



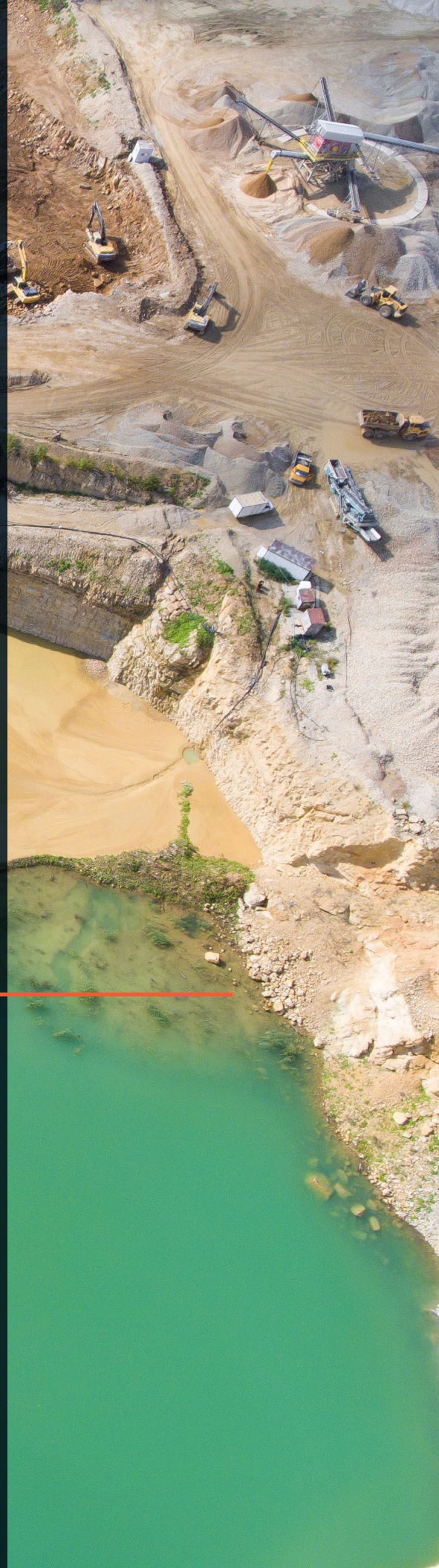
Natural  
Resource  
Governance  
Institute

# Anticorruption Guidance for Partners of State-Owned Enterprises

---

Summary

January 2022



# Anticorruption Guidance for Partners of State-Owned Enterprises

This document contains a summary of NRGi's Anticorruption Guidance for Partners of SOEs. The full guidance and information about how the guidance was developed can be found at [resourcegovernance.org/soe-anticorruption](https://resourcegovernance.org/soe-anticorruption).

## Summary

Drawing on broad stakeholder consultations, corruption case analysis and reviews of existing best practices, this guidance proposes concrete measures that companies should adopt to reduce corruption risks in their work with state-owned enterprises (SOEs) in the oil, gas and mining industries. It also recommends measures SOEs can take to strengthen their anticorruption safeguards.

The guidance for private-sector companies has five parts:

- ▶ Conducting due diligence on SOEs
- ▶ Avoiding high-risk agents
- ▶ Responding to political exposure
- ▶ Safeguarding payments
- ▶ Protecting joint ventures from corruption

The final section identifies corresponding recommendations for SOEs in each of these five areas.

By adopting stronger safeguards against corruption, international companies and SOEs can avoid costly scandals that hamper their performance and damage their reputations. These reforms would also help protect the interests of resource-producing countries. Past cases clearly show the kinds of economic, social and political damage corruption can cause.

### The challenge

A significant share of recent corruption cases in the oil, gas and mining industries have implicated state-owned enterprises (SOEs). Private-sector companies played a role in nearly all these cases too, either directly or indirectly. As this record makes clear, standard corporate integrity and compliance systems are often poorly suited to address the unique position and powers of SOEs. In many host countries, SOEs play dominant and pervasive roles and maintain close relations with the political leadership. Often the only way for private companies to work in a country is to partner with the SOE, and smooth operations often depend on securing and maintaining the SOE's favor. Companies can choose to avoid certain third parties when concerns arise, but working with SOEs—even those that exhibit major red flags of corruption—rarely seems optional. Similarly, companies cannot simply push their integrity standards and compliance systems onto an SOE given its level of influence.

