

3RD OECD INTEGRITY FORUM

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CURBING CORRUPTION INVESTING IN GROWTH



BACKGROUND DOCUMENT

Background Note for Discussion

OECD Integrity Forum

Curbing Corruption - Investing in Growth

The objective of this Background Note is to provide an analytical framework to shape discussions on corruption in investment at the OECD Integrity Forum on 25-26 March, 2015. The Background Note, including additional considerations brought forward at the Forum itself, will form the basis for the **OECD's Checklist on Curbing Corruption in Public Investment**.

The Background Note has been prepared by the Public Sector Integrity Division of the OECD's Directorate for Public Governance and Territorial Development, and benefited from comments from the Divisions on Regulatory Policy and Regional Development Policy.

Valuable inputs were also received from the Directorate for Financial and Enterprise Affairs (Investment Division, Anti-Corruption Division, Corporate Affairs Division) and the Development Co-operation Directorate (Global Partnerships & Policies Division).

Forum participants are encouraged to provide written feedback to Julio Bacio Terracino (julio.bacioterracino@oecd.org).

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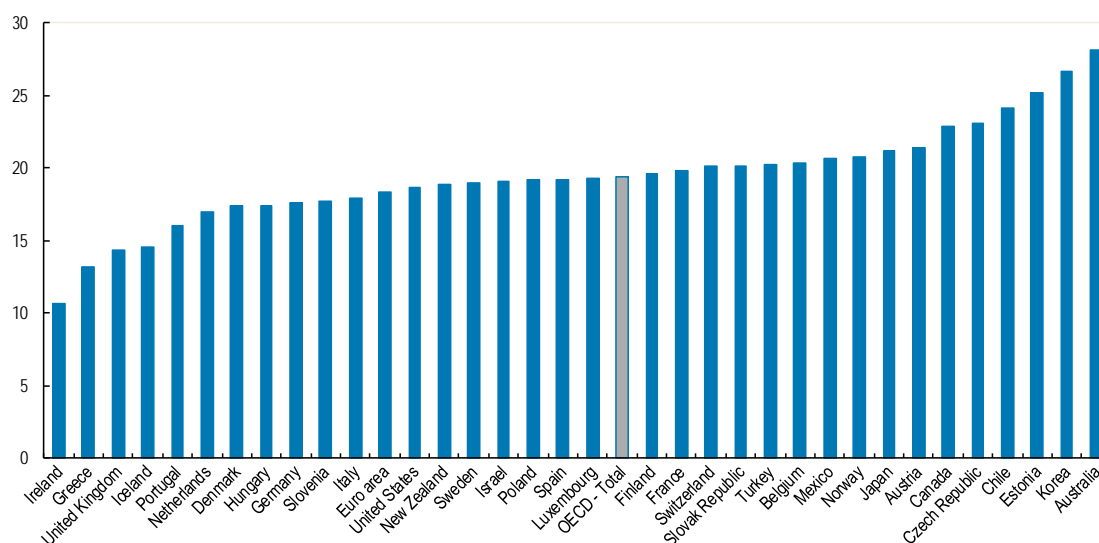
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EXECUTIVE SUMMARY

1. Investment- whether funded publically, privately, or jointly by both sectors- is a driver of sustainable growth and development, and is necessary for the provision of basic services such as electricity, water and sanitation. It is also a requisite for the delivery of public services like health, education and security. Investment mainly consists in gross fixed capital formation, which- according to the System of National Accounts (SNA) definition used for purposes of this Note- includes such fixed assets as dwellings (excluding land), other buildings and structures (roads, bridges, airports, dams), transport equipment, machinery, cultivated assets, and intangible fixed assets (such as intellectual property). This Background Note in particular focuses on curbing corruption in infrastructure investment.

2. Investment constitutes a significant share of the OECD's GDP, close to 20% on average, the majority of which is private (about 15% is public). Expenditures on infrastructure have generally not kept pace with needs, prompting many economists to cite the “global infrastructure gap” as one main factor slowing down the economic recovery and hindering development efforts.

Figure 1. Gross fixed capital formation (investment) as a share of GDP, 2012



Source: OECD (2014a) National Accounts at a Glance.

3. Public investment in particular can be thought of as a public good, and it is used by governments as one policy lever at their disposal to address such challenges as climate change, changing demographic trends, rapid urbanisations, territorial and regional economic disparities, and the emergence of new technologies. It can also be a counter-cyclical tool to stimulate growth and job creation when economies are downtrodden. Governments are increasingly turning to private finance initiatives to create public infrastructure.

4. With such important policy goals at stake, keeping investment clean should be a top priority for governments and business alike. However, around the world, scandals and corruption allegations surrounding infrastructure projects have suggested that these undertakings **may be especially prone to undue influence**. Recent evidence from the OECD (2014d) has shown that the public procurement process is one important vulnerability, and it seems some sectors may be more predisposed than others (extractives, construction and transport). The influence of money in politics may also play a role, with incentives detrimentally aligned towards more short-term and politically-motivated decision-making on the part of elected officials, the result of which are not always in the public's best interest.

5. As government and business rise to the challenge of addressing the global infrastructure gap, and as the lines between the public and private sectors become increasingly blurred, the importance of curbing corruption in infrastructure investment will only grow. Indeed, infrastructure investment is by nature highly visible to citizens and often of great interest to the media. "White elephants" serve as stark reminders of the presence of corruption and can ultimately play a role in lowering citizens' trust in government institutions. Moreover, governments will need to ensure a sound investment climate is in place to attract private capital.

6. The OECD is currently developing a **Checklist for Curbing Corruption in Public Investment** which it plans to discuss at the Organisation's 2015 Integrity Forum with relevant stakeholders from the public, private and non-profit sectors. The goal of the Checklist is to identify corruption risks throughout the investment cycle (from needs assessment to audit and evaluation), and put forward key considerations for mitigating risks at each phase. The OECD looks forward to collecting further feedback and enriching the draft Checklist with the aim that it may be used widely as a tool for preventing and mitigating corruption.

I. INVESTMENT CAN BE AN IMPORTANT POLICY TOOL FOR ACHIEVING SOCIO-ECONOMIC OBJECTIVES

Public investment constitutes a sizeable share of total investment spending and can be an important policy tool for governments at both national and subnational levels

7. Public investment can be thought of as a type of policy tool by which governments can promote sustainable (i.e. more environmentally-friendly) economic growth, innovation, and contribute to wellbeing through the provision of basic infrastructure and public services. Indeed, as this first section of the Note will show, governments use public investment, and especially investment in infrastructure, to respond to a variety of policy challenges before them-- from climate change, to economic downturns, changing demographic trends, rapid urbanizations, and the emergence of new technologies. With such important policy goals as stake, the Note stresses the importance of keeping investment clean in order to maximise its impact and ensure it results in the productive and efficient use of public resources.

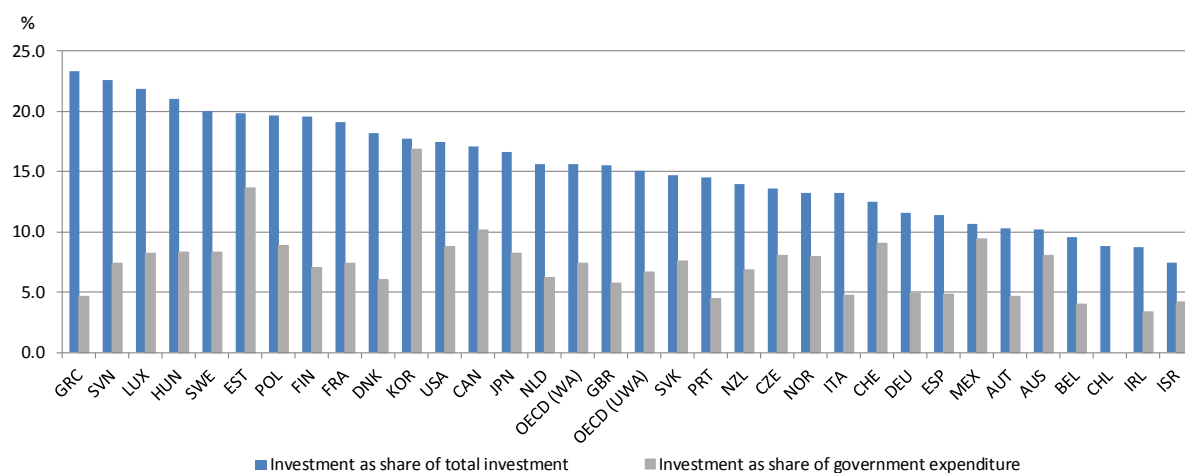
8. Defining public investment is not as clear-cut as one might assume. For purposes of this background note public investment is defined as gross capital formation and acquisitions less disposals of non-produced, non-financial assets. Gross *fixed* capital formation is the main component of investment. In layman's terms, government expenditures in gross fixed capital formation consist mainly of spending on public infrastructure (that is, roads, airports, bridges, telecommunications structures, utilities, government office buildings, schools, hospitals, prisons, etc.). Ordinary maintenance of fixed assets is not generally accounted for as investment, unless it constitutes a major improvement with a demonstrably high impact on performance or capacity. In the revised 2008 System of National Accounts, research and development (R&D) expenditure was newly recognised as capital formation, and the definition of public investment now includes this dimension as well. However, because the majority of public investment refers to physical infrastructure investment, this note refers to public infrastructure and public investment interchangeably. Finally, by the term "public", this note refers to central, state and local government, all government agencies, as well as quasi-public corporations (such as state-owned enterprises).

9. In 2013, across OECD member countries, general government investment as a share of total investment in the economy (that is, both public and private investment combined) reached an average of 15.6%¹ (Figure 2). This amounted to about USD 1.4 trillion.² In terms of total general government spending, this investment constituted just over 7% of expenditures in the same year (Figure 2). Sub-national governments (SNGs) play a key role in public investment, as they undertook approximately 60% of these outlays (OECD, forthcoming a, Figure 3). In general, SNGs' share of public investment is much larger in federations or quasi-federal countries, where it is typically split between local authorities and the intermediate tier of authority (such as regions, states or provinces) constituted by the federal units. Not surprisingly, it is much lower in historically centralised or very small countries (OECD, 2013a).

¹ OECD (Forthcoming a) Government at a Glance 2015.

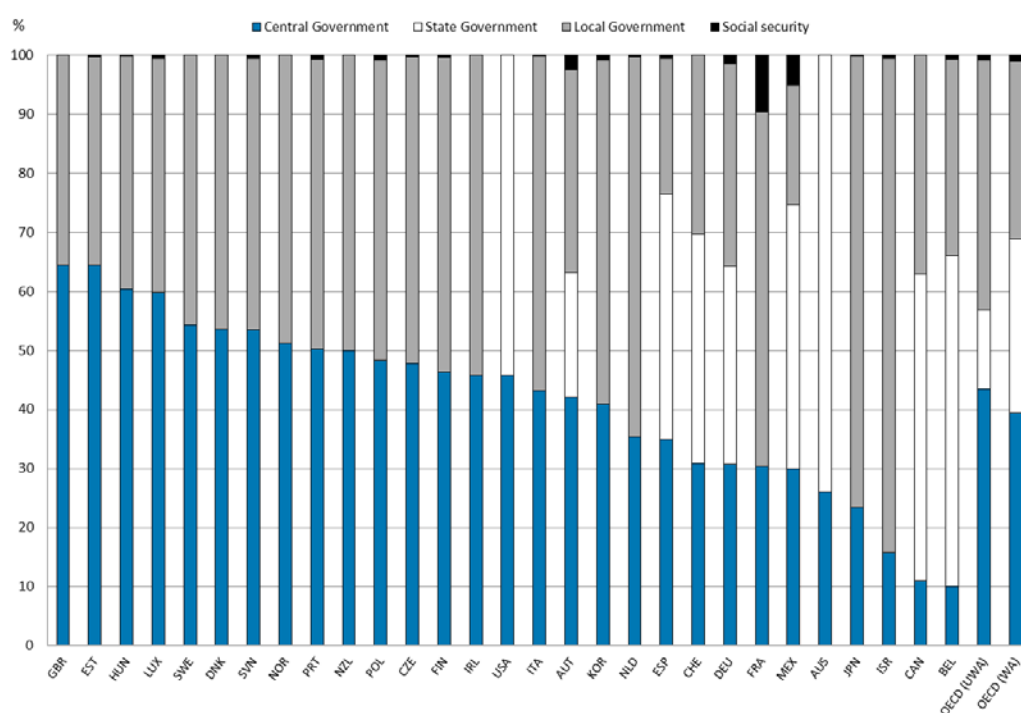
² OECD National Accounts Statistics Database

Figure 2. General government investment as a share of total investment and total general government expenditure, (2013)



Source: OECD (forthcoming a) Government at a Glance. Note: Data refer to general government spending, excluding public corporations which, in many countries, are often involved in public infrastructure projects. Therefore these data may underestimate the total amount of public investment. OECD(WA) refers to the OECD weighted average, and OECD(UWA) to the unweighted average.

Figure 3. Distribution of investment spending across levels of government (2013)



Source: OECD (forthcoming a) Government at a Glance. Note: Data refer to general government spending, excluding public corporations which, in many countries, are often involved in public infrastructure projects. Therefore these data may underestimate the total amount of public investment. OECD(WA) refers to the OECD weighted average, and OECD(UWA) to the unweighted average.

Public investment in infrastructure is an example of a public good, with positive direct and indirect benefits for the economy and society as a whole

10. While smaller in comparison to other types of government outlays, such as social welfare spending (e.g. unemployment and other social benefits), public investment nevertheless “packs a punch,” potentially creating both direct benefits as well as positive externality gains for the economy and society as a whole. Indeed, public (or publically-funded) infrastructure like transport and telecommunication networks provide a direct benefit by ensuring the necessary infrastructure is in place for commerce and trade, and allowing economic activity to reach remote areas. Likewise, public investment has direct benefits such as the delivery of basic services (e.g. water and sanitation) as well as for the delivery of social services (e.g. education, health, and security).

11. Positive externalities of these investments include increased productivity; the promotion of innovation and employment creation; as well as potential benefits to the environment (Straub 2008), all of which contribute both to sustainable economic growth and greater wellbeing. Indeed, schools and hospitals are not only bricks and mortar- they are the necessary infrastructure required for bettering human capital and improving quality of life. Likewise, law enforcement use public infrastructures to deliver services such as safety and security, which are precursors to many other outcomes including social stability and creating an enabling environment for doing business.

12. Finally, it is important to note also that public investment is sometimes crucial. Governments often invest in order to counterbalance private markets when these do not allocate goods or services efficiently, which occurs especially when many people can benefit from the same good at the same time (public good) and nobody is willing to pay the full cost of it.

A global “infrastructure gap” is hindering development and growth

13. Insufficient infrastructure investment has been proposed as one major challenge impeding development, as well as a more speedy recovery following the economic crisis. It has been estimated that “USD\$57 trillion in infrastructure investment will be required between 2013 and 2030 – simply to keep up with projected global GDP growth” (McKinsey Global Institute, 2013). Standard and Poor’s has valued annual funding needs for infrastructure to be at 3.4 trillion USD annually with most of that about evenly split among the U.S., the EU, and China (Standard and Poor’s, 2014). Similarly, it is estimated that Asia will need to spend approximately US\$8 trillion in order to maintain current levels of economic growth (PWC, 2012).

