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To Norges Bank

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Recommendation to place Petrofac Ltd under observation

Summary

The Council on Ethics recommends that Petrofac Ltd be placed under observation pursuant to the criterion relating to gross corruption or other serious financial crime in the Guidelines for Observation and Exclusion of Companies from the Government Pension Fund Global (GPFG).

Petrofac Ltd is a British oil service company, with 8,200 employees distributed across 32 departments worldwide. It is listed on the London Stock Exchange. The company engages primarily in the design and construction of infrastructure for oil and gas production, as well as the operation and maintenance of such facilities. At the close of 2022, the GPFG owned 1.19 per cent of the company's shares, worth approx. NOK 52 million.

The Council's investigations have shown that Petrofac, or its subsidiaries, may be linked to allegations or suspicions of corruption in six countries over a period of 15 years. All the cases relate to allegations of bribery or suspicious transactions via agents or through subcontractors in order to win contracts for Petrofac's subsidiaries. A former Petrofac executive has pleaded guilty to a total of 14 counts of bribery, involving a combined total of over USD 80 million, which was paid in order to win contracts worth in excess of USD 8 billion for the company. Of the total amount paid in bribes, the company has pleaded guilty in relation to USD 44 million.

The Guidelines for Observation and Exclusion of Companies from the GPFG are forward-looking, and the issue to be assessed is whether there is an unacceptable risk that the company is contributing to or is itself responsible for gross corruption. When assessing whether there exists an unacceptable risk, the Council attaches importance firstly to the extent to which the company 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 are also factors in the assessment. Otherwise, the Council attaches importance to whether the company has helped to shed light on the case, and takes the position that it is up to the company to substantiate that it is working effectively to prevent corruption if the risk to the GPFG is to be deemed acceptable.

The Council notes that in her sentencing remarks following the company's conviction in Southwark Crown Court in the UK, the judge acknowledged that since the corrupt acts took place, Petrofac has significantly strengthened its compliance organisation and due diligence processes, and that it has terminated all contracts with agents where this is not required under national law. Petrofac has shared little information about how it handles markets where the use of agents was previously crucial to winning contracts.

Petrofac still operates in a business sector and in several countries in which the risk of corruption is high. Several of the countries to which allegations or suspicions of corruption are linked remain Petrofac's most important markets. The Council has

received information about the company's general procedures for the identification and management of corruption risk, but not about what Petrofac considers to be the most important corruption risks, how these are prioritised and what specific measures the company has implemented to deal with the identified corruption risks. With respect to sanctions for violation of the company's guidelines, the Council notes Petrofac's assurance that it has "cleaned the house" after the corrupt acts came to light. Nevertheless, it is impossible for the Council to make any qualified assessment of whether the company has implemented any proportionate, dissuasive and visible responses on this basis.

The court found that Petrofac has made serious attempts to change the culture within the company, and points out that large parts of the board and management have been replaced since the corrupt acts took place. Nevertheless, the Council notes that anti-corruption does not seem to be a core competence of any of the board members appointed to the Ethics and Compliance Committee after the serious allegations of corruption became known. The Council also attaches importance to the fact that two of today's board members served on the board when the corrupt acts took place and have held key positions at the company for many years. As board chair and CEO, respectively, these two have – until now – had ultimate responsibility for establishing a good "tone from the top" and a strong compliance culture within the company. The Council therefore finds reason to question whether these have been the appropriate individuals to communicate the message of culture change to the organisation in the change process it has undergone. Another expression of companies' "tone from the top" and compliance culture is whether they themselves report wrongdoing and cooperate with the relevant investigations. The Council perceives there to be a contradiction between Petrofac's claims of dialogue with the UK's Serious Fraud Office (SFO) and the findings of the court when it handed down its verdict against the company.

The Council therefore considers that uncertainty still attaches to some elements of Petrofac's compliance programme, its corporate governance and the change in culture the company now claims to have implemented. Petrofac's new compliance organisation was put in place not long ago, making it difficult to fully assess the impact of the company's anti-corruption measures. Because the Council considers that developments forward in time remain doubtful, it takes the view that the company should be placed under observation pursuant to section 6(5) of the Guidelines.

During the observation period, the Council will monitor developments in the ongoing corruption cases and observe Petrofac's anti-corruption efforts, in part through dialogue with the company. If additional cases of gross corruption or other forms of serious financial crime are uncovered, or if the company cannot demonstrate that it is doing enough to prevent, detect and deal with corruption and other financial

crime within its business operations, the condition for recommending the company's exclusion from the GPFG could be met.

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1 Introduction

The Council on Ethics for the Norwegian Government Pension Fund Global (GPFG) has assessed the Fund's investment in Petrofac Ltd¹ (Petrofac) against the Guideline for Observation and Exclusion of Companies from the Government Pension Fund Global (the ethical guidelines).² The company can be linked to alleged or suspected corruption in multiple countries.

Petrofac Ltd is a British oil service company, with 8,200 employees distributed across 32 departments worldwide. The company is listed on the London Stock Exchange. Its core business is the design and construction of infrastructure for oil and gas production, as well as the operation and maintenance of such facilities.³

At the close of 2022, the GPFG owned 1.19 per cent of the company's shares, worth approx. NOK 52 million.⁴

1.1 Matters considered by the Council

Petrofac can be linked to alleged or suspected corruption in six countries. The allegations/suspensions relate to the bribery of public officials to secure the award of contracts. Pursuant to section 4(g) of the ethical guidelines, a company may be excluded from investment by the GPFG or placed under observation if there is an unacceptable risk that it is contributing to, or is itself responsible for, gross corruption or other serious financial crime.

The Council applies the following definition of 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*

¹ Issuer ID: 7949379

² https://www.regjeringen.no/contentassets/9d68c55c272c41e99f0bf45d24397d8c/2022_09.05_gpfg_guidelines_observation_exclusion.pdf

³ Petrofac Limited 2021 Annual Report and Accounts; <https://www.petrofac.com/where-we-operate/>.

⁴

<https://www.nbim.no/no/oljefondet/investeringene/#/2022/investments/equities/7089/Petrofac%20Ltd>.

- 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.*

Under the ethical guidelines' section 6(5), observation may be decided "when there is doubt as to whether the conditions for exclusion are met or as to future developments, or where observation is deemed appropriate for other reasons".

In the Council's assessment of future risk relating to corruption, emphasis is placed firstly on the extent to which it has taken effective steps to prevent, detect and deal with corruption. The risk of corruption in the business sectors and countries in which the company operates are also important factors in the Council's assessment. The Council otherwise attaches importance to whether the company has helped to shed light on the matter, and takes the position that it is up to the company to substantiate that it is working effectively to prevent corruption if the Council is to deem the risk to the GPGF to be acceptable.

1.2 Sources

The information obtained in relation to the corruption allegations derives primarily from the international media, as well as documents relating to criminal proceedings in the UK. The assessment of the company's anti-corruption measures is based on information published on Petrofac's website and in its annual reports, and on written communication between the Council and the company.

The company has also commented on a draft version of this recommendation.

