: Good Practice Guidance on Internal Controls, Ethics, and Compliance [[OECD/LEGAL/0378](#)].
- Recommendation on Fighting Bid Rigging in Public Procurement [[OECD/LEGAL/0396](#)]  
Recommendation of the Council on Public Procurement [[OECD/LEGAL/0411](#)].

Other relevant international sources to draw from:

- G20 High-Level Principles on Private Sector Transparency and Integrity
- G20 Anti-Corruption Action Plan: Protection of Whistleblowers
- Transparency International, 10 Anti-Corruption Principles for State-Owned Enterprises
- United Nations Convention Against Corruption (esp. chapter II)
- OECD Handbook on Public Integrity
- OECD, UNODC, and World Bank, Anti-Corruption Ethics and Compliance Handbook for Business (2013)
- UNODC, Anti-Corruption Ethics and Compliance Programme for Business: a Practical Guide (2013)

## IV.C. Safeguard the autonomy of state-owned enterprises' decision-making bodies

### Why is it important?

The board plays a pivotal and central role in SOE governance, receiving direction from the ownership entity limited to strategic issues and public policy objectives. It acts as an intermediary between the ownership entity and its executive management. A threat to the integrity and professionalism of the board not only threatens the effectiveness of integrity mechanisms in the company, but also to the integrity of the company itself.

Despite improvements in the professionalisation of boards in recent decades, and in controls for protecting their autonomy, evidence shows that SOEs face corruption-related risks that are of concern to the board and thus that should be of concern to the state. Firstly, board members have been implicated in high-profile corruption cases and other irregular practices. Secondly, SOEs that were surveyed by the OECD (2018a) reported to face risks that involve the board, including the risk of conflicts of interest going undisclosed, of favouritism in appointments and of interference in decision-making. SOEs that have a greater proportion of independent board members, or that have fewer state representatives, rate the risk of corruption in their company as lower than their SOE counterparts. Thirdly, boards are responsible for monitoring management and, indirectly, employees – the two categories of persons who were reported to be most often involved in corruption or other rule breaking within surveyed SOEs (OECD, 2018a).

The ACI Guidelines' Recommendation IV.C seeks to address some of these challenges.

### How can state owners safeguard the autonomy of decision-making bodies?

The ACI Guidelines reiterate the provisions of the SOE Guidelines on the Responsibilities of SOE boards (VII), in particular concerning board autonomy and integrity. The ACI Guidelines should therefore be implemented in accordance with good practice developed by the Working Party. They however also expand on previous provisions in order to cover issues that are particularly focused on preventing corruption and maintaining integrity, and the state is therefore encouraged to take additional steps to ensure their implementation.

Primarily, the state needs to ensure that boards have the authority, diversity, competencies and objectivity that are necessary to ensure integrity in fulfilling its own functions (IV.9). In particular, the ACI Guidelines call on states to ban politicians who are in a position to influence materially the operating conditions of SOEs from board membership (IV.9.i). The state could introduce such a restriction directly into legislation (SOE-related legislation, anti-corruption and integrity-related legislation or other rules that put restrictions on high-ranking and politically appointed officials).

In practice, the evaluation of whether a politically-appointed official or other high-level public official is in a position to influence materially the operating conditions of SOEs can be made formally part of the background checks during the selection process or of other mechanisms aimed at preventing future potential conflict of interest. The state, through its ownership entity or anti-corruption or integrity institution, may issue further guidance on how such evaluation can be made and what factors to take into account when deciding on non-eligibility of politically-appointed or other public officials.

The ACI Guidelines also recommend a pre-determined “cooling off period” for former politicians (IV.9.i). In principle, former politicians are usually covered by national anti-corruption and integrity-related legislation, which introduces restrictions on their taking up of particular positions for a certain period of time after they leave office. The state needs to ensure that these explicitly include situations covered by the ACI Guidelines, i.e. apply to former politicians who wish to serve on SOE boards. The same applies to civil

servants, who are in most countries restricted from engaging in activities that could lead to a potential or even perceived conflict of interest. Finally, it would be good practice to institute and apply “revolving door” rules to executive management of SOEs – that is, rules that apply to public sector officials and temporarily prohibit them from taking certain management positions in the private sector in the areas of operations where they have established influence or connections.

The ACI Guidelines add to the good practice in the SOE Guidelines by additionally requiring that personal integrity be a formal criterion for board membership (IV.9.v). This could be done by mandating that this criterion be taken into consideration when SOE board members are selected. To further promote its practical implementation, the state through its ownership entity or its anti-corruption institution or both can provide guidance on how personal integrity can be effectively evaluated, and what checks can be made by, for instance, consulting with national registers of officials held liable for corruption. It could also be considered a good criterion for appointment of top management and other members of the executive management of the SOE, and thus the state could encourage SOE boards to use similar rules and procedures within the company.

Rules and mechanisms to declare, identify, manage and prevent conflicts of interest may be revisited by the state to ensure that they cover all areas recommended under the ACI Guidelines (IV.9.vi). Conflict of interest rules are commonly applied to SOEs in two ways. First, general conflict of interest rules cover board members and executive managers of SOEs as falling into the category of positions exposed to heightened risks of corruption. Second, conflict of interest provisions are incorporated into legislation regulating SOEs. These approaches are not mutually exclusive. The SOEs should be expected to set up mechanisms to comply with any existing these laws. Such mechanisms could include (a) procedures to declare conflict of interest; (b) rules and procedures to identify and manage potential, actual and perceived situations of conflict of interest, and; (c) acquiring resources to manage this, such as qualified persons responsible for observance and enforcement of these rules. It is good practice for such mechanisms to be integrated into the risk management and internal control system of an SOE, and could be additionally integrated into an anti-corruption or integrity programme where existing. Sources of advice on ethics or integrity, discussed in the sections earlier, should ideally be able to advise on conflict of interest rules and procedures.

Good practice further suggests that conflict of interest rules and procedures are made well known to the employees of the SOE, its senior management and board members. They can be included in induction sessions and made part of introductory packages or referred to in employment contracts, for instance. Guidance and training on such rules should be promoted throughout the whole hierarchy. The state may offer complimentary training on conflict of interest requirements if the national rules are directly applicable to the SOEs.

The ACI Guidelines require that members of SOE boards and executive management make declarations to relevant bodies regarding their investments, activities, employment and benefits from which a potential conflict of interest could arise (III.9.iv). Any conflicts of interest of board members should be disclosed to the board and, if relevant, to the state ownership. Where SOE representatives are considered by law to be public officials, individual asset declarations may need to be submitted to specialised agencies responsible for collection and management of asset declarations or through other channels existing in the country for public officials. In some cases, asset declarations are made public. At the same time, a balance must be struck between the right of the public to information about potential conflicts of interest of public officials with the right to privacy and personal security. Legislative and regulatory provisions should define which information may be withheld from the public. The World Bank (2020) suggests that exclusion of information under broadly-termed categories such as “confidential”, “personal”, “sensitive” or “harmful to the person” do not classify as sufficiently narrow.

## Questions and answers: ACI Guidelines' IV.C



**Safeguarding the autonomy of SOE boards is a prime responsibility of the state that goes beyond promoting integrity and anti-corruption. Where is there more information about this? State ownership entities should be subject to high standards of conduct. How can the state ensure this?**

This recommendation takes as a given the full implementation of the SOE Guidelines, particularly chapter VII on the *Responsibility of the Boards of State-Owned Enterprises*, as well as provisions related to the state's role as owner of Chapter II. It builds on individual recommendations of the SOE Guidelines particularly pertinent to promoting integrity and preventing corruption.



**The ACI Guidelines state that “An appropriate number of independent members – non-state and non-executive – should be on each board and sit on specialised board committees”. What is an “appropriate number”?**

OECD's 2018 study on corruption in SOEs found that companies with specialised committees in audit, risk management, remuneration and public procurement rate the likelihood of corruption or irregularities as lower than those companies who do not have these committees. There is no definitive guidance on the exact number of independent member on the various committees. “The proportion of independent members as well as the type of independence required (e.g. from management or from the main owner) will depend on the type of committee, the sensitivity of the issue to conflicts of interests, and the SOE sector” (SOE Guidelines). However, the SOE Guidelines prescribe that audit committees be composed of independent and financially literate members.

## Country examples: ACI Guidelines' IV.C

The below examples demonstrate how different countries implement (some of) these provisions in their national contexts.



***Politicians who are in a position to influence materially the operating conditions of SOEs should not serve on their boards.... Civil servants and other public officials can serve on boards under the condition that... conflict of interest requirements apply to them [IV.9.i.]***

**Chile:** Chile imposes the following limitations for public officials on boards:

- Law 19.913: establishes as a politically-exposed person (PEP) board members and management executives of SOEs, and their close relatives;
- Law 19.863: public servants cannot be members of more than one SOE gaining remuneration;
- Art 35, no 4, Law 18.046: public servants cannot be members of boards of listed companies if, because of their duties, they perform a direct control or audit companies, and;

- Art 36, Law 18.046: prohibits from boards (except those where the state is the majority owner): members of congress, mayors, ministers, sub secretaries, intendents, governors, ambassadors, regional ministry secretaries of the superior chief of public services.

