

On Combating Corruption and Fostering Integrity

EXECUTIVE SUMMARY, RECOMMENDATIONS AND FULL
REPORT TO THE OECD SECRETARY-GENERAL

by the

OECD Secretary-General's High-Level
Advisory Group (HLAG) on Anti-Corruption and Integrity

16 March 2017



The OECD Secretary-General convened a High-Level Advisory Group on Anti-Corruption and Integrity on the occasion of the OECD Integrity Forum in March 2015. The Group, which is composed of independent experts from a variety of professional backgrounds in the anti-corruption field (see Annex I), was tasked with helping the OECD identify ways to strengthen its work on combating corruption and fostering integrity in the public and private spheres through a consultative role to the Secretary-General.

This document reproduces a report prepared by the High-Level Advisory Group which delivers recommendations on ways the OECD can strengthen its work on combating bribery and promoting integrity.

The Secretary-General formally received this report and its recommendations on 16 March 2017, during the 2017 OECD Global Anti-Corruption and Integrity Forum.

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HIGH-LEVEL ADVISORY GROUP'S RECOMMENDATIONS

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Introduction

The OECD Secretary-General convened a High-Level Advisory Group (HLAG) to help the OECD¹ identify ways to strengthen its work in combating corruption and promoting integrity² (see Annex). This is most timely given the devastating impact of corruption on societies in general, the series of recent scandals in many countries, as well as the heightened concerns about the weakening of important anti- corruption and transparency legislation and about conflicts of interest at the highest levels in some OECD governments.

Judging by the concerted leadership and engagement of the OECD on anti-corruption in recent years, there is high potential for a bold leadership role for the OECD Secretary-General, the OECD, and its members in this new era. Indeed, the HLAG applauds the leadership role of the OECD and its outstanding work in key aspects of the fight against corruption, notably through the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (“Anti-Bribery Convention”). Some notable successes of the Anti-Bribery Convention are illustrated by the ground-breaking enforcement and penalties against companies and public officials in some important OECD member countries.

Yet beyond transnational bribery and the Anti-Bribery Convention, there is also serious concern that some OECD and non-OECD countries are facing an increasing incidence of abuse of executive authority, manipulation of the judiciary and the legislative process, including legal and regulatory capture, as well as constraints to access to information and transparency, the media and civil society. This is inimical to a robust rule of law and to the fight against corruption.

Against this backdrop of a flagging commitment to anti-corruption by some key OECD members, there is a demand for urgent action and bold leadership by the OECD Secretary-General, the OECD, and its members. By assuming a prominent and effective anti-corruption role, the OECD could provide critical support for addressing and reversing recent setbacks, protecting hard-won gains over the past decades, as well as pushing for much needed progress on emerging areas in the fight against corruption within OECD member countries and beyond.

The HLAG reiterates the importance of protecting and further strengthening the implementation and enforcement of the important Anti-Bribery Convention as well as the

¹ Throughout the document, the acronym “OECD” refers to its organization and leadership unless specific mention is made to “OECD members”, which is used when the HLAG wishes to consider its constituent countries.

² Advancing integrity is of high importance alongside combating corruption. In this document, when utilising the word corruption we refer to a broad understanding of such notion, and in the anti-corruption notion it is implicit that we are referring to a broad set of integrity measures. As emphasised in the text, advancing *transparency, accountability and rule of law* is fundamental to addressing corruption and promoting integrity.

importance of ensuring adequate resources for the implementation and enforcement of other existing OECD instruments. In particular, the HLAG stresses that the breadth of its recommendations should not deflect resources from the priority of effectively monitoring the Anti-Bribery Convention to strengthen its implementation and enforcement.

The OECD should also strengthen implementation of other existing anti-corruption and integrity standards, policies and guidelines applicable to the public sector, and develop new standards in areas of vulnerability, regarding, for example, state-owned enterprises (SOEs), bribery between commercial entities, and the links between corruption and political party and election campaign financing.

The HLAG also recommends that the OECD increase its efforts to fight corruption and promote integrity by fostering *greater coordination within the organisation*, seeking multi-stakeholder guidance in its work, disseminating data, conducting more in-depth quantitative and policy analysis, and harnessing the power of new technologies. Regarding *coordination with external institutions*, the OECD should enhance its collaboration and partnerships with other international organisations (and major initiatives) working on these issues, including those involving the private sector and civil society.³

In addition to the need for the OECD to take bold leadership on anti-corruption while also better leveraging internal and external partnerships as emphasised above, the HLAG emphasises the over-arching importance of advancing *transparency, accountability and rule of law institutions* across the globe. These three governance pillars are essential to promoting integrity and to combating corruption and capture, at the global, national and subnational levels.

Some of the particular elements of these three key governance areas – *transparency, accountability and rule of law* – may not fall within the core competencies of the OECD's work. Consequently, not all the specific anti-corruption measures and initiatives required for global progress on anti-corruption are fully elaborated in the HLAG's recommendations below. Instead, the HLAG's recommendations focus on areas that it considered to be particularly relevant for the OECD.

Nonetheless, it is imperative that the OECD's anti-corruption strategy and work plan accounts for the reality that without complementary progress on these critical governance areas (including where the OECD does not play a major role), the impact of the OECD's own initiatives will be impaired. Indeed, the importance of addressing all these core governance challenges for corruption control, which cannot be fully addressed by the OECD alone, further underscores the need to ensure complementary collaboration with other key global and national organizations and initiatives. Furthermore, an up-to-date OECD anti-corruption strategy needs to fully reflect the extent to which the world has been undergoing seismic governance changes.

With such overarching perspective in mind, the HLAG presents a set of concrete recommendations for the Secretary-General's consideration and use in further internal and external consultations and possible input to a strategy for the next stage in the OECD's anti-corruption and integrity work. In the following section, the HLAG presents the full list of its 22 recommendations, organised in three sections, namely: (i) 4 recommendations

³ Specifically, on external partnerships in this global anti-corruption context, deeper collaboration ought to take place with key official international organisations and relevant multi-governmental initiatives. Further, the OECD should institutionalise its collaboration with global multi-stakeholder initiatives (MSIs), leading global think tanks and academic institutions, NGOs and business organisations working on key aspects of anti-corruption.

intended to further implementation and enforcement of existing OECD standards; (ii) 13 recommendations for updating existing standards and developing new standards; and (iii) 5 recommendations for working together towards effective implementation of new and existing OECD standards. The final section contains the HLAG's Full Report, which provides a longer narrative to explain in more detail the rationale for each recommendation.

Summary set of recommendations

A. Implement and enforce existing OECD standards

1. To further reduce transnational bribery, secure consistent enforcement of the OECD Anti-Bribery Convention, including by:
 - better publicising and engaging external stakeholders in follow up on the OECD Working Group on Bribery in International Business Transactions (WGB) country report recommendations;
 - institutionalising and expanding the WGB prosecutors' meetings to exchange information and enhance law enforcement capacity;
 - imposing stricter consequences for non-compliance with the Anti-Bribery Convention, including by codifying and publicising country status similar to the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes' procedures for non-compliant tax jurisdictions; and
 - raising greater awareness of the costs that cross-border bribery imposes on societies and the most vulnerable citizens.
2. To promote prevention of public sector corruption, encourage OECD members to conduct peer reviews, with external input and public reports, of implementation of OECD standards on integrity of public officials, such as whistle-blower protection, conflict of interest and asset disclosure.
3. To address corruption risks in procurement and contracting, particularly in key sectors (e.g. major infrastructure, extractives, and defence), monitor and report on implementation of relevant OECD instruments, including recommendations, high-level principles and other guidance.
 - In particular, the OECD should bring together key players such as the World Bank, the WTO and key civil society organisations, as well as committed business leaders working to foster anti-corruption and integrity in procurement and in contracting, to collectively scale up efforts at all levels of governments and in the private sector.
4. Encourage non-member states to adopt OECD standards and participate in OECD programs and platforms designed to foster peer review of their commitments.

B. Develop new OECD standards

5. Revise the 2009 Recommendation for Further Combating the Bribery of Foreign Public Officials for the 20th anniversary of the OECD Anti-Bribery Convention to address urgent issues, including by:

- updating its standards for reporting allegations of foreign bribery in the public and private sectors, including whistle-blower protections, and consider emerging issues on this topic such as the use of financial incentives to encourage whistle-blowers;
- encouraging the prohibition of bribery of commercial enterprises or other private- sector actors in international business transactions; and also promoting the harmonisation of corporate liability regimes; and
- promoting the harmonisation of corporate liability regimes.

6. Create and publish model guidelines for criminal and civil settlements and voluntary disclosure consistent with the requirement for effective, proportionate and dissuasive sanctions under the Anti-Bribery Convention.

- Given differences across legal systems, the OECD should establish a working group consisting of legal scholars and prosecutors from multiple countries, representatives of the WGB, civil society, and the private sector to develop guidelines to encourage and promote private sector cooperation with law enforcement.
- This initiative should complement the current Anti-Bribery Convention and related instruments as well as the need to enforce sanctions for non-compliance of the current Convention (as per Recommendation 1), and thus in no way should weaken its sanctions and enforcement.

7. Recognising that inadequately regulated political finance can unduly influence public policy, corrode public trust, result in legal and regulatory capture, and even constitute bribery or corruption in certain instances, the OECD should conduct further analysis on the corruption risks in this area, develop relevant transparency and anti-corruption standards for political, party and campaign finance, and monitor its members' efforts to adopt and implement those standards.

8. Due to the increasing devolution of resources and powers to local governments, the OECD should adapt its current tools and guidelines on integrity systems for application to local governments.

9. In order to address the heightened risk of corruption in state-owned enterprises, the OECD should develop standards for effectively preventing and detecting corruption in state-owned enterprises (SOEs), ensuring that they cannot be used to evade corruption and bribery prohibitions, including by:

- subjecting SOEs to adequate control from relevant oversight bodies, including Supreme Audit Institutions where applicable, and civil society;
- subjecting SOEs to independent audit under international accounting standards;
- requiring SOEs to adopt ethics and compliance programs consistent with the OECD Guidance on Internal Controls, Ethics and Compliance

- ensuring that independent law enforcement actions can be taken if SOEs engage in corruption;
 - ensuring that SOEs publish their budgets, disbursements, plans and programs both in their country of origin and in the countries where they operate; and
 - devising monitoring programme or other methods to ensure that countries comply with these standards.
10. To address impunity and the failure of government to take action against public officials in bribery and embezzlement cases, promote criminal prosecution, enhanced mutual legal assistance, beneficiary ownership disclosures, and greater public awareness.
11. Promote more effective coordination and mutual legal assistance in transnational corruption cases, and develop guidance on sharing and protecting forfeited assets and penalties among cooperating enforcement authorities across jurisdictions.
12. Build on the existing work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, the Financial Action Task Force, the Corporate Governance Committee, the Working Group on Bribery in International Business Transactions, and other OECD bodies to ensure that tax, anti-money laundering, and other law enforcement officials – as well as, to the extent possible, the general public – have effective access to information of the ultimate beneficial ownership of companies, trusts and other legal entities.
13. Develop standards to require the identification and sanctioning of corporate service providers and other gatekeepers who facilitate corruption, such as lawyers, accountants, bankers and real estate professionals.
14. Develop guidance to address the risk of corruption in counter-trade, particularly the use of offsets in procurement, including for defence materials and services.
15. Develop transparency requirements for commodity traders to disclose payments to governments and state-owned companies, and help further the global trend towards requiring mandatory disclosure of revenue payments to governments by all oil, gas and mining companies.
16. In order to promote integrity in society and effective implementation of anti-corruption initiatives, develop and disseminate guidance that will promote collaborative and coordinated action among stakeholders (firms, civil society, government institutions), including via multi-stakeholder initiatives (MSIs).
17. Develop and foster implementation of guidelines and good practices to ensure that civil society, including NGOs, media and academia, can provide informed and independent opinions about governments' anti-corruption and integrity performance, and for ensuring that there is adequate access to information for this purpose. Where such practices are not followed or governments obstruct civil society participation in OECD consultations or monitoring reviews, this should be explicitly noted in the relevant OECD assessments and reviews.

C. Achieving these goals by working together

18. Create a mechanism to require internal coordination, collaboration and knowledge sharing across the OECD's many locations and areas of relevant work (e.g., concerning public sector integrity, foreign bribery and corruption, financial transparency, development assistance, export credit, competition, public procurement, and extractives governance) to ensure consistent and coherent action regarding existing and future instruments and initiatives.