2 Background

The Council's inquiries have shown that Petrofac or its subsidiaries can be linked to alleged or suspected corruption in Iraq, Saudi Arabia, the United Arab Emirates, Kazakhstan, Kuwait and Syria in the period 2003–2018. In connection with the criminal proceedings against the company, information has emerged that indicates the company may have paid bribes to win contracts in twice as many jurisdictions as those to which allegations already relate.⁵ Two of the

⁵ The Guardian, 4 October 2021: Petrofac fined £70m over bribes to secure Middle East contracts, <https://www.theguardian.com/business/2021/oct/04/petrofac-fined-bribes-to-secure-middle-east-contracts>.

incidents that have come to light via the media – allegations of corruption relating to a contract in Kuwait in 2007⁶ and two contracts in Syria in 2008⁷ – will not be further discussed in this document.

2.1 Court findings

On 4 October 2021, Britain's Southwark Crown Court found a former Petrofac executive (Executive A) guilty of a total of 14 cases of bribery for the purpose of winning contracts for the company in Iraq, Saudi Arabia and the United Arab Emirates between October 2011 and 2018. These contracts had a total value of USD 8.4 billion (approx. NOK 84 billion). The Crown Court found that approx. USD 81 million (approx. NOK 810 million) in bribes had been paid to win them. Petrofac pleaded guilty to seven of the cases concerned. These are alleged to have taken place between October 2011 and May 2017, and involved payment of an estimated USD 44 million (approx. NOK 440 million) in bribes in connection with contracts worth a total of around USD 3.67 billion (approx. NOK 36.7 billion).⁸

For Executive A, the offences concerned carried a maximum custodial sentence of 5–8 years. Before any deduction for mitigating circumstances, the judge had a starting point of 7 years and 3 months' imprisonment. In the end, Executive A was given a 2-year suspended sentence, with 18 months on probation. The sentence was suspended primarily because the former employee had cooperated with the investigations carried out by the UK's Serious Fraud Office (SFO). A total of GBP 140,000 (approx. NOK 1.65 million), deemed the proceeds of

⁶ Arabian Business, 7 April 2016: *Petrofac exec "paid \$2m bribe" to secure Kuwait oil contract – report*, <https://www.arabianbusiness.com/industries/energy/petrofac-exec-paid-2m-bribe-secure-kuwait-oil-contract-report-627620>; 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>.

⁷ BuzzFeedNews, 1 April 2016: *Major Tory Donor's Oil Company Linked To Syria Bribery Allegations*, <https://www.buzzfeed.com/solomonhughes/major-tory-donors-oil-company-linked-to-syria-bribery-allega>; The Age, 30 March 2016: *The Bribe Factory – Unaoil: Syria*, <https://www.theage.com.au/interactive/2016/the-bribe-factory/day-1/syria.html>.

⁸ Sentencing Remarks of HHJ Taylor, Recorder of Westminster, 4 October 2021.

crime, was subsequently seized from Executive A under a court-issued confiscation order.⁹

For Petrofac, the penalty initially calculated was the forfeiture of approx. GBP 214 million, though the final amount payable was set at GBP 70 million, plus GBP 7 million in costs. The judge's reasoning for the reduction was, firstly, that Petrofac had implemented major reforms in the area of compliance and replaced large portions of its board and senior management; and, secondly, the company's financial situation.¹⁰

Petrofac has disclosed that several former employees have been accused of collaborating with Executive A; five of these were also named in court. As far as the Council is aware, only the company's former CEO (Executive B) has received written confirmation from the SFO that he is no longer a suspect in their investigations. He is not among the five mentioned above. Following Southwark Crown Court's verdict, the SFO announced that it had terminated its investigation of the company but that investigation of suspected individuals remained ongoing.¹¹

2.1.1 Iraq

Petrofac and Executive A were convicted of several offences in Iraq. In connection with a USD 341 million Engineering, Procurement and Construction (EPC) contract on the Badra field, which the subsidiary Petrofac International (UAE) LLC (PIUL) was awarded in February 2012, Petrofac was found to have paid USD 4.9 million in bribes via two agents. Furthermore, Petrofac paid USD 4 million in bribes, via an agent, in connection with the award of an Operations and Maintenance (O&M) contract relating to the Al-Faw (Fao) oil terminal project in

⁹ Sentencing Remarks of HHJ Taylor, Recorder of Westminster, 4 October 2021; Serious Fraud Office, 15 December 2021: *SFO secures confiscation against former Petrofac executive*, <https://www.sfo.gov.uk/2021/12/15/serious-fraud-office-secures-confiscation-against-former-petrofac-executive/>.

¹⁰ Sentencing Remarks of HHJ Taylor, Recorder of Westminster, 4 October 2021.

¹¹ Petrofac, 7 February 2019: *Board update on UK Serious Fraud Office investigation*, <https://www.petrofac.com/media/news/board-update-on-uk-serious-fraud-office-investigation-1/>; The Guardian, 4. August 2019: *SFO names four Petrofac managers over multimillion-pound bribe scheme*, <https://www.theguardian.com/business/2019/aug/04/sfo-names-four-petrofac-managers-over-multimillion-pound-bribe-scheme>; Petrofac, 26 April 2022: *Board update*, <https://www.petrofac.com/media/news/board-update-ayman-asfari/>; Serious Fraud Office, 4 October 2021: *Serious Fraud Office secures third set of Petrofac bribery convictions*, <https://www.sfo.gov.uk/2021/10/04/serious-fraud-office-secures-third-set-of-petrofac-bribery-convictions/>.

August 2012 and annual extensions of this contract in 2013, 2014 and 2015. The contract and its extensions were worth a total of USD 421 million. Executive A also offered bribes via an agent to obtain the assignment when the first-mentioned contract on the Badra field was amended and to obtain other O&M contracts on the same oil field. These bribes were, however, never paid.¹²

The verdict against Petrofac and Executive A does not name the various agents who were used to pay the bribes. However, media reports have linked the consultancy firm Unaoil to Petrofac's operations in Iraq.¹³ According to one of these reports, Unaoil's country manager is alleged to have offered USD 1 million (later reduced to USD 500,000) via an intermediary in an attempt to win contracts on the Garraf field on behalf of Petrofac and another company.¹⁴

2.1.2 Saudi Arabia

Petrofac and Executive A had admitted to two cases of corruption in Saudi Arabia. The first case relates to two EPC contracts linked to the Petro Rabigh Phase II Petrochemical Expansion project, which was awarded to Petrofac Saudi Arabia Company Ltd (PSACL) in 2012. The contracts had a combined value of around USD 600 million, with approx. USD 5.8 million being paid in bribes. The second case relates to two EPC contracts linked to the Jazan Refinery and Terminal project that PSACL also won in 2012 and that had a combined value of around USD 1.8 billion. Petrofac admitted that a total of USD 15.5 million was paid in bribes in connection with these contracts.¹⁵

¹² Sentencing Remarks of HHJ Taylor, Recorder of Westminster, 4 October 2021: Serious Fraud Office v (1) Petrofac Ltd (2) [formerly Global Head of Sales for PIUL]; Serious Fraud Office, 7 February 2019: *Former senior executive convicted in Petrofac investigation*, <https://www.sfo.gov.uk/2019/02/07/former-senior-executive-convicted-in-petrofac-investigation/>.