**Denmark:** State officials cannot act as board members or employees of SOEs. Moreover, the state's general board remuneration policy requires that the compensation should be competitive in the low end but not leading.

**Norway:** The Norwegian state is not represented on the board of directors of the SOEs. Civil servants and senior officials employed in a ministry or other central government administrative bodies that regularly considers matters of material importance to certain companies or industries are not eligible for election to the board of such companies. Furthermore, the Norwegian Parliament has decided that parliamentary representatives should be barred from serving on the boards of companies subject to parliamentary supervision, unless it can be assumed that such representatives will not stand for re-election. It follows from the handbook of political management that it is also an "unwritten rule" that newly appointed ministers withdraw from any boards and councils they serve on. State secretaries and political advisors should also consider withdrawing from such offices. The Disqualification Act also contains provisions that provide for the possibility of imposing a period of disqualification on politicians, civil servants and other state employees when they move to a position outside the government administration.



*Members of SOE boards and executive management should make declarations to the relevant bodies regarding their investment, activities, employment, and benefits from which a potential conflict of interest could arise [IV.9.iv.]*

**Chile:** The boards of directors and senior management of the SOEs must submit declarations of interests related to professional and economic activities, any participation in companies, foundations and NGOs, and all assets and liabilities. They are sent to the Comptroller General at the beginning of their functions, and are updated in March of each year and at the end of their tenure (Law No. 20,880).

**Croatia:** Under the Conflict of Interest Prevention Act, the chairpersons and management board members of majority-owned SOEs have a status of officials who are required to submit their declaration of assets, which also includes information on their salary. This information is published on the website of the Commission for Conflict of Interest.

**France:** Board chairs and CEOs of companies in which more than half of the shares are held directly by the state, or of public entities of an industrial or commercial nature, are amongst the 15,800 high-level ranking elected and non-elected public officials required to submit both an electronic declaration of assets and a declaration of interests to the High Authority for transparency in public life (HATVP), an independent administrative authority. The declaration of interest is submitted upon take-up of duties, and the declaration of assets at the end of their function, according to the Law of 11 October 2013, on transparency of public life. The statements are **controlled** by the HATVP but are not published.



*Board members should be selected on the basis of personal integrity and professional qualifications [IV.9.v]*

**Brazil:** Brazilian SOEs are required through the “SOE Statute” (Law 13,303/2016) to establish Committees of Eligibility (nomination committees). This committee is mandated to issue a formal opinion on the compliance of appointments for management positions, members of the boards and fiscal counsel with regards to the requirements and prohibitions contained in the Law concerning these nominations.

**Canada:** The process by which members are appointed to the boards of SOEs (Crown corporations) aims to ensure both independence of the board and to equip the board with sufficient capacity to assess and address corruption and integrity risks. Crown corporation board members are appointed by the Governor in Council (Governor General on the advice of the Queen’s Privy Council, as represented by Cabinet) following an open, transparent and merit-based selection process. Board profiles are developed by the Crown corporations and validated by the Privy Council Office to ensure they accurately reflect the appointment process and/or the relevant appointment provisions. Board profiles ensure an appropriate range of skill sets and qualifications required in a particular organization. Compliance with the Conflict of Interest Act is a condition of employment. The board is required to have an independent audit committee that reports to the board, with mandatory level of financial literacy. The Privy Council Office and other agencies provide ongoing support to appointees on questions that arise from board members of an ethical nature.

**Chile:** People convicted of the crimes of embezzlement of public funds, tax fraud, incompatible negotiation, bribery of public employees or illegal levy, have the penalty of permanent or temporary disqualification from holding positions in SOEs.

**Finland:** Key criteria in proposing candidates for the boards include experience and expertise, assurance of the capacity for co-operation and diversity of competence. It is, of course, the owner(s) who elect(s) these members of boards. In this respect, every member should be aware of state owner’s expectations on his/hers work on the board. All members of boards nominated by the state ownership entity are independent of the SOE in question; e.g. CEOs or any other officers of a SOE in question cannot be elected as members of the boards. Most of the board members should even be independent from the state as an owner. People appointed to boards are experienced board members with high proven ethical standards; should an unusual case occur with a doubt or concern of any corruption or any other illegality, the company could always recruit professional (legal) advisers to assist the board in assessing those issues in more detail.

**Israel:** The Israeli state ownership co-ordinating agency, the Government Companies Agency (GCA) launched “The Directors Team” initiative aimed to transform the SOE Supervisory Board members’ nomination process by creating a competitive public procedure for identifying high quality SOE Board members. The program was launched in 2013 and has since been held in three rounds. As a result, 500 candidates with the highest scores on the various profiles were included in the pool of 500 recommended Supervisory Board members by the GCA, out of which each minister can choose to nominate Board members for the SOEs that he or she is responsible for. Once a minister nominates a candidate, the nomination has to be approved by a public committee, chaired by a retired judge.

**Latvia:** As per the Government’s regulation on nomination of executive board and supervisory board, the cross-sectoral co-ordination centre participates in each nomination process. The main criterion for selection of candidates is the professionalism and appropriateness of their talents and qualities for taking particular position. An ‘unimpeachable reputation’ is one of criteria that is to be evaluated by the nomination

committee. The candidate must be a person with an unimpeachable reputation – that is, there is no proof to the contrary and there is no cause for any justified doubt on unimpeachable reputation. There have been three nomination processes where some candidates were not progressed in the evaluation process because of doubt on unimpeachable reputation.

**Mexico:** Mexico has a National Digital Platform that registers public servants and individuals that have been sanctioned. Through this system, it is possible to prevent the appointment or hiring of public servants who were sanctioned according to a final resolution. The General Law on Administrative Responsibilities (Ley General de Responsabilidades Administrativas) establishes that the sanctions for public servants must be registered and imposes the obligation on all public bodies to consult the system and verify the status of the person prior to the hiring.



*Mechanisms should exist to manage conflicts of interest that may prevent board members from carrying out their duties [IV.9.vi]*

**Chile:** Chile seeks to prevent conflicts of interest by targeting conflicts at the level of the board as well as through the integrity of SOEs' contractual engagements. For instance:

- The directors of SOEs created by law should not intervene, by reason of their functions, in matters in which they have personal interest or in which kinship have an interest (e.g. their spouse, children, adoptees or relatives up to the third degree of consanguinity and second of affinity). Likewise, they are not allowed to participate in decisions in which there is any circumstance that reduces their impartiality (Article 62 N ° 6 of [Law 18,575](#), on General Bases of the State Administration);
- The directors of SOEs are governed by the rules of open limited companies on conflicts of interest and operations with related parties, where appropriate, so the company may only enter into acts and contracts that involve one or more of its directors, if the procedure is followed and the circumstances established by that rule are met ([Law 18.046](#), on public limited companies, Article 44, conflicts of interest, articles 146 and following for operations with related parties);
- SOEs cannot sign contracts for the provision of goods or services with: (i) Executive officers of the same company, nor with people linked to them by the aforementioned kinship ties (of art. 54 of Law 18,575); (ii) those in partnerships, limited by shares or closed stock companies in which the directors or relatives indicated are part of or are shareholder; (iii) public limited companies in which their directors or relatives are owners of shares that represent 10% or more of the capital, nor; (iv) managers, administrators, representatives or directors of any of the aforementioned companies.

**France:** Conflicts of interest disclosure may be required, depending on the case, by the company's internal regulations and / or the charter of the board of directors. Most often, public companies provide for the declaration of interests of directors when taking office (renewed each year) and the designation of a contact person for declarations and spontaneous referrals during the year. The recipient of the declarations may be, as the case may be, the chair of the board of directors, the vice-chairman, a lead director, the appointments and governance committee, or even the secretary of the board of directors. With regard to representatives of the State, the supervisory authority can also be addressed. Any decision of the board of directors on the issue of conflicts of interest concerning one or more directors of the company must be recorded in the minutes of the board.

“ *Mechanisms to evaluate and maintain the effectiveness of board performance and independence should be in place [IV.9.vii]* ”

**Denmark:** Individual ministries pursue the ownership function under the general framework and guidelines of the state ownership policy as formulated in two publications “Staten som aktionær (2004)” (state as shareholder) and “Statens ejerskabspolitik (2015)” (state ownership-policy). In accordance to the general ownership policy guidelines, the ministries are required to assess the board composition on a yearly basis in co-operation with the chair of the board. The goal is to ensure that the board consist of the required competencies in order to pursue the overall strategy.

