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To Norges Bank

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Recommendation to exclude PetroChina Co Ltd from the GPFG

Summary

The Council on Ethics recommends the exclusion of PetroChina from the GPFG due to the risk of gross corruption. Around 65 senior executives and middle managers formerly employed by the company and its subsidiaries are under investigation for allegedly receiving bribes in China, Canada and Indonesia. 18 of these are thought to have already been formally sanctioned and/or convicted of corruption in China. The Council concludes that PetroChina has not adequately substantiated that it has an anti-corruption programme which will be organised and implemented in ways recommended in international standards and best practices to prevent, uncover and respond to corruption. In light of previous cases of corruption, the fact that the company operates in a business sector and in many countries in which the risk of corruption is high, as well as the fact that the company's current board of directors and group management is made up of individuals who held management positions within the company when the alleged corruption is supposed to have taken place, this means that there is an unacceptable risk that the company may once again become involved in gross corruption.

PetroChina was established in 1999 and is listed on stock exchanges in New York, Shanghai and Hong Kong. It is China's largest producer and distributor of oil and gas, and plays a dominant role in China's oil and gas industry. The company has operations in 19 countries and a large number of subsidiaries.

The criterion of gross corruption encompasses active corruption, such as the payment of bribes in return for the award of contracts. However, the criterion also includes passive corruption, exemplified by the acceptance of bribes. The Council takes the position that, in the same way as active corruption, the widespread receipt of bribes is also an obstacle to social and economic development. It fosters discrimination, prevents social justice, distorts competition and hinders sustainable economic development. In cases of passive corruption, the Council places particular emphasis on whether the practice seems to be widespread through the organisation and whether high-ranking employees are directly involved.

Around 65 former employees of PetroChina and employees in several of its subsidiaries are under investigation for allegedly accepting bribes, partly in return for awarding contracts to oil and gas subcontractors. In some of the cases, the allegations of corruption extend over the period from 1980 right up until 2014. All those who are assumed to be involved in corruption cases have held senior management positions in various divisions of PetroChina, as well as its subsidiaries. Of particular gravity, is the case against the man who served as PetroChina's CEO (2000-2013) and board chair (2007-2011). He has now been sentenced to 16 years in prison for having pocketed EUR 1.9 million in bribes from 14 sources between 2004 and 2013. In 2015, the *General Manager* of PetroChina Human Resources was sentenced to 20 years in jail for the receipt of EUR 6 million during the period 2000 to 2013. PetroChina's former *Executive Director* and its vice-chair up until 2015 is also under investigation for allegedly accepting bribes. The *General Manager* of PetroChina Gas Utilization was indicted for corruption in 2015, partly for having received bribes and for benefiting his family and friends to the tune of more than EUR 31 million. In addition, the former *General Manager* of PetroChina International Ltd, along with its former party secretary and vice president are thought to be under investigation for corruption, this latter for the receipt of bribes over a period of 22 years (1992-2014).

From November 2015 until July 2016, the Council on Ethics has engaged in a dialogue with PetroChina. The company has failed to provide much information on the matter, and has not submitted any comments on a draft recommendation. In its dialogue with the Council,

PetroChina has not contested the corruption allegations. It has confirmed some cases, while claiming not to have relevant information relating to others. The Council on Ethics has attempted to arrange a meeting with the company in Beijing, but the company has responded that it prefers to pursue a written dialogue with the Council.

The oil and gas industry, as well as the construction industry, where large public contracts are common, exposes the company to the risk of corruption. In the Council's opinion, this places particular demands on the company to have robust systems in place and to implement measures that can effectively prevent, uncover and respond to corruption. Given that many of the company's former executives stand accused of gross corruption that is claimed to have taken place over a long period of time, this requirement becomes even more pressing. The onus is on the company to prove that it is working systematically and effectively to prevent corruption.

The Council notes that PetroChina has improved its internal corruption-prevention systems since 2014, and that numerous measures are currently being implemented in different parts of the company to prevent corruption. The Council nevertheless considers that the company has failed to provide sufficient information about the corruption-prevention measures now being implemented, nor has it substantiated how these will be function effectively throughout the organisation. This includes both the mapping and assessment of corruption risk, anti-corruption training, integrity due diligence of third parties, the whistleblowing system, performance monitoring and improvement.