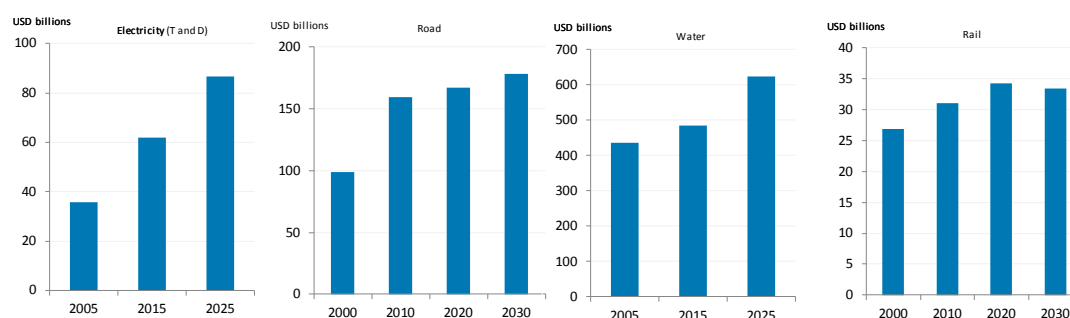
14. Many more indicators suggest that a wide gap exists between the infrastructure availability and the need for it (Table 1). It is especially a grave concern for emerging market economies and low-income developing countries. Lack of access to water and basic sanitation and shortages of electricity are still present all of which require infrastructure investment. Infrastructure is needed also to keep up with predicted world population growth, where it is estimated that it will increase by 27% by 2075 reaching 9.22 billion inhabitants (UN, 2009). Most of that increase will come from less developed regions, increasing the need for new economic infrastructure in the areas of energy, water, sanitation, transportation, as well as in social infrastructure such as schools and hospitals. Annual investment requirements for telecommunications, road, rail, electricity (transmission and distribution) and water taken together have been estimated to account for 2.5% of world GDP (OECD, 2007a).

Table 1. Estimated requirements for infrastructure spending in coming years.

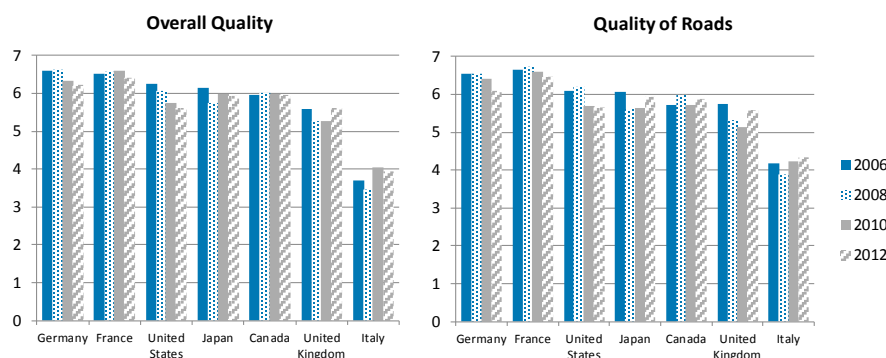
Region	Estimated requirement for infrastructure spending
Worldwide	\$20.7 trillion would be required today if all governments simultaneously decided to enact over 1,400 policies to secure energy supplies due to decades of underinvestment in energy infrastructure.
East Asia	\$700 billion per year for the next 10 years.
South Asia	\$88 billion per year for the next 10 years.
Western Europe	\$600 billion between now and 2020 for transport.
Africa	\$40 billion annually for investment and operations and maintenance.
OECD countries and some larger developing countries (such as Brazil, China and India)	\$70 trillion between 2005–2007 and 2030 for surface transportation (roads, rail and urban public transport), water, telecommunications, electricity transmission, distribution and generation and other energy-related infrastructure.
Developing and transitional countries	\$80 billion annually will be required in the next 25 years to produce water security.
Emerging economies	\$22 trillion in projected investments over the next 10 years.

Source: Adapted from UNCTAD (2009), The role of public investment in social and economic development.

15. Infrastructure availability gap is a concern for advanced economies as well (Figure 4). In recent years, there are signs of deteriorating quality of infrastructure in some advanced economies (Figure 5). Indeed, EU countries for example have spent 70% of their public investment on maintenance costs associated with past infrastructure investments (OECD, 2014c). The need for infrastructure in OECD countries is significant, where key infrastructure such as bridges and tunnels are more than a century old. Furthermore, there is a widespread concern that the spending on maintenance has been lower than ideal, further raising concerns for increasing expected future infrastructure maintenance cost. In Germany, for example, the report of the Daehre Commission (Daehre, 2012) notes that road infrastructure investments in the country have declined from 1% of GDP to around 0.7% in recent years. Gross expenditures have declined by 24% in real terms over the past 20 years. Over the same period, passenger traffic increased by a quarter and freight traffic by a factor three. Quality indicators show a marked decline. Under current funding arrangements, available resources fall short by EUR 3.3 billion of spending needs for maintenance, upgrading and extensions. Adding these resources would increase the budget by a bit less than 50% (OECD/ITF, 2013).

Figure 4. Average annual infrastructure investment requirements in OECD countries to 2025/30.

Source: OECD (2007) Infrastructure to 2030: Mapping Policy For Electricity, Water and Transport

Figure 5. Quality of Infrastructure in G7 Economies (Scale 1-7; higher score indicates better infrastructure)

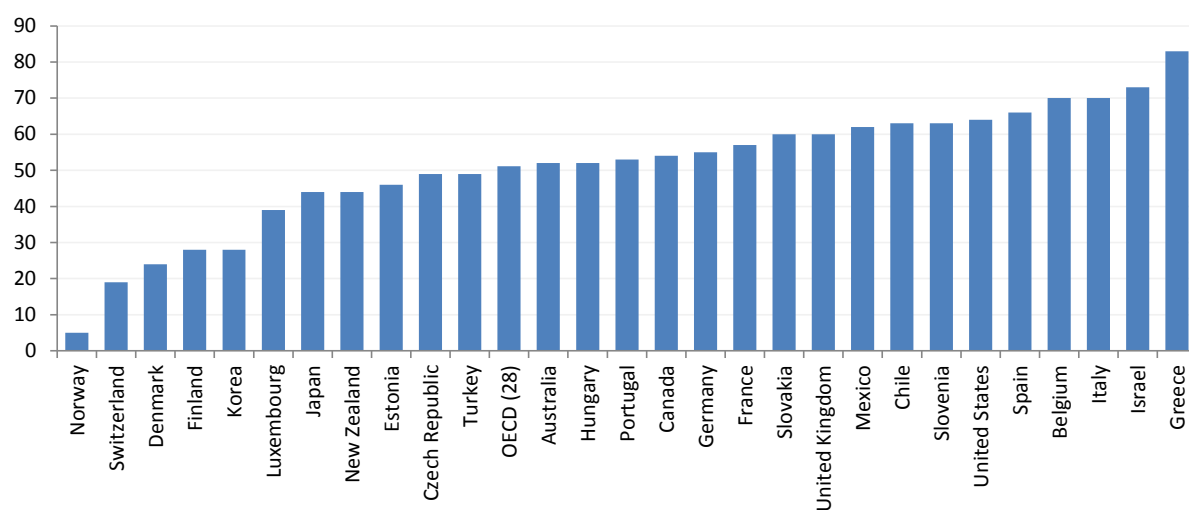
Source: Adapted from IMF (2014), World Economic Outlook 2014

Keeping investment clean is essential to maximise the benefits

16. While there is strong evidence of a global infrastructure gap, simply increasing the amount of public spending in infrastructure is not necessarily the solution; it must be **productive spending** in order for real economic and social value and utility to be created. The marginal productivity return of infrastructure investment spending, for example, depends on the level of pre-existing infrastructure availability. After surpassing certain thresholds of infrastructure levels, the marginal productivity return declines (UNCTAD, 2009). Thus the decision on whether or not to invest in more infrastructure, on which infrastructure to invest and how to invest should be taken with caution. Influence by vested interests on the decision may result even in negative return of productivity or excessive infrastructure, creating “white elephant” projects (a project that fails to meet public demand and whose costs of construction, operation and maintenance are not justified by its ultimate utility).

17. The costs of inefficient spending on public infrastructure are not only economic. Evidence of waste of public resources can cost governments dearly in terms of lost credibility and trust on the part of citizens. Governments are entrusted with spending taxpayers’ money efficiently and allocating it for the economic and social welfare of the economy and society. Given the increasingly tight fiscal space faced by many governments following the economic crisis, infrastructure spending decisions that are not based on strict need assessment and cost-benefit analysis could harm not only governments’ budgets, but also the **confidence of citizens in public institutions**.

18. Transparency International’s Global Corruption Barometer 2013, for instance, showed that on average, more than 50% of respondents in OECD countries think that the government is run by a few interests (Figure 6). Corruption is a main risk to ensuring effective and efficient investment in public infrastructure. Several studies have shown that “countries with **high levels of corruption** tend to invest less in education and health systems and more in prestigious infrastructure project that do not always have obvious benefits for society” (Vargas and Sommer, 2014). The next section of this Note will delve into how corruption can lead to inefficient and unproductive public investment spending and threaten confidence in institutions.

Figure 6. Percentage of respondents that think the government is run by a few interests

Source: Transparency International. Global Corruption Barometer 2013 (latest available)

II. CORRUPTION HAS DETRIMENTAL EFFECTS ON PUBLIC INVESTMENT

The nature of public investment in infrastructure makes it particularly prone to corruption

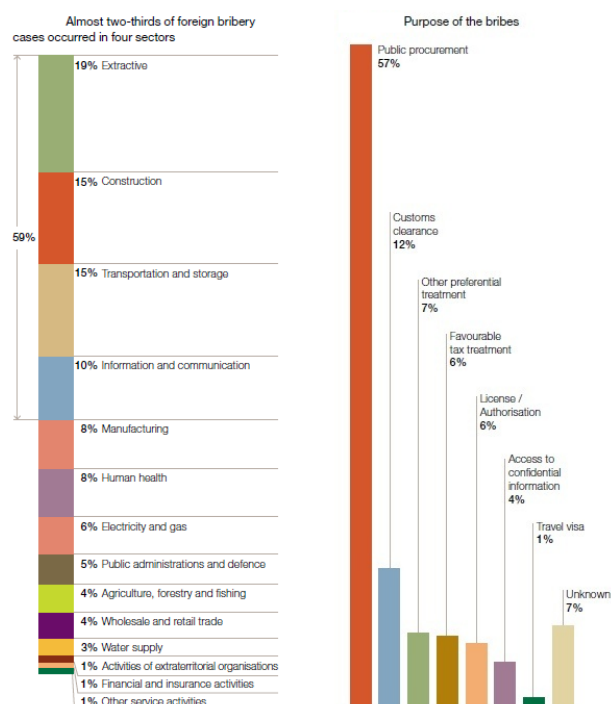
19. Several definitions of corruption exist, but one frequently-used characterization which covers a broad range of activities is the “abuse of entrusted power for private gain”. Under this conceptual umbrella, bribery, embezzlement, abuse of functions, trading in influence, are common examples of corrupt acts although the exact legal definitions of these vary across countries. This Note also contemplates the potentially adverse effects of lobbying and the financing of political parties and election campaigns when used to **“capture” investment decisions**.

20. Corruption allegations often surround government-financed infrastructure projects. Indeed, the extent of public officials’ discretion over the investment decision, the large sums of money involved, and the multiple stages and stakeholders implicated may make them more vulnerable to undue influence. Integrity weaknesses in the procurement process undergone for administering public infrastructure investment also provide opportunities for corruption. In fact, according to the OECD Foreign Bribery Report, in more than half (57%) of the cases bribes are paid in order to obtain public procurement contracts (Figure 3). (OECD, 2014d). In addition to bribery, bid-rigging, price-gouging, circumvention of the procurement process, fraudulent billing and the delivery of sub-par quality outputs in order to cut costs are among the most common corrupt activities concerning the implementation of infrastructure projects.

21. The decentralised nature of most public investment projects (see Figure 6 in previous section) may also make them especially open to corrupt practices. On the one hand, decentralisation may narrow the scope for corruption by making politicians more accountable to the citizens they serve (that is, voters should in principle be better able to discern the quality of their leadership and the results they deliver and likewise local politicians should be more in touch with specific needs and contexts of their constituencies). However, there may also be greater opportunity and fewer obstacles to corruption (notably linked to procurement) at the local level compared to the national one, due to, in some instances, **weaker governance capacity at the local level** including less developed local auditing functions, and less visibility to the press and the public (i.e. lower transparency).

22. Furthermore, today, the majority of public infrastructure projects- although by definition funded by the public purse- are not administered or implemented directly by the government but rather through public private partnerships (PPPs) or by public corporations (including state-owned enterprises) which can have more lax procurement standards and/or be subject to less oversight.

23. Additionally, it seems not all public infrastructure projects may be created equal, with recent evidence from the OECD’s Foreign Bribery Report suggesting that some sectors may be more prone to corruption than others. The report found **that two-third of foreign bribery cases occurred in 4 sectors highly related to infrastructure**; 19% occurred in the extractives sector, construction (15%), transport and storage (15%) and information and communication (10%). (Figure 7)

Figure 7. Sectors where more cases of foreign bribery occurred and the purpose of those bribes

Note: Actors are identified with reference to the United Nations International Standard Industrial Classification of All Economic Activities (UN ISIC), Rev.4 (<http://unstats.un.org/unsd/cr/registry/regcst.asp?Cl=27&Lg=1>)

Source: OECD (2014d), OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials, OECD Publishing. doi: 10.1787/9789264226616-en

24. Finally, because large-scale infrastructure projects are highly visible to the public, there are also political incentives aligned to such investments which can lead to waste. Politicians therefore have tendencies to prefer new infrastructure projects rather than maintenance and repairs to existing assets in order to increase their popularity. The influence by vested interests at this point is not so much in the administration of the investment, but in the decision to undertake it in the first place.

25. As an example of unproductive public investment caused by corruption in an investment project, a public official in one country was removed from office for having accepted a bribe estimated to be approximately USD 150 million in relation to a high-speed railway project. It was also found that there had been misappropriation of approximately USD 28.5 million. Following the announcement that the completion date of the railway would be delayed and that the trains would run at a lower speed than initially planned, public concerns over the quality of the transport network have been raised. The cases of corruption involved in this particular project kept the citizens suspicious of the quality even though the audit service did not find any defect in the quality. After its completion, the low ridership due to high ticket prices made the **service unprofitable resulting in losses to state revenue**.

26. In another case, allegations of corruption surrounded the publicly-funded construction of infrastructures for a major international sporting event. The audit court is investigating fraudulent billing and the relationship between the winning construction company and key public officials. The construction company's donation for the public officials' political party exponentially skyrocketed on the election period before the sporting event. And the actual cost of construction is nearly four times as much as what was estimated before the decision was made to host the event. Citizens' discontent was fierce due to the

fact that the construction was entirely funded from the public purse especially when the country's need for other infrastructure, including energy, water and transportation is regarded as urgent.

Corruption creates extra burdens and costs on investment which reduce value for money and the quality of results

27. Corruption comes with a high cost. Direct costs include bribe transfers, higher expenses, scarcity of essential services, lower quality and misallocations of public funds (OECD, 2015a). When there are bribe payments involved in the investment process, those paying the bribes seek to recover the cost of the bribe through inflating prices, billing for work not performed, failing to meet contract standards, reducing quality of work or using inferior materials. This brings about an exaggerated cost of public investment and the decrease in the quality of the investment. Evidently, these practices lead to **lower investment efficiency**. For instance, a study carried out by the OECD and the World Bank has highlighted that corruption in sectors of infrastructure and extractives lead to misallocation of public budget and the services were delivered in low quality and in insufficient amount (Table 2).