**Finland:** The Finnish state owner requires boards to conduct yearly self-evaluations. That can be implemented many ways, including by having an external consultant to conduct it. Usually boards undertake the review themselves using questionnaires. The results and possible negative outcomes must be reported to the state ownership entity and are discussed with the Chairs.

“ *The state should express an expectation that the board apply high standards for hiring and conduct of top management and other members of executive management... special attention should be given to managing conflict of interest... [IV.10]* ”

**France:** SOE directors, appointed by the Council of Ministers and having exercised a function in the private sector during the three years preceding their appointment, are subject to the prior opinion of the High Authority for Transparency in Public Life (HATVP). Likewise, an ethical check must be carried out (by the hierarchical authority or the HATVP) when the manager of an SOE wishes to leave the position permanently or temporarily to exercise a gainful activity within a private company. The HATVP examines whether the envisaged activity risks compromising the normal functioning, independence or neutrality of the service, whether it disregards the principles of dignity, impartiality, integrity and probity, or whether it places the person concerned in a situation of committing the offense of illegal taking of interest.

**Korea:** Guidelines on the HR management for Public Corporations and Quasi-Governmental Institutions require executive officers to be a person of integrity and morality. They require public institutions to have a personnel committee for a fair and transparent recruitment, to limit promotion, reward, and exemption rights to an employee who has committed misdeed or whose misdeed is on investigation or deliberation.

## Which other sources might be useful?

Relevant OECD instruments to draw from:

- Recommendation on Guidelines on Corporate Governance of State-Owned Enterprises (esp. II, VII) [[OECD/LEGAL/0414](#)].
- Recommendation of the Council on Principles of Corporate Governance (esp. V.I) [[OECD/LEGAL/0413](#)].
- Other relevant international sources to draw from:
- Transparency International, 10 Anti-Corruption Principles for State-Owned Enterprises (esp. 1, 10)

# Accountability & enforcement



# Recommendation V. Accountability of State-Owned Enterprises and of the State

## **The Council,**

V. RECOMMENDS that Adherents ensure proper detection of corruption, as well as investigation and enforcement, and that key processes are entrusted to institutions that are insulated from influence or suppression of said processes or dissemination of public information regarding their conduct. Strong, transparent and independent external auditing procedures are means of ensuring financial probity, informing shareholders about overall company performance and engaging stakeholders.

To this effect, Adherents, as appropriate acting via their ownership entities, should take the following action:

**V.A. Establish accountability and review mechanisms for state-owned enterprises**

**V.B. Take action and respect due process for investigations and prosecutions**

**V.C. Invite the inputs of civil society, the public and media and the business community**

## V.A. Establish accountability and review mechanisms for state-owned enterprises

### Why is it important?

The state as a whole has a responsibility to ensure, in the SOE sector, proper detection and investigation of corruption or related irregularities, enforcement of preventative measures and application of proportionate penalties when necessary.

Key processes for accountability need to be entrusted to institutions external to the SOE that are insulated from undue influence. Countries vary in the number of authorities responsible for the external control of an SOE – which may include external audit by a third party, external audit by the state’s Supreme Audit Institution (SAI), or review by another state control organ. There exists in certain jurisdictions a confusion between the role of internal and external audit, and between third party external auditors and state auditors – all of which can be symptomatic of, or lead to, oversight of irregularities.

Despite frequent misconception, external auditors are not normally mandated to detect, investigate or sanction corruption (this may only be the case for Supreme Audit Institutions, often those of the Court model). However, auditors still play an important role in supporting integrity by providing checks on the probity of accounts at a minimum. Moreover, auditors may identify irregularities, including potentially corrupt activities, in the carrying out of their duties – either directly (by identifying illicit conduct) or indirectly (by uncovering the proceeds of bribery, for instance). An OECD study found that although external auditors must uncover material misrepresentation in financial statements due to fraud, many however do not link this task with foreign bribery. It identified the need to overcome a substantial scepticism of the profession, as evidence shows that external auditors often do not look for foreign bribery during audits, or were reluctant or doubtful about their role in this regard (OECD, 2017b).

External auditors assess a range of documents and statements of a company without being part of the company, and therefore have a degree of independence and autonomy. Such independence is meant to enable external auditors to report any suspected acts of corruption or other irregularities to relevant corporate bodies internally and to competent external authorities, when appropriate, without fear of reprisal.

Recent corruption scandals have shone a light on the variety of approaches that external auditors take in face of corruption-related irregularities. An OECD study noted that “divergent considerations need to be reconciled to achieve a balance between the right to confidentiality between clients and professional advisers and the public interest in having wrongful acts reported to the appropriate authorities” (OECD, 2017b). Disclosure to an appropriate authority and withdrawal of an engagement are appropriate responses, according to a 2016 pronouncement by the International Ethics Standards Board for Accountants (IESBA) on “Responding to Non-Compliance with Laws and Regulations”. The International Standards of Accountancy allow reporting when required by law, regulation or relevant ethical requirements, which implies that confidentiality may be overridden. Furthermore, an auditor’s primary duty is to protect the integrity of the market, not the interests of the audited company.

Such a role underlines the importance of professionalism, capacity and independence of external auditors in order for them to make objective and thorough assessments.

In reality, SOEs are not systematically subject to external audit – whether third party or by the state – and the independence of external audit, where existing, is not always guaranteed. Some SOEs are required to rotate external auditors periodically to ensure the objectivity of the external audit function is not lost via the auditor’s proximity to SOEs over time. States may also impose time limits on individual auditors as well. Such requirements can found in regulation (as is the case in the European Union) and in ownership policies.

The ACI Guidelines' Recommendation V.A seeks to tackle some of these issues by ensuring that SOEs, and the SOE sector more broadly, are accountable.

## **How can state owners establish accountability and review mechanisms for SOEs?**

The principles and many of the provisions of the SOE Guidelines with regards to accountability and review mechanisms for SOEs, covered in the State's Role as an Owner (II E, F) and Disclosure and Transparency (IV B, C), are reiterated in the ACI Guidelines under Recommendation V.A. for their critical role in promoting integrity in the SOE sector. Thus, they should be implemented in line with good practices and guidance already established by the Working Party. The ACI Guidelines however provide more detail to sharpen the anti-corruption and integrity focus, and thus require the state to take steps that go beyond the SOE Guidelines. This section highlights a few of these instances.

Corporate governance or SOE-specific legislation (or similar) will spell out requirements for external control to be levied at the company level – including external audit of financial statements and appointment of external auditors – as well as on SOE reporting and disclosure that facilitate external review. SOEs' annual reporting and the state owner's aggregate reporting can be inputs to such review. Other forms of external control of SOEs by the state can include investigations into complaints lodged against SOEs or the state with respect to SOEs, ex ante approval or ex post review of public contracting and audit by the Supreme Audit Institution (SAI).

Where legislation allows, the state should make use of the opportunity to summon SOEs to report to legislature or other similar elected body directly (V.1). This would facilitate greater transparency and accountability. It can also be a good tool to facilitate direct discussions and inquiries related, for instance, to SOEs' performance, to reported or detected irregular or corrupt practices especially if they involve allegations of misconduct by ownership entity or other state officials, or to remedial actions taken by the SOEs and ownership entities when such instances have been uncovered. The ACI Guidelines can be used to inform representatives of the legislature or other similar elected body and ownership entities of such opportunities. Ideally, rules and procedures would be developed for such summons, including for closed hearings when confidential issues are discussed, and would be made known to SOEs in advance for preparations for such hearings/sessions.

The state should require SOEs to publish annual reports on their performance with audited financial statements (V.1). Practically, this requirement can be made in the state owner's disclosure policy (see above Guidance on Recommendation II.5.iii). The state owner can develop its practice of aggregate reporting, also recommended in the ACI Guidelines, from guidance and good practice accumulated by the Working Party in the process of implementing the SOE Guidelines.

The ACI Guidelines also ask the state to encourage that its SOEs' financial statements be audited annually based on internationally recognised standards for listed companies (V.2). To this end, the state could introduce such requirements into SOE-related legislation or by extending the rules applied to listed companies, at the very least to large SOEs. External independent audit should follow the guidance of the SOE Guidelines and use the developed practice in the implementation of relevant provision. The state needs to also keep in mind that the SAI should not substitute for external independent audit and should carry out their own function in regard to audits of state funds, exercise of state ownership and adequacy of risk management and integrity measures in SOEs with public policy objectives (V.2.v).