In its assessment, the Council also points out that the company's management is largely the same today as when the corrupt practices are alleged to have taken place. Both the board of directors and group management are largely made up of people who have held senior positions with PetroChina and/or its parent company over many years, including when the corruption is alleged to have taken place. Management's attitudes are generally considered extremely important with respect to preventing corruption. In the view of the Council, when a company that has been involved in serious corruption cases does not purge management at all levels, but merely weeds out those actually convicted, it sends a signal that the company is not taking the necessary steps to prevent future non-compliances. The size of the amounts that are alleged to have been received in bribes also indicates that PetroChina's management knew, or should have known, about this practice.

In its assessment of future risk, the Council also attaches importance to the fact that the company has provided inadequate answers and failed to comment on its draft recommendation. In accordance with the remarks set out in Report No. 20 (2008-2009) to the Norwegian Storting (parliament), the Council on Ethics has, with respect to this case, accorded weight to the fact that deficient information about the company's conduct, and – not least – the company's lack of willingness to provide such information, may, in and of itself, contribute to the risk of becoming complicit in unethical behaviour being deemed unacceptably high.

The Council takes into account that the recent implementation of wide-ranging anti-corruption measures in China could play an important role in the prevention of corruption in Chinese companies. The Council on Ethics has nevertheless concluded that PetroChina should be excluded from the GPFG because it attaches greater importance to the corrupt practices already uncovered and the company's response thereto. Furthermore, the Council accords great weight to the measures the company has implemented to prevent corruption, seen in relation to the overall corruption risk in the same business sector and the same countries in which the company operates.

Based on the information available, the Council considers that there is an unacceptable risk that PetroChina may once again become involved in gross corruption.

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1 Introduction

PetroChina was established in 1999 and is listed on stock exchanges in New York, Shanghai and Hong Kong. PetroChina is China's largest producer and distributor of oil and gas, and plays a dominant role in China's oil and gas industry.¹ The company has operations in 19 countries, and has reported on oil and gas production in countries such as Kazakhstan, Venezuela and Indonesia. Furthermore, PetroChina has reported that it will continue to focus on oil and gas exploration and the development of existing projects through *joint ventures* in the Middle East, Central Asia, America and the Pacific Region. Around 10 per cent of its oil and gas production currently comes from operations abroad.² The company discloses that it has several thousand subsidiaries, many of which are operative outside China.³ PetroChina has more than 520,000 employees.

PetroChina is a subsidiary of China National Petroleum Corporation (CNPC), and was established as part of a restructuring of CNPC, during which vital operations were transferred to the newly established PetroChina. CNPC owns 86.35 per cent of the company's shares.⁴ At the close of 2015, the GPFG owned 0.11 per cent of the shares in PetroChina, which were worth around NOK 1.2 billion.

1.1 Matters considered by the Council on Ethics

The allegations of corruption involving PetroChina relate to a large number of senior executives and board members who, it is claimed, have received bribes. All the allegations of corruption that the Council has examined have been or still are under formal investigation in China. Several of these investigations have resulted in convictions.

The Council on Ethics has considered whether there is an unacceptable risk of PetroChina being complicit in or itself being responsible for acts of gross corruption, pursuant to s 3(1)(5) of the guidelines for the exclusion of companies from the Norwegian Government Pension Fund Global Government Pension Fund Global (GPFG).⁵

The Council has previously based its assessments on the following definition of gross corruption:⁶

1) Gross corruption exists if a company through its representatives

¹ The company's website, http://www.petrochina.com.cn/ptr/gsjj/gsjj_common.shtml.

² PetroChina *Annual Report* 2015,

<http://www.petrochina.com.cn/ptr/ndbg/201604/a67a6a0ac90749719ced516a9c83cacf/files/26c2875cfbe847099ac0633aed666acf.pdf>.

³ For example, Kunlun Energy Ltd, in which PetroChina is the controlling shareholder with a 58 per cent shareholding, also operates in Kazakhstan, Oman, Peru, Thailand and Azerbaijan.
http://www.kunlun.com.hk/html/bus_exploration.php.

⁴ The company's *Summary Financial Statement* 2015,

<http://www.petrochina.com.cn/ptr/gsgg/201508/b2f6e033efd24af9b88e9bbb00f86525/files/68a104784de440768430393feabb8abe.pdf>. T

⁵ The guidelines' section 3(1) state: "Companies may be put under observation or be excluded if there is an unacceptable risk that the company contributes to or is responsible for:... 5) gross corruption..." The guidelines for observation and exclusion from the GPFG are available at http://etikkradet.no/files/2017/04/Etikkradet_Guidelines-eng_2017_web.pdf.