- In particular, effective enforcement and prevention in both the public and private sectors must be seen as mutually reinforcing and essential components of any anti- corruption and integrity initiative.

19. Ensure greater multi-stakeholder involvement of civil society and the private sector from member and non-member states in the OECD's anti-corruption activities.

20. Foster and monitor implementation of the OECD Recommendation for Development Cooperation Actors on Managing Risks of Corruption both generally and, in particular, as it relates to infrastructure and natural resources in countries struggling to achieve sustainable and inclusive economic growth.

21. Continue to compile, evaluate, and disseminate governance-related data as broadly as possible (embracing Open Data standards), and collaborating with other researchers and institutions, provide analysis on under-researched aspects of the costs and consequences of corruption, the benefits of good governance, clean government and the rule of law.

22. As emphasised in the introduction, the "rule of law" is an overarching challenge, fundamental to ensuring integrity and successfully combating corruption in all jurisdictions. The OECD should identify and include in its work, as appropriate and consistent with its core competencies, priority topics on the rule of law. Among possible priority areas of further work, the following should be considered:

- independence of the judiciary and of law enforcement authorities;
- laws that are clear, accessible, fair and consistently applied;
- due process behind all law enforcement reactions, including settlements;
- clear obligations to publish and to provide access to information; as well as
- unfettered media and civil society.

FULL REPORT

Introduction

The Secretary-General convened a group of independent experts from a variety of professional backgrounds in the anti-corruption field to form the High-Level Advisory Group on Anti-Corruption and Integrity (HLAG). The HLAG's main task was to advise the Secretary-General on how the OECD could identify ways to strengthen its work for combating corruption and fostering integrity in the public and private spheres as well as to face new challenges in this area. In particular, the HLAG wanted to provide the Secretary-General with recommendations on how to improve the effectiveness of existing OECD standards, develop new international benchmarks, and enhance internal and external coordination to ensure a consistent and coherent action. To this end, the Full Report provides the Secretary-General with further context and explanations for the rationale of each of the HLAG's recommendations.

A. Implement and enforce existing OECD standards

Recommendation 1

To further reduce transnational bribery, secure consistent enforcement of the OECD Anti-Bribery Convention, including by:

- better publicising and engaging external stakeholders in follow up on the OECD Working Group on Bribery in International Business Transactions (WGB) country report recommendations;
- institutionalising and expanding the WGB prosecutors' meetings to exchange information and enhance law enforcement capacity;
- imposing stricter consequences for non-compliance with the Anti-Bribery Convention, including by codifying and publicising country status similar to the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes' procedures for non-compliant tax jurisdictions; and
- raising greater awareness of the costs that cross-border bribery imposes on societies and the most vulnerable citizens.

The Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions⁴ (the Anti-Bribery Convention) has changed the global anti-corruption landscape. Before it came into force in 1999, the United States was virtually the only country in the world to prohibit the bribery of foreign public officials in international business, and bribes were often tax deductible. The OECD was the natural home for such a convention. As its member countries were responsible for approximately

⁴ The Anti-Bribery Convention is available online at www.oecd.org/corruption/oecdantibriberyconvention.htm.

76.3% of exports back in 1999, the OECD had the potential to significantly curb bribery in international commerce and development.⁵

The Anti-Bribery Convention still stands out as the only multilateral treaty focussing solely on this particularly insidious form of corruption. As a result of this specialisation, the OECD WGB, which monitors the implementation of the Anti-Bribery Convention, has developed leading expertise on preventing, detecting, investigating and prosecuting foreign bribery. This technical knowledge is vital because foreign bribery cases are notoriously complex, involving layers of intermediaries, opaque corporate structures, and cross-border financial flows.

The 41 Parties that have so far adhered to the Anti-Bribery Convention have increased their enforcement of their foreign bribery laws substantially over the years—from having almost no enforcement in the early years following 1999, to having imposed sanctions on 361 individuals and 126 entities by the end of 2014. This is due in large measure to the WGB’s effective monitoring of the Anti-Bribery Convention.

However, enforcement is still not widespread or consistent. By the end of February 2017, only 19 Parties had reported having imposed sanctions for foreign bribery through a final and binding resolution in at least one case. In order to enter into a “new era of enforcement”, as promised by the Parties in their 2016 Ministerial Declaration, the OECD must further prioritise the WGB’s monitoring programme. This is the most effective way to exert pressure on the Parties to address weaknesses in laws on corporate liability, insufficient law enforcement resources, inadequate cooperation among Parties’ law enforcement authorities, and other enforcement challenges.

In order to achieve higher levels of enforcement among the Parties to the Anti-Bribery Convention, several measures should be taken. It is vital that the WGB’s monitoring reports are given more visibility and their findings shared more widely with external stakeholders, including in developing countries that are frequently at the receiving end of foreign bribery. Meetings of the Parties’ law enforcement authorities help build trust, share expertise, and exchange information about foreign bribery typologies. They should be institutionalised, and where appropriate, expanded to involve non-Parties’ law enforcement authorities.

The means for addressing the Parties’ continuing inadequate implementation of the Anti-Bribery Convention need to be strengthened. The OECD should publicise the Parties’ level of compliance with the Anti-Bribery Convention, following the example of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. Public support for strong foreign bribery enforcement should be increased by raising awareness of the significant damage that foreign bribery causes to the most vulnerable members of society, including by robbing them of access to essential public services.

Moreover, the global economy has changed significantly since 1999, and the composition of the WGB should reflect this to maintain its relevance. The Parties to the Anti-Bribery Convention currently account for around 65% of global exports—a large share, but down by more than 10% from 1999. The OECD should therefore find new

⁵ In the early 2000’s the estimate of bribery around the globe was about US\$ 1 trillion dollars, or over 2% of world GDP, and it prominently included transnational transactions. See Daniel Kaufmann, “Myths and Realities of Governance and Corruption,” in the Global Competitiveness Report 2005-06 World Economic Forum, October 2005) pages 81-98. This publication can be found online at: http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/2-1_Governance_and_Corruption_Kaufmann.pdf

ways to proactively engage with those G20 countries that have still not joined the Anti-Bribery Convention—China, India, Indonesia and Saudi Arabia.

Recommendation 2

To promote prevention of public sector corruption, encourage OECD members to conduct peer reviews, with external input and public reports, of implementation of OECD standards on integrity of public officials, such as whistle-blower protection, conflict of interest and asset disclosure.

The OECD has played a leading role in establishing international standards for combating the supply side of foreign bribery through the Anti-Bribery Convention. Perhaps more significantly, the WGB has provided a forum in which the Parties to that Convention can foster the implementation and enforcement of their international obligations through a demanding peer-review monitoring process. This mechanism enables the Parties to identify and make recommendations regarding weaknesses in the Parties' legislative and institutional frameworks for combating foreign bribery. It also enables them to identify common challenges as well as to share their experiences and good practices. In this way, the OECD has made tremendous progress in fighting the supply side of foreign bribery.

To effectively combat corruption, however, the OECD must address both the supply and the demand side of the equation. The OECD has developed a substantial body of policies, guidelines and standards for public sector integrity that complements the Anti-Bribery Convention. These tools address issues including public integrity, conflict of interest, lobbying, political finance and public investments. Many of these standards, however, do not create legally binding obligations and implementation is weak or regressing in some OECD member countries. More importantly, they do not require OECD members to undergo formal peer-review monitoring to ensure their implementation and enforcement.

The OECD's members have a responsibility to abide by the public sector integrity policies that they have developed.⁶ For this reason, the HLAG recommends that the OECD elevate critical public sector integrity standards and guidelines, such as those in the Recommendation of the Council on Public Integrity, into binding obligations suitable for monitoring. The OECD should particularly focus on conflicts of interest, asset disclosure requirements, and whistle-blower protections in order to facilitate both the prevention and detection of corruption, bearing in mind that the WGB already monitors the whistle-blowing standard contained in Article IX of the 2009 Recommendation. At the same time, the OECD should also devise a transparent and participatory monitoring process to foster implementation of these standards.⁷ The monitoring reports should be made available to the public.

⁶ Indeed, the HLAG observes that, according to the OECD's own analysis, public officials from 24 of the 41 WGB member countries were involved in a foreign bribery scheme that was successfully prosecuted between 1999 and mid-2014. See OECD (2014), *OECD Foreign Bribery Report* page 30, www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm.

⁷ Being cognizant of this burden to countries, as an indicative suggestion (which would need to be further discussed), the OECD may wish to consider staggering the monitoring reports, whereby for instance each member could prepare a self-assessment against the relevant standard, say every one and half or two years, and undergo a formal review conducted by two or three peer-countries every fourth year or so.

The OECD has successfully used peer-review monitoring mechanisms to promote transparency, learning and collaboration in identifying shortcomings in their governance systems and anti-corruption efforts as well as solutions to these challenges.

Adopting a formal monitoring mechanism for selected standards would further help members improve their policies through a dynamic and participatory process. This would enable the OECD and its members to further elaborate and refine their public sector integrity standards over time. Once developed, these monitoring mechanisms could be expanded, where appropriate, in coordination with existing monitoring mechanisms as a way to engage non-OECD economies interested in participating in these important efforts.⁸

The OECD has an impressive track record in fostering in-depth collaboration between governments in fighting the supply side of bribery. The HLAG calls on the OECD to organise a similar mechanism for the demand side as well.

Recommendation 3

To address corruption risks in procurement and contracting, particularly in key sectors (e.g. major infrastructure, extractives, and defence), monitor and report on implementation of relevant OECD instruments, including recommendations, high-level principles and other guidance.

- In particular, the OECD should bring together key players such as the World Bank, the WTO and key civil society organisations, as well as committed business leaders working to foster anti-corruption and integrity in procurement and in contracting, to collectively scale up efforts at all levels of governments and in the private sector.

Corruption in public procurement diverts funds that should be spent for the public good. The value of public expenditures on procurement is huge, estimated at 13% to 20% of GDP⁹ and at a yearly average of US\$ 9.5 trillion.¹⁰ Further, it is estimated that between 20% to 25% of the procurement budget,¹¹ approximately US\$ 2 trillion annually, is lost to corruption.

The adverse impact of corruption in procurement can result in financial, environmental, health, safety and social failures and losses. It therefore has the greatest impact on the most vulnerable citizens, especially women, children and those below the poverty line. It can also inhibit innovation, hinder the development of new enterprises, and erode the value and trust in government.¹² For this reason, it is no surprise that the OECD identifies public procurement as a “crucial pillar of strategic governance and services delivery for

⁸ Cf. Recommendation 4 on encouraging non-member states, when appropriate, to adopt OECD standards and participate in OECD peer-review mechanisms

⁹ World Bank (2013).

¹⁰ Spruill (2013).

¹¹ OECD (2013), *Implementing the OECD Principles for Integrity in Public Procurement: Progress since 2008*, page 21.

¹² Transparency International (2014).

governments” and insists that, “well governed public procurement can and must play a major role in fostering public sector efficiency and establishing citizens’ trust.”¹³

Corruption in procurement can arise at any stage – from the initial planning, through the bidding and evaluation process, to the implementation of the contract. The procurement process is also vulnerable to many different forms of corruption or illegal activity, including: the manipulation of eligibility requirements, collusion, extortion, threats, false invoicing or fraud. The risk of corruption is greater when dealing with high-value contracts and large-scale projects, when discretion pervades the decision-making procedure, when there is a lack of transparency, and when it is difficult for outsiders to evaluate the price- quality combination in public acquisitions of goods and services. These circumstances often arise in procurement for major infrastructure projects as well as in the defence and extractive sectors, as demonstrated, for example, by the Unaoil allegations.¹⁴

For these reasons, corrupt practices in procurement are not always easy to prevent or detect, and require heightened expertise and strong preventive and compliance measures. High-risk areas need special attention, in particular a holistic and independent assessment of bidders’ past performance, competing bids in the market, and value for money in government spending. In addition, countries should be encouraged to publicly disclose contracts and licenses.¹⁵ Such disclosures can promote more effective management of countries’ extractive resources by enabling stakeholders to monitor all relevant actors and ensure that they act responsibly during the implementation of the project.¹⁶

In this regard, the HLAG commends the OECD for its adoption of the 2015 Recommendation on Public Procurement, which updates the 2008 Recommendation on Enhancing Integrity in Public Procurement.¹⁷ Furthermore, the HLAG appreciates the work that the OECD already does to support governments by conducting peer reviews of public procurement systems and proposing recommendations for improvements, by bringing together different communities to shape directions for procurement reforms, as well as by collecting and sharing reliable evidence among and beyond the OECD countries

¹³ OECD Recommendation of the Council on Public Procurement, available online at www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf (last accessed 17 February 2017).