Pursuant to the ACI Guidelines and general good practice, the state should require external auditors to report real or suspected illegal or irregular practices to the relevant corporate monitoring bodies (V.2.vi). This provision was taken from the OECD 2009 Recommendation on Anti-Bribery and is consistent with relevant provisions of the International Standard of Accountancy [ISA 240(41)-(43) and

ISA 250 (23)-(25) (revised)]. When appropriate, auditors should be required to report to competent authorities independent of the company. The state may choose to require by law that companies' management responds to the reports. It may also decide to permit or, as good practice suggests, require that auditors report to external competent authorities, such as law enforcement or corporate monitoring bodies in case when companies' management is unresponsive. Some countries have even gone beyond by including in the reports of the suspected corruption and other related offences, money laundering and securities offences to the competent authorities flaws in internal controls. One caveat that the state should keep in mind is that if the auditors are to report illegal or irregular practices, they should be protected from legal action.

To encourage that all external auditors are attune to corruption risks and integrity breaches, the state could raise awareness of their potential role. Moreover, they can provide further guidance for auditors on reporting obligations, especially when the bribery and other corruption-related reporting requirements coexist with reporting obligations under anti-money laundering legislation. The state can raise awareness of auditors through training, guidance in the form of instructions, recommendations and manuals, for instance, which would focus on these issues and ensure that auditors consider corruption "red-flags" during audits. For further guidance on implementing these provisions, the state may draw on experience of the OECD Working Group on Bribery, which provided practical recommendations on this issue to its parties.

To ensure that oversight bodies, regulatory enforcement agencies and administrative courts are responsive to information on suspected wrongdoings or misconduct related to SOEs or their owner, received from third parties, their role should be reinforced. In practice, this could mean that the state provides them with the clear mandate to undertake said activities and allocates the necessary resources, including trained and qualified staff. The state can set expectations by sending a clear policy message: that complaints should be given serious consideration and efficient response. In addition, good practice suggests that the state may wish to establish and publicise special reporting channels or other mechanisms to receive and process complaints and allegations from businesses, employees and other individuals. In addition, independent mechanisms, such as business ombudsman offices or other high-level reporting mechanisms can help maintain pressure and serve as watchdogs over such complaints.

## Questions and answers: ACI Guidelines' V.A



**What level of independence should be expected of the state auditor (the Supreme Audit Institution)?**

Standards for Supreme Audit Institutions are issued by the International Organisation of Supreme Audit Institutions (INTOSAI). According to INTOSAI, "although state institutions cannot be absolutely independent because they are part of the state as a whole, Supreme Audit Institutions shall have the functional and organisational independence required to accomplish their tasks...the necessary degree of their independence shall be laid down in the Constitution; details may be set out in legislation."

## Country examples: ACI Guidelines' V.A

The below examples demonstrate how different countries implement (some of) these provisions in their national contexts.

“ *...SOEs may be summoned to report to the national legislature or similar elected bodies of the state [V.1]* ”

**Chile:** State sector companies must deliver the information that is required of them by the Commissions of the Chambers or by individual parliamentarians in a Chamber or Commission session. More information on this inclusion in the Organic Constitution of the National Congress is available online (Article 9.A of Law No. 18,918).

“ *Independent external audit [V.2]* ”

**Canada:** The Auditor General conducts annual financial audits and a special examination (a type of performance audit) at least once every ten years (or more often if warranted), which result in publicly available reports tabled in Parliament. The audits ensure compliance of financial and corporate systems within the Crown corporations, occasionally touching on issues of ethics and integrity. The Auditor General has the ability to conduct horizontal, issue-based audits if concerns are raised in particular areas, as had been the case with concerns around sponsorships.

**Chile:** By law, all SOEs must have their Financial Statement audited. The Code issued by the state ownership entity (SEP) establishes the selection procedure and requirements that external auditors (of financial statements) must meet. Among others, auditors must be registered with the Commission for the Financial Market (CMF) and must apply, as part of their audit approach, the International Standard on Auditing (ISA) 240. The Code requires the auditor to be rotated every three years and prohibits it from providing different audit services to the auditing company. In addition, the Comptroller General – Chile's Supreme Audit Institution – has broad oversight powers over SOEs for the purpose of safeguarding compliance and fulfilment of SOEs' public objectives, the regularity of their operations and for enforcing the responsibilities of SOE managers or employees, and obtaining the information or background necessary to formulate a National Balance ([art. 16, Law N ° 10,336](#)). In addition, SOEs' Financial Statements are subject to the supervision of the Financial Market Commission (Article Tenth Law No. 20,285, on access to public information).

**Colombia:** Some SOEs have adopted voluntary policies of rotating their (external) auditors and the directorate for SOEs has pushed to change external auditors at least every four years. Colombian companies are legally required to have their annual financial statements audited by an external auditor “revisor fiscal”. The external or statutory auditor, who is assigned by the general meeting of shareholders, may perform this function for no more than five companies at a time. If a public accounting firm is appointed as “revisor fiscal”, a partner from the firm or an employee who is legally qualified to practice accounting is designated to perform those duties for no more than four consecutive years and every two years the designated partner must be changed. A number of additional legal requirements have been established in support of auditor independence. The external auditor cannot provide non-audit services for the company it audits; and in case of violation may be sanctioned by the Central Board of Accountants. In addition, according to the Commercial Code, the statutory auditor may not be i) a partner of the company or any of

its subsidiaries or those associated with or employees of the parent; ii) linked by marriage or relationship or are co-members of board members or managers, the auditor cashier or company itself, or; iii) employed by the company or its subordinate.

SOEs are, in addition, subject to the individual and sector specific supervision of bodies such as the Financial Superintendence, the Utilities Superintendence, the Comptroller General's Office and the General Accounting Office, which also, in one way or another, audit their results.

**France:** SOEs can be the subject of control by France's Court of Accounts (Cour des Comptes), that can make reports publicly available. The Court can examine SOE risk management and, if needed, can apply budgetary or disciplinary sanctions. The ownership entity, APE, can also be the audit subject.

**Iceland:** The National Audit Office is responsible, by law, for auditing all SOEs, although in a few special cases it may outsource their work to a recognised private accounting firm. This Office is accountable to parliament, not government. The Audit Office undertakes financial audits of the Central Government Accounts and the accounts of public bodies and enterprises in which the State owns majority share. Suggestions are made on improvements to accounting, the preparation of financial statements, internal controls, the security of IT-systems and financial management in general. In certain cases, either on their own initiative or by instruction from parliament, they can undertake special investigations into SOE management and issue a report.

**Norway:** Ministries are frequently audited by the state auditor on how the state as an owner promotes expectations of the SOEs and how the state as an owner follows the work in the SOEs on every area where the state has expectations of the companies with state ownership, including the work on sustainability and responsible business conduct – an area that is an explicit part of the ownership policy.



*The role of external oversight and control within the public integrity system should be reinforced [V.3]*

**Argentina:** In Argentina, there are multiple entities involved in external oversight and control of SOEs. These include:

- **SIGEN:** SIGEN is the agency responsible for the internal auditing of SOEs. SOEs must design an audit plan that needs to be approved by SIGEN.
- **National Stock Commission (CNV):** listed SOEs are subject to the corporate governance principles.
- **Central Bank:** public financial entities are regulated by the Central Bank. Financial entities are required to comply with Guidelines of Corporate Governance and explain how they meet those criteria.
- **National Audit Agency:** independent agency established to assess, audit and control the performance of the public sector, including SOEs.
- **Anticorruption Office:** the Anticorruption Office is in charge of applying the Public Ethics Law (e.g. asset declarations, prevention of conflict of interests, gifts policies) in SOEs, promoting implementation of compliance programs and, as needed, filing criminal complaints before the Judiciary.

## Which other sources might be useful?

Relevant OECD instruments to draw from:

- Recommendation on Guidelines on Corporate Governance of State-Owned Enterprises (esp. VI.B) [[OECD/LEGAL/0414](#)].
- Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions Adopted by the Council on 26 November 2009 (particularly III.V) [[OECD/LEGAL/0378](#)].
- Recommendation of the Council on Public Integrity (esp. 12) [[OECD/LEGAL/0435](#)].
- Recommendation of the Council on Principles of Corporate Governance (esp. V.C, V.D) [[OECD/LEGAL/0413](#)].

Other relevant international sources to draw from:

- Transparency International, 10 Anti-Corruption Principles for State-Owned Enterprises (esp. 10)
- International Organisation of Supreme Audit Institutions, the Lima Declaration: founding principles (1977)
- International Standard on Auditing 240: The Auditor's Responsibilities relating to Fraud in an Audit of Financial Statements, ISA 240(41)-(43)
- International Standard on Auditing 250 (revised): Consideration of Laws and Regulations in Audit of a Financial Statements, ISA 250 (23)-(25) (revised)
- International Ethics Standards Board for Accountants (IESBA) Code of Ethics for Professional Accountants (with amendments from July 2018)

## V.B. Take action and respect due process for investigations and prosecutions

### Why is it important?

One of the most effective means of deterring corruption is by increasing the opportunity cost of engaging in corruption through enforcement of the legal framework. The presence of well-functioning entities (investigative and prosecutorial) and penalties for corruption can help to reduce incentives for corruption and hold accountable those who engage.

