

Unofficial English Translation

To Norges Bank

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Recommendation to place Hyundai Engineering & Construction Co Ltd under observation

Summary:

The Council on Ethics recommends that Hyundai Engineering & Construction Co Ltd (HDEC) be placed under observation pursuant to the corruption criterion in the Guidelines for Observation and Exclusion from the Government Pension Fund Global (GPFG). HDEC is one of the largest building contractors in South Korea. The company does business worldwide, but has the bulk of its operations in Asia and the Middle East. It is listed on the Korea Stock Exchange. At the close of 2020, the GPFG owned 0.56 per cent of the company's shares, worth approx. NOK 184 million.

By itself or through subsidiaries, HDEC can be linked to allegations or suspicions of corruption in three countries in the period 2008–2018, as mentioned in section 3(e) of the GPFG's ethical guidelines. In the period 2005–2013, HDEC was involved in 13 bid-rigging cases. In the Council's opinion, repeated incidents of different forms of financial crime reflect a company's ability to prevent, detect and deal with corruption. The many different cases that can be linked to HDEC must therefore be viewed as a whole. The Council takes the view that, overall, HDEC's involvement in gross corruption has been sufficiently substantiated.

The Guidelines for Observation and Exclusion from the GPFG are forward-looking. In its assessment of the risk that HDEC will once again become involved in gross corruption, the Council attaches importance to how the company has responded to allegations of corruption and other financial irregularities, how it has assisted in the Council's inquiries and the extent to which the company has implemented effective measures to prevent corruption.

The Council considers that HDEC's handling of the various allegations shows it has treated them too lightly. The company largely denies any accountability as the controlling owner of a company linked to allegations of corruption; it blames delays and defects in the tendering process for repeated cases of bid rigging, and places facilitating payments in a completely different category than other forms of bribery. The Council also attaches importance to the company's limited disciplinary response to those responsible for the bid rigging cases, for which the company has been fined substantial amounts.

Although HDEC states that it has had an anti-corruption system in place since 2005, it was not until 2017 that it drew up detailed anti-corruption guidelines, while the guidelines for due diligence investigations into third parties have not yet been fully implemented. HDEC's assessment of corruption risk is integrated in a general risk assessment, and appears not to be particularly detailed. The Council also notes that the company does not have an overarching plan for its anti-corruption efforts. The Council has no clear understanding of the extent to which the company has allocated dedicated resources to anti-corruption activities within the company. Based on the information available, the Council therefore considers that HDEC does not at present have a compliance system that is in line with international guidelines.

HDEC's corporate governance also constitutes a weak point for effective anti-corruption activities. The OECD's principles establish that the board of directors has an important control function with respect to a company's day-to-day management, and it is therefore considered good practice to separate the roles of CEO and board chair. At HDEC, the same person fills both these roles. The Council considers that this may weaken the board's efforts to prevent corruption.

All in all, the Council therefore concludes that the risk of contributing to corruption in the future must be deemed unacceptably high. Nevertheless, the Council is recommending that HDEC be placed under observation at this time. Firstly, this is due to the fact that the company seems to have taken significant steps to improve its anti-corruption efforts the last couple of years compared to previous years. Moreover, the Council attaches importance to the fact that HDEC has proved willing to assist the Council's inquiries, thereby enabling it to gain an insight into how the

company is working to prevent and detect corruption. During the period of observation, the Council will both obtain information on this effort and monitor whether additional incidents of gross corruption in the company's operations come to light, pursuant to section 6(4) of the GPPG's ethical guidelines.

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1 Introduction

The Council on Ethics (the Council) for the Norwegian Government Pension Fund Global (GPGF) has assessed the fund's investments in Hyundai Engineering & Construction Co Ltd¹ (HDEC) against the Guidelines for Observation and Exclusion from the GPGF.² The company has been linked to several cases relating to corruption and other financial irregularities.

Hyundai Engineering & Construction Co Ltd (HDEC) is one of the largest construction companies in South Korea. It engages in the construction of ports and freight terminals, bridges and motorways, dams, nuclear power and other power generating facilities, petrochemical plants, apartment buildings, etc.³ HDEC's largest shareholder is Hyundai Motor, which owns 20.95 per cent of the company. Although HDEC has operations worldwide, its main business activities are in Asia and the Middle East. HDEC is listed on the Korea Stock Exchange.⁴

At the close of 2020, the GPGF owned 0.56 per cent of the company's shares, worth NOK 184 million.⁵

1.1 Matters considered by the Council

HDEC has been linked to allegations and suspicions of corruption in several countries. A company may be excluded from investment by the GPGF if there is an unacceptable risk that it is contributing to or is itself responsible for gross corruption, pursuant to section 3(e) of the Guidelines for Observation and Exclusion from the GPGF. The Council applies the following definition of gross corruption:

1) Gross corruption exists if a company, through its representatives,

a) gives or offers an advantage – or attempts to do so – in order to unduly influence:

i) a public official in the performance of public duties or in decisions that may confer an advantage on the company; or

ii) a person in the private sector who makes decisions or exerts influence over decisions that may confer an advantage on the company,

b) demands or receives a bribe

and

c) the corrupt practices mentioned in a) and b) are carried out in a systematic or extensive way.

¹ Issuer ID: 117619

² <https://nettsteder.regjeringen.no/etikkradet3/files/2019/12/guidelines-for-observation-and-exclusion-from-the-gpfg-01.09.2019.pdf>

³ https://www.dnb.com/business-directory/company-profiles/hyundai_engineering_construction_co_ltd.9f80d0b58d284e04985be31d20dde9fc.html#company-info.

⁴ HYUNDAI ENGINEERING & CONSTRUCTION Annual Report 2017, p. 54.

⁵ Norges Bank's website, <https://www.nbim.no/en/the-fund/investments/component/#/2020/investments/equities/4092/Hyundai%20Engineering%20%26%20Construction%20Co%20Ltd>.

2) In its assessment, the Council also attaches importance to the extent to which the company has a good anti-corruption programme that is organised and implemented in such a way as to enable the company to prevent, detect and respond to corruption in its operations.

In the Council's assessment of future risk with respect to corruption, emphasis is placed on how the company has responded to the allegations of corruption, how it has assisted in the Council's inquiries, and the extent to which it has taken effective steps to prevent, detect and respond to corruption. The risk of corruption in the business sectors and the countries in which the company operates are important factors in the Council's assessment. The Council takes the position that it is up to the company to substantiate that its efforts to prevent corruption are sufficiently effective.

1.2 Sources

The information obtained with respect to the allegations of corruption and other financial irregularities derives primarily from the international media and the South Korean competition authorities, the company, as well as the Indonesian prosecuting authorities and court documents.