¹³ At the end of March 2016, it was revealed that the Monaco-based company Unaoil had acted as agent in the Middle East, Africa and former Soviet states on behalf of almost 40 countries in the oil and gas industry in Europe the USA, Asia and Australia in the period 2002–2012. At the same time, it emerged that allegations or suspicions of corruption were linked to many of the contracts in relation to which Unaoil had acted as intermediary. (See The Age, 30 March 2016).

¹⁴ The Age, 30 March 2016: *The Bribe Factory – Unaoil: How the West bought Iraq*, <https://www.theage.com.au/interactive/2016/the-bribe-factory/day-1/iraq-feature.html>.

¹⁵ Sentencing Remarks of HHJ Taylor, Recorder of Westminster, 4 October 2021; Serious Fraud Office, 7 February 2019.

In addition, Executive A admitted paying or offering bribes in connection with a further seven contracts.¹⁶

2.1.3 The United Arab Emirates

Petrofac and Executive A also admitted to two cases of corruption in the United Arab Emirates. The first case relates to changes in the EPC contract between Petrofac Emirates and Zakum Development Company (ZADCO), linked to the Upper Zakum UZ750 Field Development project. The changes in the contract, which was worth USD 459 million, took place in November 2014. The second case relates to the Bab FEED contract, worth USD 26 million, which Petrofac Emirates won in May 2014. Bribes totalling USD 9 million were paid out in connection with these contracts. In addition, Executive A pleaded guilty to the payment of approx. USD 17 million in bribes in connection with the signing of the original Upper Zakum UZ750 contract, worth USD 2.9 billion, in 2013.¹⁷

2.2 Kazakhstan

Petrofac has confirmed that the company used the firm Unaoil to perform “consulting services” on its behalf in Kazakhstan in the period 2002–2009.¹⁸ At the end of March 2019, two brothers in the family which controls Unaoil pleaded guilty to corruption in several countries, including Kazakhstan.¹⁹ According to court documents, between 2003 and 2010 they are alleged to have paid or offered/promised to pay bribes to persons in authority in Kazakhstan, in return for winning contracts on at least two oil and gas projects in the country for a company dubbed “Company 7”. According to The Guardian newspaper, it was Petrofac which worked with Unaoil in Kazakhstan during the period in question. According to court documents, one of the brothers is alleged to have collaborated with a highly placed executive at Company 7 to engage in dual

¹⁶ Sentencing Remarks of HHJ Taylor, Recorder of Westminster, 4 October 2021; Serious Fraud Office, 7 February 2019.

¹⁷ Sentencing Remarks of HHJ Taylor, Recorder of Westminster, 4 October 2021; Serious Fraud Office, 14 January 2021: *Former senior Petrofac executive pleads guilty to bribery offences*, <https://www.sfo.gov.uk/2021/01/14/former-senior-petrofac-executive-pleads-guilty-to-three-further-bribery-offences/>.

¹⁸ Petrofac, 1 August 2016: *Update on Board review*, <https://www.petrofac.com/media/news/update-on-board-review/> (last visited 19 August 2022).

¹⁹ In addition to Kazakhstan, this included Algeria, Angola, Azerbaijan, the Democratic Republic of Congo (DNC), Iran, Iraq, Libya and Syria. In total, Unaoil is alleged to have paid bribes on behalf of 27 companies.

accounting to camouflage the bribes paid on behalf of the company as legitimate transactions.²⁰

According to media reports, one of the oil and gas projects in Kazakhstan was a contract on the Kashagan field in the Caspian Sea. Unaoil is said to have attempted to win a contract on this field, on behalf of Petrofac and another company, from 2004 onwards. A key intermediary is alleged to have been a former executive at an Italian oil company which was responsible for operating the Kashagan field in partnership with the Kazakhstan government. According to the allegations, several other executives at the Italian oil company leaked extremely sensitive tender information and rigged contracts in the country in return for bribes. In 2006, another intermediary is alleged to have told both Unaoil and a then executive at Petrofac that he had succeeded in winning a contract for Petrofac in Kazakhstan with the help of employees from the Italian oil company. According to media reports, Unaoil paid this intermediary a total of USD 1.7 million for his services.²¹

2.3 Corruption risk in sectors and countries in which the company operates

It has long been known that the oil and gas industry is one of the business sectors with the highest corruption risk in the world. Evidence for this may be found in Transparency International's Bribe Payers Index from 2011 and the

²⁰ 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 March

2019: *United States of America v. Cyrus Allen Ahsani, and Saman Ahsani*, p. 8-9, 23-24, <https://www.justice.gov/criminal-fraud/case/file/1266861/download>; The Guardian, 24 November 2019: *Petrofac executive accused of keeping fake accounts to disguise bribes*, <https://www.theguardian.com/business/2019/nov/24/petrofac-accused-of-keeping-fake-accounts-to-disguise-bribes>.

²¹ Huffpost, 30 March 2016: *U.S. Oil Industry Giant Paid Millions To A Company At The Center Of Huge Corruption Scandal*, https://www.huffpost.com/entry/kbr-unaoil-corruption_n_56fafbf1e4b0a06d5803f5b8; The Age, 30 March 2016: *The Bribe Factory – Unaoil: Kazakhstan – buying a piece of the “spaghetti house”*, <https://www.theage.com.au/interactive/2016/the-bribe-factory/day-2/kazakhstan.html>; The Age, 30 March 2016: *The Bribe Factory – Unaoil: The dirty executives*, <https://www.theage.com.au/interactive/2016/the-bribe-factory/day-2/the-dirty-execs.html>.

OECD's Foreign Bribery Report from 2014, among others.²² The high corruption risk is associated, in part, with the extraordinary returns on investment in the production of natural resources, and the fact that oil and gas production projects are often extremely complex, with many different components and suppliers.²³ However, the oil and gas industry's main challenge relating to corruption risk is, perhaps, that much of the world's oil and gas resources are located in countries with weak systems of government, an absence of democracy and/or feeble institutions. The authorities in these countries have increasingly secured for themselves direct control over the production of oil and gas resources through the establishment of state-controlled/state-owned oil companies, so-called National Oil Companies (NOCs).²⁴ Oil service companies like Petrofac must therefore work with NOCs – either directly or indirectly – in many challenging contexts.

In its interim report for the first half of 2022, Petrofac discloses revenues for the company's 19 most important markets.²⁵ Several of these markets are in countries ranked at the bottom end of international corruption indexes, while some of the very highest revenues come from countries positioned in the high-risk segment. Of the six countries to which allegations or suspicions of corruption relate, five are among the company's 19 most important markets.

3 Anti-corruption standards and best practice

In its assessment of the future risk of corruption linked to the company's business operations, 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, as well as respond to

²² Transparency International: *Bribe Payers Index 2011*, p. 15, <https://www.transparency.org/en/publications/bribe-payers-index-2011>; OECD. 2014. *Foreign Bribery Report. An Analysis of the Crime of Bribery of Foreign Public Officials*, p. 21, <https://www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm>.

