

Unofficial English Translation

To Norges Bank

8 October 2024

**Recommendation to discontinue
observation of Hyundai Engineering &
Construction Co Ltd**

Summary

In July 2021, Hyundai Engineering & Construction Co Ltd (HDEC) was placed under observation due to the risk that the company was contributing to or was itself responsible for gross corruption. Norges Bank made this decision on the basis of a recommendation issued by the Council on Ethics in April of that year. The original recommendation to place HDEC under observation was prompted by allegations or suspicions of corruption in Algeria, South Korea and Indonesia in the period 2008–2018, as well as the company's involvement in widespread bid rigging and illegal price collusion in South Korea between 2005 and 2013. The Council considered that HDEC had not taken the various allegations seriously enough and that much remained to be developed and implemented with respect to the company's systems and procedures for the prevention and detection of corruption.

Throughout the observation period, the Council has had the impression that HDEC's efforts to prevent, detect and deal with corruption have steadily improved, and the Council's assessment now is that the company seems to have put in place an anti-corruption system that, in most areas, aligns with internationally recognised recommendations. Also, during the observation period, the Council has not uncovered any new allegations of corruption relating to the company's business.

Hence, the Council no longer considers the risk of gross corruption in the company's business operations to be unacceptable and recommends that observation of HDEC be discontinued.

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1 Introduction

In July 2021, Norges Bank announced its decision to place Hyundai Engineering & Construction Co Ltd¹ (HDEC) under observation due to an unacceptable risk that the company is contributing to, or is itself responsible for, gross corruption. This was in line with the recommendation issued by the Council on Ethics in April of that year.²

HDEC is one of the largest construction companies in South Korea. It is involved in the construction of ports and shipping terminals, bridges and motorways, dams, nuclear and other power generating facilities, petrochemical facilities, apartment blocks etc. Around a quarter of the company's projects are located abroad. At the close of 2022, HDEC employed just under 7,000 people.³

At the end of June 2024, the Norwegian Government Pension Fund Global (GPF) owned 1.12 per cent of the company's shares, worth NOK 310 million.⁴

1.1 Basis for the Council's present recommendation

According to section 5(7) of the Guidelines for Observation and Exclusion of Companies from the Government Pension Fund Global, the Council on Ethics may, on the basis of new information received, recommend that Norges Bank revoke its decision to exclude a company or place it under observation.⁵

2 Background

The original recommendation to place HDEC under observation was prompted by allegations or suspicions of corruption in Algeria, South Korea and Indonesia

¹ Issuer ID: 117619.

² The Council's original recommendation may be found at:
<https://etikkradet.no/hyundai-engineering-construction-co-ltd-2/>

³ 2023 Hyundai E&C Sustainability Report.

⁴ Norges Bank, shareholding at the end of June 2024;
<https://www.nbim.no/no/oljefondet/investeringene/#/2024/investments/equities/5172/Hyundai%20Engineering%20%26%20Construction%20Co%20Ltd.>

⁵ Guidelines for Observation and Exclusion of Companies from the Government Pension Fund Global:
https://www.regjeringen.no/contentassets/9d68c55c272c41e99f0bf45d24397d8c/2022.09.05_gpfg_guidelines_observation_exclusion.pdf

in the period 2008–2018, as well as the company’s involvement in widespread bid rigging and illegal price collusion in South Korea between 2005 and 2013. The Council considered that HDEC had not taken the various allegations seriously enough and that much remained to be developed and implemented with respect to the company’s systems and procedures for the prevention and detection of corruption.

Following Norges Bank’s decision to place HDEC under observation, the Council has obtained information about how the company has been working with and developing its anti-corruption system. It has also monitored whether new allegations of corruption have come to light.

3 Key events since the company was placed under observation

Since the Council’s observation report was issued in February 2023,⁶ the Council has monitored developments in the three cases in which HDEC could be linked to allegations or suspicions of corruption. These are the Banpo-Jugong modernisation project in Seoul, the Cirebon 2 project in Indonesia and the Arzev refinery in Algeria.