The Council's assessment of the company's anti-corruption measures is based on information published on HDEC's website and in its annual reports, as well as written communication between the Council and the company.

The company has also commented on a draft recommendation.

2 The Council's findings

The Council's investigations have revealed that HDEC can be linked to allegations or suspicions of corruption in Algeria, South Korea and Indonesia in the period 2008–2018. In addition, the company has been involved in widespread bid-rigging and illegal price fixing in South Korea between 2005 and 2013.

2.1 Indonesia

In the first half of April 2019, it emerged that HDEC was alleged to have paid hundreds of thousands of US dollars in bribes to a local politician in the Indonesian province of West Java in connection with construction of the coal-fired power station *Cirebon 2*. Construction got underway in 2016. At the beginning of May 2019, a spokesperson for HDEC confirmed that the money had been paid to prevent local protests against construction of the power station from causing problems for the construction process. In this connection, the spokesperson said that it was critical for the company to complete the project by the specified deadline in order to avoid substantial financial penalties. The protests were supposed to have been motivated partly by concerns about local air pollution and the potential loss of livelihoods. According to HDEC, local residents also believed that they had not been compensated for lost land rights. In connection with another corruption case brought against the same politician, for which he

was sentenced to five years imprisonment, information was disclosed that the transfers from HDEC were also linked to the securing of land rights for the project.⁶

The bribes were concealed through HDEC's creation of a false consulting agreement with the company PT Milades Indah Mandiri, for which the fee payable totalled 10 billion Indonesian rupiah (IDR), the equivalent of approx. USD 710,000. Through a total of six payments from June 2017 until October 2018, HDEC transferred a total of IDR 6.5 billion, of which IDR 6.04 billion (approx. USD 430,000) was transferred to the politician concerned via an intermediary.⁷

In October 2019, it also became known that HDEC was under investigation by the Indonesian Corruption Eradication Commission (KPK) for the same matters, and that a local company employee had been refused permission to leave Indonesia in this connection. According to the charge that the KPK published in mid-November 2019, the bribes were linked to the award of licences for the power plant in question. The Indonesian authorities are also said to have requested the assistance of South Korean prosecuting authorities, though the Council does not know if this latter has also launched an investigation into the company.⁸

2.2 South Korea

In October 2017, allegations came to light that HDEC had paid bribes in order to win a contract for the modernisation of the *Banpo Jugong 1* apartment complex in an area of southeast Seoul (*Seocho-gu*), worth an estimated KRW 2.6 trillion (approx. NOK 20 billion). The residents of these apartment buildings had established their own election body to vote on which contractor should undertake the modernisation. In September and October 2017, HDEC – through contracted PR agencies – is alleged to have bought the necessary votes to win the contract with the help of money and gifts. The bribes were alleged to have comprised, among other things, KRW 110 million (approx. NOK 850,000) in cash, laptop computers and stays at luxury hotels. At the same time, it emerged that the South Korean authorities had launched an investigation into the matter.

At the end of April 2018, it became known that the financial crimes unit of the police and prosecuting authority in Seoul had staged a substantial raid on HDEC's head office to obtain evidence in connection with their investigation into the case. In December 2018, the

⁶ RadarBandung, 11 April 2019: *Sunjaya 'Mewek' di Persidangan*, <https://www.radarbandung.id/metropolis/2019/04/11/sunjaya-mewek-di-persidangan/>; Korea Times, 2 May 2019: *Hyundai admits bribing Indonesian politician for power plant construction*, https://www.koreatimes.co.kr/www/tech/2019/05/693_268175.html; The Jakarta Post, 22 May 2019: *Suspended Cirebon regent gets five years, has political rights revoked*, <https://www.thejakartapost.com/news/2019/05/22/suspended-cirebon-regent-gets-five-years-has-political-rights-revoked.html>; Inews24, 8 October 2019: *현대건설, 인니 공무원 뇌물공여 후폭풍... "美부패법 적용엔 친문학적 벌금"*, <http://www.inews24.com/view/1213539>; Business Korea, 14 October 2019: *Hyundai E&C Under Investigation by Indonesian Authorities on Charges of Bribery*, <http://www.businesskorea.co.kr/news/articleView.html?idxno=36944>; Letter from HDEC, dated 22 June 2020.

⁷ Komisi Pemberantasan Korupsi (KPK), 15 November 2019: *KPK Names New Suspect in Bribery Case Related to Licensing in Cirebon Regency*, <https://www.kpk.go.id/en/news/press-releases/1390-kpk-names-new-suspect-in-bribery-case-related-to-licensing-in-cirebon-regency>; Direktori Putusan Mahkamah Agung Republik Indonesia, April 2019. *PUTUSAN Nomor 14/Pid.Sus-TPK/2019/PN.Bdg*; Tribunnews, 11 January 2020: *KPK Dalami Andil Direktur PT Milades Indah Mandiri dalam Suap Eks GM Hyundai*, <https://m.tribunnews.com/nasional/2020/01/11/kpk-dalami-andil-direktur-pt-milades-indah-mandiri-dalam-suap-eks-gm-hyundai?page=all>.

⁸ Business Korea, 14 October 2019; Komisi Pemberantasan Korupsi (KPK), 15 November 2019.

prosecuting authority in Seoul also confirmed that HDEC employees had been indicted in connection with the case. According to the prosecuting authority, the accused HDEC employees knew how the PR agencies had gone about winning votes for the company.⁹

2.3 Algeria

In Algeria, HDEC can be linked to the Unaoil case¹⁰ through partly owned Hyundai Engineering Corp (HEC), which participated in a consortium that was established to win contracts for the upgrading of two oil refineries in 2008. In reports published by Fairfax Media and Huffington Post, Unaoil was alleged to have played a key role in rigging tender competitions so that the consortium led by HEC was awarded the USD 600 million contract to upgrade the Arzev refinery, while Samsung was awarded the USD 1.2 billion contract to upgrade the Skikda refinery. By drawing up an agreed “distribution formula” for the contracts’ revenues, Unaoil succeeded in generating the funds necessary to bribe executives at Sonatrach – Algeria’s state-owned oil company. As far as the Council understands, Unaoil and its subsidiary Jupiter Investments are supposed to have received USD 16 million in commission from HEC in connection with the signing of these contracts. However, it is unclear how much of this was passed on to employees at Sonatrach.¹¹

At the same time as two of the main players in the Unaoil case pled guilty for their role in it, the US Department of Justice also published, in October 2019, case documents detailing how the corruption had been organised in the countries in which Unaoil had acted as intermediary/agent, including in Algeria. Although the majority of the companies for which Unaoil worked are not named in the legal document, the description of the incident which took place in Algeria in 2008 matches the key features previously outlined in the media.¹²