Table 2. Consequences of corruption across sectors

	Infrastructure	Extractives
Misallocation of state revenues	Over-investment and mis-investment in infrastructure facilities.	Budget skewed away from services for the poor. Resource dependency common.
Wasted resources	Too-expensive subsidies. Over-inflated costs in construction cause losses for tax payers	Illicit financial flows may reflect stolen state revenues. Inefficient sector governance hampers production and revenue potential.
Inflated prices	Bribes demanded for access to water and electricity. More expensive power supply.	Framework conditions for industrial development in other sectors of the economy largely neglected, resulting in uncompetitive prices for individuals and firms.
Reduced quality	Low-quality roads and other constructions. Poorer utility service provisions (like power cuts).	Few consequences if services are inferior. Lower quality of basic service delivery, including health and education.
Scarcity	Network services not necessarily provided to all districts, despite contractual commitments.	"Scarcity" of competitors if tenders for oil licenses are manipulated.
Unfair allocation of benefits	Poor segments more exposed if there is government failure behind the provision of electricity, water and sanitation.	Political corruption causes income inequalities.
Other negative consequences	Tax/accounting-related fraud. Theft of electricity supply. Embezzlement in construction. Low quality construction claims lives.	Conflict/civil war, terror attacks, bunkering (stolen oil), illegal mining, environmental damage, lack of safety in production (causes health damage and deaths).

Source: OECD (2015 a) "Consequences of Corruption at the Sector Level and Implications For Economic Growth and Development"

28. In addition, corruption also incurs more subtle indirect costs—"such as lower incentives to innovate if market opportunities or jobs are allocated on other grounds than qualifications, the effect of not receiving the government services one is entitled to, lower trust in government institutions, adverse selection of contractors (while honest players stay away), and talented youth placing efforts in rent-seeking/positioning instead of productive labour" (OECD, 2015a). The indirect costs are difficult to

quantify and assess, but their potential detrimental effects on the economy, society and the government cannot be ignored.

29. Assessing the scale of corruption in public infrastructure investment is a challenge because corruption usually leaves no paper trail. However, several studies have estimated the amount of money lost due to corruption. It has been estimated that between 10-30% of the investment in a publicly funded construction project may be lost through mismanagement and corruption (COST, 2012). According to another estimation, “annual losses in global construction through mismanagement, inefficiency and corruption could reach \$2.5 trillion USD by 2020” (COST, 2012). Box 1 below highlights some efforts to estimate the costs of corruption in public infrastructure.

Box 1. Corruption in public infrastructure costs

The Netherlands

On December 2002, following a television documentary providing evidence of collusive behaviour, bid rigging and corrupt practices among construction companies and public officials, several investigations were carried out by the Parliament, the Cabinet, the Department of Justice, and the Dutch Competition Authority. It was found that there was a widespread use of cartels and structural bid rigging within the Dutch construction industry. The media suggested that these malpractices robbed taxpayers of about 0.5 billion euros each year in approximately 3500 projects. The investigations and allegations have had a major impact on trust, and the relationship between public sector clients and the construction industry.

Source: A.G. Dorée, 2004

Canada

On 19 October 2011, the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry, known as the Charbonneau Commission, was established by the Government of Quebec to investigate the scale of collusion and corruption on public construction contracts including, in particular, organisations and businesses of the Government of Quebec and the municipalities, including possible links with political party financing.

Witnesses described different practices in connection with the award of public contracts involving officials, consulting engineering firms, building contractors and political organisations in the municipal and provincial level, such as:

- Market allocations schemes;
- undue payment of a percentage of the value of contracts awarded in certain municipalities to public officials;
- collusion between some engineers and contractors;
- corruption of some officials in the municipal and provincial level;
- presence of organized crime in the construction industry;
- the financing of political parties in connection with the award of public contracts in the construction industry;
- use of false invoicing.

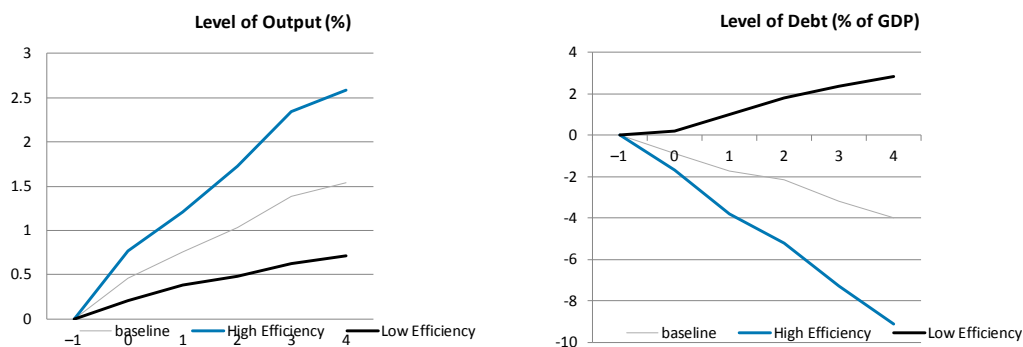
Source: Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction, 2014

Corruption in public investment can also have macro-economic effects on growth and development

30. The efficiency of investment refers to the quality of project selection and execution and the convertibility of the amount invested into productive public capital stock. In this sense, corruption decreases efficiency by inflicting bias on the project selection and decreasing the productivity of the investment project. In general, an increase in public spending results in an increase in output and decrease

in debt level. However, its level of impact differs according to the efficiency level: a lower level of efficiency in investment results in smaller increase of output and the reverse effect on the debt level. (Figure 8)

Figure 8. Effect of Public Investment on levels of output (%) and debt (% of GDP) in Advanced Economies: Role of Efficiency (Years on x-axis)



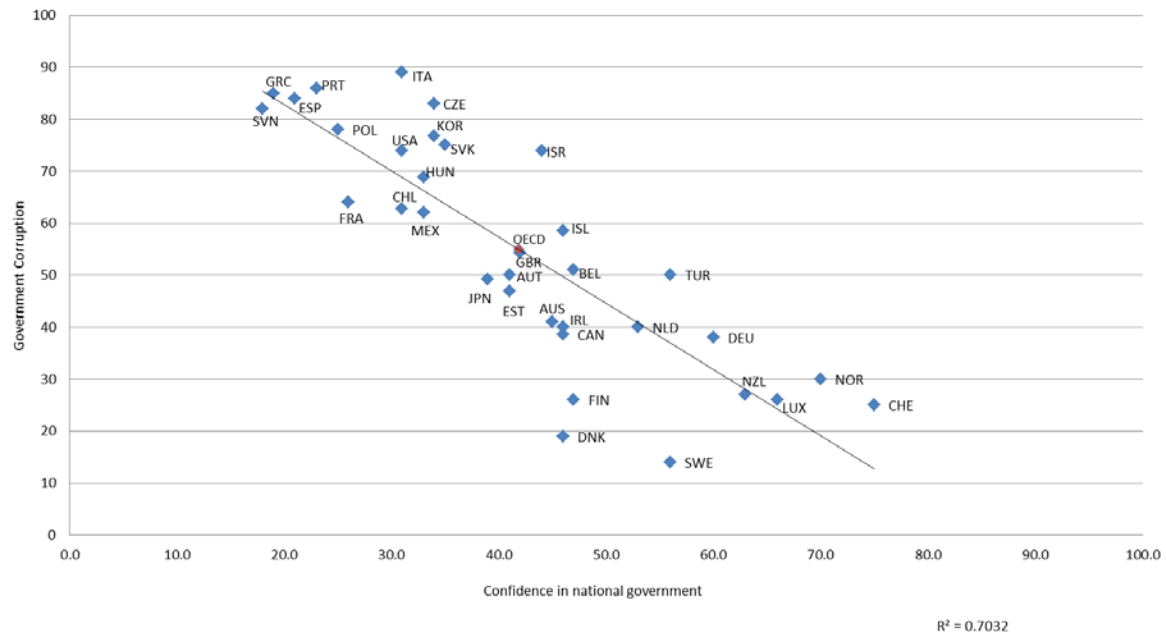
Source: Adapted from IMF World Economic Outlook 2014

31. Low income and developing countries may often lack the infrastructure and necessary capital for investments. Foreign Direct Investments (FDI) and development assistance may contribute by playing a catalytic role on investment and business climate for increased growth (See for example Tyler Lund 2010). Both FDI and development assistance flows run a risk of being distorted for illegal purposes in corrupt environments, making internal control systems and integrity practices key in order to ensure effective operations, development results and value for money. Due to the hidden nature of corruption, the volumes in terms of development assistance funds being misappropriated or stolen are difficult to measure.

32. One of the biggest international donors in terms of Official Development Assistance as a share of its gross national income (GNI), the Swedish International Development Cooperation Agency (Sida), recently published the Annual corruption report accounting for the number and levels of suspected corruption cases involving Swedish development assistance funds during 2014. The report indicated that Sida had concluded 101 investigations related to suspicions of corruption during 2014, and reclaimed 25,1 million SEK (3 Million USD) from developing partners, showing the importance of sufficiently rigorous integrity and internal control systems (Swedish International Development Cooperation Agency, 2015). By applying effective corruption risk management in their disbursement systems, donors like Sida put in place measures that help ensure the use of their development funds. This contributes to partner countries' economies, leveraging the environment for investment, job creation and growth.

Corruption in public infrastructure investment also costs governments in lost trust

33. The costs of fraud and corruption in public investment are not only economic, but also institutional and political, with serious implications for the legitimacy of the state apparatus and the ability of elected leaders and government institutions to function effectively. Figure 9 below for instance demonstrates the strong relationship between perceived corruption and confidence in national governments. The greater the government corruption that is perceived, the lower the confidence.

Figure 9. Correlation: confidence in national government and perception of government corruption (2014)

Source: GallupWorld Poll.

34. By nature large-scale public investment projects are generally highly visible and of great interest to citizens and the media. Poor outcomes or allegations of corruption (although subject to exaggeration from the bandwagon effect) therefore have the potential to influence citizens' views of elected leaders and the effectiveness and legitimacy of public institutions.

III. CORRUPTION IS A HINDERING FACTOR FOR PRIVATE INVESTMENT (DOMESTIC AND FOREIGN)

Governments cannot address the “infrastructure gap” alone and are increasingly partnering with the private sector

35. The tight fiscal space faced by many governments does not always allow them to fund all productive and necessary infrastructure investments. And the infrastructure gaps that are, and will be faced in the coming decades, increasingly underscore the need for private investment. The ownership of an infrastructure project can lie both within the public and private sectors, and the governance structures can therefore vary ranging from public works operating solely by the government with traditional public procurement procedures to hybrid models (public-private partnerships) to privately owned projects.

However, a sound investment climate is essential to attracting private investment

36. In order to attract private capital for infrastructure projects, however, a sound investment environment where their investment returns are predictable needs to be provided to investors. Already in 2002, the Monterrey Consensus of the United Nations International Conference on Financing for Development called upon countries to strive for “a transparent, stable and predictable investment climate, with proper contract enforcement and respect for property rights, embedded in sound macroeconomic policies and institutions that allow businesses, both domestic and international, to operate efficiently and profitably and with maximum development impact”, and it was highlighted that special efforts were “required in such priority areas as economic policy and regulatory frameworks”.

37. In fact, the role of a regulatory management is strongly emphasized, especially with regard to infrastructure projects whose life cycle is often much longer than political cycles. Political risks such as unexpected changes of laws and regulations, unlawful expropriations or other discriminatory actions (e.g. arbitrary non-renewal of a licence) represent a significant disincentive for investments (WEF, 2015). In this light, regulation has become an increasingly important mechanism for managing between the domains of politics and the market. Furthermore, regulators have an advantage over politics and the law in that they can give long term and continuous attention to an area of social and economic concern rather than over shorter horizons or on a case-by-case basis (OECD, 2014e).

38. In addition to a regulatory management system, investment protection through international investment treaties and agreements can greatly contribute to securing sound investment climate. In addition to these standards, investment agreements regularly provide for an investor-State dispute settlement mechanism, granting an investor the right to use dispute settlement proceedings (namely international arbitration) against a the host country of the investment. Effective dispute resolution mechanisms, which include the judiciary, quasi-judicial bodies as well as arbitration, are important means to reduce political risks and to ensure that agreed investment protection standards are respected. It is crucial that justice is done in a reliable, predictable way. This requires, *inter alia*, that the independence, integrity and impartiality of judges and arbitrators are ensured and that adequate resources are provided for the judiciary to allow timely decisions. Reducing political instability through provision of sound regulatory management and credible dispute management mechanisms should accompany efforts to curb corruption.

39. The OECD has developed the Policy Framework for Investment (PFI) (OECD, forthcoming c) to help governments design and implement policy reforms to create an attractive, robust and competitive environment for domestic and foreign investment. The PFI raises issues for policy makers in various policy areas including investment, competition, tax, corporate governance, public governance and other policy domains impacting the confidence of investors.

40. With regard to public governance, the PFI underlines the importance of quality regulation, transparency and openness and integrity as key governance pre-requisites for investment policy. It emphasizes especially the role of integrity in forming a favourable integrity climate. In order to limit undue influence and build safeguards to protect public interest, it suggests policy tools including “effective management of conflict of interests, high standards of behaviour in the public sector, and adequate lobbying and political finance regulation (OECD, forthcoming c),” which have been introduced in several OECD publications including the OECD Guidelines for Managing Conflict of Interest in the Public Sector and the 2010 OECD Principles for Transparency and Integrity in Lobbying. Furthermore, the PFI addresses the need for review mechanisms to assess the performance of laws and regulations on anti-corruption and integrity to ensure compliance.

Corruption imposes extra costs on private investment

41. Private investment, which represented 85% of total investment of OECD member countries in 2013 (OECD, 2015a), is a principal engine of economic development. However, corruption has been identified as one of the most problematic factors for doing business in several OECD countries (WEF, 2014) and it stays a major constraint dominating the investment climate. Within Europe, corruption alone is estimated to cost the EU economy EUR 120 billion per year, just a little less than the annual budget of the European Union (European Commission, 2014). Furthermore, a 2012 Gallup opinion poll show that 57% of the citizens of OECD member countries perceive corruption to be widespread in business.

42. Corruption has been shown to have multiple impacts on development prospects of countries and the investment and trade processes of companies. Empirical studies of the relationship between corruption and economic performance more generally (that is trade, investment and economic growth) yield diverse results. This is not surprising given that that data are weak, especially for corruption levels and for FDI. The fact that political instability and weak governance are closely linked to corruption, with the causality between them still in question, poses additional challenges when trying to assess the economic effect of corruption.

43. Despite these problems, two robust findings in this literature are particularly noteworthy. First, regardless of its impact on aggregate income and investment, corruption interacts in numerous ways with business decisions and with competitive conditions in markets, both domestic and foreign. It influences firms’ access to finance (Khwaja and Mian 2005), whether and where firms invest and export (Malesky, Gueorguiev and Jensen 2014 and Lee and Weng 2013) and how efficient they are (Bo and Rossi, 2007). Thus, although corruption may not show up reliably as a factor determining aggregate investment and income data, it has been shown to have an insidious effect on the decision-making processes and outcomes for production, investment and trade. In addition to criminalising bribery, both domestic and foreign, a robust set of competition and public sector integrity policies (Di Tella and Ades, 1999) designed to counter rent-seeking and corruption for all firms are needed to counter these insidious effects.

44. A second, encouraging finding from this literature is that international efforts to rein in corruption are working – they are influencing the volume of investment to different home countries and the propensity of firms to bribe. For example, the OECD Anti-Bribery Convention is shown to be influencing the decision to bribe in international business transactions by business entities based in signatory countries (D’Souza, A. 2012, Jeong and Weiner, 2012 and Cuervo-Cazurra, 2008). This is especially apparent in

recent years as enforcement efforts have been strengthened (Jensen and Malesky, 2013). It is also worth noting that the larger the number of countries participating in international initiatives, the more effective they are (Cuervo-Cazurra, 2008). Thus, inclusive international efforts and effective alliances among international organisations will increase the efficacy of the international fight against corruption. More broadly, and at the corporate level, academic studies suggest firms exhibiting a long-term commitment to corporate sustainability significantly outperform their counterparts over the long-term, both in terms of stock market as well as accounting performance.