¹⁴ Unaoil, a company reportedly incorporated in the British Virgin Islands but headquartered in Monaco, allegedly obtained billions of dollars in government contracts from 2002 to 2012 on behalf of major energy companies from OECD countries through a series of bribery schemes in Africa, Central Asia and the Middle East. It has been called the “world’s biggest bribe scandal”. Nick McKenzie et al., “Unaoil: The Company that Bribeed the World”, *The Age* (March 2016).

¹⁵ For more information, see The Open Contracting Initiative (www.open-contracting.org/) and Center for Global Development’s Publish What You Buy project (www.cgdev.org/working-group/publish-what-you-buy-working-group) (last accessed 28 February 2017).

¹⁶ See Natural Resource Governance Institute, *Five Steps to Disclosing Contracts and Licenses in EITI* (18 February 2016), available at www.resourcegovernance.org/analysis-tools/publications/five-steps-disclosing-contracts-and-licenses-eiti (last accessed 28 February 2017); cf. Recommendation 15 on transparency in commodity trading.

¹⁷ See OECD Recommendation of the Council on Public Procurement, available at www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf. (last accessed 28 February 2017).

on the performance of public procurement operations and their impact on broader public policy objectives.

Considering the existing work of the OECD on public procurement, the next logical step would be to monitor and report on implementation of the Recommendation on Public Procurement through the creation of a transparent and participatory monitoring process. OECD members should also foster implementation of the Recommendation on Fighting Bid Rigging in Public Procurement through careful review of the procurement laws to ensure the effective design of competitive tender processes.¹⁸

The Anti-Bribery Convention is also an important tool for addressing corruption risks in public procurement contracting. OECD analysis shows that from 1999 to mid-2014, 57% of concluded cases of the bribery of foreign public officials involved public procurement. The next category was customs clearance, at 12%. Although the percentage of public procurement cases has not been broken down by sector, it can be assumed that a substantial proportion involved extractives, construction, and defence, which accounted for 19%, 15%, and 5% of those concluded cases, respectively.

The WGB's programme of monitoring the implementation of the Anti-Bribery Convention should therefore place a reasonable and proportionate focus on combating foreign bribery linked to public procurement. The WGB could leverage monitoring to produce more targeted recommendations on issues such as the use of debarment by countries as an effective punishment for foreign bribery. According to data obtained by the OECD, between 1999 and mid-2014, debarment was only used as a sanction in two out of 427 concluded foreign bribery cases. Monitoring should strongly encourage public procurement authorities to require bidders to have anti-bribery programs and training, to conduct corruption risk assessments before awarding procurement contracts, and to maintain effective oversight and control during the rest of the procurement cycle. Procurement authorities should also diligently report credible suspicions of corruption to the law enforcement authorities.

Finally, the HLAG calls on the OECD to bring together key players such as the World Bank, the WTO and key civil society organisations, as well as committed business leaders working to foster anti-corruption and integrity in procurement and in contracting, to bring their collective work to scale at all levels of governments and within the private sector.

¹⁸ Consistent with the indicative approach suggested in Recommendation 2, the monitoring of these Recommendations could include self-assessment rounds by each OECD country against each listed standard (every year and half to two years) as well as a formal review mechanism conducted by a panel of two or three other countries of the latest self-assessment (every 4 years or so).

Recommendation 4

Encourage non-member states to adopt OECD standards and participate in OECD programs and platforms designed to foster peer review of their commitments.

The OECD has a long history of promoting dialogue and collaboration among both member countries and non-members to establish policy principles and priorities that garner widespread support.¹⁹ This is especially important when addressing transnational bribery, corruption and illicit financial flows, which will often fail without international collaboration. Despite much work that has been done to fight corruption, an urgent need for more harmonisation of policy as well as law enforcement efforts remains.

Building on its success in fostering collaborative development of international policy, the OECD should develop strategic criteria to identify willing and able partners with whom the OECD can work to promote a coordinated anti-corruption agenda. While the respective size of a country's economy and geopolitical circumstances will obviously be important considerations, the OECD should consider other criteria, including countries' track records in fighting corruption as well as demonstrable signs of political will to embrace an anti-corruption agenda. The ability of civil society and other stakeholders to participate should also be taken into account to ensure that the anti-corruption agenda is not thwarted by vested interests. In this way, the OECD could work with partners around the world to progressively improve the fight against corruption in a strategic manner wherever possible.

The HLAG emphasises the importance of the OECD's continuing participation and input in the context of the G-20. The HLAG notes the OECD's participation in the UK Anti-Corruption Summit, which brought together developing and developed countries to identify commitments that they could make both individually and collectively to improve the global community's anti-corruption efforts. The HLAG welcomes the Summit's call for the OECD, along with other international organisations, to support these efforts by sharing information and good practices.

In particular, the HLAG calls on the OECD to live up to its commitment made at the Summit to "strengthen the impact and effectiveness of its on-going anti-corruption efforts" by improving its internal coordination and by partnering with member and non-member countries, international organisations, and other stakeholders to "address the many interrelated dimensions of corruption." The HLAG welcomes the OECD's emphasis on encouraging major economies and exporting countries to adhere to the Anti-Bribery Convention and to encourage mutual legal assistance. In general, the OECD should use this opportunity to engage with non-member countries to ensure that its initiatives and policies continue to enjoy wide support. Where appropriate, the OECD could also consider inviting non-members to adopt OECD standards and to participate in peer-review efforts. This will not only increase the impact of the OECD's work but also foster dialogue and the exchange of knowledge with the community of anti-corruption and integrity experts.

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In the HLAG's view, the OECD could strengthen its outreach to non-member countries – especially major emerging economies – by deliberately engaging with non-members, where appropriate, when developing new anti-corruption and integrity standards or instruments. Engaging non-members in the formation of such standards could facilitate non-members' adherence to new OECD standards as well as their participation in OECD peer-review monitoring exercises.

B. Develop new OECD standards

Recommendation 5

Revise the 2009 Recommendation for Further Combating the Bribery of Foreign Public Officials for the 20th anniversary of the OECD Anti-Bribery Convention to address urgent issues, including by:

- updating its standards for reporting allegations of foreign bribery in the public and private sectors, including whistle-blower protections, and consider emerging issues on this topic such as the use of financial incentives to encourage whistle-blowers;
- encouraging the prohibition of bribery of commercial enterprises or other private-sector actors in international business transactions; and
- promoting the harmonisation of corporate liability regimes.

Since 1997, the OECD has led the development of international anti-corruption norms through the adoption of the Anti-Bribery Convention. In 2009, the OECD issued a Recommendation reflecting the knowledge and experience that the WGB had developed through the completion of its second round of peer-monitoring evaluations.

The HLAG urges the WGB to update the 2009 Recommendation for the occasion of the 20th anniversary of the Anti-Bribery Convention to reflect further reforms needed, based on the third round of monitoring, commitments made in the 2016 Anti-Bribery Ministerial Declaration and the issues highlighted below. Updating the 2009 Recommendation would confirm the Anti-Bribery Convention's relevance to the current challenges in the fight against corruption. It would also enable the WGB to respond to the concerns identified by the G20 and other anti-corruption actors at the international level.

While recognising that the WGB may have additional priorities, the HLAG strongly recommends that the WGB consider addressing three urgent issues. First, it could usefully provide more specific guidance on the measures that should be taken to protect whistle-blowers in both the public and private sectors. Whistle-blowing is crucial not only for ensuring integrity within companies and other private organisations, but also for ensuring that the public interest is protected. Yet scandals, such as the Luxemburg Leaks scandal, known as LuxLeaks,²⁰ illustrate the challenges that whistle-blowers and journalists can face even in developed OECD countries.

The WGB should consider not only what protections whistle-blowers should enjoy but also what incentives or assistance may be needed to encourage whistle-blowers to come forward and to support them when they do. These incentives or assistance could include financial awards or a dedicated agency that will advise or advocate for whistle-blowers. In addition, the Working Group should explore how to incentivise private companies to devise their own whistle-blower protections, perhaps by requiring corporate applicants for government contracts or recipients of government benefits to have effective whistle-blower programmes.

²⁰ “Everything you need to know about the LuxLeaks scandal”, EuroNews (26 Apr. 2017), available at: www.euronews.com/2016/04/26/everything-you-need-to-know-about-the-luxleaks-scandal (last accessed 20 February 2017).

Second, the WGB should consider recommending that the Parties to the Anti-Bribery Convention criminalise the bribery of private sector actors in international business transactions. Private bribery – no less than bribery of public officials – creates market distortions, which undermine fair competition and increase the costs imposed on consumers and society. A 2014 study, for instance, estimated that private-sector corruption cost 105 developing countries at least \$500 billion, which was nearly four times the amount of official development assistance (ODA) in 2011.²¹

The importance of private-sector bribery is also increasingly relevant given the fact that large multinationals increasingly rely on global supply and distribution chains, which present challenges similar to those found in public-sector procurement. While other international anti-corruption instruments already address this offence, harnessing the power of the WGB's peer-review monitoring process would promote its implementation and enforcement.

Third, the WGB should continue to harmonise standards on the liability of legal persons. In order to ensure a level playing field, companies based in a Party to the Anti-Bribery Convention should face at least a dissuasive minimum level of enforcement.²² This would include similar substantive scopes of the relevant offences, the level of penalties, extraterritorial application of the law, and levels of enforcement. The use of mitigating factors, such as for voluntary disclosure or compliance systems, and settlements should be coherent across the Parties.

The Parties should also give guidance on what would constitute an effective compliance system. The 2009 Recommendation "Good Practice Guidance on Internal Controls, Ethics and Compliance" provides a useful framework for a risk-based ethics and compliance program. The new ISO 37001 also adds to the wealth of guidance published by governments, business and non-profit organizations on this topic.

In addition, the possibility of resorting to a settlement could usefully be conditioned on the existence of an effective compliance system. While recognising that Parties can always enact tougher requirements than those required by the Anti-Bribery Convention, any attempt to standardise regimes for legal persons will facilitate compliance by the private sector as well as improve international cooperation in the investigation and resolution of bribery offences.

²¹ See Daniel F. Runde et al., "The Costs of Corruption: Strategies for Ending a Tax on Private-sector-led Growth", Center for Strategic & International Studies (Feb. 2014) pages 3-4.

²² See e.g., "Is foreign bribery an attractive investment in some countries?", in OECD Business and Finance Outlook 2016, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264257573-12-en> (pages 207-222).

Recommendation 6

Create and publish model guidelines for criminal and civil settlements and voluntary disclosure consistent with the requirement for effective, proportionate and dissuasive sanctions under the OECD Anti-Bribery Convention.

- Given differences across legal systems, the OECD should establish a working group consisting of legal scholars and prosecutors from multiple countries, representatives of the WGB, civil society, and the private sector to develop guidelines to encourage and promote private sector cooperation with law enforcement.
- This initiative should complement the current Anti-Bribery Convention and related instruments as well as the need to enforce sanctions for non-compliance of the current Convention (as per Recommendation 1) and thus in no way should weaken its sanctions and enforcement.

Taking the fight against corruption to the next level requires further engagement with private sector actors. Voluntary disclosure and settlement regimes have proved, in some cases, to be a very efficient method of stopping and sanctioning criminal activity. In several countries, negotiated settlements have become one of the most important tools for resolving criminal cases involving legal entities, and such settlements are often applied in other domains of law (e.g. competition law).

Such voluntary disclosure regimes and associated settlement agreements, which are concluded between prosecutors and a company accused of bribery, could potentially increase the number of cases that are commenced and satisfactorily resolved. In addition, settlement arrangements can, with appropriate guidance, incentivise companies to engage in better self-monitoring and self-policing, which could reduce the amount of law enforcement expenses needed to investigate and prosecute cases.

At the same time, the practice also involves serious risks. For instance, excessive prosecutorial discretion on when to enter into settlements – and on what terms – may result in similar cases being treated differently.²³ In addition, as settlements are typically the product of negotiations between prosecutors and the accused, the public may lack confidence that effective sanctions are being imposed or that the law is being faithfully applied. Given lacklustre enforcement by some OECD members, there is a serious risk that prosecutors will conclude weak settlement agreements in lieu of prosecution.