2.4 Bid rigging and illegal price fixing

According to information provided by HDEC, between 2014 and 2019 administrative and criminal fines were imposed by, respectively, the Supreme Court of South Korea and the Supreme Court in Seoul in connection with 13 different bid rigging cases in the period 2005–2013.¹³ The projects in question related primarily to the construction of subway and railway

⁹ The Sunday Newspaper (www.ilyo.co.kr), 20 October 2017: 강남 재개발 ‘진흙탕 수주전’ 후폭풍 “일부 조합원 먼저 금품 요구”, https://ilyo.co.kr/?ac=article_view&entry_id=274884; Yonhap News Agency, 25 April 2018: Police raid Hyundai Engineering’s main office in graft probe, <https://en.yna.co.kr/view/AEN20180425004551315>; Korea Times, 12 December 2018: Lotte, Hyundai, Daewoo ‘bribed apt. residents’, https://www.koreatimes.co.kr/www/tech/2019/11/693_260265.html.

¹⁰ The Age, 30 March 2016: *The Bribe Factory – Unaoil: The company that bribed the world*, <https://www.theage.com.au/interactive/2016/the-bribe-factory/day-1/the-company-that-bribed-the-world.html>

¹¹ The Age, 30 March 2016: *The Bribe Factory – Unaoil: Asia’s corruption tigers*, <https://www.theage.com.au/interactive/2016/the-bribe-factory/day-3/koreans.html>

¹² US Department of Justice, 30 October 2019: *Oil Executives Plead Guilty for Roles in Bribery Scheme Involving Foreign Officials*, <https://www.justice.gov/opa/pr/oil-executives-plead-guilty-roles-bribery-scheme-involving-foreign-officials>; United States District Court Southern District of Texas Houston Division, 4. mars 2019: *United States of America v. Cyrus Allen Ahsani, and Saman Ahsani*, pp. 10, 28-29, <https://www.justice.gov/criminal-fraud/case/file/1266861/download>.

¹³ Letter from HDEC, dated 22 June 2020. See also: Korea Joongang Daily, 24 November 2014: *Four-river fines dog Korean companies abroad*, <https://koreajoongangdaily.joins.com/2014/11/23/industry/Fourriver-fines-dog-Korean-companies-abroad/2997674.html>; The Korea Herald, 24 December 2015: *6 major builders fined for collusion in bids for river project*, <http://www.koreaherald.com/view.php?ud=20151224000728>; KHL, 2

lines, canal work and river improvements, the laying of gas pipelines and the construction of LNG tanks. The Council has identified several of these cases through its own investigations, including:

- The Four Rivers project to restore four of the largest rivers in South Korea through dredging and the construction of weirs, sluices, spillways, etc. The tender process took place in 2009. At the end of 2014, the Supreme Court of South Korea confirmed the imposition of an administrative fine of around KRW 22 billion (approx. NOK 167 million) on HDEC for participation in bid rigging in connection with this tender process. The following year, the same court imposed an additional KRW 75 million (approx. NOK 570,000) fine on the company following its criminal prosecution for the same offences.
- Construction of Incheon Subway Line 2, the tender process for which also took place in 2009. HDEC was initially fined approx. KRW 14 billion (approx. NOK 106 million) by the Korea Fair Trade Commission (KFTC) for bid rigging in January 2014. This was confirmed by the Supreme Court of South Korea in May 2015. The following month, the same Supreme Court imposed a further fine of KRW 80 million (approx. NOK 600,000) on the company following its criminal prosecution for the same offences.
- Projects relating to the construction of 12 liquid natural gas (LNG) tanks, the tender and construction processes for which took place between 2005 and 2012. HDEC was initially fined approx. KRW 62 billion (approx. NOK 470 million) by the KFTC in April 2016 for bid rigging. This fine was confirmed by the Supreme Court of South Korea in August 2019. The month before, the company had been fined KRW 160 million (approx. NOK 1.2 million) by the same court following its criminal prosecution for the same offences.
- Work on the high-speed rail link between Wonju and Gangneung in Gangwon Province in connection with the Winter Olympics in PyeongChang in 2018. The tender process for this contract took place in the spring of 2013. HDEC was initially fined KRW 21.7 billion (approx. NOK 165 million) by the KFTC in April 2017 for bid rigging. This fine was confirmed by the Supreme Court of South Korea in March 2018. In November 2016, HDEC was fined KRW 50 million (approx. NOK 380,000) by the High Court in Seoul following its criminal prosecution for the same offences.

A combined total of around KRW 223.4 billion (approx. NOK 1.7 billion) in administrative and criminal fines was imposed on HDEC for its role in the 13 cases.

January 2014: *US\$ 1.26 billion penalty for South Korea metro cartel*, <https://www.khl.com/news/US-1.26-billion-penalty-for-South-Korea-metro-cartel/1091199.article>; Korea Policy Briefing, 7 January 2014: 인천도시철도 2호선 건설공사 입찰담합 적발·제재, <https://www.korea.kr/news/pressReleaseView.do?newsId=155937511>; Korea Fair Trade Commission, 25 February 2014: 의결 제 2014 - 030 호, <http://www.laohamutuk.org/Oil/TasiMane/SSB/Hyundai/incheonsubway2FTCKor.pdf>; Pulse, 27 April 2016: S. Korea's antitrust watchdog fines 13 builders \$360 million for LNG bid rigging, <https://pulsenews.co.kr/view.php?year=2016&no=305171>; The Korea Times, 20 April 2017: 4 builders fined \$61.4 mil. for collusion, http://www.koreatimes.co.kr/www/biz/2017/07/367_227937.html#.