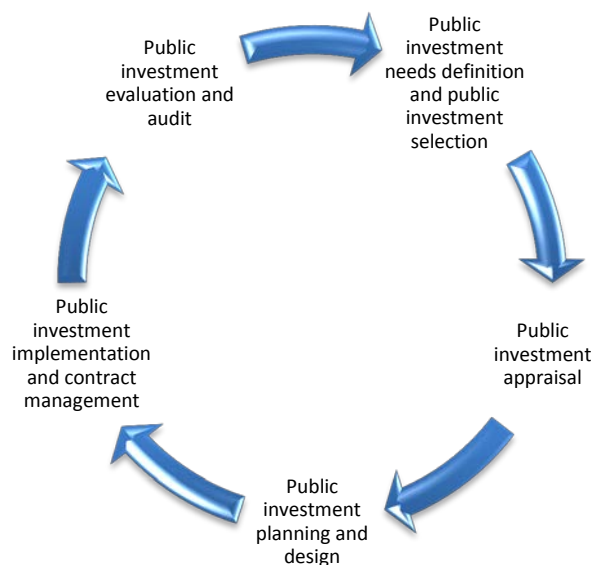
IV. CORRUPTION ENTRY POINTS IN THE PUBLIC INVESTMENT CYCLE

There is a need for a comprehensive, coherent and focused policy framework to curb corruption in public investment

45. Efforts have been mounting for securing a good investment climate for public investment. The OECD has invested a lot of efforts on this issue: the Recommendation on Public Procurement (OECD, 2015c), the Policy Guidance for Investment in Clean Energy Infrastructure (OECD, 2015d), the Recommendation on Effective Public Investment Across Levels of Government (OECD, 2014c), the Recommendation on Principles for Public Governance of Public-Private Partnerships (OECD, 2012), Principles for Private Sector Participation in Infrastructure (OECD, 2007b), Framework for Investment Policy Transparency (OECD, 2003a) and Checklist for Foreign Direct Investment Incentive Policies (OECD, 2003b) and Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD, 1997) and the update Policy Framework for Investment. However, there still lacks a comprehensive, coherent and focused policy framework to address the specific risks of corruption in public investment. Curbing corruption cannot be addressed by policy makers alone – anti-corruption efforts by the business community are also an essential part of the anti-corruption mix. Building on OECD instruments in this area, this section maps out conducts and risks of corruption at each phase of the investment cycle and identifies tools and mechanisms to curb corruption in investment.

46. Corruption in the different phases of a public investment cycle, especially infrastructure, can involve a wide range of actors including elected and non-elected public officials, lobbyists, civil society organisations, trade unions, regulators, contractors, engineers and suppliers. In addition, corruption at different phases can take place in a wide variety of ways, such as undue influence or capture of the investment project by specific interests, or bribery in the procurement process. The following sections identify entry points for corruption and major forms of corrupt practices taking place during the different phases of a public investment cycle. (Figure 10)

Figure 10. Public Investment cycle



Source: Based on Dabla-Norris, Era at all, (2011), Investing in Public Investment: An Index of Public Investment Efficiency

Public investment needs definition and selection phase

47. The parties involved in the public investment needs and selection phase may include high level elected and non-elected public officials responsible for defining the project, lobbyists, trade unions, regulators, NGOs and potential contractors. Corruption can occur where one or more of these groups seek to undertake a public investment primarily for their own profit or benefit and use corrupt practices to achieve this. This may occur, for example, where:

- Interest groups such as lobbyists, political coalitions and/or trade unions use non ethical and corrupt tactics to influence the decision-makers towards their interest.
- Public officials are bribed by a potential interest group to obtain confidential information on the government policy priorities or strategic government documents before these are made public.
- Elected public officials choose a specific public investment to benefit contractors that contributed to his/her political campaign.
- A specific public investment is selected because the public official responsible for approving the public investment has received a bribe from a potential contractor.
- A specific public investment is selected because the public official or his/her family member is part of the board of the potential company developing, building or participating in the construction of the public investment.
- A specific public investment is selected because the public official has allegiance (previous job or business relationships) with the potential company developing, building or participating in the construction of the public investment.

Public investment appraisal phase

48. During this phase, elected and non-elected public officials at all levels of government, companies, lobbyists and financial stakeholders (banks, financial agents) can corruptly seek and/or manage a financing arrangement for the public investment. This may occur, for example, where:

- A financial institution or agent, such as a bank, pays a bribe to a public official in charge of the public investment in return for the institution or agent being awarded the contract to finance the investment.
- A public official presents incomplete or false information regarding the social, economic and/or environmental feasibility studies to ensure the public investment is approved.
- A public official or the intended contractor/private operator bribe a person carrying out the social, economic and/or environmental feasibility studies to ensure the public investment is approved.
- The investor's financial risk assessments may be negated or manipulated to downplay the risks associated with the contractor.
- Elected public officials favour public investment that will be carried out through concessions or PPPs to benefit a private operator that contributed to their political campaign.
- The potential private operator of a PPP or a concession bribes a public official to not carry out a proper risk allocation, sensitivity analysis or other guarantee measures. This allows increasing the amount paid by the government to financially balance the project at the start or during future renegotiations.
- The potential private operator of a PPP or a concession bribes a public official for him not to secure the land where the project will be carried out and to disclose information about the location so the potential private operator of a PPP or a concession can buy the land and increase the price of expropriation.

Public investment planning and design phase

49. The parties involved in the planning and design phases include the responsible for the project, public officials responsible for issuing planning permits and other approvals and potential bidders and contractors. The following are examples of corrupt practices during the planning and design phase of a project:

- The contractor bribes a public official in order to obtain planning permits for the public investment, or to obtain approval for a design which does not meet relevant building regulations.
- Companies bribe a public official or local authority to obtain confidential information about the planning and design process.
- Potential bidders collude to ensure that the design of the tender will only favour one of the bidders.
- A company bribes public officials or authority responsible for the design of the public investment to tailor the design for him/her and disqualify other potential bidders. For example, a certain

technology only possessed by one of the bidders may be specified, even though other technologies may be preferable or less costly.

- The design firm, architect or engineer has a close relationship with to the public official in charge of the public investment (e.g. family or former colleagues).

Public investment implementation and contract management phase

50. Most of public investment, especially infrastructure projects are implemented through public procurement and private-public partnerships. In this phase the main actors are bidders, contractors and public officials. The following examples reflect how corruption may occur when awarding a public procurement contract or a private-public partnership:

- Bidders bribe a public official to obtain confidential information about the process, the tender documents and the reference price resulting in asymmetry of information for all potential bidders.
- A bidder which is properly qualified is rejected at pre-qualification stage as a result of bribery to the public official in charge of the public investment by another bidder.
- The bidder bribes a public official, in return for which the official ensures that the bribing bidder wins the contract. For example, the official manipulates the tender evaluation (for example, the points given on the technical evaluation) with the result that the bribing tenderer wins.
- The official ensures that there is no competitive process. The public official may announce false reasons for a direct award (e.g. special technology possessed only by the tenderer, emergency, or national security).
- The bidder provides a contribution to the ruling party to ensure that he/she will obtain the procurement contract or the concession without competition or that the evaluation method will benefit him/her only. Bidders collude to give the appearance of competition through bid rigging schemes such as cover bidding, bid suppression, bid rotation and market allocation.
- The public official awards contracts to companies own by his/her family members or to companies with which he/she has a relationship with (e.g. previous or future employer).
- The contractor bribes the public official to allow modifications to the public investment increasing the scope, time and costs resulting in higher price paid by the government.
- The contractor bribes the public official to approve defective or non-existent work.
- The contractor provides false invoices and bribes the public official to approve or overlook the discrepancy.
- The contractor misprices the goods or services and bribes the public official to approve or overlook the discrepancy.
- The contractor does false reporting of work time and qualification of his/her staff to increase or justify the cost paid by the government and bribes the public official to not verify the validity of the reporting.

Public investment evaluation and audit phase

51. A crucial and final phase is one of monitoring and evaluation, whereby internal control mechanisms are applied by relevant ministries and there exists credible and independent internal and external audit to verify the application of said controls as well as to audit public works projects directly. During this phase, contractors, evaluators and public officials can misrepresent activities and results through (i) discrepancies in financial reporting; (ii) non-compliance with financial or non-financial standards and terms and (iii) substandard performance. The following examples reflect how corruption may manifest in these ways:

- Auditors are bribed to overlook faults in financial risk assessments by the contracting entity that would otherwise point to risks in awarding the contract to the winning bid.
- A stakeholder falsifies information about the financing, processes and/or results in order to have falsely positive evaluations.
- Stakeholders forge financial documentation requested by the auditors.
- Information is purposely not publicly disclosed in order to not allow for evaluation by civil society.
- Internal or external auditors are complicit in limiting the information it requests as part of the audit execution.
- Actors are complicit in fragmenting contracts to avoid meeting the financial threshold that requires an ex ante or a priori audit, in order to move ahead with projects that have not been structured in compliance with regulations
- The public official hire a company to which he has close relationship to ensure that the auditor will not report the findings.
- The contractor and/or the public official bribe the auditor to ensure that the auditor will not report legitimate findings of non-compliance and substandard performance.
- Auditors are bribed to report favourable audit observations.

V. TOWARDS A CHECKLIST TO CURB CORRUPTION IN PUBLIC INVESTMENT

52. Following the mapping of conducts and risks of corruption at each phase of the investment cycle, this section will suggest measures to prevent corruption, mitigate the risks, and to redress them by addressing each of the conducts and risks previously identified. The following checklist is being developed with the goal of assisting governments and private sector actors in mitigating corruption risks in public investment by identifying corruption entry points over the entire public investment cycle. The checklist is still being developed and thus some questions and answers are not supported with an example. The checklist, which will benefit from further feedback from the OECD's 2015 Integrity Forum, will soon be completed to provide examples of practices for each question and answer of the checklist.

Essential elements applicable to all phases

53. There are certain measures that should be instituted throughout the policy cycle to mitigate corruption risks. They are not unique to a particular stage or phase but rather are critical throughout. The following questions and answers may guide how to prevent corrupt practices in all phases.

Q1. Are there any measures to prevent public officials and private sector employees from accepting or demanding bribes?

Governments could address these issues through:

- Developing codes of conduct for public officials, for instance in charge of tender documents or delivering construction permits, which include:
 - clear mission of the organisation, as well as its values and principles and the linkages with standards of professional conduct
 - visible guidelines on probity
 - clear definitions on what constitutes a corruption risks
 - guidelines on how public servants deal with the ethical dilemmas, prejudices and grey areas that are encountered in everyday work
 - Sanctions for integrity breaches, including administrative, disciplinary and criminal

Box 2. New Zealand Standards of Integrity and Conduct

The current New Zealand Code of Conduct for civil servants came into force on 30 November 2007, superseding the previous code, the New Zealand Public Service Code of Conduct, which had been issued in 2001 pursuant to what was then Section 57 of the State Sector Act 1988. The current Code is only delivered as a one-page document, affirming the broad characteristics of public service which should be fair, impartial, responsible and trustworthy. The Code only provides general rules of behaviour, without providing specific advice on how to behave in real-world situations. However, the Code of Conduct is not a self-standing document, as it is provided along with "Understanding the Code of Conduct - Guidance for State Servants"¹, a guide for public employees which explains the content of the Code.

Fair

We must:

- Treat everyone fairly and with respect
- Be professional and responsive
- Work to make government services accessible and effective
- Strive to make a difference to the well-being of New Zealand and all its people.

Impartial

We must:

- Maintain the political neutrality required to enable us to work with current and future governments
- Carry out the functions of our organisation, unaffected by our personal beliefs
- Support our organisation to provide robust and unbiased advice
- Respect the authority of the government of the day.

Responsible

We must:

- Act lawfully and objectively
- Use our organisation's resources carefully and only for intended purposes
- Treat information with care and use it only for proper purposes
- Work to improve the performance and efficiency of our organisation.

Trustworthy

We must:

- Be honest
- Work to the best of our abilities
- Ensure our actions are not affected by our personal interests or relationships
- Never misuse our position for personal gain
- Decline gifts or benefits that place us under any obligation or perceived influence
- Avoid any activities, work or non-work, that may harm the reputation of our organisation or of the State Service.

Note: ¹. Available at <http://www.ssc.govt.nz/code-guidance-stateservants>

Source: New Zealand State Services Commission, www.ssc.govt.nz/sites/all/files/Code-of-conduct-StateServices.pdf, accessed 11 March 2015.

- Ensuring that the public sector develops and implements codes of conduct for private sector employees which include:
 - Clear examples of activities that will compromise the ethical behaviour of the business when working closely with the public sector

- Punishments for integrity breaches including administrative, disciplinary and criminal breaches

Box 3. International Federation of Consulting Engineers (FIDIC)'s Code of Ethics

Responsibility to society and the consulting industry

The consulting engineer shall:

- Accept the responsibility of the consulting industry to society.
- Seek solutions that are compatible with the principles of sustainable development.
- At all times uphold the dignity, standing and reputation of the consulting industry.

Competence

The consulting engineer shall:

- Maintain knowledge and skills at levels consistent with development in technology, legislation and management, and apply due skill, care and diligence in the services rendered to the client.
- Perform services only when competent to perform them.

Integrity

The consulting engineer shall:

- Act at all times in the legitimate interest of the client and provide all services with integrity and faithfulness.

Impartiality

The consulting engineer shall:

- Be impartial in the provision of professional advice, judgement or decision.
- Inform the client of any potential conflict of interest that might arise in the performance of services to the client.
- Not accept remuneration which prejudices independent judgement.

Fairness to others

The consulting engineer shall:

- Promote the concept of "Quality-Based Selection" (QBS).
- Neither carelessly nor intentionally do anything to injure the reputation or business of others.
- Neither directly nor indirectly attempt to take the place of another consulting engineer, already appointed for a specific work.
- Not take over the work of another consulting engineer before notifying the consulting engineer in question, and without being advised in writing by the client of the termination of the prior appointment for that work.
- In the event of being asked to review the work of another, behave in accordance with appropriate conduct and courtesy.

Corruption

The consulting engineer shall:

- Neither offer nor accept remuneration of any kind which in perception or in effect either: a) seeks to influence the process of selection or compensation of consulting engineers and/or their clients; or b) seeks to affect the consulting engineer's impartial judgement.
- Co-operate fully with any legitimately constituted investigative body which makes inquiry into the administration of any contract for services or construction.

Source: Adapted from International Federation of Consulting Engineers (FIDIC)'s Code of Ethics <http://fidic.org/about-fidic/fidic-policies/fidic-code-ethics>

- Applying strong legal sanctions to the contractors who offer bribe payments such as restrictions on participation in future investment projects or other public procurement processes.

Box 4. Agreement for Mutual Enforcement of Debarment Decisions: Cross-debarment

The African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group and the World Bank Group signed the Agreement for Mutual Enforcement of Debarment Decisions in April, 2010. The participating institutions enforce debarment decisions made by another participating institution with respect to the agreed four sanctionable practices including (i) Fraudulent Practice, (ii) Corrupt Practice, (iii) Coercive Practice, and (iv) Collusive Practice.

Source: <http://www.constructiontransparency.org/documentdownload.axd?documentresourceid=29>

Box 5. Debarment in Canada

The Public Works and Services Canada (PWGSC) Integrity Framework establishes that a supplier is ineligible to do business with PWGSC for 10 years following a conviction or a guilty plea with a conditional or absolute discharge for any of the following Canadian or similar foreign offences:

frauds against the government under the Criminal Code of Canada;	frauds under the Financial Administration Act;
payment of a contingency fee to a person to whom the Lobbying Act applies	corruption, collusion, bid-rigging or any other anti-competitive activity under the Competition Act
money laundering	participation in activities of criminal organisations
income and excise tax evasion	bribing a foreign public official
offences in relation to drug trafficking	extortion
bribery of judicial officers	bribery of officers
secret commissions	criminal breach of contracts
fraudulent manipulation of stock exchange transactions	prohibited insider trading
forgery and other offences resembling forgery	falsification of books and documents

In order for bids to be admissible following the 10-year debarment period, a record suspension must be obtained, or capacities restored by the Governor in Council, for fraud-related offences under the *Criminal Code of Canada* or the *Financial Administration Act*.