In addition, there is also a risk that settlements, if not subject to court review, may inhibit the development of jurisprudence needed to test the validity of the legislative framework. These concerns are heightened by the absence of consistent standards for effective and dissuasive settlements.

Despite their potential benefits, settlements arrangements may prove difficult in practice unless the rules concerning them are harmonised at the international level with consistent, rigorous requirements. Consistency in the approach to voluntary disclosure and negotiated settlements is especially required if a company that concludes a settlement in one

²³ For a review of these challenges, see e.g., Jennifer Arlen, “Prosecuting Beyond the Rule of Law: Corporate Mandates Imposed Through Deferred Prosecution Agreements,” *The Journal of Legal Analysis* (2016). Volume 8, Number 1. pages 191-234.

jurisdiction will face a risk that it will be prosecuted again for the same offence in another country.²⁴

The sheer diversity of countries' approaches also presents a serious obstacle. First, countries' various legal traditions place different weights on values such as fairness, deterrence, predictability and cost-efficiency in criminal proceedings. Indeed, the approach to liability of "legal persons" varies from country to country.²⁵ Second, only some of the countries with settlement arrangements also have clear principles and guidelines regulating when they should be concluded and how they should be enforced. For these reasons, it might be difficult for governments to reach full consensus on this area of criminal law regulation.

For these reasons, the OECD should promote the harmonisation in this area by developing model guidelines and minimum requirements for negotiated settlements. The WBG should include in its country reviews a review of the use of negotiated settlements against the guidelines that are developed.

Specifically, the OECD should build on its established role as a facilitator of multi-stakeholder dialogue by establishing a platform that will enable its members, as well as legal scholars and practitioners from the different legal traditions contained within the OECD, to start a process for developing common principles for negotiated settlements – including the consequences for individuals as well as the organisations.

The OECD platform should also involve the private sector and civil society, as well as other interested international organisations, in order to ensure that the guidelines' incentives are correctly aligned to promote efficient, predictable law enforcement.

Recommendation 7

Recognising that inadequately regulated political finance can unduly influence public policy, corrode public trust, result in legal and regulatory capture, and even constitute bribery or corruption in certain instances, the OECD should conduct further analysis on the corruption risks in this area, develop relevant transparency and anti-corruption standards for political, party and campaign finance, and monitor its members' efforts to adopt and implement those standards.

One fundamental value of any democracy is equality among all citizens, including equality of access to political power and government decision-making processes. However, political finance systems that permit corporate and wealthy elites to make contributions with few restrictions have the potential to influence public policy, law-making, and regulatory regimes for the benefit of elites at the expense of the public good. The distorting influence of money in politics prevails in a number of countries

²⁴ In this context, companies potentially subject to multiple prosecutions will likely want to have the risk of "double jeopardy" addressed early if they are to be encouraged to disclose voluntarily. More generally, it is obviously relevant to take into account the goal of fairness in the treatment of companies, while at the same time not undermining the importance of incentives and dissuasive sanctions.

²⁵ OECD (2016), The Liability of Legal Persons for Foreign Bribery: A Stocktaking Report, www.oecd.org/corruption/liability-of-legal-persons-for-foreign-bribery-stocktaking-report.htm.

The OECD is well placed to take the lead on this issue, due to its ability to promote cooperation between its members and to engage proactively with the private sector and civil society. The OECD already took encouraging initial steps on political financing when it issued its report “Financing Democracy”, which focused on comparative analysis and selected case studies. The OECD’s next step should be to develop standards and carry out assessments on political finance regulations and practices for transparency and integrity for all OECD countries.²⁶

As the OECD’s own “Financing Democracy” report finds, many countries are unable to effectively monitor the performance of policy measures they have in place, and there is an empirical deficit in assessing and comparing the practices of political finance regulations in different country contexts. Addressing concerns related to the funding of political parties and election campaigns is crucial for restoring trust in government and forming the foundation for inclusive growth. Countries would benefit from highlighting and sharing good practices so as to identify the conditions for policies and practices that effectively safeguard the integrity of the policy-making process and curb the risks of policy capture by powerful special interests²⁷.

As also mentioned in the OECD report and related literature, preventing powerful special interests from exercising undue influence and “capturing” the policy, legal and regulatory process and systems requires adequate regulation of the financing of political parties and election campaigns. In addition, potential implementation gaps and loopholes that can be exploited must be addressed, such as with regards to third- party campaigning and private funding. Donor identity disclosure can be an effective tool, but only when such information is also made publicly available in a timely, user-friendly way can it be used to facilitate effective public scrutiny.

Furthermore, for regulations to be enforced requires effective oversight institutions with the independence and/or legal authority and political will to investigate and sanction potential violators. Finally, to prevent the mere rechannelling of money spent to obtain political influence into other activities like lobbying, any political finance regulations need to be part of an overall integrity framework that includes the management of conflict of interest and lobbying²⁸.

The OECD could also take the lead when political party contributions represent corrupt payments. Already in 1997, the OECD Council adopted its “Decision Concerning Further Work on Combating Bribery in International Business Transactions”, which mandated that the WGB examine, on a priority basis, the issue of “bribery acts in relation to foreign

²⁶ The important role that the OECD could play in this area has already been highlighted by one member of the HLAG. See Daniel Kaufmann & Alexandra Gillies, *From Panama to London: Legal and illegal corruption require action at the UK anti-corruption summit* (9 May 2016), available at: www.brookings.edu/blogs/future-development/posts/2016/05/09-corruption-panama-papers-kaufmann-gillies (last accessed 28 February 2017).

²⁷ OECD (2016), *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, OECD Publishing, Paris. www.oecd.org/gov/ethics/financing-democracy-9789264249455-en.htm (last accessed 28 February 2017).

²⁸ OECD (2016), *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, OECD Publishing, Paris. www.oecd.org/gov/ethics/financing-democracy-9789264249455-en.htm (last accessed 28 February 2017).

political parties”. This was followed in 2000 by the “La Pietra Recommendations”²⁹ on issues relating to corruption and political party financing, particularly in the context of the Anti-Bribery Convention.

These recommendations, which were issued by leading anti-corruption activists from the private sector, civil society and public institutions, state, *inter alia*, that the OECD should ensure that bribe payments to foreign political parties and their officials are effectively prohibited through its instruments. The Anti- Bribery Convention prohibits the bribery of foreign public officials, including when bribes are conveyed to third-party beneficiaries, which includes foreign political parties. However, the OECD has not yet conducted analysis of the application in practice of the Anti-Bribery Convention to bribery schemes involving political party or campaign financing.

Recommendation 8

Due to the increasing devolution of resources and powers to local governments, the OECD should adapt its current tools and guidelines on integrity systems for application to local governments.

The power of local governments has expanded remarkably in recent years with the decentralisation of government programmes for health, education, social services. As a result, localities are often deeply involved in public procurement and infrastructure projects, including for roads, schools, hospitals, as well as water and sanitation. They also frequently have control over land management and licensing for individuals and businesses and assure sub-national and local justice system to protect public safety and individual rights. Moreover, localities receive a greater proportion of government resources and even, in some countries, direct shares of royalties from the extractive sector.

There are good reasons for governments to delegate authority to local levels, as it can make government more responsive and accountable by fostering direct relationships with citizens and other beneficiaries of public services and institutions. Decentralisation can, however, multiply the potential sites of corruption, creating new opportunities for bribes in exchange for essential services, nepotism, patronage, local state capture and collusion.

This concern is heightened because the capacity of local governments may be limited by the lack of adequate rules, institutions, as well as financial and human resources. Even when countries have well- calibrated systems of checks and balances at the national level, they may not have sufficient institutional arrangements at the local level. Moreover, there is often less political competition at the local level, leaving greater space for collusion between influential members of the government and the private sector. In addition, there are often fewer civil society organizations or journalists to observe and publicise local government actions. Finally, as in other levels of government, corruption can create a vicious circle, undermining local governments by diverting resources needed for services or to ensure adequate pay for public servants.

While it is of paramount importance to bolster the integrity and professionalism of local government institutions, it can be difficult to address this risk without depriving local governments the flexibility and autonomy that decentralisation is supposed to foster. This is why we recommend the OECD to develop and offer comprehensive advice to

²⁹ La Pietra Recommendations (2000, La Pietra, Italy), available at: [https://one.oecd.org/document/DAFFE/IME/BR/WD\(2000\)39/en/pdf](https://one.oecd.org/document/DAFFE/IME/BR/WD(2000)39/en/pdf) (last accessed 28 February 2017).

countries on how integrity mechanisms can be developed for, or adapted to, assist local governments.

In this context, the OECD may be confronted with three important challenges in dealing with local governments. The central challenge in this area for multilateral organisations like the OECD is that they work primarily with the national governments. For this reason, it can be difficult for them to deal with local governments without the support of the national government. As a number of national governments have identified this as a major issue, the OECD could consider teaming up with them in pilot projects which could then be promoted for replication. The OECD should also consider working with multipliers – for example regional bodies, such as the Economic Commission for Africa (ECA) and the Organization of American States (OAS), national and international federations of municipalities, relevant NGOs and foundations, as well as specific professional groups.

A second challenge arises because the levels of responsibilities and resources for each municipality can vary greatly even within each country. This presents a significant challenge for designing effective integrity systems that can work in all types of local governments. In this regard, the HLAG recommends that the OECD consider the approach taken by Transparency International, namely developing a comprehensive Local Government Integrity System that can be adapted by each local government to its situation.

The third challenge stems from the fact that it would be impossible to deal directly with each local entity even within one country. Once again, this is another reason to work closely with multipliers, including interested national governments. The OECD could also explore means of conducting outreach through digital media to promote local government integrity. However, such efforts should not be limited to merely posting tools on the website.

The OECD is well-placed to advance the cause of preventing and tackling corruption in local government, given the expertise developed through the work of the Regional Development Policy Committee and the Development Assistance Committee (DAC), as well as its work with the G20 and G7. The OECD has a vast inventory of tools, guidelines and standards that could be used directly at the local level in their current state on topics such as facilitating civic engagement and public procurement.

The OECD could also help in compiling and synthesising the practical lessons and implications of subnational governance and corruption challenges in their sectoral dimensions. For instance, countries and localities which are rich in natural resources face very particular governance issues, which have already been subject to some serious studies³⁰, yet further work is needed, and likewise in some other dimensions.

Other OECD instruments may require further adaptation such as the work on enforcement of criminal law in corruption cases, which may face different challenges at the local level if there is a tighter relationship between leaders in public and private institutions. There would also certainly be a need to develop new instruments where gaps exist.

³⁰ A synthesis of the rationale to focus on these issues as well as findings from various studies conducted by NRGi are in this article: www.brookings.edu/blog/future-development/2016/09/27/close-to-home-the-critical-importance-of-subnational-governance-in-oil-gas-and-mining/ (last accessed 28 February 2017).

The OECD could develop standards, with a view towards providing the necessary flexibility to account for differences in size, complexity and institutional characteristics of local governments. Finally the OECD could consider how to ensure that the lessons learned from implementing and monitoring the Anti-Bribery Convention can be applied to strengthen public sector frameworks for local governments.

Recommendation 9

In order to address the heightened risk of corruption in state-owned enterprises, the OECD should develop standards for effectively preventing and detecting corruption in state-owned enterprises (SOEs), ensuring that they cannot be used to evade corruption and bribery prohibitions, including by:

- subjecting SOEs to adequate control from relevant oversight bodies, including Supreme Audit Institutions where applicable, and civil society;
- subjecting SOEs to independent audit under international accounting standards;
- requiring SOEs to adopt ethics and compliance programs consistent with the OECD Guidance on Internal Controls, Ethics and Compliance
- ensuring that independent law enforcement actions can be taken if SOEs engage in corruption;
- ensuring that SOEs publish their budgets, disbursements, plans and programs both in their country of origin and in the countries where they operate; and
- devising monitoring programme or other methods to ensure that countries comply with these standards.

In many countries, SOEs are increasingly responsible for greater sums of public investment, in a variety of areas, from the production of strategic goods up to the delivery of public services. In some cases, the performance of SOEs has been hindered due to inefficiencies caused by various factors, including excessive bureaucracy. National oil companies (NOCs) in many resource rich countries are considered a drain on the government funds for reasons of inefficiency and because of patronage and corruption, leading to calls to prioritise NOC reform in these countries.³¹

OECD analysis shows that between 1999 and mid-2014, 27% of concluded cases of foreign bribery involved the bribery of officials of SOEs, and 80.11% of all the bribes paid in those cases during this period were paid to SOE officials. The bribes were paid to various levels of officials, and many of the SOE officials held dual positions. Multinational SOEs headquartered in OECD countries can also be responsible for the supply-side of bribing foreign public officials, as seen in concluded cases against certain national oil companies.