2.5 Anti-corruption enforcement in South Korea

South Korea is a party to the OECD's Anti-Bribery Convention. Since its ratification in 1999, the country's implementation of the convention has been subject to four rounds of evaluation. The fourth and final evaluation report, from 2018, states that the number of cases relating to bribery abroad that have been investigated, prosecuted and judged in South Korea has fallen since the previous evaluation in 2011. According to the report, this is a cause for concern, since the level of enforcement is disproportionate to the significant level of South Korean companies' exports to and direct investments in countries and business sectors where the risk of corruption is high. Furthermore, the report shows that the majority of the investigations concerned were initiated after the South Korean police and prosecuting authorities had been tipped off by foreign authorities or had received warnings or complaints from the companies' business partners or competitors. In this connection, it is pointed out that little has been done since the last round of evaluation in 2011 to strengthen the South Korean authorities' own capacity to detect and proactively investigate bribes paid abroad. Nor, according to the report, has South Korea put in place a satisfactory regime of sanctions on companies and individuals for this type of illegal activity. Not only are the statutes' sentencing frameworks deemed to be too low in this area, it is also pointed out that the establishment of a regime where sanctions are effective, proportionate and dissuasive remains a highly challenging process.¹⁴

The findings of the OECD's fourth round of evaluation are also supported by a similar survey of the enforcement of the Anti-Bribery Convention in OECD countries carried out by Transparency International in 2020. This survey established four different levels for the individual countries' enforcement activities; South Korea was ranked in the lowest category, ie "little or no enforcement". The Transparency International report shows that the legal amendments adopted in 2020, ie after the OECD's latest evaluation report, increased the level of fines for individuals and companies, and gave the police and prosecuting authorities wider powers to engage in wiretapping. Nevertheless, the report maintains that the sanctions which may be imposed in South Korea on companies and individuals found guilty of paying bribes abroad are inadequate and should be toughened up.¹⁵

3 Standards for compliance and corruption prevention

In its assessment of what a company is doing to prevent future acts of corruption, the Council refers, among other things, to international standards for best practice regarding compliance and combatting corruption in multinational companies. On the basis of these standards, some key principles can be deduced with respect to the steps a company should take to establish and implement an effective anti-corruption programme.¹⁶ The OECD has also adopted its own

¹⁴ OECD. 2018. *Implementing the OECD Anti-Bribery Convention. Korea Phase 4 Report*, pp. 5, 10-12, 38-39, 70, 73-74, <https://www.oecd.org/corruption/anti-bribery/OECD-Korea-Phase-4-Report-ENG.pdf>; OECD, 20. December 2018: *Korea must enhance detection and reinforce sanctions to boost foreign bribery enforcement*, <http://www.oecd.org/newsroom/korea-must-enhance-detection-and-reinforce-sanctions-to-boost-foreign-bribery-enforcement.htm>.

¹⁵ Transparency International, 2020, *Exporting Corruption. Progress report 2020: Assessing enforcement of the OECD Anti-Bribery Convention*, pp. 78-79, https://images.transparencycdn.org/images/2020_Report-Full_Exporting-Corruption_EN.pdf.

¹⁶ Internationally recognised guidelines and principles for the design of anti-corruption programmes may be found, inter alia, in: ISO 37001:2016: *Anti-bribery management systems – Requirements with guidance for use*; UNODC. 2013. *An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*,

principles for good corporate governance, which in several key areas have a significant impact on companies' efforts to combat corruption.¹⁷

Compliance:

All relevant international bodies presume that top management must be genuinely involved in this effort if a company is to be capable of preventing corruption effectively. It is important that management clearly communicates a zero-tolerance policy on corruption, and that the company communicates the importance of its corruption-prevention activities to its workforce, business partners and representatives.¹⁸

To be able to define systems tailored to the specific business, corruption risk must be systematically identified and assessed in all areas of the operation. Such assessments are performed on an ongoing basis in connection with third-party due diligence, training and internal investigations. It is a minimum requirement that a company implements robust preventive measures in those areas in which it is most exposed to risk.¹⁹

To achieve the effective implementation of these systems, good training programmes must be developed for employees and those business partners over which the company has a controlling or decisive influence. Senior executives, middle managers and employees in high-risk positions must, in particular, receive specially tailored training.²⁰

Furthermore, it is important that the company perform due diligence on third parties, that third parties in high-risk areas are given anti-corruption training and are followed up on a regular basis, and that payments to such third parties are checked and verified as being proportionate to the work performed.²¹ The follow-up of third parties may, for example, include regular reviews and updates of risk assessments and due diligence processes, repeated online and database searches to identify new red flags, and regular and/or risk-based audits.²²

available at https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf; U.S. Department of Justice (DOJ) and U.S. Securities and Exchange Commission (SEC). 2012. *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, available at <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf>; OECD. 2010. *Good Practice Guidance on Internal Controls, Ethics and Compliance*, available at <https://www.oecd.org/daf/anti-bribery/44884389.pdf>; Transparency International (TI). 2013. *Business Principles for Countering Bribery*, available at http://www.transparency.org/whatwedo/publication/business_principles_for_countering_bribery.

¹⁷ OECD. 2015. *G20/OECD Principles of Corporate Governance*, <https://www.oecd-ilibrary.org/docserver/9789264236882-en.pdf?expires=1613743902&id=id&accname=oid029201&checksum=9FD3F296897F315D9174C3C84FA49BD1>.

¹⁸ UNODC (2013), Chapter III, (A); OECD (2010), Annex II, (A)(1); TI (2013), point 6.1. See also World Bank Group (WBG). 2010. *Summary of World Bank Group Integrity Compliance Guidelines*, point 2.1, available at <http://pubdocs.worldbank.org/en/489491449169632718/Integrity-Compliance-Guidelines-2-1-11.pdf>.

¹⁹ This follows, inter alia, from UNODC (2013), Chapter II; OECD (2010), Annex II, (A); DOJ and SEC (2012), Chapter 5, pages 58-59; UK Ministry of Justice. 2011. *The Bribery Act 2010 Guidance*, Principle 3, available at <https://www.gov.uk/government/publications/bribery-act-2010-guidance>. More detailed guidance on how such risk assessments may be performed can be found, inter alia, in the Global Compact's *A guide for anti-corruption risk-assessment* (2013), available at https://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/RiskAssessmentGuide.pdf.

²⁰ UNODC (2013), Chapter III, (H); OECD (2010), Annex II, (A), point 8; TI (2013), point 6.4; WBG (2010), point 7.

²¹ OECD (2010), Annex II, (A), point 6(i); TI (2013), point 6.2; WBG (2010), point 5.

²² World Economic Forum-Partnering Against Corruption Initiative (WEF-PACI). 2013. *Good Practice Guidelines on Conducting Third-Party Due Diligence*, point 4(b), p. 14, http://www3.weforum.org/docs/WEF_PACI_ConductingThirdPartyDueDiligence_Guidelines_2013.pdf.