⁶ The Council on Ethics' recommendation of 21 December 2015 to put Petrobras SA under observation is available at <http://etikkradet.no/files/2017/02/Recommendation-Petrobras-21-December-2015.pdf>

- a) *gives or offers an advantage – or attempts to do so – so as to unduly influence:*
 - i) *a public servant in the execution of public duties or in decisions which may bring the company an advantage, or*
 - ii) *a person in the private sector who takes decisions or has influence on decisions which may bring the company an advantage,*
- b) *demands or receives bribes,*

and

c) the corrupt acts mentioned in letters a and b are carried out in a systematic or comprehensive manner.

2) In its assessment, the Council also places emphasis on whether the company has implemented effective anti-corruption procedures that are organised in a way that enables it to prevent, detect and respond to corruption.

When assessing whether there is a risk that PetroChina may in future become involved in corrupt practices, the Council has attached importance to the corruption allegations currently being levelled at the company, the company's response thereto, the countries and business sectors in which the company operates, and what the company is currently doing to prevent corruption. The Council takes the position that it is up to the company to substantiate that it is making adequate efforts to prevent corruption effectively.

1.2 Sources

In this case, the Council bases its assessment primarily on information that has been published in the Chinese media about corruption investigations and convictions, including articles published in the *China Daily* and *South China Morning Post*. PetroChina has also provided some information about the corruption cases. Certain of the allegations are documented by means of publicly available court filings.

The Council contacted the company in November 2015 and in June and July 2016. The Council on Ethics has asked PetroChina to comment on the corruption allegations, to account for its internal anti-corruption systems and to show how these are implemented in its operations, such that corruption is effectively prevented, uncovered and dealt with. The company has confirmed that some of its former employees have been convicted and that relevant information has been published, but has informed the Council that it has no further knowledge of the corruption cases.⁷ PetroChina has, however, provided some information regarding its compliance system. The company has received a draft recommendation to exclude it from the GPFG, but has not submitted any comments thereon. The Council on Ethics has attempted to arrange a meeting with PetroChina in Beijing, but the company has responded that it prefers to pursue a written dialogue.

In addition, the Council has commissioned the assistance of a consultant with respect to an assessment of anti-corruption systems in companies with which PetroChina may be compared, as well as how this work should be organised and implemented to comply with international standards and best practices.

⁷ Letter from PetroChina to the Council on Ethics, 11 January 2016.

2 The Council on Ethics' investigations

The Council on Ethics has examined the allegations of corruption against PetroChina in China, Indonesia and Canada. The main emphasis has been on the corruption cases in China. All of these cases relate to senior executives at PetroChina and the following wholly owned or controlled subsidiaries: PetroChina Jiangxi Marketing Co, PetroChina Heilongjiang Marketing Co, PetroChina International Co Ltd,⁸ PetroChina International Investment Corporation (Canada),⁹ PetroChina Yumen Oilfield Co,¹⁰ PetroChina Gas Utilisation, PetroChina Daqing Oilfield Underground,¹¹ PetroChina Tarim Oilfields,¹² as well as PetroChina Sichuan Petrochemical Co,¹³ PetroChina Dushanzi¹⁴ and Kunlun Energy Ltd.¹⁵

2.1 About the corruption allegations

According to the information available, PetroChina and its subsidiaries are alleged to be involved in gross corruption in that around 65 employees or former employees and/or their family members are supposed to have accepted bribes, partly in return for the award of oil and gas contracts to subcontractors. Some of these people are accused of involvement in corruption over a period stretching from 1980 right up until 2014. Weight has not been accorded to the corrupt practices that are alleged to have taken place before PetroChina was floated on the stock exchange in 1999. According to information which the Council has at its disposal, all the former employees involved in corruption cases have held senior management positions in various divisions of PetroChina, as well as subsidiaries that are wholly owned or controlled by PetroChina.