Source: Integrity Framework, Public Works and Services Canada, available at <http://www.tpsgc-pwgsc.gc.ca/ci-if/ci-if-eng.html>

Q2. Are there measures in place to adequately identify and manage potential and apparent conflicts of interest situations?

Governments could address this issue through:

- Identifying and mitigating conflict of interest situations through legislation, codes of conduct or guidelines.
- Providing clear examples and situations of private interests that may lead to potential conflicts of interest situations in legislation, codes of conduct and/or guidelines, including on gifts, hospitality, previous employment, outside positions, assets and liabilities
- Providing public officials in “at-risk” areas with specific codes of conduct, especially for those who have higher interaction with private sector

- Requiring public officials to disclose their family members' private interests where potential conflicts of interest may arise

Box 6. Conflict of Interest Management during Tender Evaluation in Australia

Government of South Australia's Department of Planning, Transport and Infrastructure (DPTI) addresses ways to address potential and material conflict of interest situations during the procurement process through the Procurement Management Framework. It states that the DPTI staff member should notify the evaluation Panel Chairperson as soon as they notice any apparent conflict of interest situation. Even though a potential conflict of interest will not necessarily preclude a person from being involved in the evaluation process, it is declared and can be independently assessed.

It also lists situations which would be considered as a material conflict of interest of a staff in relation to a company submitting a tender including: (i) a significant shareholding in a small private company which is submitting a tender; (ii) having an immediate relative (e.g. son, daughter, partner, sibling) employed by a company which is tendering, even though that person is not involved in the preparation of the tender and winning the tender would have a material impact on the company; (iii) having a relative who is involved in the preparation of the tender to be submitted by a company; (iv) exhibiting a bias or partiality for or against a tender (e.g. because of events that occurred during a previous contract); (v) a person, engaged under a contract to assist DPTI with the assessment, assessing a direct competitor who is submitting a tender; (vi) regularly socialising with an employee of tenderer who is involved with the preparation of the tender; (vii) having received gifts, hospitality or similar benefits from a tenderer in the period leading up to the call of tenders; (viii) having recently left the employment of a tenderer; or (ix) considering an offer of future employment or some other inducement from a tenderer.

Source: http://www.dpti.sa.gov.au/open_government/proactive_disclosure/details_of_procurement_practices_within_departments

Box 7. Conflict of Interest Management in Infrastructure Projects in the Philippines

The Bidding Document provided by the Department of Transportation and Communication of the Philippines for Bicol International Airport Development Project states that bidders with conflicting interests shall be disqualified to participate in the procurement process. The document lists detailed cases of Bidders with conflicting interest situations, examples of which include; a bidder having controlling shareholders in common with another bidder; a bidder receiving or having received any direct or indirect subsidy from any other bidder; or a bidder who participated as a consultant in the preparation of the design or technical specifications of the goods and related services that are the subject of the bid.

Furthermore, in accordance with the Implementing Rules and Regulations of Republic Act No. 9183 ("Government Procurement Reform Act"), all bidding documents shall be accompanied by a sworn affidavit of the bidder that it is not related to the Head of the Procuring Entity, members of the Bid and Awards Committee (BAC), member of the Technical Working Group (TWG), members of the BAC Secretariat, the head of the Project Management Office (PMO) or the end-user unit, and the project consultants, by consanguinity or affinity up to the third civil degree.

Source : http://www.dotc.gov.ph/images/Public_Bidding/CivilWorks/Air_Sector/2014/NewLegazpiApt--BIADP_P2a/BidDocs_BIADP_Pkg2A_Clean_WithEdits_SGD.pdf

Q3. Are there measures in place to regulate and limit the use of confidential information by public officials?

Governments could address this issue through:

- Cancelling retrospectively the decisions based on confidential information
- Setting up mechanisms that prevent confidential information, authority or influence from being used for personal gain or for improper advantage of other businesses and non-profit organisations

Q4. Are there mechanisms in place for the government and the private sector to provide protection for employees to report wrongdoings or breaches of integrity?

Governments and business could address this issue through:

- Providing consistent advice and support to staff in case of questions or having witnessed misconduct and integrity breaches such as through a whistleblower hotline and providing effective whistleblower protections for those who report misconduct in good faith
- Developing guidelines to report wrongdoing in case of integrity breaches or mismanagement and providing effective protections for those who report such wrongdoing in good faith
- Providing effective protection ensuring that private and public sector employees, as well as their careers, are protected, in case they report wrongdoing in good faith

Box 8. Comprehensive protection in Korea

Korea's Act on the Protection of Public Interest Whistleblowers provides protection to whistleblowers who report any violation of public interest in both the public and private sector. Whistleblowers are protected from:

- a. Removal from office, release from office, dismissal or any other unfavourable personnel action equivalent to the loss of status at work;
- b. Disciplinary action, suspension from office, reduction in pay, demotion, restriction on promotion and any other unfair personnel actions;
- c. Work reassignment, transfer, denial of duties, rearrangement of duties or any other personnel actions that are against the whistleblower's will;
- d. Discrimination in the performance evaluation, peer review, etc. and subsequent discrimination in the payment of wages, bonuses, etc.;
- e. The cancellation of education, training or other self-development opportunities; the restriction or removal of budget, work force or other available resources, the suspension of access to security information or classified information; the cancellation of authorization to handle security information or classified information; or any other discrimination or measure detrimental to the working conditions of the whistleblower;
- f. Putting the whistleblower's name on a black list as well as the release such a blacklist, bullying, the use of violence and abusive language toward the whistleblower, or any other action that causes psychological or physical harm to the whistleblower;
- g. Unfair audit or inspection of the whistleblower's work as well as the disclosure of the results of such an audit or inspection;
- h. The cancellation of a license or permit, or any other action that causes administrative disadvantages to the whistleblower;

Source: Korea's Act on the Protection of Public Interest Whistleblowers, Act No. 10472, Mar. 29, 2011. Article 2 (6).

Q5. Are there measures in place in the private sector to ensure support and commitment from senior management in the prevention of corruption in public investment?

Business could address this issue through:

- Demonstrating visible and active commitment by the Board of Directors or equivalent body to the implementation of the enterprise's programme through strong, explicit and visible support and commitment from senior management to the company's internal controls, ethics and compliance programmes or measures for preventing and detecting foreign bribery
- Adopting anti-corruption code of conduct for businesses

Box 9. APEC Anti-Corruption Code of Conduct for Business

APEC leaders have acknowledged the importance of curbing corruption in business and promoting business integrity and transparency in the private sector and thus developed APEC Anti-Corruption Code of Conduct for Business. The Code specifically lists the following elements:

- 1) Prohibition of bribery; that all forms of bribes shall be prohibited
- 2) Program to Counter Bribery; that the enterprises, in consultation with their employees, should develop a program reflecting the characteristics and specificities of the business which should apply to all controlled subsidiaries, foreign and domestic
- 3) Provision of clear scope and guidelines with regard to charitable contributions, gifts, hospitality, expenses, facilitation payments and political contributions
- 4) Implementation of the program via communication, management leadership especially that of the Board and the CEO, appropriate financial recording and auditing mechanisms, human resources management reflecting the enterprise's commitment to it, raising awareness, monitoring and review, training, etc.

Source: http://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Task-Groups/~/_media/Files/Groups/ACT/07_act_codebrochure.ashx

Q6. Are there measures in place for governments and companies to, promote and incentivise integrity and compliance, together?

Governments and business could, address this issue together through:

- Taking a holistic approach to promoting business integrity, especially in the area of public investment, given that these transactions are especially prone to the risk of corruption and other types of misconduct (i.e., fraud, bid-rigging, money-laundering, conflicts of interest, etc.) The OECD is considering this type of approach to promoting business integrity with the new OECD Trust and Business Project (www.oecd.org/daf/ca/trust-business.htm). This approach could include assessing the following measures for creating a culture of integrity in companies doing business with governments, many of which are included in the OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance*:
 - Reflecting in recruitment, promotion, training, performance evaluation, and recognition the company's commitment in the fight against corruption
 - Ensuring that employees will not suffer retaliation, discriminatory or disciplinary action for refusing to pay bribes, even if such refusal may result in the company losing business

- Providing trainings constantly to employees on integrity and anti-corruption measures
- Implementing special policies for particular risk areas such as facilitation payments; conflict of interest; solicitation and extortion; and special types of expenditures, such as gifts, hospitality, travel and entertainment, political contributions, and charitable contributions and sponsorships

Public investment needs and selection phase

54. The identification and selection process of investment projects could involve significant discretion of public officials and participation of multiple stakeholders, which make this stage prone to corruption. Specific regulations for each stakeholder should be clearly stated and communicated and potential conflict of interest situations should be adequately identified and managed for the public officials involved in the process.

55. Enhancing transparency and public participation can contribute to ensuring that the process is carried out based on policy priorities. In addition, addressing the treatment of confidential information and depoliticizing the problem identification and public investment selection could greatly aid to limit undue influence in the process. The following questions and answers may guide how to prevent corrupt practices in this phase:

Q7. Are there measures in place to ensure that public investment decisions are based on national, regional or sectorial objectives?

Governments could address this issue through:

- Providing online platforms where the public is invited to inform national infrastructure priorities
- Setting up an independent body responsible for assessing the national infrastructure needs
- Coordinate with sub-national governments to ensure that strategic priorities for investment are well aligned across levels of Government (OECD, 2014b)

Box 10. Infrastructure Australia and the National/sub-national platform of dialogue

Infrastructure Australia

The central government created an advisory body, Infrastructure Australia (IA), to co-ordinate with the states for investments of national importance. The body was established in 2008 to advise the central government on investment priorities in the transport, communication, water and energy sectors and to help states identify infrastructure projects that are a national priority. IA assesses the states' applications for funding under the Building Australia Fund (BAF), the Commonwealth's main mechanism to finance critical infrastructure projects.

National/sub-national platform of dialogue

The **Council of Australian Governments (COAG)** is the main forum for the development and implementation of inter-jurisdictional policy. It is composed of the Australian Prime Minister as its chair, State Premiers, Territory Chief Ministers and the President of the Australian Local Government Association. Through COAG, the federal and sub-national governments have endorsed national guidelines on public-private partnerships, agreed to a national port strategy, and concluded intergovernmental agreements on heavy vehicles, rail and maritime safety. COAG also receives regular reports from Infrastructure Australia.

Source: OECD (2014) Toolkit on Effective Public Investment Across Levels of Government- Australia. Available at <http://www.oecd.org/effective-public-investment-toolkit/australia.pdf>

Q8. Are there measures in place to prevent that the selection of public investment favours a particular interest's group/individual against public interest?

Governments could address these issues through:

- Rendering the decision-making process more transparent by:
 - Making relevant information available publically through channels such as web sites, and newsletters
 - Publishing information and reports regarding long term national and development plans
 - Increase citizen participation through participatory budgets

Box 11. Participatory budgeting, Porto Alegre, Brazil

Participatory budgeting (PB) began more than a decade ago in Porto Alegre, the e Capital of the State of Rio Grande do Sul, one of the most populated cities in South Brazil.

The participatory budgeting is a process through which citizens present their demands and priorities for civic improvement, and influence through discussions and negotiations the budget allocations made by their municipalities.

Since 1989, budget allocations for public welfare works in Porto Alegre have been made only after the recommendations of public delegates and approval by the city council. Participatory budgeting has resulted in improved facilities for the people of Porto Alegre.

The Participative Budget has proved that the democratic and transparent administration of the resources is the only way to avoid corruption and mishandling of public funds. Despite certain technocratic opinions, the popular participation has provided efficient spending, effective where it has to be and with results in public works and actions of great importance for the population. Since its beginning, the projects decided by the Participative Budget represent investments over 700 million dollars, mainly in urban infra-structure and upgrading the quality level of the population.

Source: Adapted from World Bank (2015b), Empowerment Case Studies: Participatory Budgeting in Brazil available at http://siteresources.worldbank.org/INTEMPowerment/Resources/14657_Particip-Budg-Brazil-web.pdf and (UNESCO, 2015), Management of Social Transformations (MOST) Programme Database <http://www.unesco.org/most/southa13.htm>

- Increase citizen participation through a website for citizens to prioritise public investments.

Box 12. The United Kingdom: Public Inquiry in the Construction of Heathrow's Terminal 5

The construction of Heathrow Airport Terminal 5 (T5) was the largest construction project in Europe in the early 2000s.

The construction of Heathrow's Terminal 5 also holds the record of the longest public inquiry in the history of the UK, which lasted nearly four years. The public inquiry cost £80m, heard 700 witnesses and generated 100,000 pages of transcripts. The secretary of state gave his approval to the project after reviewing the public inquiry report, and a number of conditions and limitations were imposed to take into account the complaints of local communities regarding noise and pollution.

The British Airports Authority (BAA) claimed that the terminal was needed to cope with the projected rise in numbers of passengers from around 58 million then to 80 million in 2013, to maintain Heathrow's position as a world airport hub. BAA argued that because aircraft were getting larger the number of flights would only increase by eight per cent. BAA told the public inquiry that it was prepared to accept a cap on aircraft noise at 1994 levels and a limit on the number of night flights at then current levels. It maintained that noise would not increase because engines were getting quieter and noise monitoring was improving. BAA said that if Terminal 5 was rejected the South East of England would run out of airport capacity in five years with damaging effects on the economy. BAA also claimed that opinion polls showed a growing number of local residents supported the terminal.

The London Chamber of Commerce launched a campaign, Business for T5, to promote the benefits of expanding the airport. It claimed that overseas visitors would spend an estimated 10 million fewer nights in Britain if Terminal 5 did not go ahead with a loss of about £1 billion to the hotels sector and another £500 million to the wider tourist industry.

Heathrow has since launched property and noise consultations to develop compensation packages and seek views on how that compensation fund should be used £550 million allocated for the noise insulation and property compensation programme.

Source: http://www.hacan.org.uk/resources/briefings/hacan.briefing.heathrow_terminal_5.pdf

- Inviting relevant groups in the decision making process:
 - Finding the right mix of participants and ensuring that no group is inadvertently excluded
 - Stakeholder mapping and analysis
 - Marginalising “usual suspects”
- Consulting experts and “outsiders” from the public administration to evaluate the pertinence of the public investment and the results of that consultation must be publically disclosed.
- Securing transparency and integrity in lobbying (OECD principles on lobbying)
 - Introduce a lobbying registry
 - Regulation of revolving doors (e.g. cooling off period, etc.)

Box 13. Revolving Doors: Australia and Chile

Article 7 of Australia's Lobbying Code of Conduct sets a cooling-off period of 18 months for ministers and parliamentary secretaries and 12 months for ministerial staff. During those times, the former are prohibited from engaging in lobbying activities pertaining to any matter on which they worked in the last 18 months of employment, and the latter in the last 12 months.

For a period of six months after they leave office, Chile prohibits officials from the executive branch of government from working in or for companies that were under the supervision and control of the public body in which they were previously employed.

Source: OECD (2014 f), Lobbyists, Governments and Public Trust, Volume 3: Implementing the OECD Principles for Transparency and Integrity in Lobbying, OECD Publishing, <http://dx.doi.org/10.1787/9789264214224-en>

- Transparency/balanced composition in advisory group

Box. 14 Register of Commission Expert Groups and Similar Entities

The European Commission created a Register of Commission Expert Groups and Similar Entities in December 2010. It contains information on the types of entities listed, groups' membership, the department running the groups, the procedures used to select members, groups' missions and activities. Stakeholders can thus scrutinise the work of advisory groups which, in turn, could make it less likely that the interests of the few influence outcomes at the expense of the public interest.