²³ GAN Integrity, 6 July 2018: *Corruption Risk in Oil and Gas: Why We See So Much*, <https://www.ganintegrity.com/blog/oil-company-corruption/>

²⁴ U4 Anti-Corruption Resource Centre. 2008. *Grand corruption in the regulation of oil*, p. 18, U4 Issue, <https://www.u4.no/publications/grand-corruption-in-the-regulation-of-oil>

²⁵ Petrofac Limited, 30 June 2022: *Interim Condensed Consolidated Financial Statements*, p. 24, https://www.petrofac.com/media/vnjlzzjz/petrofac-half-year-2022-results-financial-statements_.pdf.

corruption allegations and investigations.²⁶ In addition, the OECD has established a set of principles for good corporate governance which, in several key areas, also has a significant impact on companies' anti-corruption endeavours.²⁷

3.1 Corruption prevention

All standards for best practice presume that top management must be genuinely involved in this effort if a company is to be capable of effectively preventing corruption. An effective anti-corruption programme must therefore be based on the strong, explicit, visible and active support and commitment of the company's top management and board of directors. In this context, it is important that management clearly communicates zero tolerance of corruption, and that the company communicates the importance of its corruption-prevention activities to its workforce, business partners and representatives.²⁸

To be able to define systems and an anti-corruption programme tailored to the specific business, corruption risk must be systematically identified and assessed in all areas of the operation. It is a minimum requirement that a company

²⁶ Internationally recognised guides and principles for the design of anti-corruption programmes may, for example, be found 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*, 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_counterin_g_bribery.

²⁷ OECD. 2015. G20/OECD Principles of Corporate Governance, <https://www.oecd-ilibrary.org/docserver/9789264236882-en.pdf?expires=1668072820&id=id&accname=oid029201&checksum=5980DECB3A7C585CE47482CD26C9BBC1>.

²⁸ 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 <https://thedocs.worldbank.org/en/doc/06476894a15cd4d6115605e0a8903f4c-0090012011/original/Summary-of-WBG-Integrity-Compliance-Guidelines.pdf>.

implements robust preventive measures in those areas in which it is most exposed to risk.²⁹

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.³⁰

Furthermore, it is important that the company perform checks on third parties, so called due diligence, 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.³¹ 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.³²

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, and the company should have a clearly defined procedure for investigating reports of rule violations.³³

²⁹ This follows, for example, from UNODC (2013), Chapter II; OECD (2010), Annex II, (A); DOJ and SEC (2012), Chapter 5, pp. 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>. A more detailed guide to the performance of such risk assessments may, for example, be found in Global Compact's *A guide for anti-corruption risk-assessment* (2013), available at https://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/RiskAssessmentGuide.pdf.

³⁰ UNODC (2013), Chapter III, (H); OECD (2010), Annex II, (A), point 8; TI (2013), point 6.4; WBG (2010), point 7.

³¹ OECD (2010), Annex II, (A), point 6(i); TI (2013), point 6.2; WBG (2010), point 5.

³² 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.

³³ UNODC (2013), Chapter III, (J) and (K); WBG (2010), point 10.

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.³⁴

According to best practice, 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.³⁵

3.2 Disciplinary action/sanctions

Several of the most important standards require that companies' response to non-compliance with internal guidelines be proportionate and dissuasive, and that the disciplinary action taken against individual offenders be clearly disclosed. UNODC, for example, states that sanctions must be applied in practice, since sanction systems that exist only on paper will undermine the anti-corruption programme rather than reinforce it. If sanctions are not applied equally forcefully at all levels in the company, the programme as such will lose its credibility. In its guide to the UK Bribery Act, Transparency International UK recommends that companies do not let an employee who has been involved in bribery resign voluntarily instead of implementing a formal termination of employment process. This is because the first course of action will send a clear signal to employees that the company would rather sweep the matter under the carpet than take firm action to sanction wrongdoers.³⁶

³⁴ UNODC (2013), Chapter III, (L); OECD (2010), Annex II, (A), point 12; TI (2013), points 6.8 and 6.10; WBG (2010), point 3.

³⁵ 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.

³⁶ World Economic Forum-Partnering Against Corruption Initiative (WEF-PACI). 2016. *Global Principles for Countering Corruption*, p. 9, https://www3.weforum.org/docs/WEF_PACI_Global_Principles_for_Countering_Corruption.pdf; UNODC (2013), Chapter III, (K); WBG (2010), point 10.2; DOJ and SEC (2012), Chapter 5, pp. 59-60; OECD (2010), Annex II, (A), point 10; Transparency International UK. 2010. *The 2010 UK Bribery Act Adequate Procedures. Guidance on good practice procedures for corporate anti-bribery programmes*, Chapter 3.6.3, https://www.transparency.org.uk/sites/default/files/pdf/publications/Adequate_Procedures_-_Guidance_to_the_UK_Bribery_Act_2010.pdf.

3.3 Response to allegations and investigation of corruption

It follows from Article 39 of the United Nations Convention Against Corruption (UNCAC) that States Parties shall encourage companies to report corruption-related crime to the authorities. The UNODC considers that companies play a key role, not least, in preventing and uncovering complex and concealed acts of corruption, and in prosecuting those involved.³⁷

When assessing whether to indict companies or enter into out-of-court settlements, the US Department of Justice (DOJ), which has a unique position with regard to combatting international corruption, has long emphasised the extent to which companies themselves report cases of corruption, cooperate in its investigations and implement mitigation measures.

More specifically, this means that:

- a) the company, at its own initiative, reports potentially criminal activity when the company becomes aware of it;
- b) the company is willing to share relevant information and evidence with the investigation, as well as help to identify relevant persons both inside and outside the company, including senior executives;
- c) the company implements an effective compliance programme or improves its existing programme, replaces those responsible in its management and sanctions or dismisses those employees who have been involved in the illegal activity.³⁸

British prosecuting authorities and the UK's SFO have also long attached importance to companies' self-reporting, cooperation and implementation of mitigating measures as relevant factors in their decisions to prosecute or not.³⁹

3.4 Corporate governance

The OECD principles state, among other things, that the board of directors is responsible for exercising control of a company's day-to-day management on behalf of its shareholders. In order for the board to exercise this function, it must be able to make objective and independent assessments, which would normally

³⁷ UNODC (2013), Chapter III, (K).

³⁸ DOJ and SEC (2012), Chapter 5, pp. 53-54.

³⁹ SFO, CPS and Revenue and Customs Prosecutions Office, 2009-2010: *Guidance on corporate prosecutions*, p. 8, <https://www.sfo.gov.uk/publications/guidance-policy-and-protocols/guidance-for-corporates/guidance-on-a-corporate-prosecution/> <https://www.sfo.gov.uk/download/guidance-corporate-prosecutions/> (last visited: 14 November 2022).

presume that a sufficient number of board members are independent of executive management.⁴⁰

One of the board's key functions is to safeguard the integrity of the company's accounting and financial reporting systems, including their independent auditing. Furthermore, the board must ensure that the company has appropriate internal control systems in place, specific systems for risk management, financial and operational control, and systems to ensure compliance with statutory provisions and relevant standards. As examples of relevant statutes, regulations and standards, the OECD principles refer to national laws enacting the OECD's Anti-Bribery Convention, as well as legislation covering other forms of bribery and corruption.⁴¹

4 The company's corruption-prevention measures, handling of investigations and corporate governance

4.1 Measures implemented by Petrofac to prevent, detect and respond to corruption

Tone from the top:

Apart from references to the SFO's investigations made by the CEO and board chair in the company's annual reports for 2018 and 2020, and the mention of the final verdict in the annual report for 2021, it has been difficult to find written examples of the "tone from the top" concerning anti-corruption in these reports since the company was floated on the stock exchange in 2005. The Council has therefore asked the company to provide some tangible examples of steps that the CEO, board chair or other members of top management have taken during the previous five years to communicate a zero tolerance for corruption to the company's employees, business partners and representatives. In response, Petrofac has primarily referred to the CEO's participation when the company's standard anti-corruption eLearning course was launched in July 2011 and when a new eLearning course was launched in July 2016. In addition, the CEO is said to have sent an email to all employees in September 2016 in connection with a campaign to encourage the reporting of potential wrongdoing in the company, called "Speak Up".⁴² Commenting on a draft version of this recommendation to

⁴⁰ OECD (2015), Principle VI, p. 45, Principle VI.E, p. 50.