It may moreover reduce any sense of impunity that may exist in and around the SOE sector. An OECD survey of SOEs demonstrated that one of the greatest challenges to integrity in their companies had to do with opportunistic behaviour: the perception that the cost of corruption, or the likelihood of getting caught, is low. This perception was pronounced in SOEs compared to private enterprises, and in SOEs with public policy objectives compared to those with predominantly economic activities. SOEs appear less likely or less willing to walk away from known corruption risks than private companies are – which may point to a fallible confidence in state backing or the pressure SOEs face to achieve public policy objectives (OECD, 2018a).

In practice, institutions responsible for corruption detection, investigation and enforcement may not have or may not exercise the independence necessary to carry out their function in an unimpeded manner. In certain cases, state representatives may have incentives to influence due process where irregularities might implicate high-level political decision makers or public officials, or where irregularities simply point to a fault in the governance of enterprises under the state's watch.

By one measure, cases of corruption, bribery and other misconduct most often come to light through companies' self-reporting (OECD, 2017b). In the case of SOEs, potential cases of corruption might be brought to the attention of the ownership entity. At present and in practice, suspicions brought to the attention of ownership entities are most commonly forwarded to relevant enforcement authorities. Most ownership entities follow investigations proceedings at arm's length, co-operating with investigative authorities when called upon to provide information about the SOE. Some ownership entities require implicated SOEs to develop an action-plan, which the state owner can then follow-up on in subsequent years for assurance on the improvement of internal controls and attempts to mitigate likelihood of recurrence. There may be more that the state owner can do and be aware of – explored in the following sections.

The ACI Guidelines' Recommendation V.B seeks to tackle some of the challenges in this area.

### How can states take action and respect due process for investigations and prosecutions?

Enforcement of legal and regulatory requirements that affect corporate governance practices, including in the context of anti-corruption and integrity, falls outside of the scope of ownership entities' functions, and requires the state to strengthen the roles and capabilities of other bodies directly responsible for enforcement. However, there are certain steps that can be undertaken by those exercising ownership rights in order to take action and respect due process for investigation and prosecution, as called for in the ACI Guidelines. They are as follows:

- Ownership entities should co-operate fully with relevant authorities (V.4). There is a wide range of options that the state can pursue to foster such co-operation. It can encourage signing of formal co-operation agreements and memorandums between relevant agencies, for instance. The state may opt to create joint task forces, working groups or other similar joint units on a regular or ad-hoc basis. The state as a whole could proactively raise awareness and educate representatives of the ownership entity through training, seminars and other types of guidance about, inter alia: their duties and obligations when they come across illegal or irregular practices; liabilities for withholding or hiding of the information

on such discoveries; ways of reporting or otherwise communicating such information to the responsible agencies, and; how to receive protection, advice or guidance on ethical dilemmas. Anti-corruption agencies should be well placed to develop and issue such trainings, guidance and methodological recommendations. Good practice suggests that organising joint training activities between ownership entities and anti-corruption or other relevant entities responsible for enforcement are very effective. Good practice further suggests that establishing a process for regular feedback on any referrals facilitates such referrals and increases their quality – which results in more cases of detection of corruption or integrity breaches.

- To ensure that civil, administrative and criminal penalties for corruption, applicable to both natural and legal persons, are effective, proportionate and dissuasive (V.5), the state does best to draw on the practice and guidance provided in this respect by the WGB in regard to implementation of Anti-Bribery Convention and its related instruments.
- The state should ensure that persons who are willing to report real or encouraged illegal or irregular practices in and concerning SOEs, should be protected against all types of unjustified treatments resulting from such reporting in law (V.6). Such persons can be covered by general whistleblower legislation, or by special provisions or regulations covering SOEs and ownership entities that can be introduced by the state. The state should also afford such protection in practice. In practice, protective measures can be introduced within the ownership entity, by the ownership entity or by an outside authority. In implementing these provisions the state is encouraged to consult the Study on G20 Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation developed by the OECD in the framework of the G-20 Anti-Corruption Working Group (OECD, 2015).
- In order to encourage SOEs to actively and effectively respond to external auditors' reports of real or suspected illegal or irregular practices (V.7), the state could mandate SOEs to do so in law. It is already mandated in a number of countries and is proving to be effective. Alternatively, the state can incentivise SOEs to respond appropriately. For example, law enforcement agencies in some countries may take into consideration conduct of due internal investigations and adequate measures taken by SOEs in response to such reports, when deciding on prosecution or non-trial resolutions. These could be incorporated into guidelines for enforcement bodies, as well as into guidelines on implementation of the anti-bribery and other anti-corruption-related legislation. Some jurisdictions have handed down milder punishments to companies that self-report – legislation in these jurisdictions should explicitly allow for such consideration to be given to SOEs where appropriate. All of these options can be promoted by the state owner in its dialogues with SOE boards, through guidance and training for SOE management and compliance officers or similar and through other state policies which relate to SOEs or anti-corruption and integrity.
- The state can ensure that SOEs are treated on par with privately owned companies by enforcement agencies in the course of investigation or prosecution of corruption, by fully implementing relevant articles of the Anti-Bribery Convention and becoming familiar with the recommendations of the Working Group on Bribery developed in this respect.
- In order to prevent recurrence of corruption or irregular practices if they have taken place in SOEs, the state should have processes for follow-up with SOEs to support them in mitigating recurrence (V.9). For this, the state owner could conduct an analysis of the root-causes of corruption or of irregular practices that took place, and could do so with the involvement of external expertise, or preferably jointly with relevant anti-corruption and integrity bodies. Where the causes of the corruption or irregularity have bene of a systemic nature, the state owner may consider the need to reform. Concerned SOEs, in particular those responsible for risk management, could also be involved in this task. In addition or instead, the state owner may also encourage the SOE to conduct a root-cause analysis itself. The results of such analysis could be communicated throughout the SOE hierarchy and, if appropriate, among other SOEs within the state portfolio. To be meaningful, the analysis would lead to development of prevention or remedial plans, with elements of monitoring of their implementation.

## Questions and answers: ACI Guidelines' V.B



**The ACI Guidelines recommend that “Civil, administrative or criminal penalties for corruption or other unlawful acts should be effective, proportionate and dissuasive. They should be applicable to both natural and legal persons including SOEs”. What kind of penalties are effective, proportionate and dissuasive?**

Civil or administrative sanctions that might be imposed upon legal persons for corruption may include, aside from non-criminal fines: exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from participation in public procurement or from the practice of other commercial activities; placement under judicial supervision, and; issuance of a judicial winding-up order (see commentaries on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions). Moreover, the OECD Anti-Bribery Convention (Article 2) and UNCAC (Article 26) calls on countries to take measures as necessary, in accordance with legal principles, to establish the liability of legal persons for bribery of a foreign public official and for corruption, respectively. In the event that criminal responsibility is not applicable to legal persons, governments should ensure that legal persons are subject to effective, proportionate and dissuasive non-criminal sanctions (adapted from Anti-Bribery Convention, Article 3.2.)



**The ACI Guidelines recommend that “Persons willing to report real or encouraged illegal or irregular practices in and concerning SOEs, including related to the state owner, should be offered protection in law and practice against all types of unjustified treatments as a result of reporting”. How can individuals be protected?**

Owners are encouraged to consult the OECD’s “Committing to Effective Whistleblower Protection” (OECD, 2016b). Broadly, protection could mean protecting the identity of a whistleblower through measures of confidentiality (with sanctions for disclosure of identity), and protection from professional marginalisation, offering possibilities for work reassignment or job protection for existing or prospective applications.



**The ACI Guidelines suggest that the ownership entity should, when corruption or irregular practice has been detected, “have processes for follow-up with SOEs to support the mitigation of recurrence”. In addition to the country examples below, what types of questions could the ownership entity ask to understand better ‘what went wrong’?**

State ownership entities could consult the US Department of Justice’s resource “Evaluation of Corporate Compliance Programs” (US DOJ, 2017), which asks the following:

- **Evolving Updates** – How often has the company updated its risk assessments and reviewed its compliance policies, procedures, and practices? What steps has the company taken to determine whether policies/procedures/practices make sense for particular business segments/subsidiaries?

- **Remediation** – What specific changes has the company made to reduce the risk that the same or similar issues will not occur in the future? What specific remediation has addressed the issues identified in the root cause and missed opportunity analysis?
- **Root Cause Analysis** – What is the company’s root cause analysis of the misconduct at issue? What systemic issues were identified? Who in the company was involved in making the analysis?
- **Prior Indications** – Were there prior opportunities to detect the misconduct in question, such as audit reports identifying relevant control failures or allegations, complaints, or investigations involving similar issues? What is the company’s analysis of why such opportunities were missed?