This recommendation will not explicitly mention every individual case for reasons of resources. However, it can be mentioned that, according to the information that is publicly known primarily through Chinese media, a total of 18 former employees have already received administrative sanctions by CCDI or have been sentenced to prison terms in the ordinary courts of law. Cases of central importance are presumed to be the case against PetroChina's former CEO and board chair (he was CEO from 2000 to 2013 and board chair from 2007 to 2011), who was sentenced to 16 years in prison for having pocketed EUR 1.9 million in bribes from 14 sources between 2004 and 2013.¹⁶ Furthermore, the *General Manager* for PetroChina Human Resources was sentenced in 2015 to 20 years in jail for accepting bribes totalling EUR 6 million over a period of 13 years (2000-2013).¹⁷ On 3

⁸ The company's website, <http://intl.petrochina.com.cn/intlen/>.

⁹ <https://www.linkedin.com/company/petrochina-international-america->

¹⁰ Bloomberg, <http://www.bloomberg.com/Research/stocks/private/snapshot.asp?privcapid=58132955>.

¹¹ <https://www.sec.gov/Archives/edgar/data/1108329/000114554902000160/u98151exv8w1.txt>.

¹² PetroChina *Annual Report* for 2015, and the Securities and Exchange Commission, <https://www.sec.gov/Archives/edgar/data/1108329/000114554902000160/u98151exv8w1.txt>.

¹³ Bloomberg, <http://www.bloomberg.com/Research/stocks/private/snapshot.asp?privcapId=36367806>.

¹⁴ Securities and Exchange Commission, <https://www.sec.gov/Archives/edgar/data/1108329/000114554902000160/u98151exv8w1.txt>.

¹⁵ The company's website, <http://intl.petrochina.com.cn/intlen/>, and Kunlun Energy's website, http://www.kunlun.com.hk/html/ab_profile.php.

¹⁶ South China Morning Post, 12 October 2015, <http://www.scmp.com/news/china/policies-politics/article/1866628/chinas-former-cnpc-head-jiang-jiemin-gets-16-years-jail>.

¹⁷ He was *Deputy General Manager* (2008-2009) and *General Manager* for PetroChina Daqing Oilfield Co., Ltd. (2009-2014), a wholly owned subsidiary of PetroChina. See South China Morning Post, 13 October 2015, <http://www.scmp.com/news/china/policies-politics/article/1867324/two-more-allies-chinas-former-security-tsar-taken-down>. He was also *Deputy General Manager* and later *General Manager* for Jilin Oilfield (2000-

November 2016, PetroChina's vice-chair up until 2015 and its former *Executive Director*, appeared in court where he admitted receiving around EUR 2 million in bribes from 1997 until 2014. He has yet to be sentenced.¹⁸ The *General Manager of PetroChina Gas Utilization* was indicted for corruption in 2015, partly for accepting bribes and benefiting his family and friends to the tune of more than EUR 31 million.¹⁹ The former *General Manager* of PetroChina International Ltd, as well as its former party secretary and vice president, are thought to be under investigation for corruption, this latter for receiving bribes over a period of 22 years (1992-2014).²⁰

Some of the corruption is also alleged to have taken place in connection with PetroChina's operations in Canada, Indonesia and Iraq. The former *General Manager* of PetroChina International (Canada) has been under investigation for corruption since 2014.²¹ The former *General Manager* for Indonesian operations at PetroChina (2004-2013) has been under investigation for corruption since 2013.²²

3 International standards for compliance and corruption prevention

3.1 International standards

On the basis of international standards for compliance and the prevention of corruption in multinational companies, certain key principles can be deduced with respect to steps an enterprise ought to take to establish and implement an effective anti-corruption programme. There are numerous practical guidelines relating to this.²³ The Council on Ethics has also received advice from a consultant with regard to what constitutes best practice for anti-corruption programmes in companies that may be compared with PetroChina. The Council takes the position that the company must be able to document the measures mentioned below.

All relevant international bodies presume that senior management must be genuinely involved in the work if the company is to be capable of effectively preventing the occurrence of corruption. It is important that management clearly communicates a zero tolerance for corruption, and that the company communicates the importance of its corruption prevention activities to the workforce, business partners and representatives.²⁴

2004), also a subsidiary controlled by PetroChina, see the Securities and Exchange Commission, <https://www.sec.gov/Archives/edgar/data/1108329/000114554902000160/u98151exv8w1.txt>. Between 1983 and 2014, he held several executive positions at CNPC, http://www.js.xinhuanet.com/2013-08/27/c_117111879.htm.

¹⁸ See "People's Daily" <http://en.people.cn/n3/2016/1103/c90000-9136906.html>.