⁴¹ OECD (2015), Principle VI.D.7, pp. 49-50.

⁴² Respectively, letter from the Council on Ethics, dated 24 August 2022, and reply from Petrofac, dated 22 November 2022.

place the company under observation, Petrofac further disclosed that its board of directors communicated zero tolerance for compliance and ethics related breaches during a live-streamed intranet address to all employees in January 2020. This was in connection with the launch of the company's revised code of conduct.⁴³

Risk assessments:

According to Petrofac, risks relating to bribery and corruption have been an integrated part of the company's overarching Enterprise Risk Management (ERM) process since the company was floated on the stock exchange in 2005.⁴⁴ Since 2008, bribery and corruption have been highlighted as one of the "key risks" or "principal risks" facing the company. In the annual reports from and including 2014, bribery and corruption is also assessed as having a "high" level of materiality for both the company internally and for the company's external stakeholders.

In response to the Council's questions, Petrofac has provided an overarching description of the processes and methods the company uses to assess corruption risk. Petrofac has also shared a list of 32 different questions for assessing risk at the country level, as well as an anonymised example from 2019 of a country where a majority of the relevant questions have been used to rank this country's level of risk.⁴⁵ However, this overview does not contain a description of the measures the company has initiated or is planning to initiate to deal with the risks identified in the country concerned.

Commenting on a draft version of this recommendation, Petrofac pointed out that the company's compliance programme is based on an overarching risk assessment which, among other things, takes account of the fact that it operates in the oil and gas sector. The company further emphasised that the current compliance programme has been under development since 2019, with the assistance of a law firm. In this process, several reviews have been performed to assess the programme's design and efficacy.⁴⁶

Petrofac has not shared any information with the Council concerning what it considers to be the most important corruption risks in the company's operations,

⁴³ Letter from Petrofac to the Council on Ethics, dated 3 March 2023.

⁴⁴ Letter from Petrofac, dated 1 October 2020.

⁴⁵ Respectively, letter from the Council on Ethics, dated 3 September 2020, and reply from Petrofac, dated 1 October 2020; Reply from Petrofac, dated 22 November 2022.

⁴⁶ Letter from Petrofac to the Council on Ethics, dated 3 March 2023.

or how these are prioritised.⁴⁷ However, in its comment on the draft recommendation, the company has disclosed some general measures intended to safeguard the management or elimination of identified risks.

- Introduction of an overarching Anti-Bribery and Corruption Policy in 2022
- Latest update of the Standard for the Prevention of Bribery & Corruption in 2022
- Introduction of a separate procedure covering due diligence, gifts, entertainment and hospitality
- Revision of the company's Conflict of Interest Policy and introduction of a Conflict of Interest Procedure
- Introduction of a digital tool to manage the self-reporting of potential conflicts of interest and approval of gifts, entertainment and hospitality
- Introduction of a tool for due diligence assessments, supplied by Dow-Jones, supported by system level controls
- Trade Compliance Policy & Procedures intended to ensure a uniform approach to compliance with trade regulations
- A well-functioning programme to encourage the reporting of wrongdoing (Speak Up) in place which is supported by a No-Retaliation Policy.⁴⁸

Guidelines and plans:

In its 2005 annual report, Petrofac stated that it had a clear anti-corruption policy, including a ban on bribes.⁴⁹ In 2010, the company also launched its own anti-corruption guidelines, the Standard for the Prevention of Bribery & Corruption, which is applicable to all employees and those who work with or on behalf of the company. The standard has subsequently been updated on two occasions, most recently in June 2022. The prevailing guidelines encompass contract processes, due diligence investigations into third parties, gifts and entertainment, facilitation payments, contributions to political parties, money laundering, etc.⁵⁰

⁴⁷ Letter from Petrofac, dated 1 October 2020.

⁴⁸ Letter from Petrofac to the Council on Ethics, dated 3 March 2023.

⁴⁹ Petrofac Annual Report and Accounts 2005, p. 31.

⁵⁰ Petrofac. 2022. *Standard for the Prevention of Bribery & Corruption*, Rev 2, 27 June 2022, <https://www.petrofac.com/media/3umncyhj/standard-for-the-prevention-of-bribery->

The Council asked Petrofac whether it had an overarching plan for, or description of, the company's anti-corruption activities. In response, the company has furnished the Council with a copy of its Anti-Bribery and Corruption Policy from May 2022. The policy document contains a vision, at the core of which lies the zero tolerance principle. It establishes which obligations apply to all employees and which goals must be fulfilled in this connection. It also makes it clear which other actors the document does or should apply to apart from the company's own employees. With respect to an *annual* plan for the company's activities in the anti-corruption area, Petrofac has disclosed that it is currently working with a law firm to draw up a long-term plan for its entire compliance programme. When completed, the compliance plan will also contain annual plans for the company's anti-corruption endeavours.⁵¹

Training:

The Council asked the company whether it has a specific plan for anti-corruption training, Petrofac has disclosed that the company has compulsory anti-bribery and corruption training (eLearning) for all managers and senior specialists/technical managers. Petrofac further disclosed that employees within these categories must sign an annual declaration in which they pledge to comply with the company's code of conduct and can report potential conflicts of interest, etc. Petrofac has shared the underlying declaration form with the Council. The company also states that it has included third parties (consultants) in the training programme. Petrofac has shared two sets of anti-corruption training materials with the Council.⁵²

In 2020, the Council asked the company how many employees had undertaken the Anti-Bribery & Corruption (ABC) training in the previous five years. Petrofac replied that around 80 per cent of the company's employees had completed this training during the period in question. Among those who had completed the training, just over one-third were managers and senior specialists/technical managers. This corresponds to almost all of the employees at these levels. However, Petrofac does not have an overview of how many third parties have undergone this type of training, since the company does not keep records for

[and-corruption_final.pdf](#). Petrofac has also shared the original guidelines from 2010 with the Council.

⁵¹ Respectively, letter from the Council on Ethics, dated 24 August 2022, and reply from Petrofac, dated 22 November 2022.