To avoid corrupt practices, SOEs, and the relationship between them and the government owners, must be guided by high standards of governance and transparency. While the option for the “enterprise” model for state owned units provides gains in efficiency, it can

³¹ See Natural Resource Governance Institute, *Reforming National Oil Companies: Nine Recommendations* (10 July 2014), www.resourcegovernance.org/analysis-tools/publications/reforming-national-oil-companies-nine-recommendations (last accessed 28 February 2017).

be incompatible with many rules and instruments of public control, government surveillance, and even public transparency, which play a key role in the prevention of corruption. The OECD, for its expertise and worldwide experience, can certainly make a relevant contribution in this issue, by developing (or sharing) standards of disclosure, integrity and control instruments which are compatible with the nature of private corporations and, at the same time, are capable to render the qualified degree of transparency and accountability which is required of a governmental body. Those standards should be flexible enough to be adaptable to the large variety of existing legal and regulatory systems.

For instance, the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (2015) provide a solid platform for preventing corruption involving SOEs. The Working Party on State Ownership and Privatisation Practices will, based on the Guidelines, develop SOE Integrity Guidelines focused on the avoidance of corrupt practices.

The HLAG recommends that this undertaking be supported by developing standards for the independent oversight of SOEs, including by supreme audit institutions and, where appropriate, by civil society.

The 2016 Ministerial Declaration by Parties to the Anti-Bribery Convention states that Parties need to enhance, in particular, enforcement of their foreign bribery offences against companies, including state-owned or controlled enterprises. The WGB's monitoring programme should therefore be vigilant concerning the risk of foreign bribery involving SOEs at the supply and receiving ends of the bribery transaction, particularly given that they are often involved in high-value contracts in sectors at high risk for corruption (e.g., oil and gas, energy, defence, construction and engineering, telecommunications, and financial services).

Recommendation 10

To address impunity and the failure of government to take action against public officials in bribery and embezzlement cases, promote criminal prosecution, enhanced mutual legal assistance, beneficiary ownership disclosures, and greater public awareness.

The Anti-Bribery Convention's focus on the supply of bribes to foreign public officials has been a major stimulus to stemming the flow of bribes in international business around the world. The importance of continuing this focus at the OECD is discussed under Recommendation 1. However, the OECD could make a further significant impact on foreign bribery by helping to make sure that the public officials at the receiving end of bribery transactions are also subject to effective, proportionate and dissuasive sanctions. Foreign bribery can involve complex arrangements involving multiple players, requiring an integrated approach through criminal enforcement and prevention measures. Too often, it seems that the public officials who solicit or accept bribes, including officials at the political level, are treated with impunity.

In order to address significant gaps in the international framework for addressing public officials who solicit or accept bribes, the WGB's monitoring and annual reports could usefully include assessments of how effectively the individual Parties are cooperating and sharing information with the law enforcement authorities in the foreign public officials' countries and the extent of prosecution of officials by those countries.

Of course it is often the case that the constraint is less an absence of information sharing, but instead a lack of political will to prosecute. As a start, the WGB should consider holding a “tour de table” to discuss the prosecution of public officials as well as of companies and publicising law enforcement developments against both sides of foreign bribery transactions. This is especially true when both the supply-side and demand-side of a foreign bribery scheme concern WGB countries.

Monitoring reports could also usefully compile good practices on measures employed by Parties to discourage the demand for bribes, including through the common integrity mechanisms for the public sector, as well as through trade and investment agreements, joint initiatives for preventing corruption in major infrastructure contracts, and joint probes into bribery allegations.

In addition to monitoring measures under the Anti-Bribery Convention, there are several other ways for proactively engaging with countries that are at risk of bribe solicitation, especially developing countries that have valuable natural resources or that are pursuing major infrastructure development projects. Through awareness-raising initiatives, the OECD should make sure that companies operating in high-risk countries have channels for safely reporting any solicitations for bribes. It should also ensure that high-risk countries clearly understand that the laws implementing the Anti-Bribery Convention prohibit the bribery of their officials, and it should encourage them to report allegations of such bribery to the relevant Parties’ law enforcement authorities.

The WGB should consider inviting selected countries that are not party to the Anti-Bribery Convention (“non-Parties”) to participate, where appropriate, in its meetings of law enforcement officials in order to discuss how to cooperate more closely in sharing information to address both sides of the foreign bribery transaction. In addition, the WGB should consult closely with non-Parties to determine effective ways to incentivise mutual cooperation. Non-Parties with limited law enforcement resources are more likely to cooperate if they are promised a share of the fines imposed or assets confiscated from the individuals and companies sanctioned for giving bribes.

The OECD should also collaborate more closely with organisations actively involved in promoting the enforcement of receiving-end bribery offences, particularly the United Nations Office of Drugs and Crime (UNODC), the Secretariat for the Conference of the State Parties to the United Nations Convention against Corruption. This could include more frequent cooperative work, such as the OECD, UNODC and World Bank initiatives, which produced the joint OECD-StAR Analysis: *Identification and Quantification of the Proceeds of Bribery* (2012). Increasing collaboration between the OECD and organisations focussing on enforcement against the solicitation and taking of bribes would significantly multiply the likelihood of successful enforcement against both sides of corrupt transactions involving public officials.³²

³²

It can also be noted that the 2009 Recommendation on Further Combating Foreign Bribery (www.oecd.org/daf/anti-bribery/oecdantibriberyrecommendation2009.htm) states that Parties should consider ways for facilitating mutual legal assistance between Parties and non-Parties. Implementation of this provision and investigations and prosecutions could be routinely assessed in the context of the WGB’s monitoring programme.

Recommendation 11

Promote more effective coordination and mutual legal assistance in transnational corruption cases, and develop guidance on sharing and protecting forfeited assets and penalties among cooperating enforcement authorities across jurisdictions.

The HLAG observes that the Parties to the Anti-Bribery Convention have repeatedly identified problems associated with obtaining mutual legal assistance as being a “major obstacle” to the effective investigation and prosecution of foreign bribery.³³ This is true both among the Parties themselves as well as when dealing with other countries that are not party to the Anti-Bribery Convention.

The Parties to the Anti-Bribery Convention, can do more to facilitate mutual legal assistance by informing about the mutual benefit of sharing evidence for the sake of law enforcement, and developing guidance on when to share forfeited assets or penalties imposed for foreign bribery offences with countries that have been injured by foreign bribery offences as well as with countries that assist with the investigation. While recognising the effort made by the prosecuting state(s) to hold wrongdoers accountable, these guidelines should consider how to evaluate and reward effective mutual legal assistance (e.g., evidence that can be used at trial as well as other pertinent information that leads to such evidence). They should also consider the oversight mechanisms that would be needed within cooperating countries to ensure that recovered assets or shared penalties are not diverted.

To develop this guidance, the OECD should make use of the existing relationships that the WGB has fostered among law enforcement officials from the Parties to the Anti-Bribery Convention as well as other countries. The OECD should also involve other OECD bodies, such as its Development Assistance Committee and the Global Forum on Tax in this effort. It should also seek insights from prosecutors, judges and academics who have experience with, or have studied, ways of dealing with international economic crimes, such as money laundering and transnational tax evasion.

In particular, the OECD should consider efforts being taken by other international organisations, including the United Nations and the World Bank, and find further ways to collaborate with them. For example, the OECD and StAR Initiative could build on their joint study on the identification of bribery proceeds³⁴ to explore systems for repatriating the proceeds recovered for boosting law enforcement or other development needs.

Although forfeited assets and penalties in cases of foreign bribery cannot fully compensate countries for the damage that they have suffered as a result of corruption (or of the costs of providing mutual legal assistance), distributing them among cooperating

³³ See, e.g., OECD (2012), *Typology on Mutual Legal Assistance in Foreign Bribery Cases* (page 7), www.oecd.org/daf/anti-bribery/TypologyMLA2012.pdf; WGB (2006), *Mid-Term Study of Phase 2 Reports*, www.oecd.org/daf/anti-bribery/36872226.pdf, at para. 400 (“Another issue that gave rise to concerns was the extreme difficulty in obtaining effective MLA from non-Parties. Given that most foreign bribery cases take place in non-Parties, this represented a major obstacle to the effective implementation of the Convention.”).

³⁴ See discussion in Recommendation 10 of the joint OECD-StAR Initiative report *Identification and Quantification of the Proceeds of Bribery* (2012), <http://dx.doi.org/10.1787/9789264174801-en>.

jurisdictions would, and has already encouraged countries to provide mutual legal assistance more proactively. It would also build public support for prosecuting and punishing those who engage in corruption in countries – not only in the countries of the bribe recipient and the bribe giver but also in those countries that assisted with the investigation.

In the long run, the knowledge that all countries that are affected by transnational corruption have strong incentives to work together should further discourage potential wrongdoers from trying to unlawfully seek personal benefits at the public's expense. The OECD, having led the fight in criminalising foreign bribery, should continue to develop the international system for combating it efficiently and fairly.

Recommendation 12

Build on the existing work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, the Financial Action Task Force, the Corporate Governance Committee, the Working Group on Bribery in International Business Transactions, and other OECD bodies to ensure that tax, anti-money laundering, and other law enforcement officials – as well as, to the extent possible, the general public – have effective access to information of the ultimate beneficial ownership of companies, trusts and other legal entities.

The Final Communiqué following the April 2011 meeting of the G20 Finance Ministers and Central Bank Governors called for the FATF and Global Forum on Transparency and Exchange of Information for Tax Purposes to make initial proposals “on ways to improve the implementation of international standards on transparency, including on the availability of beneficial ownership information, and its international exchange”.

In May 2016, the London Summit Communiqué expanded this request to include the OECD. Information about the ultimate beneficial ownership of corporate vehicles is vital for effectively investigating corporate wrongdoing—particularly tax evasion, money laundering and corruption—and imposing penalties on the perpetrators who have benefited from these offences. It is also essential for ensuring that public officials cannot evade conflicts-of-interest checks or circumvent asset declaration regimes by using opaque companies controlled by them, their family members or trusted confidants.

Improving open access to information on beneficial ownership will also minimise risk that public-sector officials will abuse their office by diverting resources or other benefits to companies that directly or indirectly benefit them. Due to its expertise in many relevant areas, the OECD should provide leadership on setting standards for ensuring that tax, anti-money laundering, and law enforcement authorities (as well as the general public, where appropriate) have effective and open access to information about the ultimate beneficial ownership of corporate and other legal entities.

Previously, initiatives for improving access to information about ultimate beneficial ownership were mainly focussed on the use of such information for fighting tax evasion and money laundering. However, inadequate access to beneficial ownership information is also one of the most serious obstacles to combating corruption.

This issue rose to the top of the anti-corruption agenda following major high profile cases of the bribery of foreign public officials – including cases that the United States resolved against BAE Systems and Daimler-Chrysler – which involved complex networks of shell companies for transferring bribe payments to obtain lucrative foreign procurement

contracts. The issue was more recently highlighted by the Panama Papers,³⁵ which disclosed the identities of previously unknown beneficial owners of intermediary companies in two cases that had already been settled with the U.S. Department of Justice under the Foreign Corrupt Practices Act. The Panama Papers also revealed the use of opaque corporate structures in a third, major ongoing foreign bribery case.

Work at the OECD on improving access to beneficial ownership information for the purpose of preventing and investigating corruption, including foreign bribery, should build on work at the FATF and Global Forum on Transparency and Exchange of Information for Tax Purposes. The Anti-Bribery Convention and related instruments include obligations on anti-money laundering, and the use of tax measures for preventing and detecting foreign bribery, which should be integrated into work by the two forums.

The G20/OECD Principles of Corporate Governance include principles on disclosure of major share ownership, including beneficial owners, and voting rights, which should form the basis for further guidance and standard setting in this area. OECD work in this area should also include the role of corporate service providers – including lawyers, accountants, and bank representatives – in identifying the ultimate beneficial owners of their corporate clients.

Furthermore, the WGB should ensure that its fourth phase of monitoring, which began in late 2016, covers issues regarding access to beneficial ownership for the purpose of investigating foreign bribery cases, as well as related money laundering, book-keeping and tax evasion offences.