## Country examples: ACI Guidelines’ V.B

The below examples demonstrate how different countries implement (some of) these provisions in their national contexts.



*State ownership entity should co-operate fully [V.4]*

**Chile:** The state ownership entity (SEP), through its Code, lays out its expectations for SOEs’ to be transparent and collaborative with Audit Institutions in the course of audit or investigation. The Office of the Comptroller General (CGR) and the Financial Market Commission (CMF) send SEP copies of audit reports in order to obtain its co-operation in monitoring the implementation of corrective measures recommended in the audits.

**Finland:** Regarding co-ordination with relevant agencies with respect to corruption prevention, detection or enforcement, the Finnish ownership entity may have discussion with these authorities or give and gather information they may require for their investigations, reports or conclusions.

**Latvia:** The cross-sectoral coordination centre has provided clarifications to Corruption Combating and Prevention Bureau on matters related governance of state-owned and municipality-owned enterprises, mainly concerning matters such as remuneration, extension of mandate of executive board members and bonuses to executive board members. The cross-sectoral coordination centre has worked together with Competition Council in a parliamentary working group on amendments of State Administration Structure Law dealing with preconditions of state ownership in enterprises. The Competition Council has to provide its opinion on cases when line ministries evaluate state ownership. The cross-sectoral coordination centre consults the Competition Council regarding these evaluations and underlying arguments.



*Transparent procedures to ensure that all detected irregularities are investigated and prosecuted when necessary [V.8]*

**Argentina:** In case of corruption, members of the Board could: a) initiate a legal case before the courts b) raise the event to the internal auditor c) report a criminal case before the Anticorruption Agency.

**Canada:** If a case of corruption or rule breaking is reported, depending on the circumstances, the Crown Corporation or government (as the case may be) would begin appropriate investigation, commensurate with the source and scale of the alleged rule breaking. For example, rule breaking by top management (employees of the corporation) would likely be dealt with by the Crown Corporation internally initially, until such point as may be necessary to engage appropriate outside authorities. Actions by board members would be dealt with by

government through whatever channel had jurisdiction over the subject matter of the reported behaviour (e.g., financial mismanagement would engage the Auditor General or potentially external auditors; conflicts of interest/ethics would engage the responsible Commissioner; or actions may come out through whistleblower action through the Integrity Commissioner). Where there is sufficient ground to investigate the matter as criminal behaviour, the appropriate law enforcement body would be engaged. The responsible Minister would be answerable to Parliament with respect to actions taken

**Chile:** Each company has its own procedure (in accordance with SEP Guideline on Transparency), and whenever a complaint is placed in the system, the firm must carry out an internal enquiry. If it conveys a strong belief and presumption that a felony may have taken place or that it could be taking place, they have the obligation to report it to the Public Ministry, who is the body in charge of conducting a formal criminal procedure. SEP strongly recommends its companies to provide every material collaboration with such investigations and provide all the background information and support that may be needed to the authorities.

**Colombia:** The SOE and the state ownership entity must communicate this case to the instances of control: Comptroller General's Office –fiscal control-, Office of the Attorney General and the Procurator's General Office – disciplinary authority.

**Finland:** Investigations are initiated without delay both externally and internally. Also an external auditor carries out a special auditing. A professional legal aid can also be used. The findings and conclusions are reported immediately thereafter to the state ownership entity (and, as the case may be, to other major shareholders), who decides how to proceed in the matter. The minister responsible of ownership steering is also informed. Person(s) who are under investigation are removed from his/hers/their position(s) in the company. If the investigations indicate any corruption or other rule breaking, the case will be forwarded to police for investigation and, as the case may be, later to the public prosecutor (district attorney). The prosecutor decides, whether to take the case to the court or not. The company and the state ownership entity (and, as the case may be, the other major shareholder(s)) mutually decide when, if ever, and how to publish the case.

**Peru:** The Institutional Control Offices (Government Audit teams) could recommend the initiation of a Sanctioning Administrative Procedure to the Comptroller General of the Republic, which represents a way to control corruption. The ownership entity (FONAFE) could request the Institutional Control Offices or the Comptroller's Office to include in its Control Plan an alleged case of corruption. On the other hand, in relation to the Presidency of the Council of Ministers, FONAFE must report on the dismissals that may occur, which will prevent employees dismissed for committing acts of corruption from being hired in other entities. FONAFE and the Companies under its scope will not discriminate the position of the person who commits an act of corruption and will apply the measures provided for that purpose.

**Slovenia:** SOEs must follow certain steps in accordance with the relevant internal acts, procedures and legislation. First, internal procedures should be carried out by the relevant person (e.g. compliance officer, internal auditor), after which competent institutions should be notified about the suspicion. A special commission within the state ownership holding reviews all incoming complaints and notices. If necessary, the state ownership entity resends those complaints to the State Attorney, the Commission for the Prevention of Corruption or other authorised state institutions.



*Supervisory, regulatory and enforcement authorities have the authority, integrity and resources... [V.8.i]*

**Canada:** Pursuant to the Public Servants Disclosure Protection Act, the Public Sector Integrity Commissioner can investigate reported instances of abuse in Crown corporations. Employees are empowered to disclose abuses within their Crown corporations.

**Iceland:** The Ministry of Finance (the state ownership entity) appoints members to the independent Complaints Board for Public Procurement, which also applies to complaints against SOEs.



*Ownership entity has processes for follow-up with SOEs [V.9]*

**Canada:** Should a potential issue be uncovered, government can determine an appropriate course of action, for instance:

- By ordering or prohibiting a particular action (through such available means as a ministerial directive, a legal directive or conditioning a corporate plan),
- Addressing issues at level of board/CEO appointments and/or
- Legislatively altering the mandate or winding-down the organization itself.

Where there is failure to meet the owner's expectations in integrity or anti-corruption, the government has a range of corrective actions that may be taken, depending on the severity/circumstances. For example, individuals in a conflict of interest situation may be sanctioned as per legislation or removed from office (if board members). Widespread unethical behaviour or abusive practices could result in the government's refusal to approve corporate activities, provide funding or in extreme cases wind-down of the organization. Conditions may be placed on corporate activities going forward or directives issued to ensure future compliance.

**Philippines:** if the board or top management reports a case of corruption or other rule breaking, the following actions can be undertaken by the SOE and the state ownership entity. For the state ownership entity, it may pursue any of the following actions:

- Dismiss the report for want of palpable merit;
- Forward the report to the concerned SOE for its corresponding official action;
- If it involves an officer or employee, submit a formal recommendation to the Governing Board of the concerned SOE for the discipline of the erring individual(s);
- If it involves an Appointive Director of the Board, submit a formal recommendation to the Governing Board of the concerned SOE for the suspension of the erring Appointive Director;
- Submit a formal recommendation to the President of the Philippines for the removal of the erring Appointive Director;
- Endorse to the proper government agency, such as the Office of the Ombudsman, the pursuit of criminal and/or administrative processes against the erring Appointive Director, officer or employee of the concerned SOE;
- Instruct the GOCC Governing Board and Management to comply with applicable laws or jurisprudence and/or to undertake corrective measures to address the matters raised in a complaint/report;
- Consider a complaint/report closed and terminated if after investigation, the state ownership entity finds the response of the alleged erring individual adequate

In SOEs that are subject to existing civil service laws, rules and regulations, the Governing Board of the SOE shall have the authority to discipline or remove the CEO or other executive officer upon a majority vote of the members of the Board who took part in the investigation.

**Slovenia:** The shareholder can recall the members of the supervisory board or not give a discharge to the members of management and supervisory board. For some cases the Slovenian Sovereign Holding Act

prescribes offence provisions and competent minor offence authorities – for example: a fine between 400 to 4,000 euros shall be imposed on an individual who fails to submit data on their financial situation or changes in their financial situation to the Commission for the Prevention of Corruption.

### Which other sources might be useful?

Relevant OECD instruments to draw from:

- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (esp. Art 3-8) [[OECD/LEGAL/0293](#)].
- Recommendation on Guidelines on Corporate Governance of State-Owned Enterprises [[OECD/LEGAL/0414](#)].

Other relevant international sources to draw from:

- United Nations Convention Against Corruption (esp. Chapter III)

## V.C. Invite the inputs of civil society, the public and media and the business community

### Why is it important?

It is a commonly recognised good practice to encourage transparency, openness and stakeholder engagement throughout the political process and policy-making cycle, as stipulated by the OECD Recommendation of the Council on Public Integrity. SOEs face fewer obstacles to integrity in countries with strong rule of law – measured by absence of corruption, openness of government, civil justice and upholding of fundamental rights, amongst other pillars of democracy.