Source: OECD (2014 f), Lobbyists, Governments and Public Trust, Volume 3: Implementing the OECD Principles for Transparency and Integrity in Lobbying, OECD Publishing, <http://dx.doi.org/10.1787/9789264214224-en>

Q9. Are there measures in place to prevent that elected public officials choose a specific public investment to benefit contractors that contributed to their political campaign?

Governments could address this issue through:

- Banning certain types of private contributions, in particular:
 - Corporations with government contracts or partial government ownership
 - Corporate donations, trade unions, etc.
 - Foreign corporate donations
 - Introduce the limit for private funding
- Requiring disclosures of information regarding political funding and ensuring that:
 - Information is timely, reliable, accessible and intelligible public disclosure of reports
 - Information is complete and includes private donations

Box 15. Oversight/Information Disclosure

In the United Kingdom all parties' reported financial information i.e. donation/loan reports, campaign expenditure returns and statement of accounts are made available on the Electoral Commission's website. This includes pdf copies of invoices and receipts for campaign expenditure.

In Italy, party financial accounts must be published on the websites of the political parties, the website of the Chamber of Deputies, as well as in newspapers, and the Official Gazette of the State.

Source: OECD (forthcoming d). Financing Democracy

- Promoting media and civil society scrutiny
- Ensuring that companies/contractors publish online their contributions to political campaigns and political parties
- Ensuring independent and efficient oversight by:
 - Strengthening independence of monitoring body and process
 - Providing capacity through sufficient resources and specialised auditing capacities and methodologies
 - Providing for dissuasive and enforceable sanctions in case of breaches

Box 16. New Zealand: Sanctions on non-submission of financial reports

In New Zealand, non-submission of financial reports can lead to fines. If anonymous donations exceed NZD 1,500 [USD 1,000], exceeding amount must be paid to the Electoral Management Body. Person convicted of corrupt practices loses right to vote for three years, and face imprisonment not exceeding two years. In cases of corrupt or illegal campaign practices, the election of a candidate can be voided.

Source: OECD (forthcoming d). Financing Democracy

Public investment appraisal phase

56. It can be difficult to assess the cost of government-led investment projects, and especially infrastructure projects, where comparable information is not often available due to the size of the projects or the scarcity of comparable projects. Due to this, financial, economic, environmental and social feasibility studies have more room for manipulation. It is thus suggested by some experts to use reference class forecasting as aid in making more accurate estimation of costs and benefits (Flyvbjerg et al, 2009).

57. Moreover, guaranteeing the independence of the experts and consultants carrying out the studies may also assist in mitigating corruption risks in this phase. Similarly, a professional and independent audit function can be an important method of deterring and detecting corruption. An ex ante audit during the project appraisal should work to deter potential avenues for corruption, requiring risks to be addressed before advancement. However, ex ante audits should not be relied upon as the sole check-and-balance, but should be considered one verification method meant to coincide with appropriate due diligence and the application of measured controls. The following questions and answers may guide how to prevent corrupt practices in this phase:

Q10. *Are there measures in place to ensure that awarding the contract to banks to finance the investment is based on their capacity to finance and cost, and that it is not inflicted by other undue influence?*

Governments could address this issue through:

- Ensuring that Bankers follow codes of conduct with specific regulations requiring more scrutiny for those having higher interaction with the public sector.

Box. 17. Business Conduct Guidelines of Commerzbank AG

The Business Conduct Guidelines of Commerzbank AG address professional ethics and behaviour of their employees, inter alia, by requiring compliance with applicable laws as well as impartiality and the prohibition of accepting or providing gifts. The Guidelines also include sections on conflicts of interest, bribery, corruption, and tax fraud, money-laundering and insider trading.

Source: https://www.commerzbank.de/media/konzern_1/konzerninfo/verhaltensrichtlinie/Compliance_Verhaltensrichtlinie_en_July11.pdf

- Implementing legislations or codes of conduct which explicitly prohibit public officials from receiving certain payments or gifts that may create conflict of interest situations to their official duty.
- Higher scrutiny is demanded for senior officials who have more discretion and decision-making power

Q11. *Are there measures in place to ensure objectivity and credibility of social, economic and environmental feasibility studies?*

Governments could address this issue through:

- Limiting discretionary room of the public officials in the assessment through
 - delegating the assessment studies to external experts for social, economic and environmental feasibility studies or
 - providing public officials with standardised assessment guideline
- Publishing the studies for which the public officials or the experts who carried out the studies will be held responsible.
- Assuring a proper public consultation process associated with the relevant feasibility studies.
- Keeping record of the assessment of the expert on their report for future reference and penalising those with alleged bias on future public investment project assessments.
- Restricting room for undue influence on the experts through:
 - sanctions on public officials who try to unduly influence the experts' studies
 - carrying out internal concomitant audit and having external scrutiny

Box 18. Public and Private Infrastructure Investment Management Centre (PIMAC) in Korea

PIMAC is a Korean think-tank that conducts project evaluation as Preliminary Feasibility Studies (PFS) and Re-assessment Studies of Feasibility on public investments, and Value for Money Tests for PPP projects of infrastructure investment project.

The Preliminary Feasibility Studies Guideline provides for guidance on how to appraise projects and states what kinds of cost and benefit analysis should be included. The purpose of the guideline is to present results of technical appraisal work logically and clearly, to maintain the consistency across different PFS and to improve the reliability and accountability of the PFS results. It provides for general guidelines and standard guideline for each areas, such as road, railway, airport, harbour, culture, tourism, sports and R&D.

The guideline includes detailed guidance on economic feasibility, fiscal feasibility assessment, policy analysis (e.g. degree of lagging regional development, promoting regional economy, possibility of receiving fiscal support, consistency with related plans, environmental impact assessment, etc) and Analytic Hierarchy Process (AHP).

Source: <http://pimac.kdi.re.kr>

Q12. Are there measures in place to limit the influence of a potential private operator of a PPP or a concession?

Governments could address this issue through:

- Establishing standards for risk analysis which limit the room for public officials' discretion.

Box 19. The United Kingdom: Risk Register

The UK Department for Transport requires promoters to construct a comprehensive Risk Register to mitigate the risk involved in the implementation of large schemes. This register lists the risks that are likely to affect the delivery and operation of the proposed infrastructure. Construction risks (e.g., timescale and cost perspectives) and operational risks (e.g., maintenance risk and revenue risk) and a share of risks associated with climate change should be included in the register. The Risk Register should identify who owns the risks.

Source: Flyvbjerg et al, 2009

- Publishing the studies and holding responsible the persons having carried out for the report.
- Concomitant, or real time, audit.
- Providing regulations and sanctions on the use of confidential information by the public officials in legislation or in code of conduct.

Public investment planning and design phase

58. Clear regulations and legal requirements are helpful to reduce a public official's discretion or avoid private interests from inflicting influence on the process. External scrutiny can be helpful in curbing corruption in the process but sometimes it is not feasible due to limited resources in the public sector. Additionally, it was proposed in a certain country that local contribution to public investment should be required for contractors to increase the sense of responsibility over the investment project. The following questions and answers may guide how to prevent corrupt practices in this phase:

Q13. *Are there measures in place against some actors getting more information as an improper favour?*

Governments could address this issue through:

- Digitalising the information dissemination

Box 20. Recommended Transparency on Major Project by GIACC

The Global Infrastructure Anti-Corruption Centre (GIACC) suggests that the following information to be disclosed for major projects. Information should be provided in a free, easily accessible and comprehensible form, and on a prompt and regular basis.

General project information

- (1) Name of project owner
- (2) Structure and Principal Shareholders of project owner
- (3) Description, purpose, location of project
- (4) Project approvals
- (5) Feasibility and cost-benefit studies
- (6) Outline specification
- (7) Original budget
- (8) Original programme
- (9) Actual project cost
- (10) Actual programme
- (11) Opposition to the project
- (12) Evaluation reports (interim, final, lifetime)
- (13) The information in C, D and E

General funding information

- (1) Name and address of funder
- (2) Funding agreement
- (3) Changes to funding terms
- (4) Fees paid by/to the funder
- (5) Funder's cost-benefit/feasibility studies
- (6) Funder's project evaluation reports
- (7) For PFI projects, the financing/user agreement between the public sector user and project owner, changes to this agreement, and reasons for these changes.

Government permit information

For each permit/approval required in relation to the project:

- name, type, purpose
- government department responsible for issuing
- official fee
- official time-scale within which should be issued
- name of official to whom reports can be made

Major contract information

- (1) Name of contract
- (2) Type of procurement procedure
- (3) Invitations to pre-qualify, tender etc.
- (4) List of pre-qualification applicants/tenderers
- (5) Procurement evaluation report
- (6) Names of procurement evaluators (to be disclosed after publication of contract award)
- (7) Name of winning contractor
- (8) Contractor's principal shareholders
- (9) Contractor's joint venture members *
- (10) Contractor's agents *
- (11) Contract documents
- (12) Original contract price
- (13) Original contract scope of work or services
- (14) Original contract programme
- (15) Major changes to price, programme and scope of work (i.e. assessed at 5% or more of the original cost or programme) and reasons for these changes
- (16) Details of any re-award of contract
- (17) Final contract price
- (18) Total contract payment
- (19) Actual programme and completion date
- (20) Actual scope of work
- (21) Country where contract payments made
- (22) Currency of contract payments
- (23) Contract evaluation reports

Major Sub-contract information

(As for Major Contracts.)

Independent Assessor information

- (1) Name and qualifications of independent assessor
- (2) Agreement appointing the Independent Assessor
- (3) Who nominated the independent assessor
- (4) His duty to investigate and report corruption
- (5) The contact details of the independent assessor to be used for making reports to him.

Source: Global Infrastructure Anti-Corruption Centre, Transparency, Principle 6 available at http://www.giaccentre.org/documents/GIACC.PACSPS2Transparency_Nov08_Table2.pdf

- Establishing sound and comprehensive e-procurement systems for complete dissemination of public procurement information

Box 21. Australian Government's procurement information system

The Australian Government's procurement information system, AusTender, provides centralised publication of Australian Government business opportunities, annual procurement plans, multi-use lists and contracts awarded.

Agencies are required by the Commonwealth Procurement Rules to publish on AusTender standing offer arrangements and contracts with a value of AUD 10,000 or more. Since 2005, Commonwealth Authorities and Companies Act bodies are also required to publish details of certain contracts and standing offers.

On the AusTender website, it is possible to access reports on contract notices, standard offer notices and procurement plans (<https://www.tenders.gov.au/?event=public.reports.list>). As an example, the records that are available online on contract notices include information on the procuring entity, the procurement method, the contract value and period, a description of the contract, and supplier details. The records are searchable by agency, date range, value range, category, confidentiality, supplier name, supplier Australian Business Number (ABN) and report type. It is also possible to download summary records that include information on the total count and value.

Aggregated information that has been extracted from AusTender is available on the website of the Department of Finance.

It includes statistics on:

- total procurement contracts reported, including a breakdown of total value and number of contracts per financial year;
- procurement contracts by value threshold, including a breakdown of value, percent of total value, number of contacts and percent of total number of contracts;
- SME participation in procurement;
- individual business participation in procurement;
- the ratio of goods to services contracts procured;
- the top 20 categories for goods and services procurement contracts, including a breakdown of value, percent of total value, and percent of Small and Medium Enterprises (SME) participation;
- the top 10 procuring Financial Management and Accountability Act 1997 Agencies (FMA), including a breakdown of value, percent of total value, and rank in previous years compared to the most recent ranking.

In addition, the Department of Finance, together with Protiviti, has conducted an analysis of AusTender data for 2010-11 and 2011-12 on (i) the split (by value) between the procurement of goods and services by the Australian Government; (ii) the total value of Australian Government procurement for each United Nations Standard Products and Services Code (UNSPSC) in relation to total expenditure in Australia; (iii) the total value of goods procured that are likely to be "Australian made" and services procured that are delivered from within Australia; and (iv) the total value of goods or services procured by the Australian Government that are likely to be imported, in order to determine the impact the Australian Government procurement market has on the Australian economy. The report is available at the Departments' website (<http://www.finance.gov.au/procurement/analysis-of-australian-overseas-purchasing-contracts.html>).

Source: OECD (Forthcoming e). Compendium of Good Practices for Integrity in Public Procurement

Q14. Are there measures in place to ensure that the design of the tender documents and specifications are not restrictive or tailored?

Governments could address this issue through:

- Creating an independent assessor commission/committee that will address bidders concerns regarding the design of the tender);

Box 22. New York Tappan Zee Hudson River Crossing Project; Procurement Integrity Monitor

In order to counter the corruption risks associated with the design-build model of the Tappan Zee Bridge project, it was decided to retain Independent Procurement Integrity Monitor for this project. The Governor's office and the NYSTA determined to address the tension between the need, on the one hand, for confidentiality in the evaluation of the proposals and negotiations with the proposers versus, on the other hand, the need for transparency in the decisions surrounding the expenditure of public funds, by having an independent firm, outside of the procurement process itself, monitor compliance with the controls governing that process.

The objectives of the integrity monitor included process evaluation, process enhancements and compliance monitoring. In order to achieve these ends, it was entitled to (i) obtain and review selected documentation relating to integrity and security of the procurement process; (ii) make recommendations for enhancements of the process to appropriate personnel; (iii) perform monitoring through: unannounced attendance at meetings selected on a random basis; review of documents produced by the procurement process; interview with those involved in process; physical observation of compliance with all critical security/integrity-related controls; communication with appropriate personnel as to any issues found so as to facilitate immediate remediation; and (iv) prepare a final report.

Source: Thacher Associates. "Tappan Zee Hudson River Crossing Project; Report of the Independent Procurement Integrity Monitor." <http://www.newnybridge.com/documents/int-monitor-report.pdf>

- Establishing a tender template limiting over specification;
- Involving experts groups or individuals to participate/help in the design of the tender documents and specifications to avoid restrictive specifications
- Ensuring that designs are complete and a technical commission undertake site surveys

Public investment implementation and contract management phase

59. The multiplicity of stakeholders and modes of delivery in this stage opens up many entry points for corruption. Open, transparent and clear criteria for bidding on public contracts (including criteria that potential contractors cannot have been convicted for bribery or corruption or under investigation for bribery or corruption) are essential to guarantee that the procurement process is carry out with integrity. The diversity of the stages makes it unfeasible to have external scrutiny at each stage. Adequate checks and balances in the process are expected in order to ensure the quality of goods and services provided. The following questions and answers may guide how to prevent corrupt practices in this phase:

Q15. Are there measures in place to ensure the winning bidder is the most qualified?

Governments and business could address this issue through:

- Use of Integrity pacts so that the government officials and companies adhere to an ethical conduct during the procurement process

Box 23. Integrity Pacts in India

Integrity Pacts, developed by Transparency International (TI) in the 1990s, oblige government officials and companies to adhere to an ethical conduct. The three main objectives are to enable Companies to abstain from corruption by providing assurance to them that the competitors will similarly refrain from corruption, and that government agencies are also committed to prevent corruption; Governments to reduce the high costs and the distortion effect of corruption in public procurement; and Citizens to more easily monitor public decision-making and their government's activities.

In the recent past, the Central Vigilance Commission (CVC) has taken commendable initiatives in terms of promoting electronic solutions and Integrity Pacts. Integrity Pacts in procurement help governments, businesses and civil society to fight corruption in the field of public contracting via an agreement on no corruption between the procurement agency and all bidders for a public sector contract. In India, Integrity Pacts hold additional relevance for the following reasons:

- High ranking in the Corruption Perception Index;
- History of scandals and delays in Public Procurement;
- Existing anti-corruption regulations have had limited success.