Management must encourage employees to behave in compliance with the anti-corruption programme and to report any suspected breaches of internal regulations. Systems should be established by which employees and others can report wrongdoing anonymously and without risk of retaliation.²³ The company should have a clearly defined procedure for investigating reports of rule violations, and the sanctions imposed on individuals who breach the rules must be made widely known.²⁴

The anti-corruption programme must be monitored and improved on the basis of both internal experience and external factors, such as new laws and standards for best practice.²⁵

According to such standards, it is crucial that corruption prevention activities be delegated to a separate function or a person endowed with the necessary resources and autonomy. It is presumed that the compliance department has direct access to executive management and to the board of directors.²⁶

Corporate governance:

Among other things, the OECD's principles state that a company's board of directors is responsible for supervising its day-to-day management on behalf of the shareholders. In order for the board to perform this function, it must be able to make objective and independent assessments. This normally presumes that a sufficient number of board members are independent of the company's executive management. Furthermore, separating the roles of CEO and board chair is generally considered good practice, since this can help to establish a suitable balance of power, increase accountability and improve the board's capacity to make decisions independently of the company's executive management.²⁷

One of the primary functions of the board of directors is to safeguard the integrity of the company's accounting and financial reporting systems, including verification by an independent auditor. Furthermore, the board must ensure that the company has appropriate internal control systems in place, particularly systems for risk management, financial and operational control, and compliance with laws and relevant standards. As examples of relevant laws, regulations and standards, the OECD principles refer to national criminal statutes implementing the OECD's Anti-Bribery Convention, as well as legislation prohibiting other forms of bribery and corruption.²⁸

4 Information provided by the company

4.1 HDEC's response to the allegations of corruption and the bid rigging

Cirebon 2 power plant in Indonesia:

HDEC has confirmed to the Council that it made the payments in question to the local firm of consultants in Indonesia, and disclosed that it has launched its own investigation into the

²³ UNODC (2013), Chapter III, (I) and (J); OECD (2010), Annex II, (A), points 9 and 11(ii); TI (2013), points 6.3.1 and 6.5.1; WBG (2010), points 8.1, 9.1 and 9.3.

²⁴ UNODC (2013), Chapter III, (J) and (K); WBG (2010), point 10.

²⁵ UNODC (2013), Chapter III, (L); OECD (2010), Annex II, (A), point 12; TI (2013), points 6.8 and 6.10; WBG (2010), point 3.

²⁶ This follows, inter alia, from DOJ and SEC (2012), Chapter 5, p. 58; OECD (2010), Annex II, (A), point 4; WBG (2010), point 2.3.

²⁷ OECD (2015), Principle VI, p. 45, Principle VI.E, pp. 50-51.

²⁸ OECD (2015), Principle VI.D.7, pp. 49-50.

case.²⁹ However, the company denied that the money it transferred to the politician concerned was a reward for the award of land rights and environmental permits. The company also pointed out that responsibility for obtaining such permits lay with the client PT Cirebon Energi Prasarana – not with HDEC. The company further stated that it was not aware that KPK had presented any evidence to support this assertion. Nor, according to HDEC, has its former local employee yet been charged in connection with this case. HDEC also affirmed that the company as such is not at present under investigation by KPK and that it is not aware that HDEC or its employees are under investigation by South Korean authorities with respect to the case in Indonesia.

HDEC has disclosed that in the wake of the case concerned in Indonesia it has taken extensive steps to revise the company's procedures and strengthen its defences against bribery and other forms of corruption.³⁰

Arzev refinery in Algeria:

HDEC has pointed out that even though, at the relevant point in time, it was the controlling shareholder in HEC,³¹ it was not involved in the project in question in Algeria and had no influence over HEC's management or decisions because the companies, according to HDEC, operated and still operate independently of each other. HDEC also referred to a letter from HEC, in which the latter disclosed that it had carried out an internal investigation when the matters concerning the Arzev refinery came to light, and that this investigation had found no evidence of bribery or that the company had a contractual relationship with Unaoil in the period concerned. HEC is not aware that it is under investigation for the matters in question in Algeria.³²

Banpo Jugong project in Seoul, South Korea:

While confirming that South Korean law prohibits building contractors participating in tender competitions from giving or offering money and/or other items of value to members of the residents associations which will decide which company will be awarded the contract, HDEC made it clear that “excessively overheated” marketing and sales-promoting activities among the competing bidders was “inevitable” in this case.³³

HDEC further pointed out that despite a wide-ranging police investigation, no evidence has been found that any of the company's employees had instructed the PR agencies to engage in illegal marketing. According to the company, none of the suspects has yet been charged. HDEC also considers that “unethical bribery” must perhaps be considered different to “ethical facilitating payments”, which are part of marketing and sales-promoting activities. Since HDEC considers that the case is debatable, it has not taken disciplinary action against the employees under suspicion in the case.

However, on the basis of the case concerned, HDEC has adopted a new “Compliance Guideline in Housing Reconstruction Project Marketing”. This guideline contains requirements that:

²⁹ Letter from HDEC, dated 22 June 2020; Letter from HDEC, dated 7 April 2021.

³⁰ These steps are described in more detail in section 4.2.

³¹ 72.55% from 2008 to 2014, 38.62% thereafter. Source: Letter from HDEC to the Council on Ethics, dated 12 October 2020.

³² Letter from HDEC, dated 22 June 2020; letter from HDEC, dated 7 April 2021.

³³ Letter from HDEC, dated 22 June 2020.

- (i) Marketing and sales-promoting measures must be reviewed by the company's compliance officers.
- (ii) Contracts with PR agencies must contain a specific compliance clause.
- (iii) Employees at the PR agencies engaged must be provided with compliance training.
- (iv) The PR agencies concerned, and their employees, must sign compliance agreements.

Bid rigging and illegal price fixing:

HDEC has confirmed that bid rigging is illegal under South Korea's Fair Trade Act. At the same time, the company points out that delays in the tender processes helped promote illegal price collusion between the major South Korean building contractors. HDEC has further disclosed that it did not perform any internal investigations because it always cooperated fully with the authorities in these cases. The majority of the employees who were involved in the bid rigging have now left the company, according to HDEC. The company has further disclosed that in 12 of the cases no disciplinary action was taken against the individuals concerned, since it considered that the bid rigging had to be viewed in the context of deficiencies in the tender competition process, such as delays. With respect to the 13th bid rigging case – relating to the high-speed railway line in Gangwon Province – HDEC has disclosed that two of the employees involved in the bid rigging were suspended for one month without pay.³⁴

HDEC further points out that it is not the only major building contractor in South Korea to have been indicted and convicted for violating competition rules. The company also asserts that substantial improvements have been made in the way public procurement processes are undertaken in South Korea, so that South Korean companies now have fewer incentives to engage in illegal price fixing.³⁵

4.2 Anti-corruption measures implemented by HDEC

The Council has found limited information about HDEC's anti-corruption measures on the company's website. In correspondence with the company, however, the Council has received some further information, as well as some of its internal guidelines. In its reply to the Council, the company admits that some work remains to be done to further develop and implement its anti-corruption programme, but also points out that a number of processes have been initiated to improve this programme, details of which remain to be disclosed. This will, for example, include certification in accordance with the ISO 37001 – Anti-Bribery Management Systems.³⁶

Tone from the top:

In a brief memo entitled “*Enhancement of Compliance and Transparency Policy*”, published on the company's website in August 2019, HDEC's CEO made it clear that the company has zero tolerance for corruption. However, it has been difficult to discover similar written examples of the “tone from the top” in publicly available company documents. For example, the Council cannot see that corruption, bribery, bid rigging/antitrust activities or other financial misdeeds have been mentioned in any of the CEO's introductions to annual or sustainability reports in the past ten years. The Council has asked whether the company can provide any tangible examples of initiatives the CEO/Chair have implemented in the last couple of years to communicate a zero tolerance for corruption to the company's employees,

³⁴ Letter from HDEC, dated 22 June 2020; Letter from HDEC, dated 12 October 2020.