Accountability and integrity in SOEs and of the state can be enhanced through engagement of civil society. Anecdotal evidence shows that where SOEs may be saddled with non-transparent public policy objectives after formal objectives are set, it can be difficult to discern which activities of SOEs are based on conferred state-wide interest or political or personal interest in SOEs. Civil society can help to monitor and oversee implementation of SOE objectives and hold the state to account for justified ownership. At the same time, engagement of civil society should strictly prohibit participation of social interest groups in the decision-making of an SOE or of the state ownership entity.

Civil society, the public, the business community and media also play an important role in uncovering and reporting corruption involving SOEs or around SOEs. Their reporting is an essential source of detection, both for law enforcement authorities that investigate allegations contained in the press, and for companies that decide to conduct internal investigations or self-report. The role of media is enhanced by legal frameworks protecting freedom, plurality and independence of the press, laws allowing journalists to access information from public administrations, open data allowing access to an enormous amount of previously unattainable information, and efficient judicial systems that keep journalists away from unfounded lawsuits (OECD, 2017b). Some of the latest corruption cases involving SOEs (e.g. Telia Company and Petrobras) have come to light through reports by investigative journalists and triggered investigations, which in some cases have already resulted in sanctions; the pressure to take these allegations seriously has been equally important in many of these cases.

Many integrity and anti-corruption initiatives, which in one way or another have relevance for SOEs, have been initiated by civil society, business organisations and professional associations. To name a few – TI's Business Integrity Programme that produced 10 Anti-Corruption Principles for SOEs, the Extractive Industries Transparency Initiative, Infrastructure Transparency Initiative and the Open Government Partnership. They have all accumulated good practices and knowledge that can be put to good use by the state, state ownership entities and SOEs.

Compliance capabilities of SOEs can benefit from experience developed in this area by the private sector and vice-versa. Such knowledge sharing is facilitated by various international fora engaged in promoting integrity in business, such as the B20 through its B20 Collective Action Hub, the UN through its Global Compact, OECD through its Trust in Business Initiative and most recently a joint project between the OECD and Basel Institute on Governance – “Compliance without Borders”. These initiatives allow pooling the resources, multiplying the knowledge and broadening access to learning tools and databases. These and business integrity initiatives – be they international or national – can help SOEs build resilience to undue influence and exert peer pressure to follow honest business practices.

The ACI Guidelines' Recommendation V.C seeks to address some of these issues, encouraging the state to leverage the inputs of civil society, the public, media and the business community, to promote SOE integrity.

## How can states invite the inputs of civil society, the public and media and the business community?

There are multiple ways that the state can implement the ACI Guidelines' provisions aimed at inviting inputs from civil society, the public, media and business community. The types of engagement depend on the purpose of such inputs.

In particular, to lead by example in proactively seeking to improve public knowledge about SOEs, the state could encourage SOEs to make as many integrity-related disclosures as possible (e.g. conflict of interest). Section III.B of this Guide provides a list of possible disclosures. In addition, the state could consider a requirement to disclose beneficial ownership of all legal persons, including SOEs, and publish such information on-line, as well as introduce measures to authenticate beneficial owners and verify relevant information. At a minimum, the state should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities (FATF, Recommendation 24).

Moreover, the state can ensure that access to such information is facilitated by using on-line platforms and issuing information in open data formats, i.e. made available with the technical and legal characteristics necessary for it to be freely used, re-used, and redistributed by anyone, anytime, anywhere (G20, 2015). This can be done by introducing legislation about on-line publication in open data formats of information held by public authorities, including ownership entities, and ensuring the regular publication of high-interest datasets with the guaranteed right of re-use free of charge under an open license. Good practice suggests setup of central government portals for publishing open data and establishment of national standards on open data. The G20/OECD Compendium of Good Practices on the Use of Open Data for Anti-Corruption is a useful resource for countries to assess and improve their open data frameworks (OECD, 2017c).

The state owner is encouraged to implement fully the SOE Guidelines' provisions on transparency and disclosure, including via the use of web-based communication tools. The state should make available information on the ownership structure, linking SOEs to the ownership entity responsible for said SOEs (II.5.iii). The ownership entity should also consider providing information about the organisation of the ownership function and the ownership policy (SOE Guidelines, Chapter VI.C). The provision of information to the public will require a degree of financial, material and human resources. This could for instance even lead to the creation of designated information officers or units in ownership entities.

The ACI Guidelines encourage co-operation amongst relevant state bodies with stakeholders, trade unions, private sector representatives, the public and the media in facilitating analysis of the disclosed information (V.11). To this end, the state could require that independent analysis, conclusions and recommendations be formalised as part of the process of development of SOE-relevant policies and of SOE-related decision-making. International standards on policy development promote the use of analytical reports, surveys and studies developed by non-governmental stakeholders – the same principle can be applied in the context of state ownership. For example, when developing anti-corruption and integrity policies concerning SOEs or designing anti-corruption and integrity expectations of the state with regards to SOEs, consultations with the above stakeholders could be a mandatory step. To ensure that co-operation with civil society and other stakeholders is genuine and useful for the state, it should actively engage with their initiatives, such as various transparency initiatives developed by TI Chapters and headquarters (e.g. Transparency in Corporate Reporting (TRAC) and Integrity Pacts).

To strengthen the development of integrity mechanisms of SOEs and their effectiveness, as recommended by the ACI Guidelines, the state can promote that SOEs get involved in various business integrity initiatives by issuing recommendations to do so, incentivising SOEs or otherwise positively recognising such steps. The state could create or support joint meetings, forums and other platforms for dialogue between SOEs, privately owned companies and the state for exchange of ideas and good practices.

Collective action is also a useful source of learning for SOEs. The state could consider encouraging its SOEs to sign anti-corruption declarations, enter into integrity pacts or join principle based initiatives and coalitions with integrity certification, among others. Risk management systems' and compliance programme staff of SOEs can benefit from taking part in training, seminars, conferences organised by private sector, business associations, and the like. Guidance developed by the private sector can be tapped into by the state when providing guidance to the SOEs. Training activities for SOEs on compliance organised or co-organised by the state through ownership entity or other state institutions can involve experts from the private sector, business associations and other professional organisations.

The state as a whole may additionally consider joining and ensuring full compliance with international transparency and good governance initiatives, notably the Extractive Industries Transparency Initiative, the Infrastructure Transparency Initiative and the Open Government Partnership.

The state and its officials, including those within the ownership entity, should respect civil liberties, including the right to freely criticise and investigate. The state is strongly encouraged to repeal any general criminal liability for defamation and insult, if they exist, as they have a chilling effect on freedom of speech and activity of the mass media, which leads to self-censorship and hinders investigative journalism that can expose corruption. Civil courts should provide the only legal forum for remedying harm caused to one's honour and dignity. More severe sanctions for libel and insult of public officials also do not comply with international standards, according to which such persons may, on the contrary, be subject to a much higher level of criticism than an ordinary citizen would be.

In fact, reporting should be encouraged with clear and adequate protection measures, incentives, support and advice to those who make such reports. Alternative reporting mechanisms could also be supported by the state, regardless of whether they are being set up with or without government involvement. Moreover, the state could promote dialogue, follow-up and co-operation around these mechanisms between the SOE and enforcement agencies. The state should consider encouraging its law enforcement and other competent authorities to use proactively all these sources for detection of corruption and integrity violations in and around SOEs.

## Questions and answers: ACI Guidelines' V.C



**The ACI Guidelines recommend that the “state leads by example with regards to transparency actively seeking to improve public knowledge about SOEs”. How can the state do this in practice?**

As the SOE Guidelines [VI.C] suggest, the ownership entity should publish their annual aggregate reports online to facilitate access by the general public. In addition, the state could make available a clarification of the ownership structure and a list of SOEs owned by the state. The ACI Guidelines moreover add that, where possible, the state could provide links to SOEs publicly available disclosures. In addition, the state may go further and provide information in formats that are user-friendly and can be perused by watchdog organisations or by other stakeholders for analytical and other purposes. For example, by making information easily searchable and provided in the machine-readable format.



The ACI Guidelines suggest that “the state may encourage SOEs to consider engagement with civil society, business organisations and professional associations...”. What benefits would this bring?

Expanding on the OECD Good Practice Guidance, such engagement platforms could: (i) enable dissemination of information on relevant issues, including regarding developments in international and regional fora, and provide access to relevant databases; (ii) make training, prevention, due diligence and other compliance tools available; (iii) offer general advice on carrying out due diligence; (iv) offer general advice and support on resisting undue influence, and; (v) enhance company reputation when SOEs join integrity or anti-corruption collective actions or other integrity initiatives.



The ACI Guidelines recommend that “Stakeholders and other interested parties, including creditors and competitors, should have access to efficient redress through unbiased legal or arbitration processes when they consider that their rights have been violated”.