⁵² Respectively, letter from the Council on Ethics, dated 3 September 2020, and reply from Petrofac, dated 1 October 2020. Respectively, letter from the Council on Ethics, dated 24 August 2022, and reply from Petrofac, dated 22 November 2022.

internal and external course participants.⁵³ Petrofac further disclosed that it intended to hire a training manager in December 2022, who will also be responsible for the development of an evaluation tool for the company's entire training programme.⁵⁴

Organisation:

Petrofac first appointed a Chief Compliance Officer (CCO) towards the end of 2018.⁵⁵ According to Petrofac, the CCO reports directly to the chair of the board's Compliance and Ethics Committee. For administrative purposes, the position reports to the company's General Counsel. As at November 2022, the company's Group Compliance Department numbered a total of 13 employees. This also includes a dedicated Investigation Team, which was established in April 2018.⁵⁶ The Compliance Department is primarily responsible for the following four main areas:

1. Anti-Bribery and Corruption (ABC), which includes ABC reviews of contracts, due diligence, gifts and entertainment, and conflicts of interest;
2. Trade compliance, including sanctions and import/export controls;
3. Risk assessments;
4. Communication and training.

According to Petrofac, the plan is for the department to have a total of 15 employees working more or less specifically with anti-corruption once it is fully staffed.⁵⁷

Use of third parties and third-party due diligence:

In its anti-corruption guidelines from 2010, Petrofac states that the performance of due diligence on third parties of a certain size is crucial before the company

⁵³ Respectively, letter from the Council on Ethics, dated 3 September 2020, and reply from Petrofac, dated 1 October 2020.

⁵⁴ Letter from Petrofac, dated 22 November 2022.

⁵⁵ <https://www.petrofac.com/en-gb/responsibility/ethics/> (last visited 28 January 2020); Petrofac Annual Report and Accounts 2014, 2015 and 2016.

⁵⁶ The company states that three positions remain unfilled in the department. The final headcount is therefore presumed to rise to 16. Of these, the Inquiry Team will comprise a total of five employees.

⁵⁷ Letter from Petrofac, dated 1 October 2020, as well as a letter from the Council on Ethics, dated 24 August 2022, and reply from Petrofac, dated 22 November 2022.

signs any contracts with them.⁵⁸ Petrofac has shared with the Council the Compliance Due Diligence Standard Operating Procedure that has been in effect at the company since May 2020. The checkpoints, tools and processes described in these guidelines seem largely compliant with the requirements set out in the prevailing international guidelines relating to corruption, money laundering, export controls, etc.

Petrofac has informed the Council of how many due diligence investigations focusing on corruption risk the company performed in the period 2016–2020. However, the company could not divulge the number of third parties that had been rejected on the grounds of a too high corruption risk.⁵⁹

In connection with the conviction of Petrofac and Executive A, Southward Crown Court found that the use of agents was a key factor in all three of the countries in which corruption took place, i.e. Iraq, Saudi Arabia and the United Arab Emirates.⁶⁰ Petrofac has not disclosed how many agents the company has previously had contracts with, but states that it now has contracts with only two agents in Kuwait. The prevailing policy is not to engage this type of third party unless so required under national law. In answer to the Council's question about how the company is compensating for the loss of the services which were previously performed by agents/intermediaries, Petrofac states that it has increased the number of employees in the countries concerned in order to obtain a better understanding of the individual country and get closer to both customers and the local supply chain.⁶¹

Whistleblowing, investigations and reactions:

From Petrofac's annual reports, it seems that the company introduced reporting procedures as long ago as 2005,⁶² while an external whistleblowing channel was established in 2009.⁶³ In 2020, Petrofac transferred the external whistleblowing

⁵⁸ Petrofac Limited, November 2010, p. 14.

⁵⁹ Letter from Petrofac, dated 1 October 2020, as well as a letter from the Council on Ethics, dated 24 August 2022, and reply from Petrofac, dated 22 November 2022.

⁶⁰ Sentencing Remarks of HHJ Taylor, Recorder of Westminster, 4 October 2021.

⁶¹ Letter from the Council on Ethics, dated 24 August 2022, and reply from Petrofac, dated 22 November 2022.

⁶² Petrofac Annual Report and Accounts 2005, p. 34.

⁶³ Petrofac Annual Report and Accounts 2012, p. 86; Letter from Petrofac, dated 22 November 2022.

channel to Navex, which could offer a more user-friendly platform in six languages.⁶⁴

Since 2016, Petrofac has also had an employee with specific responsibility for investigating all such reports received.⁶⁵ Petrofac has shared the Group Investigations Procedure that has been applicable at the company since July 2020. With regard to bribery in particular, Petrofac has disclosed figures for the number of reports of bribery/kickbacks paid to company employees that were received in 2018, 2019 and 2020 respectively. According to the company, some of these reports were confirmed, in the sense that Petrofac's Code of Conduct was found to have been breached, though not necessarily that the receipt of bribes was confirmed. The action taken in response to these cases varied from a formal warning to dismissal, depending on an assessment of the individual's culpability. None of the cases were considered worthy of criminal investigation by the police/prosecuting authority.⁶⁶ In response to the Council's questions, Petrofac has also provided information on a couple of reports concerning alleged facilitation payments and a customer soliciting the payment of bribes to a third party. None of these allegations has been confirmed.⁶⁷

The Council has inquired whether the company has taken action against any of its employees in connection with the matters which resulted in conviction in the UK's Southwark Crown Court in the autumn of 2021. However, the company has declined to answer this on the grounds that it is confidential information.⁶⁸ Commenting on a draft version of this recommendation, Petrofac asserts that it has "cleaned the house" thoroughly and effectively, such that none of the individuals who were involved in any of the cases Petrofac pleaded guilty to are still employed by the company.⁶⁹

Assessment of Petrofac's anti-corruption measures in the verdict delivered by Southwark Crown Court:

The Court acknowledged that Petrofac has made serious attempts to change the company's culture and approach to compliance since the corrupt acts took place.

⁶⁴ Petrofac Limited Annual Report and Accounts 2020, p. 54

⁶⁵ Petrofac Annual Report and Accounts 2016, p. 89.

⁶⁶ Letter from Petrofac, dated 1 October 2020.

⁶⁷ Letter from the Council on Ethics, dated 24 August 2022, and reply from Petrofac, dated 22 November 2022.

⁶⁸ Letter from the Council on Ethics, dated 24 August 2022, and reply from Petrofac dated 22 November 2022.

⁶⁹ Letter from Petrofac to the Council on Ethics, dated 3 March 2023.

In this connection, reference was made to the company having materially strengthened its compliance organisation and due diligence functions, facilitated independent inquiries and terminated all contracts with agents where this is not required under national law.⁷⁰

4.2 Petrofac's handling of corruption allegations and investigations

Petrofac has disclosed that a dedicated board sub-committee has been tasked with managing Petrofac's contacts with the UK SFO and overseeing the company's handling of the investigation after it became known in May 2017. In February 2018, the company issued an update, in which it was disclosed that the company was still engaged in a dialogue with the SFO and that it had provided and would continue to provide the SFO with relevant documents. In November 2019, the company is said to have stated that it remained in dialogue with the SFO, with a view to bringing the case to a close. In January 2021, after Executive A had pleaded guilty to offences in the United Arab Emirates, Petrofac disclosed that its dialogue with the SFO was still ongoing.⁷¹

In that portion of her sentencing remarks relating to Petrofac as a company, the judge in Southwark Crown Court made it clear, that there was no voluntary or early self-reporting on the case by the company, but that there has been "some cooperation with the investigation since the start of 2021". The judge further pointed out that there was "undoubtedly the case" that Petrofac would not have pleaded guilty to the seven counts in the indictment if Executive A had not shared as much information with the investigation as he did. According to the judge, Executive A has been the only party to cooperate with the investigation over a period of more than four years, while others have not cooperated.⁷² In its comment on the draft recommendation, Petrofac points out that – between 2017 and 2021 – it procured tens of millions of documents for the SFO, facilitated many interviews between the SFO and current and previous company

⁷⁰ Sentencing Remarks of HHJ Taylor, Recorder of Westminster, 4 October 2021.