Finally, OECD work should also benefit from, and be beneficial to, other such parallel initiatives by other organisations, such as the recently adopted requirement to publicly disclose beneficiary owners in extractives among all 50 member countries of EITI.

Recommendation 13

Develop standards to require the identification and sanctioning of corporate service providers and other gatekeepers who facilitate corruption, such as lawyers, accountants, bankers and real estate professionals.

As shown in the Panama Papers³⁶ and in recent forfeiture actions filed by the United States, foreign bribery and transnational corruption cases often employ sophisticated schemes involving complicated corporate

Often, many types of professionals take part in the apparently legal transactions that serve to camouflage the flow of money or financial interests as well as their real beneficiaries (e.g. a foreign official). These professionals can include lawyers, accountants or bankers as well as other service professionals who create and manage shell companies or trusts.

³⁵ The “Panama Papers” scandal arose when documents of a Panamanian law firm and corporate services provider were leaked to the press, thus revealing how shell companies were used for illegal criminal activities and tax evasion. For more information, see ICIJ, “The Panama Papers: Politicians, Criminals and the Rogue Industry That Hides Their Cash”, available at: <https://panamapapers.icij.org/> (last accessed 20 February 2017)

³⁶ See footnote 33 in discussion for Recommendation 12, *supra*, for an explanation of the “Panama Papers”.

Without question, some professionals may inadvertently become involved in such transactions despite their best efforts to conduct due diligence on their clients. Others, however, willingly take part in such transactions or do so by studiously avoiding or ignoring red flags. Unfortunately, these facilitators often avoid liability when a corruption case is detected, even though their services were often crucial for helping corrupt officials and other wrongdoers hide their identities and their illegal gains as long as possible.

As a result, these professional facilitators typically have few incentives to end their profitable practices that perpetuate and facilitate corruption. This public responsibility is not novel. Public accounting firms serve a public function when they publish certified financials, and lawyers in most jurisdictions are viewed as officers of the court, with a duty to justice that supersedes their duties of zealous representation of their clients. For the function of society, it is reasonable to require such professionals to observe standards to detect, expose and prevent corruption.

While the Anti-Bribery Convention clearly prohibits bribery carried out through the use of intermediaries, including service providers, the HLAG would encourage OECD members and other countries that have adhered to relevant OECD instruments to collectively develop standards to cover the full range of ways in which professional service providers can facilitate corruption.

The OECD needs to take the lead to harmonise the standards set for professionals among its members, while working with professional associations to account for specific challenges presented in different sectors. Creating equivalent standards across the OECD will facilitate international law enforcement cooperation, especially if the standards ensure that investigators can access the records needed to identify beneficial owners or to trace illicit money flows, whether those records are held by public agencies (e.g. company registries, tax authorities, or financial intelligence units) or by individuals and entities in the private sector.

Such harmonisation could also promote more effective due diligence in the private sector if essential information is also made available to the public. Uniform OECD standards would facilitate international commerce while helping professional service providers to properly identify the participants in the corporate and financial transactions in which they are involved. Crucially, these standards must also set forth the circumstances in which those who advise or assist in camouflaging illicit money flows should be sanctioned.

The OECD is well placed to develop such standards, as they would be closely related to measures against tax evasion in international trade as well as those against money laundering. Consequently, the OECD can build on the work of the FATF, the Global Tax Forum on Transparency and Exchange of Information for Tax Purposes, and the Working Group on Bribery in International Business Transactions to develop these tools to address foreign bribery and other transnational corruption offences. The OECD can also encourage the implementation of these standards, for example, by harnessing the power of the peer-review monitoring process used by FATF, the Global Forum on Tax, and the WGB.

The HLAG stresses that this Recommendation is related to Recommendations 10, 11, and 12. The OECD is, therefore, strongly advised to consider them together to ensure that the issues are addressed in a complementary and comprehensive fashion.

Recommendation 14

Develop guidance to address the risk of corruption in counter-trade, particularly the use of offsets in procurement, including for defence materials and services.

The term ‘countertrade’ was first coined between World War I and World War II, when it was necessary for some nations to use bilateral exchanges of goods to overcome hyperinflation and deflation, and minimise foreign exchange transactions. During and following the Cold War, the concept maintained traction due to different economic pressures. Its use continues to this day, but increases during periods of economic and financial crisis. The use of countertrade has many proponents and detractors. However, regardless of the side of the argument that one stands on, almost everyone would agree that it raises serious issues of transparency and accountability and is prone to corruption. This is largely due to the potential to misrepresent the value of the goods traded.

An offset is one of the most notable forms of countertrade that has evolved in modern times. Offsets are often used by government authorities to procure major goods and services related to infrastructure development and national security, such as defence materials and transportation networks. Offsets in the defence sector have gained the most attention, largely due to their enormous value. A defence offset is essentially a legal side arrangement between a supplier and a purchasing government, in which the supplier is obligated to reinvest a proportion of the defence contract in the purchasing country.

There are two types of defence offsets – direct and indirect. A direct offset agreement relates to the main defence contract. A supplier might be obligated to transfer technology, provide training, or subcontract parts of the defence contract to local suppliers. An indirect offset agreement is not directly related to the main defence contract. For instance, a supplier might be obligated to undertake a completely unrelated infrastructure contract, such as building a highway.

Offsets are prone to corruption for several reasons. Since they are not part of the main contract, they are not subject to the same level of scrutiny and due diligence, and indirect defence offsets even more so. They are extremely complex, and therefore it can be very challenging to identify potential corruption.

For instance, offset obligations, which typically range between 50 to 100 percent of the value of the main defence contract, are normally calculated through complicated techniques such as the use of ‘multipliers’. These techniques provide opportunities for hiding corrupt payments. The risk of using offsets for corruption arises at different points in the offset agreement process. A supplier could offer an attractive offset to induce a government to procure defence material that it does not need. It could also offer an attractive offset to sway a procurement decision in its favour.

It would be logical for the OECD to take the lead internationally on developing guidance to address the risk of corruption in countertrade, including defence offsets. It has expertise in all the relevant areas, including public procurement, development, fair competition, anti-corruption, and corporate governance. Many of the world’s major defence suppliers are based in OECD member-countries, and most of them are Parties to the Anti-Bribery Convention. Since corruption related to offsets constitutes foreign bribery and is directly covered by the Anti-Bribery Convention, failure to deal with this issue at the OECD could appear inconsistent with the spirit and letter of the Anti-Bribery Convention.

Recommendation 15

Develop transparency instruments to require commodity traders to disclose payments to governments and state-owned companies, and help further the global trend towards requiring mandatory disclosure of revenue payments to governments by all oil, gas and mining companies.

Global commodity trading activity mainly involves companies based in the OECD countries, particularly Switzerland, the UK and the U.S.³⁷ Some of the commodity traders are not subject to rigorous financial reporting requirements, because they are not listed at a stock exchange. Often beneficial owners of their customers are not known. However, their activities have decisive impact on the economic and governance outcomes in developing countries, particularly many resource rich countries. Many trading companies work extensively in “high-risk” environments – including countries with weak institutions, conflicts or other challenges that scare away more risk-averse companies. Given the size of this footprint, and its prevalence in countries with high-levels of corruption or poverty (or both), the quality of trading companies’ business practices is of serious concern.³⁸

Such traders play several roles that allow them to influence public revenues and institutions, often requiring the building of close relationships with top officials and political elites. Not only are they major buyers of commodities, which generate significant public revenues, but they also provide large loans to governments, sell refined products, and enter into joint ventures with state-owned entities. Therefore, they play a valuable role in developing countries. However, past experience shows that governance challenges arise when traders do not prioritise transparency and accountability.³⁹

As companies based in OECD countries play a dominant role in this economic area, the OECD is well placed to devise consistent standards for ensuring that these activities are reported in a systematic and transparent manner. The OECD should ensure that these reports are made publically available so that stakeholders can monitor payments that companies receive and whether any funds are diverted.

More generally, in the past a very large part of the natural resource sector has been notably opaque and vulnerable to corruption in most resource rich countries, seriously impairing their countries’ development prospects (the so called ‘resource curse’). Tackling corruption in resource rich countries and in the extractives sector requires a rigorous and in-depth approach which considers the particular context of such sector and the country. OECD and other organizations have recognised this challenge and carried out work,

³⁷ Natural Resource Governance Institute, *Briefing: In Pursuit of Transparent Trading* (October 2015), available at www.resourcegovernance.org/sites/default/files/documents/nrgi_tradingpaper.pdf (last accessed 28 February 2017).

³⁸ Natural Resource Governance Institute, *Briefing: In Pursuit of Transparent Trading* (October 2015), available at www.resourcegovernance.org/sites/default/files/documents/nrgi_tradingpaper.pdf (last accessed 28 February 2017).

³⁹ Natural Resource Governance Institute, *Briefing: In Pursuit of Transparent Trading* (October 2015), available at www.resourcegovernance.org/sites/default/files/documents/nrgi_tradingpaper.pdf (last accessed 28 February 2017).

which is noted.⁴⁰ Regarding the understanding of the various corruption manifestations in extractives, there is scope for further work by OECD, in collaboration with partners that possess expertise in particular areas and relevant countries.

Thanks to major advocacy from NGOs⁴¹ and the multi-stakeholder initiative (EITI), significant progress took place over the past decade regarding disclosure mechanisms by governments and companies in the extractive sector, including mandatory disclosure requirements regarding the revenue payments that companies make to governments, which were adopted in about 30 countries, covering scores of the most important extractive companies in the world. Further, major progress has just taken place with EITI's Board agreement regarding implementation by its 50 member countries of its requirement to disclose project-level payments. This progress continues apace in many jurisdictions and the OECD should help ensure that all of its members promptly apply mandatory disclosure requirements.

Drawing on its multi-lateral character and its credibility for rigor and reform, the OECD should work to further transparency and disclosure initiatives in extractives, helping the further globalization of mandatory disclosure requirements for state and private companies, and collaborating more closely with other organizations in this field.

Recommendation 16

In order to promote integrity in society and effective implementation of anti-corruption initiatives, develop and disseminate guidance that will promote collaborative and coordinated action among stakeholders (firms, civil society, government institutions), including via multi-stakeholder initiatives (MSIs).

The effective prevention of corruption requires a whole-of-society approach, engaging government institutions, the private sector and civil society. While many anti-corruption initiatives have concentrated on formal rules, law enforcement institutions or corporate compliance, there are too few initiatives designed for promoting the coordinated action against corruption that is so often essential for laws and institutions to function in practice.

The purpose of initiating coordinated action – labelled at times as “collective action” – is often linked to the need to overcome the “prisoner’s dilemma”, namely situations in which uncoordinated participants will seek to maximise their individual advantage even

⁴⁰ The OECD has recently issued a first report on these issues, which is noted and welcomed, see OECD. Corruption in the Extractive Value Chain: Typology of Risks, Mitigation Measures and Incentives. OECD Publishing. Paris. www.oecd.org/corruption/corruption-in-the-extractive-value-chain-9789264256569-en.htm (last accessed 17 February 2017). For a detailed and rigorous framework to diagnose governance challenges in the sector and design policy responses, see the Natural Resource Charter compendium and its benchmarking manual, respectively, as per Natural Resource Governance Institute. Natural Resource Charter 2nd Edition. June 2014, www.resourcegovernance.org/analysis-tools/publications/natural-resource-charter-2nd-ed last accessed 17 February 2017), and Natural Resource Governance Institute. Natural Resource Charter Benchmarking Framework. October 2016. www.resourcegovernance.org/analysis-tools/tools/natural-resource-charter-benchmarking-framework (last accessed 28 February 2017).

⁴¹ Critical for this progress was the NGO coalition Publish What You Pay (PWYP) and the global multi-stakeholder Extractive Industry Transparency Initiative (EITI), supported by other organizations (such as NRGI, OSF and Global Witness).

though everyone would be better off if they cooperated in the sense of complying with the rule of law.⁴²

In the marketplace, this dynamic could inhibit market participants from seeking to adopt higher social standards because their competitive position may be undercut by less scrupulous competitors. A collective action strategy can assist to level the playing field by trying to ensure that all relevant participants adopt the necessary standards at the same time. By cooperating and policing themselves, companies can aim to achieve compliance with law, for example by introducing higher standards or jointly demanding higher integrity in the business environment.