³⁵ Letter from HDEC, dated 7 April 2021.

³⁶ Letter from HDEC, dated 7 April 2021.

business partners and representatives. In reply, HDEC has primarily pointed to the fact that it adopted a new management policy – “The Great Company” – in February 2019, in which “Compliance and transparent management” is highlighted as one of three new core values for the company. In addition, HDEC states that it is in the process of strengthening its focus on ESG. However, corruption, bribery or other financial irregularities are not mentioned in the articles the company has shared with the Council.³⁷

Risk assessments:

According to the company’s sustainability report for 2019, HDEC has had an Integrated Risk Management System (IRMS) in place since 2016. In response to the Council’s questions, the company has confirmed that corruption risk is an integral part of this system. According to HDEC, the IRMS is applied to all projects and throughout the entire lifecycle of each individual project. The Council has requested further details of the processes and methods HDEC uses to assess corruption risk, but the company has shared only an example of an overarching risk map, which it uses in its Risk Based Management (RBM) of tender processes abroad. “National corruption” is mentioned as one of the risk factors.³⁸

The Council has also requested a more detailed overview of the most important corruption risks that have been identified through the IRMS, and how these are ranked. In response, the company stated that it is extremely difficult to rank different corruption risks in relation to particular guidelines, since the company undertakes different construction projects in many countries worldwide. In this connection, HDEC refers once again to national corruption risk as one of the most important findings of this risk analysis, and discloses that it has projects underway in several countries that score less than 50 on Transparency International’s Corruption Perceptions Index (CPI). In response to the Council’s questions about the type of measures the company has implemented on the basis of the risk analysis, HDEC states that in July 2019 it decided to develop its own third-party due diligence procedure (“Counterparty Corruption Risk Due Diligence”). This procedure is scheduled to be fully implemented in the organisation by the end of 2021.³⁹

Guidelines:

HDEC also has its own Anti-Corruption Compliance Policies and Procedures (ACCPP) and an Anti-trust Policy, which may be viewed on the company’s website.⁴⁰ The anti-corruption guidelines went into effect in April 2017. In reply to the Council’s questions, HDEC has disclosed that it did not have dedicated anti-corruption guidelines before this date, but that the company introduced an anti-corruption system in 2005, which it implemented and improved continuously to keep it in line with internationally recognised standards, such as the US Foreign Corrupt Practices Act (FCPA) and the UK’s Bribery Act (UKBA). The company also states that, since 2005, it has had an ethical governing document, the Hyundai E&C Green CSR Declaration, which was revised several times up until 2014. The 2014 version of the document contains some brief provisions concerning antitrust activity, bribery, corruption, etc. HDEC has also disclosed that its ACCPP has been revised twice, in July 2019 and March 2020.

³⁷ Letter from the Council on Ethics to HDEC, dated 25 May 2020 and HDEC’s reply of 22 June 2020.

³⁸ Hyundai Engineering & Construction 2019 Sustainability Report, p. 62, https://en.hdec.kr/en/company/library_03.aspx?#tabArea01; Letter from the Council on Ethics to HDEC, dated 25 May 2020 and HDEC’s reply of 22 June 2020.

³⁹ Letter from the Council on Ethics to HDEC, dated 25 May 2020 and HDEC’s reply of 22 June 2020.

⁴⁰ Letter from the Council on Ethics to HDEC, dated 25 May 2020 and HDEC’s reply of 22 June 2020. See the website: <https://en.hdec.kr/en/invest/ethic.aspx>.

The Council has asked whether HDEC has a specific plan for how it organises and implements its efforts to prevent, detect and deal with corruption. In reply, the company has said that it will base its overarching plan on the Compliance Control Standards (CCS) that the South Korean government has drawn up for the country's listed companies. HDEC's board of directors approved the standards in January 2019 and the company is now working on their implementation. The standards' three main elements are: control environment, control activities, and monitoring and improvement. According to HDEC, the company's appointment of a Compliance Officer, the adoption and implementation of the ACCPP, employee training, etc, are in accordance with the CCS's recommendations.

Training:

According to the ACCPP, all employees have a duty to take the company's anti-corruption training course, which the company's compliance officers are responsible for providing. The Council has asked whether the company has a more detailed plan for its anti-corruption training activities. In reply, the company said that, in 2020, it planned to undertake the following three main training activities, in line with the CCS:

- 1) Basic training in compliance with South Korean legislation relevant to the construction industry, to be given to 1,300 employees.
- 2) Training of new employees.
- 3) Specialised training for 6,000 employees in South Korea, as well as 50 employees working abroad, in South Korean anti-corruption legislation and the FCPA/UKBA.⁴¹

The company has let the Council see the training materials relating to the above-mentioned legislation, as well as the ACCPP. The training materials relating to the FCPA/UKBA provide an overarching presentation of the laws' area of application and what HDEC as a company should pay particular attention to. The presentation of the ACCPP provides a more systematic review of the most important provisions in these guidelines. The FCPA/UKBA and ACCPP training materials also contain some closing questions for the course participants, but no examples of specific cases.

According to HDEC, 719 employees underwent training in competition law and legislation relating to the use of subcontractors in 2019, while 54 employees took the introductory course in compliance. In the same year, 4,803 employees in South Korea and 39 employees abroad took the course in South Korean anti-corruption legislation and the FCPA/UKBA. By 2019, HDEC had also held online training courses in transparency and ethics for 30 subcontractors. These courses have so far focused solely on preventing bribery aimed at HDEC's employees, and the company is therefore considering expanding the curriculum to cover other forms of corruption as well. HDEC states that because the company operates in the construction industry, it is challenging to ensure that partners in joint ventures and consortia, as well as subcontractors, provide anti-corruption training to their own employees, since HDEC's collaboration with these companies generally relates to individual projects that are limited in time. However, HDEC states that it is working to find alternative solutions for these business partners.