⁷¹ Petrofac, 5 February 2018: *Board update on UK Serious Fraud Office investigation*, <https://www.petrofac.com/media/news/board-update-on-uk-serious-fraud-office-investigation/>; Petrofac, 15 January 2021: *Statement on UK Serious Fraud Office announcement*, <https://www.petrofac.com/media/news/statement-on-uk-serious-fraud-office-announcement/>.

⁷² Sentencing Remarks of HHJ Taylor, Recorder of Westminster, 4 October 2021.

employees, and held numerous in-person meetings with the SFO. According to Petrofac, the company here went further than it was legally obliged to.⁷³

4.3 Petrofac's corporate governance

In her sentencing remarks, the judge in Southwark Crown Court pointed out that Petrofac, as all other companies, operates through its managers and employees. In this connection, the judge found that Petrofac, as part of the reforms implemented at the company, has made significant changes to its board and management since the corrupt acts took place. For example, the company recruited a new CEO with effect from 2021, while several new individuals have been appointed to key management positions. The judge further noted that none of the board members or senior executives referenced in the indictment or implicated in the SFO's evidence are any longer in the company's employ.⁷⁴

However, two key board members, who held seats on the board while the corrupt acts took place, will not step down from the board until Petrofac's Annual General Meeting in May 2023. One of these individuals is Executive B, one of Petrofac's founders. He held the post of CEO from the company's stock market flotation in 2005 right up until the end of 2020. He has also had an uninterrupted seat on the board since 2005.⁷⁵ The second individual is the board's current chair, who has held this office since May 2018. He has been a board member since 2012.⁷⁶ In its comment on the draft recommendation, Petrofac points out, firstly, that Executive B and the person who has been board chair since 2018 are not part of the company's day-to-day/operative management. Furthermore, Petrofac states that it was considered in the company's interests that these individuals should help to secure continuity in the board during a transition period, after the company had undergone major changes, at the same time as a new corporate culture, strategy, vision, rules and procedures were established.⁷⁷

⁷³ Letter from Petrofac to the Council on Ethics, dated 3 March 2023.

⁷⁴ Sentencing Remarks of HHJ Taylor, Recorder of Westminster, 4 October 2021.

⁷⁵ Petrofac. 2011. Petrofacts February 2011, pp. 12, 14-15, https://issuu.com/petrofacts/docs/petrofacts_feb_2011_-_andy_inglis_joins_petrofac (last visited: 29 January 2020); Petrofac Limited 2021 Annual Report and Accounts, p. 102; Petrofac, 26 April 2022: Board update, <https://www.petrofac.com/media/news/board-update-ayman-asfari/>.

⁷⁶ Petrofac Limited Annual Report and Accounts 2021, pp. 89, 92.

⁷⁷ Letter from Petrofac to the Council on Ethics, dated 3 March 2023.

The person who has been CEO since the start of 2021 will leave the company at the close of March 2023.⁷⁸

Petrofac states that the company is subject to the UK Corporate Governance Code and that it has met all the requirements, bar one, in this standard in 2021. The exception was that the current board chair was allowed to remain in post beyond the nine-year time limit set for this office.⁷⁹

Petrofac further discloses that, in 2021, the board devoted almost 40 per cent of its time to handling the SFO investigation and its outcome.⁸⁰

In May 2022, the company adopted an Anti-Bribery and Corruption Policy, which states that the board has ultimate responsibility for the design and efficacy of the company's anti-corruption measures.⁸¹

The Council has asked Petrofac whether any of the board members who have taken office since the SFO's investigation became known in May 2017 have a background which makes them especially qualified to monitor the company's anti-corruption activities. The company has provided the names of, in all, five board members who have been appointed to the board's Ethics and Compliance Committee during the period concerned.⁸² The Council has reviewed the CVs of these board members, which are openly available online.⁸³ None of the CVs mentions anti-corruption in relation to the individual's place of work, work experience or educational establishment. Nor is anti-corruption included by the three board members who have also listed various areas of competence. The same picture also emerges from Petrofac's own description of the "key strengths and experience" of each of the relevant board members in its annual report.⁸⁴ However, in its comment on the draft recommendation, Petrofac highlights several factors relating to these board members that it believes make them qualified to perform such a function. For example, the company refers to

⁷⁸ Petrofac, 22 November 2022: Petrofac management and Board changes, <https://tools.eurolandir.com/tools/Pressreleases/GetPressRelease/?ID=4207365&lang=en-GB&companycode=uk-pfc&v=>.

⁷⁹ Petrofac Limited, 2021, p. 89.

⁸⁰ Petrofac Limited 2021, p. 90.

⁸¹ Petrofac Limited, May 2022: Anti-Bribery and Corruption Policy, <https://www.petrofac.com/media/5b3hi1gk/anti-bribery-and-corruption-policy.pdf>

⁸² Letter from the Council on Ethics, dated 7 November 2022, and reply from Petrofac, dated 22 November 2022; Petrofac Limited Annual Report and Accounts 2021, p. 93.

⁸³ LinkedIn (last visited 29 November 2022).

⁸⁴ Petrofac Limited 2021, s. 92-93.

extensive management and board experience and in-depth sectoral knowledge. In the performance of their previous roles, several of the board members concerned are also said to have been involved in remediation following allegations of corruption aimed at companies with which they have been associated. A couple of the board members also have experience from auditing, compliance and/or financial control activities. Petrofac also disclosed that the board is being assisted by a law firm to review the company's ethics and compliance programme on a regular basis.⁸⁵

5 Information from the company

In addition to the information published on the company's website and in its annual reports, Petrofac has provided the Council with information on its anti-corruption measures and shared several of its internal guidelines on several occasions from 2020 to 2022. The description given in Chapter 4 is based largely on this information. In March 2023, the company commented on a draft version of this recommendation to place it under observation. Several of the statements the company made in that connection have been incorporated into Chapter 4. Otherwise, the company's most important assertions are presented below:⁸⁶

Allegations and suspicions of corruption:

Petrofac points out that the company has pleaded guilty only to not having prevented corruption in three jurisdictions in the period 2011–2017. With regard to its links to Unaoil, the company states that its own investigation found no irregularities.

Use of third parties and due diligence thereon:

In response to the Council's questions concerning compensation for loss of the services previously provided by agents/intermediaries, Petrofac repeated its reply from November 2022, which is already cited in section 4.1 above.

Reporting, investigations and sanctions:

In addition to the company's own claim to have "cleaned the house", Petrofac pointed to the court's finding that none of the board members or senior executives named in the indictment or implicated in the SFO's evidence are any

⁸⁵ Letter from Petrofac to the Council on Ethics, dated 3 March 2023. Two of the three board members who, according to Petrofac, have been involved in handling corruption allegations made against companies with which they were associated left the board in May 2022. The third member has served on the board since 2015.