¹⁹ As far as the Council is aware, a verdict will soon be delivered: People, 14 April 2015, <http://politics.people.com.cn/n/2015/0414/c1001-26839953.html>.

²⁰ Sina, 22 February 2014, <http://finance.sina.com.cn/china/20140222/040818297758.shtml>.

²¹ China Daily, 30 July 2014, http://www.chinadaily.com.cn/china/2014-07/30/content_18206974.htm.

²² 18 October 2013, http://news.163.com/13/1018/02/9BEGHJ4C0001124J_all.html.

²³ Guidelines for this work can be found, inter alia, in the UN's anti-corruption portal *TRACK* (Tools and Resources for Anti-Corruption Knowledge), *Global Compact: A guide for anti-corruption risk-assessment* (2013) and the OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance* (2010). Transparency International (TI) has listed a number of general recommendations for the establishment of corruption-prevention systems in its *Business Principles for Countering Bribery*.

²⁴ UNODC, *Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, A; OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance* (2010), A, point 1, and TI's *Business*

In order to be able to define systems that are tailored to the specific business, a systematic effort is required to identify and assess corruption risk throughout the enterprise. In accordance with best practice, risk assessments are performed by the body within the company responsible for establishing, implementing and improving the anti-corruption programme. Such assessments are performed regularly in connection with the evaluation of third parties, training and internal inquiries. A comprehensive mapping of corruption risk is often performed annually. Important risk factors that must be assessed are the company's size, business model, local and regional factors, and the sector in which the company operates. At the very least, the company must implement sound preventive measures in those areas where the company is most exposed to risk.²⁵

To achieve the effective implementation of the systems concerned, it is presumed that good training schemes are developed for employees and business partners over whom the company has a controlling or decisive influence. In particular, senior executives, middle managers and employees in at-risk positions must receive specifically tailored training. It is important that the training is made comprehensible for all employees, and that it is based on specific examples drawn from real life, including personal experience. It is also best practice that the company perform self-assessments of whether its training programmes are well designed and effective.²⁶

It is also important that the company performs checks on third parties, so-called due diligence, that third parties in at-risk areas are given anti-corruption training and followed up on a regular basis, and that payments to such parties are proportional to the work performed.²⁷

Management must encourage employees to act in compliance with the anti-corruption programme and report any suspected breaches of internal rules and regulations. Systems should be established so that employees and others can report matters anonymously and with no risk of reprisal.²⁸ The company should have a clear procedure for investigating any

Principles for Countering Bribery, point 6.1,

http://www.transparency.org/whatwedo/publication/business_principles_for_countering_bribery, as well as the World Bank Group Integrity Compliance Guidelines point 2.1, available at <http://pubdocs.worldbank.org/pubdocs/publicdoc/2015/12/489491449169632718/Integrity-Compliance-Guidelines-2-1-11.pdf>.

²⁵ This follows from, inter alia, UNODC, *Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, chapter 2, https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf, OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance* (2010), Annex II, A), available at <http://www.oecd.org/investment/anti-bribery/anti-briberyconvention/44884389.pdf>. This also underpins *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (2012), chapter 5, p. 58-59 by the US Department of Justice and Securities and Exchange Commission, available at <http://www.justice.gov/criminal-fraud/fcpa-guidance>, and the UK Ministry of Justice *Bribery Act 2010 Guidance*, Principle 3, <http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>.

²⁶ UNODC, *Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, chapter 3(H), OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance*, (A)(5), TI's *Business Principles for Countering Bribery*, points 6.4 and 6.6, and World Bank Group *Integrity Compliance Guidelines* point 7.

²⁷ OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance*, (A)(6)(i), TI's *Business Principles for Countering Bribery*, point 6.2, and World Bank Group *Integrity Compliance Guidelines* point 5.