So far, HDEC has not performed an external evaluation of its anti-corruption training courses, but has disclosed that it obtains feedback from the employees who have taken them.

⁴¹ Letter from the Council on Ethics to HDEC, dated 25 May 2020, and HDEC's reply of 22 June 2020.

Organisation:

According to HDEC's sustainability report for 2019, the company established a system to monitor compliance and ethics in 2018. The company's Domestic Legal Affairs Office is responsible for monitoring the system, implementing compliance initiatives and appointing compliance officers at head office and the various business units. Specific measures to monitor compliance in the company are supposed to have been implemented with effect from September 2018.⁴² In April 2020, HDEC reorganised this area, such that responsibility for both national compliance and compliance in the company's international operations was brought together in one department – the Legal Affairs Group (LAG). The company has a Chief Compliance Manager (CCM), who is appointed by the board and who is responsible for the performance of risk analyses, compliance training and improvements to the company's compliance system. The CCM reports to the board's Corporate Governance & Transparent Management Committee. The CCM has a staff of 13, who all work at head office. To provide local compliance support in the individual business areas and at its international offices, HDEC has 23 "senior ambassadors" (two in each business division) and 355 "junior ambassadors" (one in each team, project or branch office). To date, the ambassadors' primary task has been to communicate HDEC's rules and guidelines for compliance to other employees. In the longer term, however, the company intends these compliance ambassadors to also perform independent risk assessments in this area. HDEC has not answered the Council's questions on how many people in the company work specifically on anti-corruption.⁴³

According to HDEC, it is the company's Internal Audit Group that currently carries out investigations into possible breaches of the company's internal guidelines, in addition to the more ordinary internal auditing functions. In the longer term, however, HDEC plans to hive off the CCM's staff from the LAG so that this unit will also be able to perform more independent anti-corruption audits and investigations. The ordinary audits are performed in compliance with legislation applicable to large construction companies in South Korea, and are intended, in part, to prevent violations of the competition and anti-corruption rules. In the period 2011 to 2019, an average of 35 ordinary audits were performed each year. HDEC does not have a separate plan for anti-corruption audits, but since the company's internal regulations have, since 2017, been extended to include international legislation in this area (including the FCPA), the audits' focus has also been expanded to cover the bribery of public officials abroad.⁴⁴

Use of third parties and third-party due diligence:

The Council has asked how many due diligence inquiries into third parties HDEC has carried out with respect to corruption risk in the past five years. In reply, the company has pointed out that it started working to develop its own procedure for such inquiries in 2019, and that the new procedure is scheduled to be fully implemented in the organisation by the end of 2021. HDEC has shared these guidelines with the Council. As far as the Council can see, the checkpoints, tools and procedures contained therein seem to correspond to the requirements set out in the relevant international guidelines.⁴⁵

⁴² 2019 Hyundai Engineering & Construction Sustainability Report, pp. 60–64, 76.

⁴³ Letter from the Council on Ethics to HDEC, dated 25 May 2020 and HDEC's reply of 22 June 2020.

⁴⁴ Letter from the Council on Ethics to HDEC, dated 25 May 2020 and HDEC's reply of 22 June 2020.

⁴⁵ Letter from the Council on Ethics to HDEC, dated 25 May 2020 and HDEC's reply of 22 June 2020.

Whistleblowing, investigations and sanctions:

HDEC states that it has a system in place in the organisation to receive reports – including those submitted anonymously – concerning violation of the competition rules and other irregularities.⁴⁶ Since 2012, these reports have been followed up by the company’s Cyber Audit Office (CAO), which is part of the Internal Audit Group. The Council has asked to see the guidelines for how reports of suspected wrongdoing are handled and investigated. However, the company has shared only an overarching flow chart showing the procedural steps from the receipt of a report until the final outcome of the investigation is communicated to the whistleblower.

The Council has also asked the company for further details of the number of reports concerning active/passive bribery that have been received in recent years, how many of these have been confirmed and what sanctions, if any, have been imposed. According to HDEC, on average less than 10 per cent of the reports received by the company each year since the CAO was established in 2012 have related to financial irregularities. The company has not disclosed any figure for how many of these may have related to bribery. With regard to confirmed reports, the company has disclosed the number of disciplinary sanctions, in the form of suspension or dismissal, that HDEC has imposed on employees in the period 2015–2019 for violation of its internal guidelines. However, HDEC has not disclosed whether, and in which case how many, of these confirmed reports related to corruption or bribery. HDEC has shared its guidelines for administrative sanctions with the Council.

The company’s Internal Audit Group has also performed ordinary audits of compliance with the company’s anti-corruption guidelines (ACPP) since April 2017. HDEC has stated that, up until 2020, no ACPP violations have been uncovered as a result of such audits.

4.3 Corporate governance

The Council has examined the composition of HDEC’s board and executive management since 2010. During this entire period, the board has comprised seven members, four of whom are external. All of the original board members from 2010 were replaced in 2020. With effect from 2011, the practice has been that the same person acts as both CEO and board chair.

5 The Council’s assessment

Based on the documentation available, the Council has assessed the GPF’s investment in HDEC against the corruption criterion in its guidelines for observation and exclusion. The Council has initially considered whether there is an unacceptable risk that HDEC has contributed to or has itself been responsible for gross corruption, including whether such corruption has been carried out in a widespread and/or systematic fashion.

By itself or through subsidiaries, HDEC can be linked to allegations or suspicions of corruption in three countries in the period 2008–2018, as mentioned in section 3(e) of the GPF’s ethical guidelines. In the period 2005–2013, HDEC was involved in 13 bid-rigging cases. In the Council’s opinion, repeated incidents of different forms of financial crime reflect a company’s ability to prevent, detect and deal with corruption. The many different cases that

⁴⁶ 2019 Hyundai Engineering & Construction Sustainability Report, p. 61; Letter from the Council on Ethics to HDEC, dated 25 May 2020, and HDEC’s reply of 22 June 2020.

can be linked to HDEC must therefore be viewed as a whole. The Council takes the view that, overall, HDEC's involvement in gross corruption has been sufficiently substantiated.

In its assessment of the risk that HDEC will once again become involved in gross corruption, the Council attaches importance to how the company has responded to the allegations of corruption and other allegations, how it has assisted the Council's investigations, and the extent to which it has implemented effective measures to prevent, detect and respond to corruption. The corruption risk in the business sector and countries in which the company operates is also a key aspect of this assessment.