While SOEs and their partners often operate with integrity, corruption is common and harmful enough to deserve special attention. Many recent cases have revealed SOE officials receiving bribes, steering overly lucrative deals to politically connected parties, or misappropriating SOE funds. In other instances, private companies instigated the corruption, lured by the lucrative opportunities SOEs can offer. In some countries, these and other forms of SOE corruption are chronic and reinforced by the prevailing political context. SOE corruption often inflicts harms on society, including lost public revenues, weak sector performance, damage to host communities, lost investment and slowed economic growth, entrenched authoritarian regimes, public frustration and distrust, and even political unrest and conflict.

Many companies and SOEs are working to prevent corruption, creating opportunities for progress. Past corruption scandals created serious legal, reputational or commercial consequences for many SOEs and their corporate partners. Environmental, social and governance (ESG) factors including around integrity have gained influence within the sector, and risks accepted years ago are no longer tolerable for many industry players. Some companies and SOEs have adopted valuable anticorruption reforms which, if adopted more widely, would help clean up and level the industry's playing field. Meanwhile, past cases offer valuable lessons about the sector's greatest corruption vulnerabilities and how they might be fixed. The guidance presented here builds on these openings.

### The guidance

Below is a summarized list of the recommendations. The full versions contain further explanation and detailed proposals.

The guidance is primarily intended for three categories of company that engage extensively with SOEs—those in exploration and production, the supply of goods and services, and commodity trading—but many of the recommendations also apply to SOE lenders, investors and financial service providers. Within these firms, compliance and legal departments would lead on implementing many of the recommendations. The final section of the guidance contains recommendations for SOEs.

Civil society groups, parliamentarians, anticorruption commissions and other oversight actors could also use the guidance when pressing for reform and evaluating whether investors and SOEs are adequately preventing corruption. Finally, the guidance could inform other governance and anticorruption standards, in the extractive sector and beyond.

*Note: For the purposes of this guidance, private-sector companies that partner with SOEs are referred to as “companies” and state-owned enterprises, while also companies, are referred to as “SOEs.”*

### Conducting due diligence on SOEs

SOEs have a unique and complex risk profile which standard due diligence approaches were not designed to address. By conducting more thorough and tailored SOE due diligence, companies can take business decisions that fully reflect the prevailing risks.

#### **1. Companies should supplement their standard due diligence approaches to address the distinct risk profile of SOEs.**

- 1.1. Conduct due diligence in a manner that influences business decisions.
- 1.2. Examine the political and economic context in which the SOE operates.
- 1.3. Identify the leading corruption risks, their potential harms and whether the engagement might directly or indirectly contribute to them.
- 1.4. Identify the SOE's roles and the potential conflicts among them.
- 1.5. Assess the SOE's governance and accountability record against international standards.
- 1.6. Strengthen due diligence practices for short-term transactions with SOEs and when SOEs are clients.

### Avoiding high-risk agents

Agents feature commonly in extractive sector corruption schemes, including when companies use agents to seek new business and approvals from SOEs. Many companies and SOEs have reformed their use of agents as a result. These recommendations aim to accelerate this trend.

#### **2. Companies should eliminate or reduce the use of business development agents, and stop agent practices which exacerbate corruption risks.**

- 2.1. Use a functional approach to identify the company's high-risk agents.
- 2.2. Take steps to eliminate the use of representative business development agents.
- 2.3. Publicly commit to restrictions around working with certain types of agent. (See categories in Recommendation 3.2 below.)
- 2.4. Apply special controls and scrutiny to any remaining agent relationships.
- 2.5. Publicly disclose the company's agent policy, a list of its agents and, over time, their beneficial owners.
- 2.6. Adopt payment structures which discourage corruption, including avoiding success fees.
- 2.7. Explore opportunities for collective action.