²⁸ UNODC, *Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, chapter 3 (I and J), OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance*, (A)(9 and 11, ii), TI's *Business Principles for Countering Bribery*, points 6.3.1 and 6.5.1, World Bank Group *Integrity Compliance Guidelines* points 8.1, 9.1 and 9.3.

reported non-compliance with corporate guidelines, and the sanctions to be imposed on individuals who violate the rules must be made crystal clear.²⁹

The anti-corruption programme must be monitored and improved on the basis of both internal experience and external factors, such as new legislation and standards for best practice.³⁰ ³¹

According to international standards for best practice, it is crucial that anti-corruption activities are delegated to a dedicated function or a person with the necessary resources and autonomy. It is also important that the compliance department has direct access to group management and the board of directors.³²

3.2 Chinese statutory requirements

The Chinese authorities have recently taken a tough stance on corruption. An aggressive anti-corruption campaign has been launched to combat corruption primarily in state-owned entities, and it has been announced that steps will be taken against both “*tigers and flies*”. The ban on corruption is provided in several laws. The most important provisions have been included in the *PRC Criminal Law*, eg Article 393 which covers corporate penalties, the *PRC Company Law*, and the *Rules Governing the Listing of Stocks on the Shanghai and Shenzhen Stock Exchange*, which are meant to clarify the individual anti-corruption regulations in the *PRC Company Law and the PRC Bidding Law*.³³

According to information that the Council on Ethics has obtained about Chinese anti-corruption standards, there is an expectation that companies have a clearly expressed attitude that corruption is not acceptable, that employees are trained in anti-corruption and compliance and that reporting systems exist through which employees can report non-compliances with internal by-laws and regulations. Many companies have now established an advisory body or

²⁹ UNODC, *Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, chapter 3(J and K), World Bank Group *Integrity Compliance Guidelines*, point 10.

³⁰ UNODC, *Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, chapter 3(L), OECD’s *Good Practice Guidance on Internal Controls, Ethics and Compliance*, (A)(12), TI’s *Business Principles for Countering Bribery*, points 6.8 and 6.10, World Bank Group *Integrity Compliance Guidelines*, points 3.

³¹ Other general guidelines for companies’ anti-corruption efforts can be found in the Global Compact’s *A guide for anti-corruption risk-assessment* (2013), available at <https://www.unglobalcompact.org/resources/411>, The OECD *Guidelines for Multinational Enterprises*, <http://www.oecd.org/daf/inv/mne/48004323.pdf>, The United Nations Global Compact (*The Ten Principles*), Asia-Pacific Economic Council (*Anti-Corruption Code of Conduct for Business*), International Chamber of Commerce (*ICC Rules on Combating Corruption*), and The World Economic Forum (*Partnering Against Corruption-Principles for Countering Bribery*).

³² This follows from, inter alia, *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, chapter 5, p. 58, the OECD’s *Good Practice Guidance on Internal Controls, Ethics and Compliance*, (A)(4), and World Bank Group *Integrity Compliance Guidelines* point 2.3.

³³ Key guidelines can be found in *Interpretations issued by the Supreme People’s Court, the Supreme People’s Procuratorate, or the State Administration for Industry and Commerce*. According to the *Rules Governing the Listing of Stocks on the Shanghai and Shenzhen Stock Exchange*, listed companies should, within a reasonable space of time, disclose all offences committed by directors, consultants and high-level employees. The *PRC Bidding Law* states that all large public contracts must be awarded as the outcome of a tender competition, and that bribes in return for the award of contracts is prohibited, see Article 32. Non-compliances that qualify as criminal offences, must be prosecuted pursuant to the penal code, see Article 53. On 25 December 2013, the General Office of the CPC Central Committee issued the *Plan for Establishing and Improving the Work of Punishing and Preventing Corruption (2013-2017)* (“2013-2017 Work Plan”) to strengthen party organisations at all levels, establish internal anti-corruption systems and enhance compliance.

an expert group which provides advice on how anti-corruption procedures in the company's operations should be implemented.

4 Information provided by the company

4.1 PetroChina's anti-corruption programme

PetroChina states that it has a zero tolerance for corruption. PetroChina's board chair has stated that the company's objective is to be "*honest, accountable, law-abiding, stable and harmonious*". The company has developed a compliance system that includes a number of rules and guidelines to combat corruption. Since 2012, PetroChina has, among other things, adopted "*2003-2017 Work Plans to Establish and Improve the Systems for Punishment and Prevention of the Bribery Act*", "*Anti-corruption Guidelines for Overseas Business*", and "*Views on the Implementation of Anti-Corruption Training of Senior Management*".