The Council considers that HDEC's response to the various allegations shows it has treated them too lightly in previous statements. For example, the Council notes that HDEC states that they introduced an anti-corruption system as far back as 2005, yet refuses to accept any responsibility for the anti-corruption procedures in place at the partly owned HEC, despite the fact that it had a controlling interest in HEC at the time that company was involved in the corruption case concerning the Arzev refinery in Algeria. The Council also questions why HDEC – after being given a total of NOK 1.7 billion in administrative and criminal fines for 13 cases over a period of eight years – points to delays and deficiencies in the tender processes as the reason for the offences concerned.

The Council further notes that the company uses the term “ethical facilitating payments” as opposed to “unethical bribes” in connection with the Banpo Jugong project in South Korea. The Council takes the view that this could undermine the zero tolerance for corruption that HDEC's top management otherwise communicates.

The Council's review of HDEC's systems and procedures for the prevention and detection of corruption gives the impression that much remains to be done with regard to their development and implementation, despite the company disclosing that it introduced an anti-corruption system as long ago as 2005. The specific measures such as an anti-corruption system ought to contain seem to be of relatively recent date. For example, the company established anti-corruption guidelines for the first time in 2017, while its guidelines for third-party due diligence have still not been fully implemented. The Council therefore takes the view that the company has only recently begun to put in place a compliance system that meets international standards.

From the documents received by the Council, it appears that HDEC has had a “zero tolerance” policy with respect to corruption since August 2019, which was communicated by the company's CEO. The Council has failed to discover earlier, corresponding written examples of the “tone from the top” in publicly available documents issued by the company. The Council has also asked the company to provide tangible examples of steps the CEO/Chair has taken in recent years to communicate a zero tolerance for corruption to the company's employees, business partners and representatives. However, no such documentation has been received.

In order for a company's anti-corruption programme to be tailored as closely as possible to its specific business operations, best practice dictates that the risk of corruption be systematically mapped and analysed across the entire organisation. According to HDEC, corruption has been included in the company's risk management system, which was introduced in 2016. However, the Council has received no detailed information about the processes and methods HDEC applies to assess corruption risk, or more detailed specifications of the most important corruption risks identified through such processes.

The Council notes in particular the company's assertion that it is difficult to rank the various corruption risks, and the fact that it only refers to corruption risk at the country level as a

starting point for its anti-corruption efforts. Given that one of the main objectives of a risk analysis is to prioritise the use of companies' resources in the area of compliance, and that there are also many generic factors which may underpin such analyses, this indicates that HDEC's corruption risk analyses are still relatively early in the development phase. The Council further notes that the company does not have an overarching plan for its anti-corruption efforts and that its procedures for third-party due diligence investigations will only be fully implemented in 2021. Based on HDEC's disclosures concerning the organisation of its anti-corruption efforts, the Council is still not entirely clear about how far the company has come with regard to allocating dedicated resources to this area. Given HDEC's risk exposure, with many large, public works contracts in challenging markets, the Council considers that this appears to be a relatively passive approach to corruption risk on the part of the company.

The Council notes that HDEC has had a whistleblowing system and reporting procedures, including opportunities to report matters anonymously, in place for a long time. Moreover, the company has a dedicated unit within its Internal Audit Group whose task is to follow up and investigate all allegations of potential irregularities, including corruption. Since the Council has received no detailed information about the number of corruption-related reports, or how these have been dealt with, it is hard for the Council to form an opinion on how well the system works in practice. As to the various allegations and suspicions mentioned, it is only in connection with the bid rigging cases that HDEC has disclosed that specific sanctions have been imposed. For 12 of the 13 cases, HDEC has disclosed that it imposed no sanctions on the employees involved. The company claims that this was due to inherent weaknesses in the actual tender processes. In the thirteenth case, which concerned bid rigging in connection with the high-speed railway line in Gangwon Province, the company said that two employees were suspended without pay for a month, as a result of their role in the bid rigging.

Given that this was the only disciplinary action taken after 13 confirmed breaches of the law over an eight-year period and the imposition of NOK 1.7 billion in fines, this seems a very circumspect reaction on the part of the company in light of the overall picture. The Council is therefore uncertain about the preventive effect this is likely to have within the company, both with regard to illegal price fixing and other forms of financial crime. This must also be seen in light of the broader picture to emerge from international evaluations performed, among others, by the OECD, which shows that South Korea neither investigates corruption cases nor enforces its anti-corruption laws with sufficient vigour, and that the level of sentencing on conviction is too low.

Another weak point, in the Council's view, seems to be HDEC's corporate governance. The OECD principles for corporate governance establish that the board of directors has an important control function with respect to a company's day-to-day management, including ensuring that the company complies with relevant laws and regulations relating to corruption. To improve the board's ability to exercise independent control of executive management, the principles also state that separating the role of CEO from that of board chair is good practice. In this connection, the Council notes that the same person has performed both roles at HDEC since 2011. The Council therefore questions whether this is the most appropriate method of organisation, with a view to preventing corruption in the company's operations.

All in all, this does not – in the Council's view – provide reasonable assurance that HDEC has in place an apparatus capable of preventing, detecting and dealing with corruption. In principle, this would indicate that the risk of the company contributing to corruption in the future must be deemed unacceptably high. Nevertheless, the Council is not recommending that HDEC be excluded from investment by the GPF, but that it be placed under observation. Firstly, this is due to the fact that the company seems to have taken significant

steps to improve its anti-corruption efforts the last couple of years compared to previous years. Moreover, the Council attaches importance to the fact that HDEC has proved willing to assist the Council's inquiries, thereby enabling it to gain an insight into how the company is working to prevent and detect corruption. The Council also notes that HDEC itself acknowledges that some work remains to be done to further develop and implement the company's anti-corruption programme. On this basis, the Council considers that there are grounds to observe the company's development going forward, see section 6(4) of the Guidelines for Observation and Exclusion from the Government Pension Fund Global (GPFG).

The Council will monitor closely whether new allegations of corruption or other financial irregularities linked to the company's operations come to light, and will observe HDEC's anti-corruption activities through, among other things, continued dialogue with the company. If, going forward, further instances of gross corruption in the company's operations are uncovered, or if the company is unable to show that it is doing enough to prevent, detect and deal with corruption in its operations, the conditions for recommending the company's exclusion from investment by the GPFG may be met.

6 Recommendation

The Council on Ethics recommends that Hyundai Engineering & Construction Co Ltd be placed under observation due to an unacceptable risk that the company is contributing to or is itself responsible for acts of gross corruption.

Johan H. Andresen Chair	Hans Chr. Bugge	Cecilie Hellestveit	Brit Rugland	Trude Myklebust
(Sign.)	(Sign.)	(Sign.)	(Sign.)	(Sign.)