Collective action has been attempted in some sectors and industries, such as to combat the perceived common threat of kleptocratic regimes. Transparency International has encouraged such a strategy by promoting “Integrity Pacts” around the world with the support of major international companies. However, also the OECD has played an important role in such respects. For example, it initiated a form of collective action when it provided a forum for its members to develop the Anti-Bribery Convention, thus subjecting competitors from every signatory country to the same standards.

Despite examples of successful coordination of efforts for higher integrity, experience shows collective action can be difficult to initiate in practice – both at the local level or among governments internationally. When it comes to private sector initiatives, outsiders may justifiably view collective action efforts among competitors with suspicion that such private dealings may not advance the public interest.⁴³ For this reason, attempts of developing a climate for anti-corruption, collective action initiatives need support from neutral actors, and in some contexts, the OECD could perform this role. For these reasons, the HLAG calls on the OECD to conduct systemic research and analysis in order to determine when collective action should be pursued and how the organization can facilitate coordinated anti-corruption efforts between stakeholders.

A number of institutes and organisations have already begun work in this area,⁴⁴ while some important global multi-stakeholder initiatives (MSIs, such as EITI and OGP) have already been functioning and expanding their scope for a number of years. They provide useful lessons, both in terms of notable achievements as well as some obstacles and setbacks. The OECD can draw on these global (as well as some national) initiatives for better understanding of the characteristics of successful collective action. Drawing on a review of the experience and its lessons, the OECD can provide advice to firms, NGOs, trade associations as well as governments that want to trigger some coordinated and concerted drive against corruption.

⁴² The ‘collective action’ term is subject to different interpretations and use in different contexts, and their applicability of it in practice varies depending on the setting, the ‘actors’ (that wish to move forward collectively), the goals, and the set of incentives. Consequently, a complete treatment of ‘collective action’ is not intended here at this stage. Yet the practical lessons emerging from some multi-stakeholder (and multi-party) initiatives do constructively point to opportunities for OECD to do further exploration on this issue, collaborating with others.

⁴³ As Adam Smith observed in “The Wealth of Nations,” competitors rarely cooperate except to the detriment of the public.

⁴⁴ For example, the Basel Institute and the International Anti-Corruption Academy have started exploring this issue, while Transparency International has developed experience over 20 years of working to implement Integrity Pacts for procurement projects around the world.

Recommendation 17

Develop and foster implementation of guidelines or good practices to ensure that civil society, including NGOs, media and academia, can provide informed and independent opinions about governments' anti-corruption and integrity performance, and for ensuring that there is adequate access to information for this purpose. Where such practices are not followed or governments obstruct civil society participation in OECD consultations or monitoring reviews, this should be explicitly noted in the relevant OECD assessments and reviews.

In a number of countries, the space for civil society, NGOs and the media is being severely limited by legislation and executive action. The legal restrictions on the ability of civil society to operate have been increasing in scores of countries in recent years, as has media censorship.⁴⁵ It is widely perceived that the percentage of countries of countries permitting free, independent and unencumbered media and advocacy by civil society organisations has drastically fallen in the last 10 years. This can be seen by the fact that many governments around the globe, including those in some OECD members, have increased the restrictions imposed on media and civil society groups. At the same time, the evidence indicates that having a vibrant and engaged media and civil society is essential for developing and implementing effective anti-corruption programs.

The OECD has gradually recognised that governments cannot effectively combat corruption acting in isolation. It has therefore increasingly used its convening power to bring representatives from governments together with representatives from civil society, business and academia to encourage dialogue on anti-corruption issues.⁴⁶

In this way, the OECD has gained the trust of governments and the civil sector alike. The OECD should, therefore, develop, provide advice on, and assess the implementation of norms by its members and any other interested countries to create a legal and regulatory environment that fosters – and does not impede – a strong and participatory civil society and a vibrant, independent media.

As indicated in Recommendation 19, the OECD should also develop guidelines on how its own committees and staff engage with civil society organisations when collecting data and analysing developments in OECD members or in other countries that have adhered to OECD instruments. In particular, where the OECD invites civil society to play a role in its work, such as in the WGB's peer-review monitoring process or other evaluations, the final report or analysis should reflect any instances where the evaluated country has restricted civil society's ability to participate in the review. Such reports should

⁴⁵ For details, see Freedom House's annual Freedom in the World report, which assesses countries' degree of political freedoms and civil liberties (www.freedomhouse.org); CIVICUS' Civil Society Watch Report 2015 and updates on the situation in countries on their website (www.civicus.org/), as well as Reporters Without Borders, and especially their Press Freedom Index (see <https://rsf.org/en>).

⁴⁶ As mentioned, OECD support for a regulatory and legal structure that enhances the overall environment by which civil society operates can be critical. Furthermore, OECD could work further with media organizations and as importantly, towards embracing and collaborating with relevant MSIs, such as EITI and OGP, as well as applying their lessons for its own future anti-corruption initiatives. Such future OECD initiatives have a higher likelihood of success if they are multi-stakeholder in nature, instead of being top-down and/or solely driven by governments or multi-governmental organizations. Thus, inclusion of the private sector and civil society, working with governments and parliaments, is warranted.

also highlight any situations where restrictions on civil society have hindered the evaluated country's implementation of the applicable standards.

C. Achieving these goals by working together

Recommendation 18

Create a mechanism to require internal coordination, collaboration and knowledge sharing across the OECD's many locations and areas of relevant work (e.g., concerning public sector integrity, foreign bribery and corruption, financial transparency, development assistance, export credit, competition, public procurement and extractives governance) to ensure consistent and coherent action regarding existing and future instruments and initiatives.

- In particular, effective enforcement and prevention in the public and private sectors must be seen as mutually reinforcing and essential components of any anti-corruption and integrity initiative.

The OECD has an impressive and diverse body of anti-corruption standards for the public and private sectors. Given the complex and often transnational nature of corruption, the OECD should increase collaboration within and among the different parts of the organisation that address corruption and integrity issues in the public and private sectors. This would help the OECD achieve the following three goals: 1) to fully capitalise on its diverse areas of anti-corruption expertise; 2) to encourage governments to adopt holistic and coordinated responses to corruption issues; and 3) to ensure that all parts of the OECD provide consistent messages concerning the fight against corruption.

Corruption has many root causes, and manifests itself through many types of interrelated conduct, including bribery at home and abroad, conflicts of interest, money laundering, tax evasion, and the misuse of development assistance funds. The OECD has significant expertise in all these areas through a variety of disciplines, including the bribery of foreign public officials, public sector integrity, public procurement, human trafficking and corruption, bribery and officially supported export credits, corporate governance, and fair competition in the market place. By increasing the collaboration among experts in these various disciplines, the OECD would be able to provide more effective evidence-based policy advice for combating corruption holistically.

Since the OECD encourages governments to use holistic approaches to solving problems, including corruption, improving coordination within the OECD would increase the OECD's credibility in this regard. Increasing connectivity would also be a safeguard against the dissemination of inconsistent messages about fighting corruption from different parts of the OECD, such as potential inconsistencies between recommendations and other instruments for this purpose.

The creation of an internal coordination mechanism for addressing corruption issues would be cost-effective, enabling the various relevant parts of the OECD to foster implementation of anti-corruption and integrity instruments based on peer-reviews, where relevant, and to disseminate the expertise of their committees. One of the main strengths of the OECD is that its policy advice and instruments are supported by the work of its expert committees, composed of the OECD members and often certain non-OECD countries as well. The internal coordination mechanism should profit from this structure, by promoting knowledge-sharing and a more efficient use of resources between the

various relevant parts of the organisation. It should not add layers of bureaucracy or lead to internal competition for resources and attention.

In addition to increasing internal connectivity, the OECD should ensure that all relevant work areas integrate into their policy advice and instruments the basic principle that enforcement of prohibitions against corruption is one of the most important measures for preventing corruption, and should be an integral part of any anti-corruption and integrity initiative. Moreover, all parts of the organisation should be aware of how corruption impacts on the issues that they address, such as the environment, education, health and sustainable development, and consider incorporating anti-corruption strategies into their work streams where appropriate.

Recommendation 19

Ensure greater multi-stakeholder involvement of civil society and the private sector from member and non-member states in the OECD's anti-corruption activities.

Engagement with the private sector and civil society – including professionals, academics, non-profits and the media – is critical for effectively addressing corruption and for promoting accountability. Yet, policy efforts to foster such engagement, in many cases, are only relatively recent and are not firmly established as a government practice.

The OECD should also engage with a broader range of NGOs, academic institutions, professional associations and think tanks, for example, by creating an NGO liaison office to disseminate information. This could help a wider range of civil society groups to participate in OECD consultations or otherwise offer input into OECD's work. This would lessen the OECD's reliance on a small number of "insider" NGOs. There could be an open call for participation in these processes facilitated by OECD or an open call with some filters, such as relevant expertise in the field. The OECD could further define the number of representatives participating in each group of stakeholders and establish criteria to identify who would be selected to represent each group.

Multi-stakeholder initiatives (MSI), where governments, civil society and industry leaders work in tandem to develop standards of transparency, integrity and anti-corruption can have an important role regarding global and national norms. One important example is the Extractive Industries Transparency Initiative (EITI), which has brought together governments, businesses and civil society to address poor governance and opacity in extractives. Transparency International has also had success bringing German business and civil society together to pave the way for Germany's adherence to the 1997 Anti-Bribery Convention. Furthermore, new multi-stakeholder transparency initiatives (MTIs) are under way, such as Construction Sector Transparency Initiative (CoST) and the Fisheries Transparency Initiative (FiTI). These examples suggest that while MSIs are insufficient on their own – they can play an important role and complement (rather than substitute) governments' role in decision-making and implementation of sector policy and oversight initiatives.

In an increasingly inter-connected world, systematic MSI approaches are important to create legitimacy for policy initiatives. They can also help secure public space for dialogue and participation in OECD member countries and, perhaps even in non-member states that agree to participate in OECD work. The investigative journalism associated with

the Panama Papers⁴⁷ and Unaoil⁴⁸ scandals, as well as related civil society efforts to promote tax justice, also provide clear examples of how strengthening civil society can strengthen the OECD’s policy efforts. For these reasons, the HLAG encourages the OECD to adopt MSI approaches to ensure the effective cooperation of government, business and civil society actors in its anti- corruption work and to generate more credible and participatory deliberations.

There are many examples of how the OECD has used its position for promoting transparency and access to information about sector performance. For example, the WGB monitoring process has set an important precedent for how its members are expected to engage with their own constituencies. Meetings at the OECD and during on-site visits in country anticipate the participation of the private sector and civil society. Full country reports are made public. This model should be expanded and replicated across the range of OECD programs regarding integrity and anti-corruption. Given resource constraints inhibiting civil society participation in OECD anti-corruption programmes, consideration should be given enhancing online/web-based opportunities.

Recommendation 20

Foster and monitor implementation of the OECD Recommendation for Development Cooperation Actors on Managing Risks of Corruption both generally, and in particular, as it relates to infrastructure and natural resources in countries struggling to achieve sustainable and inclusive economic growth.

As noted in the *OECD Recommendation for Development Cooperation Actors on Managing the Risk of Corruption*⁴⁹, corrupt practices in the management and delivery of development – and humanitarian – assistance contributes to the loss of billions in aid intended for the poorest and most vulnerable. Given the limited assistance resources and the burgeoning need for assistance, the HLAG endorses the *Recommendation* and the commitments of the Development Assistance Committee (DAC) and WGB to monitor its effective implementation.

The *Recommendation*, which builds on the collective knowledge of the OECD, provides important guidance to improve integrity and anti-corruption measures in overseas development assistance. It calls for more proactive and comprehensive measures by donors *and* recipient countries to prevent, detect and sanction corruption. Development agencies are responsible and should be held accountable for ensuring that funds are used for the purpose intended, while recipient countries are responsible and should be held accountable for ensuring that government spending, whether it is funded by domestic resources or international aid or development loans, achieves effective outcomes with value for the money.

Full implementation of the *Recommendation* will help ensure greater corruption risk management by all concerned. This is particularly important in countries that are

⁴⁷ See footnote 17, *supra*, for an explanation of the “Panama Papers” scandal.

⁴⁸ See footnote 7, *supra*, for an explanation of the “Unaoil” scandal.

⁴⁹ The OECD Recommendation of the Council for Development Cooperation Actors on Managing Risks of Corruption is available online at: www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm.

vulnerable to corruption, for example because of weak institutions, conflict, crises and/or poverty (such as many afflicted by the so called ‘resource curse’).