Monitoring and inspection mechanisms have also been established.³⁴ The board's Nomination Committee was established in 2015 in part to ensure a more transparent nomination process.³⁵ The company has also intensified its supervision of overseas operations.³⁶

The company further discloses that it places great emphasis on anti-corruption training for managers. In-house training of senior management at its subsidiaries is staged annually, with the objective of enhancing their knowledge of internal monitoring processes.³⁷

With regard to whistleblowing mechanisms, the company has told the Council that it has well established management systems as well as an open and transparent "*information disclosure system*" in compliance with all relevant regulations for listed companies. However, the company has not provided specific details.³⁸

According to PetroChina's *Sustainability Report 2015*, the company has an *Integrity and Compliance Guideline*, as well as a *Code of Ethics*. Integrity due diligence is also performed on third parties. According to this report, an anonymous whistleblowing channel has also been set up, and reports of non-compliances are investigated and sanctions imposed. Furthermore, the internal control system has been strengthened by means of an improved risk management system. There is no further information regarding any of the above-mentioned governing documents.³⁹

4.2 PetroChina's current management

After the corruption allegations became known in 2014, PetroChina has made some changes in its management. The company separated the roles of CEO and board chair in 2014. The current CEO was appointed in 2014 and the board chair in 2015. However, most of the members of the present board, as well as group management, including the board chair and the CEO, have held senior positions at both CNPC and PetroChina prior to this. Certain

³⁴ Letter from PetroChina to the Council on Ethics, 11 January 2016.

³⁵ Letter from PetroChina to the Council on Ethics, 27 July 2016.

³⁶ Letter from PetroChina to the Council on Ethics, 11 January 2016.

³⁷ Letter from PetroChina to the Council on Ethics, 27 July 2016.

³⁸ Letter from PetroChina to the Council on Ethics, 27 July 2016.

³⁹ PetroChina *Sustainability Report 2015*, available at

<http://www.petrochina.com.cn/petrochina/xhtml/images/shyhj/2015kcxfzbgen02.pdf>.

individuals have been employed at the companies since the early 1990s. According to information at the Council's disposal, the board is "new" to the extent that three out of four independent board members have not previously worked for PetroChina or CNPC.⁴⁰

5 Assessment of the Council on Ethics

Based on the documentation available, the Council has assessed the GPFPG's investment in PetroChina against the corruption criterion in its guidelines. The Council has considered whether there exists an unacceptable risk that the company has been involved in actions which, under the guidelines, constitute gross corruption, including whether the corrupt practices have been performed in a comprehensive and/or systematic manner, and whether there is a risk that the company may once again become involved in similar incidents.

The criterion relating to gross corruption encompasses active corruption, such as the payment of bribes in return for the award of contracts. However, the criterion also includes passive corruption, exemplified by the acceptance of bribes. The Council takes the position that, in the same way as active corruption, the widespread receipt of bribes is an obstacle to social and economic development. It fosters discrimination, prevents social justice, distorts competition and hinders sustainable economic development. In cases of passive corruption, the Council places particular emphasis on whether the practice seems to be widespread though the organisation and whether high-ranking employees are directly involved.

Based on the information available about the alleged corruption involving former employees of PetroChina and its subsidiaries, the Council considers that there is an unacceptable risk that the company may be responsible for acts which must be deemed to constitute gross corruption. The Council attaches particular importance to the number of former executives at PetroChina and its subsidiaries who have recently been under formal investigation for corruption, and who have received formal sanctions and/or prison sentences. Around 65 former senior executives and manager from several business units belonging to PetroChina and its subsidiaries have received bribes in their capacity as company employees. This practice continued from the company's stock market flotation in 1999 until 2014. The total amount received has, in some cases, been calculated at several million euro, and in one case the figure has been put at over EUR 30 million.

Based on the large number of corruption cases that have now come to light, it seems as though the company's internal systems – irrespective of its intentions – have failed, and that there may have been deficiencies in its internal controls which allowed widespread corruption to take place over so many years. The Council on Ethics considers that the company had not properly defined and organised its anti-corruption procedures until 2014. If such procedures did exist, it is clear that they failed to effectively uncover and prevent widespread corruption. On this basis, it also seems clear that the remaining members of management should, in any event, have known what was going on.

The Council has considered whether there is an unacceptable risk of the company once again becoming involved in corruption. This assessment rests on three crucial factors. Firstly, there is the corruption risk in the countries and business sectors in which PetroChina operates. Secondly, PetroChina has not adequately substantiated that future non-compliances will be prevented, uncovered and dealt with. The third factor is that the majority of those who ran

⁴⁰ The biographies of current members of PetroChina's board and group management are available from the company's website, <http://www.petrochina.com.cn/ptr/ldjs/ldjs.shtml>.