39 public sector companies are using Integrity Pacts in their procurement process. According to a Transparency International -India document, 96% of Integrity Pact Compliant Public Sector Undertakings feel that the Integrity Pact has helped in making procurement process more transparent and 100% feel that the procurement process will not be better off without IP.

Integrity Pacts in India has been used in several sector such as energy (gas, oil, thermal power), telecommunication or airport construction. In addition, India has developed specific Integrity Pacts in defence procurement. The Defence Procurement Procedures (DPP) 2006 for the first time introduced a provision called pre-contract Integrity Pact, in a move to eliminate 'all forms of corruption' in defence deals. The DPP 2006 provided for the appointment of Independent Monitors (IMs), who would be responsible to examine any violations of the Pact, brought to notice by the buyer. However, DPP 2006 did not mention the precise role and power of the IMs. An Amendment in 2009 includes clauses on precise role and powers to IMs.

Henceforth, IMs are authorised to scrutinize complaints with regards to violation of Integrity Pacts, through the access to 'the relevant office records in connection with the complaints sent to them by the buyer.' According to Defence Procurement Procedures 2011, Integrity Pacts are applicable in procurements worth Rs 100 crores (approximately USD 16 million) & above and in Defence Enterprises at Rs 20 crores (approximately USD 322 thousand) & above.

Source: Draft National Anti-Corruption Strategy <http://cvc.nic.in/NationalAntiCorruptionStrategydraft.pdf> and Assessment of Integrity Pact (IP) in IP Compliant Public Sector Undertakings. Transparency International. http://www.transparencyindia.org/resource/survey_study/Assessment%20of%20Integrity%20Pact%20in%20IP%20compliant%20PSUs.pdf

- Implementing an Integrity Framework

Box 24. PWGSC's Integrity Framework, Canada

The Public Works and Services Canada (PWGSC) has a strong framework in place to support accountability and integrity in its procurement and real property transactions. This includes policies, procedures and governance measures to ensure fairness, openness and transparency.

The key elements of PWGSC's Integrity Framework include the following:

Types of contracts covered:

The Integrity Framework only applies to all PWGSC managed contracts and real property transactions, including: construction contracts, goods and services contracts and real property transactions.

Applicability to sub-contractors/sublessors: It does not apply sub-contractors; its relationship is with the prime contractor. However, all procurement instruments or leases stipulate that the contractor agrees to bind the subcontractor by the same conditions by which the contractor is bound under the contract.

There is no dollar threshold of contracts covered.

Offences covered include, but are not limited to¹:

frauds against the government under the Criminal Code of Canada;	frauds under the Financial Administration Act;
<ul style="list-style-type: none"> - payment of a contingency fee to a person to whom the Lobbying Act applies - bribery of judicial officers, public officials or officers - Suppliers convicted of a listed offence will be ineligible/ debarred for a period of 10 years from the date of conviction. 	<ul style="list-style-type: none"> - corruption, collusion, bid-rigging or any other anti-competitive activity under the Competition Act - criminal breach of contract

¹For a full list of offences covered please see Box 5.

Exceptions: The Public Interest Exception applies, on a case-by case basis, in circumstances in which it is necessary to the public interest to enter into business with a supplier that has been convicted or has been conditionally or absolutely discharged of an offence under PWGSC's provisions. Possible circumstances necessary to the public interest could include:

- No other supplier is capable of performing the contract;
- an emergency;
- national security;
- health and safety; and
- economic harm.

In such cases, PWGSC could also impose additional stringent controls, administrative measures, and monitoring in the contract or real property agreement.

Recourse in the event of a conviction post contract award: PWGSC may terminate a contract or real property agreement for default if a conviction occurs post contract award, or may continue with the option to impose oversight and monitoring measures.

List of ineligible suppliers:

PWGSC does not maintain a list of ineligible suppliers

- By bidding, suppliers certify that they do not have any of the convictions or have plead guilty and have been absolutely or conditionally discharged of offences under PWGSC's Integrity Framework.

PWGSC verifies the eligibility of suppliers and authorizes them for the specific transaction.

Source: Integrity Framework, Public Works and Services Canada, available at <http://www.tpsgc-pwgsc.gc.ca/ci-if/ci-if-eng.html>

- Providing verbal debriefing by the government to aggrieved bidders to provide a better understand how the decision was reached, increasing understanding of the integrity involved in the process.

Box 25. Verbal Debriefing in the United Kingdom

Verbal debriefing is a recognised good practice that many OECD member countries use to promote a constructive and transparent dialogue with the marketplace and expand their supply base. In addition, by giving unsuccessful suppliers more insight into the process, they can better understand how the decision was reached, increasing the understanding of the integrity involved in the process. More importantly, it also serves as an additional motivation to encourage procurement officers to conduct procedures appropriately and according to integrity safeguards.

The United Kingdom regulations require departments to debrief candidates in contracts exceeding European thresholds. They also strongly recommend verbal debriefing in contracts below thresholds, which is the responsibility of the contracting agency or public organisation.

Debriefing discussions – either face-to-face, over the telephone or by videoconference – are held within a maximum of 15 days following the award of the contract. Sessions are chaired by senior procurement personnel who have been involved in the procurement.

The topics for discussion during the verbal debriefing depend mainly on the nature of the procurement. However, the session follows a predefined structure. First, after introductions are made, the procurement selection and evaluation process is explained openly. The second stage concentrates on the strengths and weaknesses of the supplier's bid. After the discussion, the suppliers are asked to describe their views on the process and raise any further concerns or questions. More importantly, at all stages it remains forbidden to reveal information about other submissions. Following the debriefing, a note of the meeting is made for the record.

An important result of an effective debriefing is that it reduces the likelihood of a legal challenge because it proves to suppliers that the process has been carried out correctly and according to rules of procurement and probity. Although the causality between the introduction of detailed debriefing and legal reviews cannot be proven, a sharp decrease in the number of reviews was observed in the United Kingdom between 1995 and 2005 (from approximately 3 000 to 1 200).

Source: OECD (2013), Public Procurement Review of the Mexican Institute of Social Security: Enhancing Efficiency and Integrity for Better Health Care, OECD Public Governance Reviews, OECD Publishing. <http://dx.doi.org/10.1787/9789264197480-en>

- Inviting civil society to monitor that the process is carried out in a transparent manner (e.g. use of social witness)

Box 26. Social witnesses in Mexico

Since 2009, social witnesses are required to participate in all stages of public tendering procedures above certain thresholds as a way to promote public scrutiny. In 2014, these thresholds are MXN 336 million (approximately USD 25 million) for goods and services and MXN 672 million (approximately USD 50 million) for public works.

Social witnesses are non-government organisations and individuals selected by the Ministry of Public Administration (SFP) through public tendering. SFP keeps a registry of the approved social witnesses and evaluates their performance; unsatisfactory performance potentially results in their removal from the registry.

When a federal entity requires the involvement of a social witness, it informs SFP who designates one from the registry.

As of January 2014, SFP had registered 39 social witnesses for public procurement projects, five Civil Society Organisations and 34 individuals. This number has grown from 5 social witnesses in 2005 to 40 in 2014.

SFP notes that “the monitoring of the most relevant procurement processes of the federal government through social witnesses has had an impact in improving procurement procedures by virtue of their contributions and experience, to the point that they have become a strategic element for ensuring the transparency and credibility of the procurement system”. An OECD-World Bank Institute study (2006) indicates that the participation of social witnesses in procurement processes of the Federal Electricity Commission (Comisión Federal de Electricidad) created savings of approximately USD 26 million in 2006 and increased the number of bidders by over 50%.

Source: OECD (2013), Public Procurement Review of the Mexican Institute of Social Security: Enhancing Efficiency and Integrity for Better Health Care, OECD Public Governance Reviews, OECD Publishing. <http://dx.doi.org/10.1787/9789264197480-en>

- Ensuring that a review and remedy system is in place which has the following characteristics:
 - provide timely redress;

- be effective in correcting (and thus preventing) instances of unlawfulness on the part of economic operators and/or contracting authorities;
- be transparent and clear (i.e. understandable and easy to use by economic operators); and
- non-discriminatory and available to all the bidders wishing to participate in a specific contract award procedure.

Box 27. The Office for Government Procurement Challenge System in Japan

The Japanese system of complaints concerning government procurement of goods and services (including construction services) aims to ensure greater transparency, fairness, and competitiveness in the government procurement system, under the principle of non-discrimination of foreign and domestic sources.

The Government Procurement Review Board (the Board) composed of 7 committee members and 16 special members receives and reviews complaints. The Office of Government Procurement Review (OGPR) headed by the Chief Cabinet Secretary and with administrative vice-ministers or directors from all ministries and agencies as its members is also notified of review procedures. Persons or bodies wishing to file a complaint may do so with the Board within ten (10) days after the basis of the complaint is known. The Board will examine complaints received within seven (7) working days of filing and determine whether they will be accepted for review.

If a complaint is accepted for review, the Board will immediately notify the complainant, OGPR, and the procuring entity of this in writing and publicly announce its decision through the Official Gazette, the Internet (<http://www5.cao.go.jp/access/english/kouji-e.html>), and other means, soliciting the attendance of participants interested in the complaint. The procuring entity is required to present a report to the Board; if the complainant or the participants disagree with this report, they may present statements to the Board or request a review by the Board, which the Board will subsequently undertake. Finally, a report on findings will be drawn up within ninety (90) days by the Board in cases of standard review. This period can be shortened if the complainant or the procuring entity so desire. This time limit may also vary according to the type of procurement of the complaint. If the Board finds that procurement has been carried out in a manner inconsistent with any provision of the Agreement on Government Procurement or other applicable measures, it will draw up recommendations

Source: OECD (Forthcoming e). Compendium of Good Practices for Integrity in Public Procurement

- Carrying out a parallel independent procurement evaluation to strengthen the detection of collusion, bid-rigging and favouring a supplier.

Box 28 The Government Accountability Office has increased its role as a review and remedy body

The laws and regulations that govern contracting with the federal government are designed to ensure that federal procurements are conducted fairly. On occasion, bidders or others interested in government procurements may have reason to believe that a contract has been, or is about to be, awarded improperly or illegally, or that they have been unfairly denied a contract or an opportunity to compete for a contract. A major avenue of relief for those concerned about the propriety of an award has been the Government Accountability Office (formerly known as the General Accounting Office).

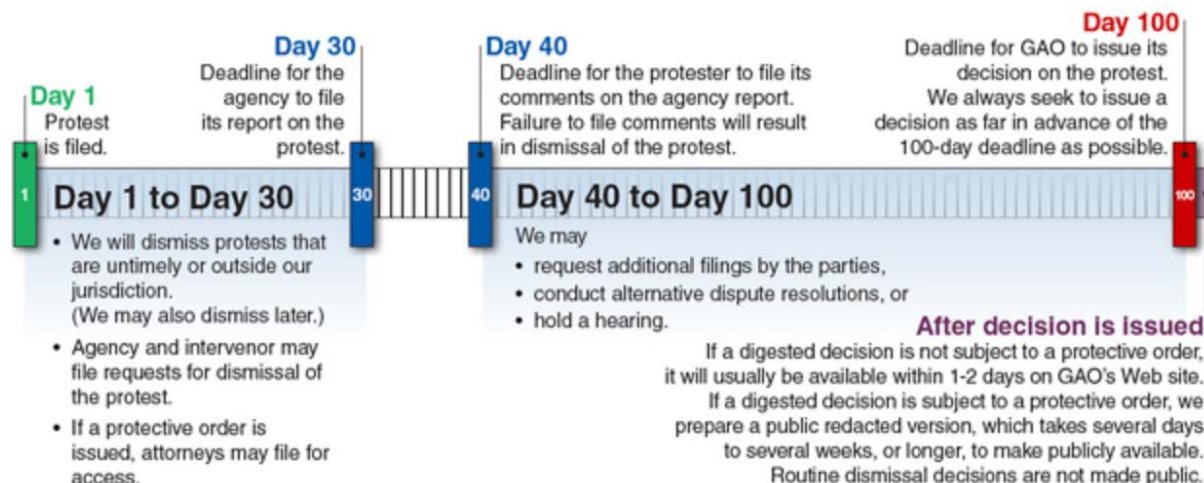
A bid protest is an adjudicative process; it is not an audit conducted by GAO's audit team in accordance with generally accepted government audit standards. Moreover, unlike GAO audit reports, a GAO bid protest decision does not address broad programmatic issues, such as whether a weapons program is being managed effectively and within cost, nor does a GAO bid protest decision evaluate which company's proposal is better.

Over the years, GAO has developed a substantial body of law and standard procedures for considering bid protests.

For more than 80 years, the first bid protest decision was published by GAO in 1926, GAO has provided an objective, independent, and impartial forum for the resolution of disputes concerning the awards of federal contracts. Over the years, the decisions of the Comptroller General of the United States, the head of GAO, in bid protest cases have resulted in a uniform body of law applicable to the procurement process upon which the Congress, the courts, agencies, and the public rely. Although protesters may be represented by counsel, filing a bid protest with GAO is easy and inexpensive and does not require the services of an attorney. In addition, matters can usually be resolved more quickly by protests filed with GAO than by court litigation.

Filing a GAO protest may trigger an automatic stay of contract award or performance that lasts for the duration of the protest. Such automatic stays are unique to bid protests filed with GAO and help account for GAO's popularity as a protest forum. Agencies may, however, override these stays upon determining that urgent and compelling circumstances will not permit waiting for GAO's decision, or performance of the contract is in the best interests of the United States.

Timeline of a Bid Protest



Source: Bid Protests at GAO: A Descriptive Guide Ninth Edition 2009. GAO-09-471SP, Washington D.C. available at <http://www.gao.gov/assets/210/203631.pdf> and <http://www.gao.gov/legal/bids/timeline.html> last accessed 5 November 2014.

Q16. *Are there measures in place to prevent bid rigging, collusion or the agree sharing of the market or future contracts in a public investment?*

Governments could address this issue through:

- Using framework agreements created through competitive processes.
- Using a prequalification system with the adequate technical, financial and qualitative criteria

- Using a two-envelope approach whereby the envelope containing the price is only considered following a technical evaluation.

Box 29. Two-envelope system used in Bids submission phase in Slovak Republic

Two substantial amendments to the Act No. 25/2006 Coll., on Public Procurement became effective in 2013. In the bids submission phase of the procurement cycle, the one stage tender process has been replaced by a two stage tender, involving a "two envelope system."

Bids in the tenders are to be submitted in two parts: the "Criteria" part contains the offer with respect to the award criteria, i.e. in most cases only the price; while the "Other" part contains all other documentation and information related to the bid. The "Other" part is opened first and only after evaluation of whether the selection criteria (e.g. technical equipment) have been met can the "Criteria" part of all submitted bids be opened and evaluated. Generally, such a two stage process should ensure that the price does not influence the technical evaluation of the bid.

Source: www.schoenherr.eu/knowledge/knowledge-detail/slovakia-substantial-changes-in-public-procurement-every-detail-counts/

Q17. Are there measures in place to ensure that non-competitive procedures are not used without proper justification?

Governments could address this issue through:

- Clearly defining and disseminating legal requirements for the use of non-competitive procedure.
- Ensuring that all the justifications are properly presented and make them public.
- Ensuring that this type of decision is not at the discretion of one individual. (E.g Four-eyes principle)

Box 30. Four-eyes Principle Tappan Zee Bridge Project, New York State

The Tappan Zee Bridge is located in the State of New York, crossing the Hudson River between the Village of South Nyack in Rockland County and the Village of Tarrytown in Westchester County. The project started in 2012-2013 and the new bridge should be complete in 2018. The total cost of the New NY Bridge project is USD 3.9 billion.