### Responding to political exposure

Companies must often make complex, subjective decisions about whether working with a politically exposed third party will contribute to corruption. These difficult decisions arise frequently in SOE engagements, including when vetting joint venture suppliers, equity partners and trading intermediaries. The following measures would lower the number of discretionary decisions companies make and help them steer clear of situations in which they may enable corruption.

#### **3. Companies should screen out politically exposed third parties who may cause harm to producer countries, and should publicly commit to avoiding inappropriate partners.**

- 3.1. Adopt a robust definition of politically exposed persons in the company's anticorruption policies, and commit to conducting enhanced due diligence on third parties that meet this definition.
- 3.2. Publicly commit to restrictions against working with certain types of entities, including:
  - ▶ entities that will not report their beneficial owners
  - ▶ entities whose key personnel or beneficial owners include:

## Anticorruption Guidance for Partners of State-Owned Enterprises

- ▶ a public official with a conflict of interest relating to the business the company is seeking
- ▶ a former official who recently left such a position of influence, for example, within the last 24 months
- ▶ individuals in violation of the producer country's prohibitions on public officials acquiring commercial interests
- ▶ individuals or entities convicted or otherwise credibly shown to have engaged in corruption-related offenses, and where evidence of adequate remediation is not found.

3.3. Require all third parties to submit beneficial ownership information, and work to verify this information for high-risk parties or transactions.

3.4. Move toward the public reporting of beneficial ownership information for joint venture partners, large suppliers and high-risk third parties.

3.5. Evaluate engagements with politically exposed third parties for their risk of enabling corruption, and avoid engagements that carry those risks.

### Safeguarding payments

In several countries, payments made by companies to SOEs have been misappropriated or misused by SOE or other public officials. While companies neither can nor should control how SOEs manage their funds, they should adopt measures to reduce these risks, and work collaboratively with others to support accountability in the sector.

#### **4. Companies should actively protect against the misappropriation of payments made to SOEs.**

4.1. Incorporate misappropriation risks in due diligence on SOEs, even for shorter-term transactions.

4.2. Adopt robust controls as a first line of defense against the diversion of payments.

4.3. Establish company principles and procedures for responding to misappropriation concerns, and suspend or end operations if misappropriation risks leading to societal harm.

4.4. Publish payment data on a real-time basis in high-risk deals and jurisdictions.

4.5. For certain bespoke arrangements, such as resource-backed loans or social investments, push for payment structures that prioritize transparency, oversight and development spending.

4.6. Support financial accountability by engaging government, SOE and external stakeholders.

### Protecting joint ventures from corruption

Whether establishing a new partnership or revisiting outdated approaches, joint venture (JV) partners can benefit from coming together to assess and improve their anticorruption systems.

**5. JV partners should jointly evaluate the venture's anticorruption systems against the following set of principles, developed with prevalent corruption trends in mind. They could then agree and adopt measures to address any concerns or shortcomings.**

Principle 1. The JV promotes a culture of integrity.

Principle 2. The JV deploys anticorruption safeguards based on a sound assessment of risk.

Principle 3. The JV manages procurement with integrity and does not enable corrupt practices.

Principle 4. The JV safeguards financial flows against corruption.

Principle 5. The JV guards against potential conflicts of interest and inappropriate forms of political influence.

Principle 6. The JV operates to global transparency standards and proactively engages with other stakeholders on building integrity in the sector.

### Recommendations for SOEs

The following recommendations for SOEs complement the guidance above for private-sector companies. Action by both sets of actors is essential to reducing corruption risks. See the more detailed version for concrete measures SOE management can take to raise investor confidence, improve performance and avoid controversy.

S1. Adopt and publicly announce governance practices that demonstrate the SOE's commitment to operating with integrity.

S2. Reduce the use of high-risk agents by companies seeking business from the SOE.

S3. Avoid conflicts of interest and the inappropriate participation of politically exposed persons among the SOE's third parties.

S4. Safeguard SOE finances from misappropriation.

S5. Working with partners, evaluate JV anticorruption systems against a set of principles, and adopt measures to address any shortcomings.