As noted in Recommendation 3, enhanced corruption risk management is particularly imperative in public procurement, which is highly vulnerable to corruption. Development-financed procurement of major public contracts provides significant business opportunities, such as in the construction sector, the main sector involved in infrastructure development. At the same time, however, OECD analysis shows that between 1999 and mid-2014, 57% of concluded foreign bribery cases involved bribes to obtain public procurement contracts⁵⁰ and 15% involved the construction sector, the second highest after the extractive sector.⁵¹ This is likely due to the substantial value of the contracts, often financed by bilateral or multilateral development assistance agencies, to help countries modernise their infrastructure. This risk will only grow as countries strive to fulfil the Sustainable Development Goals, which, reportedly, may require investments worth up to USD 5 trillion annually until 2030.

As it seeks to implement its recommendations on procurement, bid-rigging and development cooperation, the OECD should support efforts by civil society, governments, the private sector and international organisations to help address corruption in contracting and public procurement.⁵² Collectively, these efforts represent a significant flourishing of ways to detect conflicts of interest and prevent other forms of corruption in contracting and public procurement.

The HLAG welcomes the DAC’s efforts to broaden its “inclusiveness and representativeness” and applauds its cooperation with other OECD bodies to facilitate integrity in overseas assistance and sustainable development outcomes. As noted in Recommendation 18, the HLAG calls on the OECD to continue to explore ways to promote such internal coordination, especially when it contributes to work underway by other stakeholders in the fight against corruption.

⁵⁰ OECD (2014), *OECD Foreign Bribery Report* page 32, www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm.

⁵¹ OECD (2014), *OECD Foreign Bribery Report* page 22, www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm.

⁵² For example, civil society groups are monitoring projects, the Open Contracting Partnership standards help ensure transparency to facilitate public oversight, governments committed at the UK Anti-Corruption Summit to beneficial ownership disclosure and open contracting and international organisations, such as the World Bank, are exploring how to collect and publish beneficial ownership information of entities participating in Bank-financed procurement.

Recommendation 21

Continue to compile, evaluate, and disseminate governance-related data as broadly as possible (embracing Open Data standards), and collaborating with other researchers and institutions, provide analysis on under-researched aspects of the costs and consequences of corruption, the benefits of good governance, clean government and the rule of law.

Data is a powerful tool for anti-corruption, crucial for monitoring, analysis and research, advocacy and empowerment, and evidence-based programme design and policymaking. Open data can improve governance by helping to make it more accountable and efficient, empower citizens by enabling informed decision making, create economic opportunities, and help find solutions to big problems.⁵³ With reliable estimates of the problem's magnitude, the OECD can also assess the impact of law enforcement strategies and develop priorities to reduce harm as much as possible.

The OECD has been working on open data and quantitative analysis in a number of areas relating to public sector integrity. For example, a series of Government at a Glance reports⁵⁴ (2009, 2011, 2013 and 2015), Lobbyists, Governments and Public Trust Volume 3 (2014), and the OECD Foreign Bribery Report (2014) provide quantitative analysis of anti-corruption and integrity related issues. The OECD is also working with several countries to develop the use of data analytics to combat fraud, waste and abuse, and to promote improved government performance. By supporting the advancement and adoption of more rigorous methods for quantitative analysis, the OECD works to strengthen the evidence-base on which policy and budgetary decisions are made.

While the OECD is well recognised for its solid analysis and fact-based policy advice, the HLAG underscores that anti-corruption should be no exception despite the obvious difficulty of collecting reliable data. The organization is well recognised and trusted for its advanced data-collecting exercises, which have taken place in close collaboration with members for decades. The OECD thus has a comparative advantage and credibility regarding both data and anti-corruption, yet it has not integrated both.

The OECD is therefore encouraged to undertake quantitative work on several issues, by combining its expertise on anti-corruption, data collection and quantitative analysis.

Among some of the particular area of further focus for the OECD should be to:

- conduct quantitative analysis of the effectiveness of its various instruments;
- analyse and distil the lessons from the variance in anti-corruption performance over time and across different countries;
- carry out legal and evidence-based policy analysis to engage with policy-makers and to guide future anti-corruption and integrity work;

⁵³ See, e.g., Natural Resource Governance Institute, *Rethinking Corruption: An Empirical Governance Perspective* (6 April 2016), available at www.resourcegovernance.org/blog/rethinking-corruption-empirical-governance-perspective (last accessed 28 February 2017).

⁵⁴ The Government at a Glance Reports are available at www.oecd.org/gov/govtaglance.htm (last accessed 28 February 2017).

- working collaboratively with other organizations and researchers, promote the analysis of new ‘frontier’ areas where evidence is becoming available (e.g. beneficiary ownership, contracts, revenue payments by companies to governments, transfer pricing); and
- adopt and disseminate the use of innovative information technology tools related to big data, social media and forensic data analysis as tools in the fight against corruption.

Recommendation 22

As emphasised in the introduction, the “rule of law” is an overarching challenge, fundamental to ensuring integrity and successfully combating corruption in all jurisdictions. The OECD should identify and include in its work, as appropriate and consistent with its core competencies, priority topics on the rule of law. Among possible priority areas of further work, the following should be considered:

- independence of the judiciary and of law enforcement authorities;
- laws that are clear, accessible, fair and consistently applied;
- due process behind all law enforcement reactions, including settlements;
- clear obligations to publish and to provide access to information; as well as
- unfettered media and civil society.

A convincing anti-corruption strategy requires a clear legal framework combined with consistent and impartial enforcement. This can only be done in a system that respects and fosters the rule of law, in which laws are adopted and enforced without fear of – or favour for – vested interests.

This aim reflects core values of the OECD and is already incorporated in many of its governance initiatives. For example, rule of law considerations are enshrined into Article 5 of the Anti-Bribery Convention, prohibiting countries from allowing political considerations, economic consequences, or diplomatic ties with other countries from interfering with the investigation and prosecution of foreign bribery. This very example shows, however, that such steps are not sufficient for advancing the rule of law: Many Parties to the Anti-Bribery Convention still have not successfully prosecuted a foreign bribery case more than 15 years after that Convention entered into force. While the OECD and the WGB have made impressive accomplishments at the technical level, the overall lack of implementation reveals that certain countries either lack sufficient political will or the institutional capacity to live up to their international obligations.

While recognising that the OECD cannot force its member countries – much less non-members – to adopt specific policies, it should consistently encourage members to adopt clear and accessible anti-corruption legislation and insist on transparent law-making processes in order to prevent the corrupt from creating and abusing loopholes. This would entail efforts to raise awareness about governments’ obligations to publish information necessary for citizens to understand how law enforcement reactions are made in accordance with laws and regulations, including in association with criminal and civil settlements as addressed under Recommendation 6. Where possible, the OECD should examine how it can encourage independence of the judiciary and of law enforcement authorities from both public and private interference. The OECD has a well-established

track record for creating effective monitoring structures and collaborating with non-OECD members to advance the anti-corruption agenda.⁵⁵

When necessary, the OECD should also seek to convince governments to control corruption in their law enforcement authorities and underscore the importance of competence and capacity to bring the corrupt to justice. Finally, consistent with OECD's efforts to promote integrity in government, it should encourage its members and other partner countries to promote their shared fundamental values in the rule of law, transparency, access of information, and freedom of speech. Promoting these values will strengthen anti-corruption efforts and also preserve space for investigative media and whistle-blowers to help uncover wrongdoing. In this way, the OECD can assist countries to ensure that their laws are fair and consistently applied to hold wrongdoers accountable, while respecting due process and the right to a fair trial.

⁵⁵ See also the work of other international organizations, e.g., IMF Staff Discussion Note "Corruption: Costs and Mitigating Strategies" (May 2016) page 4, available at www.imf.org/external/pubs/ft/sdn/2016/sdn1605.pdf (last accessed 28 February 2017).

ANNEX: LIST OF MEMBERS OF THE OECD SECRETARY-GENERAL'S HIGH-LEVEL ADVISORY GROUP ON ANTI-CORRUPTION AND INTEGRITY

Nancy Boswell (United States)

Nancy Boswell is an adjunct law professor and Director of the US & International Anti-Corruption Law Certificate Program at the American University Washington College of Law. She was a member of US State Department and USAID advisory committees and continues to participate in public and private sector training and online programs. From 1994 to 2011, she led the US chapter of Transparency International (TI) and served on TI's Board of Directors. She now serves on the Board of the Ethics and Compliance Initiative and the Steering Committee of the ABA International Law Section Anti-Corruption Committee.

Peter Eigen (Germany)

Peter Eigen has worked at the World Bank in economic development for 25 years. In 1993, Peter Eigen founded Transparency International (TI). From 1993 to 2005, he chaired the board of TI, and is now the chairman of its Advisory Council. In 2005, he led the founding group and served as founding chair of the Extractive Industries Transparency Initiative (EITI). For several decades Eigen has led initiatives for better governance and the fight against corruption worldwide, including the founding of the International Civil Society Center, the Partnership for Transparency Fund, the Fisheries Transparency Initiative, the Garment Industries Transparency Initiative and Climate Transparency initiative. Professor Eigen has taught law and political science at the universities of Frankfurt and Georgetown, at Harvard University, at Johns Hopkins University/ SAIS, and since 2002, he is teaching at the Freie Universität, Berlin.

Jorge Hage (Brazil)

Jorge Hage Sobrinho has been a professor at the Federal University of Bahia and held the positions of Mayor of Salvador, State Congressman and Federal Congressman. Mr. Hage was a judge in Brasília, and held the positions of Vice-Minister and Minister of State, as Head of the Office of the Comptroller General of Brazil, which is one of the anticorruption and integrity agencies in the Brazilian Government. He has represented Brazil in several conferences and global initiatives, such as UNCAC, OGP, IACC and various OECD events. He is presently a professor, lecturer and consultant in anti-corruption and compliance legislation in Brazil.

Takeyoshi Imai (Japan)

Since 2002, Professor Imai has taught at the Law School of Hosei University in Japan. He is on the Editorial Board of the Journal of Money Laundering Control, and has published himself on organised crime in Japan. Prof. Imai is a member of Japan Criminal Law Association; Director, Criminal law Subcommittee, Legislative Council, the Ministry of Justice; and a member of Bidding Monitoring Committee, the Cabinet Secretariat and the Cabinet Office.

Daniel Kaufmann (United States/Chile)

Daniel Kaufmann is currently president and CEO of the Natural Resource Governance Institute (NRGI), a non-resident senior fellow at the Brookings Institution, a full member of the international board of EITI, and a member of advisory boards at Transparency International and at the Mo Ibrahim Foundation, among others. He has also held senior positions at the World Bank, including director at the World Bank Institute, and has been a visiting scholar at Harvard University. Dr. Kaufmann has worked on anti-corruption programs in many countries around the world, and has been widely published in academic, policy and media publications on a broad range of fields, including governance and anti-corruption.

Huguette Labelle (Canada)

Huguette Labelle served for 19 years as deputy head of different Canadian government departments including the Secretary of State, Transport Canada, the Public Service Commission, and the Canadian International Development Agency. Ms. Labelle is a former Chair of the Board of Directors of Transparency International. She currently Chairs the Independent Advisory Board for Appointments to the Senate of Canada, is Vice-chair of the International Anti-Corruption Academy International Senior Advisory Board and serves on other Boards and Councils.

Peter Solmssen (United States)

Peter Solmssen is an American lawyer and business executive currently serving as Executive Vice President and General Counsel of American International Group. He was Managing Board Member and General Counsel of Siemens AG, the German engineering company, from 2007 until 2014.

Tina Søreide (Norway)

Tina Søreide is a Professor of Law and Economics at the Norwegian School of Economics (NHH). She holds a PhD in economics (NHH), had a post doc position in criminal law at the University of Bergen, and has been a visiting scholar at Yale. She was previously employed by the World Bank, Washington DC and the Chr. Michelsen Institute (CMI). Prof. Søreide studies law enforcement, industry regulation and development. She has published extensively on anti-corruption, and has worked as a consultant on G20 and OECD anti-corruption initiatives.

Neville Tiffen (Australia)

Neville Tiffen is a specialist consultant in corporate governance, integrity and compliance. He is an independent member of the Integrity Committee of the Department of Education in Victoria and is a Fellow of the Governance Institute of Australia. He was formerly Global Head of Compliance at Rio Tinto and has also held other senior positions for Rio Tinto, including Regional General Counsel – US/South America, Chief Counsel – Australia and Corporate Secretary/Chief Counsel for Comalco.