⁸⁶ Letter from Petrofac to the Council on Ethics, dated 3 March 2023.

longer employed by the company. Furthermore, reference is made to the judge's comments regarding the changes that have taken place at the company in this connection.

Handling of allegations and investigations into corruption:

Petrofac considers the Council's description of the company's cooperation with the SFO to be inaccurate and unfair.

6 The Council's assessment

Based on the available documentation, the Council has assessed the GPF's investment in Petrofac against the criterion relating to gross corruption and other serious financial crime in the Guideline's for Observation and Exclusion of Companies from the Government Pension Fund Global.

The Council's investigations have revealed that Petrofac or its subsidiaries can be linked to alleged or suspected corruption in six countries over a period of 15 years. All the cases relate to allegations of bribery or suspicious transactions via agents or subcontractors to win contracts for Petrofac's subsidiaries. A former Petrofac executive has pleaded guilty to a total of 14 cases of bribery, involving payment of more than USD 80 million in bribes, to win contracts worth in excess of USD 8 billion for the company. Of the total amount paid in bribes, the company has pleaded guilty in respect of USD 44 million.

The Council notes Petrofac's assertion that it pleaded guilty only to failing to prevent corruption in three jurisdictions in the period 2011–2017. The Council, however, does not assess guilt under criminal law but whether the company has behaved in a way that constitutes an unacceptable risk of it contributing to or being responsible for gross corruption or other serious financial crime. In this perspective, the Council does not distinguish between the company and the company's employees. The Council also considers that, despite neither the company nor its employees having been found guilty in connection with the other cases, it has been adequately substantiated that bribes may have been paid with the aim of securing contracts for Petrofac.

On the basis of the matters described, the Council has considered whether there is an unacceptable risk that Petrofac will, in future, become involved in similar actions.

The Council has firstly assessed Petrofac's efforts to prevent, detect and respond to corruption. The Council notes Southwark Crown Court's finding that, since the corrupt acts took place, the company has significantly strengthened its compliance organisation and its due diligence functions, and that it has terminated all contracts with agents where this is not required under national

law. Nevertheless, the Council considers that considerable uncertainty still attaches to the company's handling of corruption risk.

The available information indicates that Petrofac will continue to operate in a sector and in countries where the risk of corruption is high. Several of the countries to which the alleged or suspected corruption relates are also currently among Petrofac's most important markets. The company's risk assessments will always constitute a key part of its anti-corruption programme. In the Council's view, they will be particularly important when facing the risk picture concerned here. In this connection, the Council notes that Petrofac's compliance programme is based on an overarching risk assessment and that the company has implemented several general measures to manage or eliminate identified risks. However, Petrofac has not shared with the Council information about what it considers its most important corruption risks, how these are prioritised or which specific measure the company has implemented to manage any identified corruption risk. Furthermore, the company has not yet confirmed that it has started creating annual action plans in the anti-corruption area.

Since the use of agents has probably been one of the largest corruption risks, the Council considers the company's sharp reduction in the use of agents in recent years to be a positive step. The company has also disclosed that the services previously provided by these agents are now being performed by the company's own employees. However, the company still operates in several of the same markets. Because the company has provided very little information about how these markets will be managed in practice, the Council is uncertain about the impact this measure will have.

In her sentencing remarks following the company's conviction in 2021, the judge in Southwark Crown Court acknowledged that Petrofac has made serious attempts to change its corporate culture and refers to the fact that the company has replaced a significant portion of its board and management since the corrupt acts took place. Nevertheless, the Council attaches importance to the fact that two of today's board members also held seats on the board when the corrupt acts took place and have held key positions at the company for many years.

As board chair and CEO, respectively, these individuals have, up to now, had ultimate responsibility for establishing a good "tone from the top" and a strong compliance culture within the company. The Council notes that it was considered to be in the interests of the company that Executive B and the board's current chair should help to secure continuity in the board during a transition period, and that they will resign from the board at Petrofac's AGM in May 2023. At the same time, the Council finds it questionable whether these two – through the change process that the company has described – have been the right people to communicate the message of culture change to the organisation.

Another expression of the “tone from the top” and a company’s compliance culture is whether it itself reports cases of wrongdoing and cooperates with the authorities’ investigations. The Council perceives there to be a disparity between Petrofac’s reporting about its dialogue with the SFO and the findings of Southwark Crown Court. Firstly, according to the judge’s sentencing remarks, there was no voluntary or early self-reporting on the part of the company. Furthermore, the judge found that cooperation of any kind with the investigation did not commence until the beginning of 2021, despite the investigation getting underway in May 2017. In this connection, the Council would also like to point out that the judge concluded that Petrofac would not have pleaded guilty if Executive A had not cooperated with the investigation.

The Council notes that Petrofac has devoted a great deal of time and resources to assisting the SFO’s investigation. This includes facilitating the conducting of interviews and sharing large volumes of documents, and that the company itself feels it has cooperated over and above its legal obligations. Nevertheless, on the basis of the Council reading of the judge’s remarks it is difficult to determine that the company has cooperated fully with the investigation. In light of the experience provided by other assessments under the corruption criterion, the Council would also like to remark that the quantity of documentation is not necessarily an indicator of the quality of the documents a company shares with the prosecuting authorities. The extent to which this is a good indicator of the degree of cooperation is therefore also uncertain.

With respect to the board’s role, the Council notes that several of the members of the board’s Ethics and Compliance Committee have been involved in handling allegations of corruption by virtue of their former roles/offices, or that they have experience of compliance and/or auditing. In light of the company’s high risk exposure, the fact that the board has ultimate responsibility for the design and efficacy of the company’s anti-corruption measures and, not least, the serious allegations of corruption to which Petrofac can be linked, the Council nevertheless finds reason to question why none of those who have been appointed to this committee since the SFO’s investigation became public knowledge seem to have any background or special competence in the area of anti-corruption.

The Council also attaches material importance to the absence of visible reactions on the part of the company. Petrofac has disclosed that it has “cleaned the house” and that none of the individuals linked to the allegations of corruption are any longer employees of the company. However, it is not possible on this basis for the Council to make a qualified assessment of whether Petrofac has implemented a proportionate, dissuasive and visible response. Since appropriate reactions are important for the prevention of corruption, the Council considers that this uncertainty represents a significant future risk.

Although Petrofac has improved its compliance programme since the corruption allegations came to light, the Council therefore considers that uncertainty continues to attach to some elements of this programme, the company's corporate governance and the culture changes the company now claims to have implemented. In addition, it is not long since Petrofac established its new compliance organisation, making it difficult to fully assess the impact of the company's anti-corruption measures. The Council therefore considers that developments forward in time remain doubtful and that the company should be placed under observation pursuant to section 6(5) of the Guidelines.

During the period of observation, the Council will monitor developments in the ongoing corruption cases and observe Petrofac's anti-corruption endeavours, in part through dialogue with the company. If additional cases of gross corruption or other forms of serious financial crime should come to light, or if the company cannot demonstrate that it is doing enough to prevent, detect and deal with corruption and other financial crime within its business operations, the conditions needed to recommend the company's exclusion from investment by the GPFG could be met.

7 Recommendation

The Council on Ethics recommends that Petrofac Ltd be placed under observation due to an unacceptable risk that the company is contributing to gross corruption.

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(Sign.)

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