### Approach

The guidance derives from three main sources. First, over a two-year period beginning in December 2019, NRGi convened and consulted more than 110 individuals from over 50 organizations, including compliance personnel and other representatives from 18 large oil, gas and mining companies, several SOEs and many anticorruption experts and activists. Along with one-on-one interviews with participants, NRGi held workshops on each of the guidance's five topics in November and December 2020.

Second, NRGi studied over 100 extractive sector corruption cases to identify common trends and possible remedies.

Third, NRGi reviewed and drew from other anticorruption and compliance guidance published by law enforcement agencies, international bodies such as the UN, the World Bank and the OECD, companies and non-governmental organizations, as well as materials and standards related to SOE and resource governance. (For a list of key sources, see the references section of the full guidance.)

The guidance has several defining attributes that distinguish it from existing tools and frameworks:

**Sector- and SOE-specific.** Extensive guidance is available for companies on establishing internal compliance systems and managing third-party risk, but it does not focus on SOEs or the extractive sector—both of which present specific challenges.

**A mix of basic and ambitious measures.** Some recommendations contained in the guidance represent good practices that many companies have already adopted and that should be mainstreamed across the industry. Others are more forward-looking and ambitious and will carry commercial costs, but target demonstrated areas of risk. As a result, certain recommended measures are more difficult to implement than others. Taken as a whole, however, the guidance here reflects the practices that companies should adopt if preventing corruption and the consequent harms are a top priority.

**Problem-focused.** The guidance is not comprehensive. Its five topics emerged from the consultation process as challenging areas where more learning and improved practices are needed. Other important anticorruption topics, such as bribery, facilitation payments, gifts and hospitality, are not a focus, though many other anticorruption resources address these.

**Prioritizing the public interest in producing countries.** NRGi is a non-profit organization that works to promote effective, accountable and sustainable resource governance, especially in developing countries. This brings a different orientation from that of many sources of compliance guidance, which traditionally prioritize a company's desire to avoid legal liabilities.



## Anticorruption Guidance for Partners of State-Owned Enterprises

This focus explains several of the guidance's cross-cutting themes:

- ▶ **How companies can avoid enabling corruption.** Companies should actively work to avoid enabling the diverse forms of corruption that occur frequently in the extractive sector, including its more systemic forms.
- ▶ **Assessing and avoiding potential societal harms.** Because SOEs manage public resources, SOE corruption can inflict serious harms on the public interest. While there are limits to their influence, companies should incorporate awareness and assessments of societal harms into their anticorruption approaches, and use this as a factor to determine risk and inform decision-making (alongside e.g., the company's own reputational and legal concerns).
- ▶ **Reducing subjective case-by-case decisions.** Past corruption cases indicate that a full reliance on case-by case discretionary decision-making can, in certain instances, fail to protect the public interest. Under pressure to advance a deal, company personnel have elected to accept serious corruption risks. In some cases, scandal, legal action and societal harm followed suit. In response to this trend, the guidance recommends that companies adopt several upfront rules, such as limitations on working with certain high-risk third parties, that would help reduce the number of *ad hoc* decisions company personnel must make.
- ▶ **Transparency, including the disclosure of rules and policies.** Many of the recommendations urge companies to disclose information about their engagements with SOEs. In particular, companies should tell the public more about their approach to managing corruption risks, including the rules they have in place around agents, politically exposed persons, conflicts of interest, payment controls and other priority topics. By disclosing these rules, a company signals its commitment to integrity to current and prospective third parties, staff, investors and other key stakeholders including citizens. Public disclosure of company rules discourages exemptions and avoidance, and may motivate other industry players to follow suit.

## ACKNOWLEDGMENTS

This guidance was authored by NRGi advisor Alexandra Gillies and consultant Tom Shipley. The authors are grateful to this project's many contributors, including the experts and industry personnel who generously gave their time and ideas over the past two years. Dozens of people spoke frankly about sensitive issues, reviewed drafts and answered questions. The authors also appreciate the *pro bono* support of the law firm Cleary Gottlieb Steen & Hamilton LLP.



# **Anticorruption Guidance for Partners of State-Owned Enterprises**

---

## **Summary**