As provided for in the SOE Guidelines (III.B annotations) “Stakeholders should be able to challenge SOEs and the state as an owner in courts and/or tribunals and be treated fairly and equitably in such cases by the judicial system. They should be able to do so without having to fear an adverse reaction from the state powers exercising ownership over the SOE that is subject to the dispute.”

### Country examples: ACI Guidelines’ V.C

The below examples demonstrate how different countries implement (some of) these provisions in their national contexts.



*... the state leads by example with regards to transparency, actively seeking to improve public knowledge about SOEs [V.10]*

**Chile:** SOEs have the obligation to publish on their websites information about the board. This includes information about the organisational structure, quarterly financial and other statements, consolidated information on the company’s staff and its regulatory framework and the annual report. SOEs must also post information about members of the board of directors and management including their remuneration, functions and competencies and stakes in subsidiaries, associates or other entity (Article 10 of [Law No. 20,285](#)). Likewise, the ownership entity (SEP) not only has the obligation to publish certain information on its website but, in addition, it must provide all the information that is requested by any citizen, unless some reason for reservation established in the law operates with respect to it (Article 7 and 10 and following, of the first article of [Law No. 20,285](#), on access to public information).

**Brazil:** Since the enactment of the Law No. 13.303/2016, which provides the legal status of SOEs, the Secretariat of Coordination and Governance of SOEs (SEST) of the Ministry of Planning has been working hard, conducting a seminar aimed at instructing the entire population, especially public servants who work directly in SOEs on the importance of the Law.

**Thailand:** In 2014, Thailand became a member of CoST Infrastructure Transparency Initiative – the leading global initiative improving transparency and accountability in public infrastructure – at the request and initiative of Thailand’s state ownership entity (SEPO). Infrastructure projects that are selected to form part of the CoST programme have real-time information about the project made publicly available online. Forty data points are disclosed by the project owner on the CoST website and are verified by an Assurance Team for completion and accuracy. The Assurance Team also selects certain projects to visit and gather complementary information. Public forums are held for exchanges between project owners and citizens, before all information is analysed and recommendations are made for improvement. All information, including that from site visits and the assessments, is published online.

The pilot project of Thailand’s CoST initiative was the expansion of Suvarnabhumi Airport (AOT) because it was a huge project that was within the public interest and required lots of contracts. The SEPO coordinated with AOT to develop the Thailand CoST’s website to disclose project information. Originally housed within the SEPO, the Secretariat for CoST Thailand was transferred from SEPO to the Comptroller General in 2017 in order to expand CoST’s coverage to companies other than those that are state-owned. By 2019, 15 projects involved state enterprises, while 182 were at the local level and 55 in the ‘official sector’. Each year the Office of the Comptroller General issues an “[Assurance Report](#)” on CoST activities that covers, among other things, the status and results of participating projects.

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*Relevant state bodies should be encouraged to co-operate with stakeholders, trade unions, private sector representatives and the public and the media in facilitating the analysis of disclosed information and, where appropriate, highlighting and addressing problems of corruption in and concerning SOEs [V.11]*

**Argentina:** As part of a policy dialogue with civil society, Argentina encourages think tanks and universities to research, debate and mainstream the importance of good governance for the performance of SOEs. Currently, CIPPEC (a well-known think tank) is leading a program on transparency of SOEs.

**Hungary:** In 2013, TI Hungary launched a project to evaluate and rank SOEs in terms of their transparency and disclosure practices, as well as certain integrity mechanisms. TI gathered information on a number of indicators from the websites of 66 SOEs and conducted in-depth interviews on transparency and integrity with SOEs. It then organised multi-stakeholder working group discussions with representatives of SOEs, the National Authority for Data Protection and FOI, representatives of owners, such as the National State Holding Company and the Hungarian Development Bank, and government decision makers from various ministries. Through these discussions a minimum transparency and compliance checklist was developed based on legislative requirements and OECD corporate governance guidelines, with the intention of enabling monitoring and driving improvements in SOEs’ transparency and disclosure in alignment with a consistent methodology. Through this project, TI-Hungary was generating data and feedback on integrity and corporate governance in order to drive improvement in Hungary’s SOEs.

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*...encourage SOEs to consider engagement with civil society, business organisations and professional associations that may serve to strengthen the development and effectiveness of integrity mechanisms [V.12]*

**Norway:** In 2013, Norway established a forum where non-governmental organisations (NGOs) and representatives from the different ministries that manages state ownership meet twice a year to discuss

and exchange experiences regarding responsible business conduct, including anti-corruption and bribery. Issues that have been raised are for example: best practice anti-corruption programs, and how to conduct integrity due diligence. The purpose of the forum is to raise awareness, enhance understanding, and to contribute to a competent based dialogue with the SOEs.

**Russia:** The Anti-Corruption Charter of the Russian Business was signed, on September 20, 2012, by the four largest business unions of Russia: the Russian Union of Industrialists and Entrepreneurs (RUIE), the Chamber of Commerce and Industry of the Russian Federation, the All-Russian Public Organization of Small and Medium-Sized Businesses «OPORA RUSSIA» and the All-Russian Public Organization «Delovaya Rossiya», which involve many state-owned enterprises. Every second year, companies submit a self-completed Declaration on Anti-Corruption Measures Taken to RUIE or to the relevant Chamber of Commerce and Industry.



*Representatives of the state and SOEs should refrain from actions that serve to repress or otherwise restrict the civil liberties, including liberties to criticise or investigate, of civil society organisations, trade unions, private sector representatives, the public and media [V.14]*

**Sweden:** In 2012, a Swedish TV programme, Mission Investigate, started investigating a bribery case regarding a Swedish-Finnish partly state-owned telecommunication company, Telia Company, and its links with Gulnara Karimova, the daughter of the Uzbek president. Journalists identified payments in Telia Company's annual report to a company called Takilant, based in Gibraltar. They went to Gibraltar and were able to obtain information on the company from the business registry authority, including limited financial information and the name of the director who turned out to be the acting personal assistant to Karimova. The journalists' investigation was made possible by open data in Sweden and other countries, which allowed for either online or in-person consultation of companies' registers and provided journalists with firms' annual reports. In addition, the story was made possible through collaboration via the Organised Crime and Corruption Reporting Project (OCCRP), a network of investigative journalists, and in particular, its members in Uzbekistan. (OECD, 2017b)

## Which other sources might be useful?

Relevant OECD instruments to draw from:

- Recommendation on Guidelines on Corporate Governance of State-Owned Enterprises (esp. V-VI.) [[OECD/LEGAL/0414](#)].
- Recommendation of the Council on Public Integrity (esp. 13) [[OECD/LEGAL/0435](#)].

Other relevant international sources to draw from:

- United Nations Convention Against Corruption (Art. 10 and 13)
- Council of Europe Resolution (97)24 (Point 16)
- Transparency International 10 Anti-Corruption Principles for State-Owned Enterprises (esp. 3)

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## Annex A. Other OECD legal instruments on promoting integrity in the private and public spheres

- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions [[OECD/LEGAL/0293](#)] (*Working Group on Bribery in International Business Transactions*)
- Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service [[OECD/LEGAL/0316](#)], (*Public Governance Committee*)
- Recommendation of the Council on Principles for Transparency and Integrity in Lobbying [[OECD/LEGAL/0379](#)] (*Corporate Governance Committee*)
- Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009, including its Annex II: Good Practice Guidance on Internal Controls, Ethics and Compliance added in 2010) [[OECD/LEGAL/0378](#)] (*Working Group on Bribery in International Business Transactions*)
- Decision of the Council on the Guidelines for Multinational Enterprises [[OECD/LEGAL/0307](#)] (*Investment Committee*)
- Recommendation on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas [[OECD/LEGAL/0386](#)] (*Development Assistance Committee and Investment Committee*)
- Recommendation on Fighting Bid Rigging in Public Procurement [[OECD/LEGAL/0396](#)] (*Competition Committee*)
- Recommendation on Guidelines on Corporate Governance of State-owned Enterprises [[OECD/LEGAL/0414](#)] (*Corporate Governance Committee*)
- Recommendation of the Council on Public Procurement [[OECD/LEGAL/0411](#)] (*Public Governance Committee*)
- Recommendation of the Council on Principles of Corporate Governance [[OECD/LEGAL/0413](#)] (*Implementing body: Corporate Governance Committee*)
- Recommendation of the Council for Development Co-operation Actors on Managing Risks of Corruption [[OECD/LEGAL/0431](#)] (*Development Assistance Committee and the Working Group on Bribery in International Business Transactions*)
- Recommendation of the Council on Integrity in Public Procurement [[OECD/LEGAL/0435](#)] (*Public Governance Committee*)
- Recommendation of the Council on Public Integrity [[OECD/LEGAL/0435](#)] (*Governance Committee*)
- Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct [[OECD/LEGAL/0443](#)]





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