The four eyes principle is a requirement that two individuals review and approve some action before it can be taken. Several teams were set up to ensure the respect of the “four-eyes” principle and the fairness of the selection process during the procurement phase:

- A Procurement Management Team, comprised of a team of public and private employees (from New York State Thruway Authority (NYSTA), the New York State Department of Transportation, two international engineering and consulting firms and a transportation engineering, planning and consulting firm);
- A Legal team, comprised of legal advisors, both public and private to conduct a legal pass/fail analysis of aspects of the proposals and provide guidance throughout the procurement process;
- A Financial Team to perform a financial pass/fail review and a net present value analysis of the price proposals;
- A Price Reasonableness Team to conduct reviews of each of the proposals and provide recommendations to the BRSC regarding the reasonableness of the pricing for each of the proposals;
- A Technical Evaluation Teams to evaluate the technical strengths and weaknesses of each proposal. Teams were created for the following nine disciplines: (i) Construction; (ii) Structures; (iii) Geotechnical; (iv) Roadway; (v) Visual Quality; (vi) Operations and Security; (vii) Management; (viii) Environmental; and (ix) Public Outreach.
- A Value Assessment Team comprised of engineers and other professionals from both the public and private sectors, to assemble all of the reports for each proposer, and where feasible, use the accumulated reports to quantify the technical strengths and weaknesses of each proposal;
- A Blue Ribbon Selection Committee to present a non-binding recommendation to the Selection Executives. In an effort to prevent any possibility of bias for or against any particular proposal directed toward any joint venture or member thereof, the work of the BRSC was “blind” to the identity of the contractors associated with any proposal;
- A Bridge Design Aesthetic Team, comprised of artists and architects, to review the proposed bridge designs and assist in the evaluation process;
- A group of Selection Executives comprised of the members of the Major Projects Committee of the Thruway Authority’s Board, to review the selection and findings of the BRSC. Importantly, the Selection Executives was also “blind” as to the identity of which contractor had submitted which proposal and knew the proposals only by code names.
- The ultimate determination to award a contract was made by the full NYSTA Board.

Source: Report of the Independent Procurement Integrity Monitor. Available at <http://www.newnybridge.com/documents/int-monitor-report.pdf>

Q18. *Are there measures in place to ensure that there is not false reporting of invoices regarding costs associated to materials, labour hours and qualifications of staff?*

Governments could address this issue through:

- Publicising the estimated cost of the project and the final cost incurred to citizens through media and community groups
- Ensuring that profit and labour costs are separated from the rates for materials and equipment;
- Increasing the functionalities of the e-procurement systems to cover the contract management phase and assure publication of relevant information in informational portals, including variations and reasons for the overrun

Box 31. Integrated e-procurement system KONEPS in Korea

In Korea, a notable improvement has been made in the transparency of public procurement administration since the early 2000s through the implementation of a national e-procurement system.

In 2002, Public Procurement Service (PPS), the central procurement agency of Korea, introduced a fully integrated, end-to-end e-procurement system called KONEPS. This system covers the entire procurement cycle electronically (including a one-time registration, tendering, contracts, inspection and payment) and related documents are exchanged online. KONEPS links with about 140 external systems to share and retrieve any necessary information, and provide a one-stop service, including automatic collection of bidder's qualification data, delivery report, e-invoicing and e-payment. Furthermore, it provides related information on a real-time basis.

All public organisations are mandated to publish tenders through KONEPS. In 2012, over 62.7% of Korea's total public procurement (USD 106 billion) was conducted through KONEPS. In KONEPS 45 000 public entities interact with 244 000 registered suppliers. According to PPS, the system has boosted efficiency in procurement, and significantly reduced transaction costs. In addition, the system has increased participation in public tenders and has considerably improved transparency, eliminating instances of corruption by preventing illegal practices and collusive acts. For example, the Korea Fair Trade Commission runs on KONEPS, the Korean BRIAS system which is the automated detection system for detecting suspicious bid strategies. According to the integrity assessment conducted by Korea Anti-Corruption and Civil Rights Commission, Integrity perception index of PPS has improved from 6.8 to 8.52 out of 10 as the highest score, since the launch of KONEPS.

A key concern for illegal practices was borrowed e-certificates. In order to mitigate this risk, the Public Procurement Service introduced "Fingerprint Recognition e-Bidding" in 2010. In the Fingerprint Recognition e-Bidding system, each user can tender for only one company by using a biometric security token. Fingerprint information is stored only in the concerned supplier's file, thus avoiding any controversy over the government's storage of personal biometric information. By July 2010, it was applied in all tenders carried out via the KONEPS by local governments and other public organisations procuring goods, services and construction projects. In 2011, PPS launched a new bidding service allowing the bidding process to take place via smartphones through newly developed security tokens and applications.

Source: Public Procurement Service (PPS), Korea

Q19. *Are there measures in place to ensure that there is no delay in public investment due to corrupt practices?*

Governments could address this issue through:

- Creating a website that monitors in real time the advancement of the public investment and how is the advancement compare to the cost and time estimations

- Training community monitors' to observe the progress and quality of the project

Box 32. Online tracking of public works the cases of Mexico and Chile

The State's Employees' Social Security and Social Services Institute in Mexico implemented a portal on the procurement of public works. This portal was developed by the Control and Supervision of Works at a Distance (COSODI) unit, as a new model of control and audit for public works. COSODI carries out risk analyses and internal assessments and develops monitoring tools throughout the procurement cycle (planning to execution) to ensure the proper completion of works and detect risks of fraud and corruption. The portal provides real-time, accurate information on the awarded public works procurement, thus providing an opportunity for the society at large to monitor the progress made in conducting the works. The website provides information on the type of contract awarded, the period during which it should be implemented, the geographic location and the status of implementation and the financial payments. The portal also provides comparative data on the total value of works contracted by the state.

Chile's Supreme Audit Institution, the Comptroller General of the Republic of Chile (Contraloría General de la República – CGR), is established by the Constitution as an autonomous government body. Infrastructure investment is a main category of the CGR's ex post audit function, which focuses on the technical and administrative activities of public sector entities responsible for public works, the coherence of public procurement processes, the proportionality and justification of any changes to original objectives and legal and regulatory compliance of the entity.

The CGR launched, in December 2014, the GEO-CGR portal that stores and allows for the publication, articulation and consultation of geo-referenced information on the investment of resources in public works, with the aim of promoting social control by providing citizens and other users with the tools to monitor reliable and timely and information categorised by territory. Users can lodge complaints and make suggestions on control, facilitating the easier and active participation of citizens in ensuring control in the public sector.

Source: OECD (2013c) and OECD (Forthcoming f).

Public investment evaluation and audit phase

60. Evaluation and auditing of public investment projects reaffirms its significance when considering its role in delivering public policy goals. In this vein, the evaluation and audit phase of a public investment project can also assess partially the achievements of the government in delivering public policy goals.

61. Given the importance of the audit function for integrity throughout the investment project cycle, operational independence is critical, from the appointment of institutional leadership to the enforcement of codes of conduct at all levels. As autonomous entities, audit institutions must also be protected from external and undue influence and empowered with the appropriate resources to fulfil their function.

62. In this process, accountability of the auditors carries a significant weight and relying on their discretion alone can be insufficient in some contexts. Their accountability can be strengthened through adequate legal framework on their probity. To complement it, regulations and sanctions should also be in place against those who may try to exert undue influence on auditors. The following questions and answers may guide how to prevent corrupt practices in this phase:

Q20. Are there measures in place to ensure that the entities (public or private) have effective system of internal controls and financial reporting to monitor and identify irregularities?

Governments could address this issue through:

- Application of the COSO Framework on internal control (establishment of a control environment, appropriate risk assessment, establishment of control activities, clear information and communication throughout the entity, and monitoring of control mechanisms for their effectiveness and appropriateness). In particular, a few requirements stand out:
 - There exists an appropriate application of robust risk assessment procedures (for example, Integrated Financial Risk Assessments)
 - There is a clear procedure for dealing with unexpected risks, and mechanisms through which auditors can seek advice and recourse
 - An appropriate level of risk tolerance is established by entity management and communicated clearly to internal audit as well as to all staff of the entity

Box 33. International standards on internal control and audit: COSO Framework

The international industry standard on internal control, as espoused by the Committee of Sponsoring Organisations of the Treadway Commission (COSO), articulates the components of effective internal control as involving the following elements: the control environment, risk assessment, control activities, information and communication, and monitoring activities. All these elements are essential and must be able to operate together seamlessly for an effective internal control system.

Component	Principles
1. Control Environment	
<ul style="list-style-type: none"> • Established by senior management • Set of standards, processes and structures • Represents integrity and ethical values of the organisation • Enables management oversight • Processes to ensure a competent workforce • Performance measures, incentives and rewards 	<ol style="list-style-type: none"> 1. Demonstrates commitment to integrity and ethical values 2. Exercises oversight responsibility 3. Establishes structure, authority and responsibility 4. Demonstrates commitment to competence 5. Enforces accountability
2. Risk Assessment	
<ul style="list-style-type: none"> • Dynamic and iterative process • Establishes risk tolerance against clear organisational objectives 	<ol style="list-style-type: none"> 6. Specifies relevant objectives 7. Identifies and analyses risk 8. Assesses fraud risk 9. Identifies and analyses significant change
3. Control Activities	
<ul style="list-style-type: none"> • Performed at all levels of an entity • May be preventative or detective 	<ol style="list-style-type: none"> 10. Selects and develops control activities 11. Selects and develops general controls over technology 12. Deploys through policies and procedures
4. Information and Communication	
<ul style="list-style-type: none"> • Using relevant quality information to carry out internal control responsibilities • Continual, iterative process of providing, sharing and obtaining necessary information 	<ol style="list-style-type: none"> 13. Uses relevant information 14. Communicates internally 15. Communicates externally
5. Monitoring Activities	
<ul style="list-style-type: none"> • Scope and frequency partly depends on assessment of risks and management considerations 	<ol style="list-style-type: none"> 16. Conducts ongoing and/or separate evaluations 17. Evaluates and communicates deficiencies

Source: Adapted from COSO's Internal Control – Integrated Framework, Executive Summary, May 2013 http://www.coso.org/documents/990025P_Executive_Summary_final_may20_e.pdf; COSO, An Update of COSO's Internal Control – Integrated Framework, May 2012 http://www.coso.org/documents/cosoicifoutreachdeck_05%2018%2012.pdf

- Ensuring that financial transactions are adequately identified and recorded (i.e. no “off the books” expenditures or non-identified accounts”)
- Monitoring cash payments or payments in kind in order to avoid that they are used as substitutes for bribes
- Ensuring information is kept for sufficient period and not prematurely destroyed (OECD, UNODC, World Bank, 2013)
- Cross-referencing public expenditure information to detect irregularities within and across sectors

Box 34. Public Spending Observatory in Brazil

The Office of the Comptroller General of the Union launched the Public Spending Observatory (*Observatório da Despesa Pública*) in 2008 as the basis for continuous detection and sanctioning of misconduct and corruption. Through the Public Spending Observatory, procurement expenditure data are cross-checked with other government databases as a means of identifying atypical situations that, while not a priori evidence of irregularities, warrant further examination.

Based on the experience over the past several years, a number of daily actions are taken to cross procurement and other government data. This exercise generates “orange” or “red” flags that can be followed up and investigated by officials within the Office of the Comptroller General of the Union. In many cases, follow-up activities are conducted together with special Advisors on Internal Control and internal audit units within public organisations.

Examples of these tracks related to procurement and administrative contracts include possible conflicts of interest, inappropriate use of exemptions and waivers and substantial contract amendments. A number of tracks also relate to suspicious patterns of bid-rotation and market division among competitors by sector, geographic area or time, which might indicate that bidders are acting in a collusive scheme.

Finally, tracks also exist regarding the use of federal government payment cards and administrative agreements (*convenios*). In 2013, there were 60,000 instances of warnings originated from the computer-assisted audit tracks used by the Office of the Comptroller General of the Union to identify possible procurement irregularities, like:

Business relations between suppliers participating in the same procurement procedure.
 Fractioning of contracts in order to use exemptions to the competitive procurement modality.
 Non-compliance by suppliers with tender submission deadlines.
 Registration of bid submissions on non-working days
 Supplier's bid submissions or company records with the same registered address.
 Contract amounts above the legally prescribed ceiling for the procurement modality used.
 Contract amendments within a month of contract award, in violation of the specific tender modality.

Evidence of bidder rotation in procurement procedures

Use of reverse auctions for engineering services.

Micro- and small enterprises with shareholders in other micro- and small enterprises.

Personal relations between suppliers and public officials in procurement procedures
 Use of bid waiver when more than one “exclusive” supplier exists
 Bid submission received prior to publication of a procurement notice.
 Possibility of competition in exemptions.
 Participation of newly established suppliers in procurement procedures.
 Contract amendments above an established limit, in violation of the specific tender modality
 Commitments issued prior to the original proposal date in the commitment registration system.
 Bidding procedures involving suppliers registered in the Information Registry of Unpaid Federal Public Sector Credits (*Cadastro Informativo de Créditos Não Quitados do Setor Público Federal*).^{*}
 Micro- and small enterprises linked to other enterprises
 Micro- and small enterprises with earnings greater than BRL 0.24 million or BRL 2.40 million, respectively.

Source: OECD (2012), *OECD Integrity Review of Brazil: Managing Risks for a Cleaner Public Service*, OECD Public Governance Reviews, OECD Publishing. <http://dx.doi.org/10.1787/9789264119321-e>

Q21. Are there measures in place to guarantee the independence of auditing institution or auditors?

Governments could address this issue through:

- Ensuring that auditors are subject to specific code of conduct regarding their contacts with the contractors.

Box 35. INTOSAI's Code of Ethics for Auditors in the Public Sector

The International Organisation of Supreme Audit Institutions (INTOSAI) developed a Code of Ethics for auditors in the public sector. The independence, powers and responsibilities of the public sector auditors place high ethical demands on their daily conduct, which should be beyond reproach in all circumstances. The Code of Ethics is structured around 5 key areas:

1. Promulgation of trust, confidence and credibility

The conduct of public sector auditors should be beyond reproach and worthy of trust of its stakeholders, who should also be assured of the fairness, impartiality, accuracy and reliability of audit work.

2. Integrity

Public Sector Auditors have a duty to adhere to high standards of behaviour in the course of their work and in their relationships with staff of audited entities. Integrity requires auditors to conduct audit work in line with principles of objectivity and impartiality and to make decisions with the public interest in mind.

3. Independence, objectivity and impartiality

Public Sector Auditors should strive to be independent from audited entities and interested groups, and free from interference of political or personal interests. This means that auditors should focus on topics under review and should express conclusions in opinions based exclusively on evidence obtained and assembled in accordance with their entity's auditing standards.

4. Professional secrecy

Public Sector Auditors should not disclosure information that is gathered throughout the audit cycle to third parties in writing or orally, which is not part of its statutory or legal responsibilities which form their normal proceedings.

5. Competence

Public Sector Auditors have a duty to conduct themselves in a professional manner in carrying out their work, and should not undertake work that they are not competent to perform. This coincides with the auditor's full understanding and application of auditing, accounting and financial management standards, policies, procedures and practices as well as constitutional and legal frameworks.

Source: INTOSAI, Code of Ethics, International Standards of Supreme Audit Institutions (ISSAI 30),

- Excluding auditing institutions from future public investment audit if they are found in wrongdoings (e.g. receiving bribes, using false information in their reports)
- Creating specialised oversight bodies to apply strict procedures for controlling costs and monitoring progress to ensure that projects were built on time and within budget.

- There is control of the controllers – e.g. internal audit is overseen by external audit, which is in turn overseen by another objective external body.

Q22. Do audit functions have adequate capacity and resources to provide timely and reliable audits, as well as to remain insulated from manipulation of audit processes?

Governments could assist by:

- Ensuring that audit functions are adequately resourced
- Establishing systems and databases on which auditees can draw reliable information about ongoing public works
- Promulgating technical skills to employ innovative technological advancements that ensure more reliable audits and data

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