PetroChina, and in some cases also CNPC, when the alleged corrupt acts took place still hold leading positions at PetroChina today.

The oil and gas industry, as well as the construction industry, where large public contracts are common, exposes the company to the risk of corruption. In the Council's opinion, this places particular demands on the company to have robust systems in place and to implement measures that can effectively prevent, uncover and respond to corruption. Given that many of the company's former executives stand accused of gross corruption that is claimed to have taken place over a long period of time, this requirement becomes even more pressing. The onus is on the company to prove that it is working systematically and effectively to prevent corruption.

The second element that contributes to future risk is that PetroChina provides little specific information about its anti-corruption programme and how this is implemented throughout the organisation. The Council notes that the company has improved its internal corruption-prevention systems since 2014, and that numerous measures are currently being implemented in different parts of the company to prevent corruption. For the Council, however, what is important is that adequate information is provided about the corruption-prevention measures now being implemented, as well as how these will function effectively throughout the organisation.

In its communications with the Council on Ethics, the company has, for example, not substantiated that it has routines for the regular internal mapping and assessment of corruption risk, as prescribed in international standards and best practice, and which is essential for being able to adapt the anti-corruption programme to changing framework conditions.

The company has not provided adequate information on its procedures for assessing third parties. Nor has it provided much information on how reports of alleged wrongdoing are received and followed up through the internal control system. The Council has not received adequate information on how the anti-corruption programme is continuously monitored and improved. Finally, PetroChina has not adequately explained how its anti-corruption efforts are organised, including who is responsible for implementing which measures.

Furthermore, the Council attaches importance to the fact that the company's management is largely the same now as when the alleged corrupt practices took place. Those who have been sanctioned for or convicted of corrupt acts are gone, but the remaining management personnel remains largely unchanged. The Council points out that the company's management, both at the board level and the group management level, largely comprises individuals who have held high-level positions at PetroChina and/or CNPC over a long period, including when the corrupt practices are alleged to have taken place. Management's attitude is generally considered extremely important for the prevention of corruption. In the view of the Council, when a company that has been involved in serious corruption cases does not purge management at all levels, but merely weeds out those actually convicted, it sends a signal that the company is not taking the necessary steps to prevent future non-compliances. The size of the amounts that are alleged to have been received in bribes indicates that the rest of PetroChina's management knew or should have known about this practice.

In its assessment of future risk, the Council also emphasises the fact that the company has provided inadequate answers and has not responded to its draft recommendation. This weakens the grounds for assessing the specific actions and compliance systems, and reinforces the risk of future corrupt practices. In accordance with the remarks set out in Report No. 20 (2008-2009) to the Norwegian Storting (parliament), the Council on Ethics has, with respect to this case, accorded weight to the fact that *"deficient information about the*

company's conduct, and – not least – the company's lack of willingness to provide such information, may, in and of itself, contribute to the risk of becoming complicit in unethical behaviour being deemed unacceptably high".⁴¹

The Council considers that the widespread anti-corruption measures implemented in China in recent years could play an important role in preventing corruption in Chinese companies. Nevertheless, the Council on Ethics concludes that PetroChina should be excluded from the GPFG because it attaches greater importance to the acts of corruption already uncovered and the company's response thereto. Furthermore, the Council accords great weight to the measures the company has implemented to prevent corruption, seen in relation to the corruption risk present in the business sector and the countries in which the company operates.

Based on the information available, the Council considers that there is an unacceptable risk that PetroChina will once again become involved in gross corruption.

6 Recommendation

The Council on Ethics recommends that PetroChina be excluded from the GPFG due to an unacceptable risk of gross corruption.

Johan H. Andresen
Chair
(sign.)

Hans Chr. Bugge
(sign.)

Cecilie Hellestveit
(sign.)

Arthur Sletteberg
(sign.)

Guro Slettemark
(sign.)

⁴¹ Report No. 20 (2008-2009) to the Norwegian Storting, p. 125, sidebar 4.6, <http://www.regjeringen.no/pages/2172105/PDFS/STM200820090020000DDDPDFS.pdf>, see also the Council on Ethics' recommendation to exclude the Zijin Mining Group Co Ltd, 18 June 2012, available at http://etikkradet.no/files/2017/02/Rec_Zijin_2012_Eng.pdf.