At the end of January 2024, it became known that the Seoul Central District Court had ordered HDEC to pay a fine of KRW 50 million (just under NOK 400,000) in connection with the Banpo-Jugong project. The Court found that the company had used unlawful means to promote itself to members of the organisation tasked with selecting which contractor should carry out the modernisation of the housing complex. In addition, HDEC executives and employees were fined amounts ranging from KRW 2 million to KRW 10 million (approx. NOK 15,000–75,000) or given suspended prison sentences.⁷

The Council is not aware of any new developments in the cases relating to Cirebon 2 or the Arzev refinery.

⁶ <https://files.nettsteder.regjeringen.no/wpuploads01/sites/275/2023/03/20230208-Observation-report-HDEC.pdf>.

⁷ Maeil Business Newspaper, 23 January 2024: Hyundai Engineering & Construction Co., which provided money and valuables to its members in a bid for reconstruction, was fined, <https://www.mk.co.kr/en/realestate/10927724>; The JoongAng, 23 January 2024: 재건축 사업권 따내려 '금품 살포' 현대건설 벌금 5000만원, <https://www.joongang.co.kr/article/25224016#home>.

During the observation period, the Council has not uncovered any new allegations of corruption relating to HDEC's business operations.

4 Corruption risk in business sectors and countries in which the company operates

With regard to sectoral risk, what the FTSE defines as the *Construction and Materials* sector has long been highlighted as one where the risk of corruption is among the highest in the world. For example, *Construction* was ranked as the second most corrupt of all the business sectors surveyed in connection with the OECD's Foreign Bribery Report from 2014.⁸

With regard to country risk, the OECD's Phase 4 Report evaluating South Korea's implementation of the OECD Anti-Bribery Convention stated in 2018 that little had been done to raise sentencing levels and reinforce the investigation and prosecution of corruption cases since the previous round of evaluations in 2011.⁹ In 2022, the OECD expressed grave concern about recent and wide-ranging changes in South Korea's Prosecution Service Act and Criminal Procedure Act, since the OECD Working Group on Bribery considered that these amendments would seriously impede on the South Korean prosecuting service's ability to investigate and prosecute cases of corruption taking place abroad. The legislative amendments went into effect in September 2022.¹⁰

In the latest study of how the OECD countries' rules on the bribery of foreign public officials were being enforced, carried out by Transparency International

⁸ 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>.

⁹ 4 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-foreignbribery-enforcement.htm>.

¹⁰ OECD, 20 July 2022: *Recent legislative reforms raise serious concerns over Korea's capacity to investigate and prosecute foreign bribery*, <https://www.oecd.org/daf/anti-bribery/recent-legislative-reforms-raise-serious-concerns-over-koreas-capacity-to-investigate-and-prosecute-foreign-bribery.htm>; Lawtimes, 25 December 2022: 키워드로 돌아본 2022년 법조, <https://www.lawtimes.co.kr/Legal-News/Legal-News-View?serial=184036&kind=AA01>.

(TI) and published in 2022, South Korea was ranked in the lowest category “little or no enforcement”. The TI report points out that there are still weaknesses in the legislation covering this area and that enforcement is hampered by inadequate resources and political interference, among other things.¹¹

5 The company’s anti-corruption activities since 2021

5.1 Tone from the top

In its original recommendation, the Council expressed a wish for additional concrete examples of steps that HDEC’s CEO/Board Chair had taken to communicate zero tolerance for corruption to company employees and others. This picture had not changed much when the Council spoke with the company in 2022. In 2024, however, HDEC could point to a number of examples of the “tone from the top” on the topic of anti-corruption. This has been expressed in both speech and writing not only to the employees and managers of the various divisions within the company, but also to HDEC’s suppliers, shareholders and other stakeholders. HDEC has shared with the Council examples from several different meetings and training courses organised by the company.

HDEC highlights two examples in particular. The first is from the annual conference with the company’s largest suppliers that took place in 2023. Here, HDEC’s CEO emphasised not only the importance of anti-corruption efforts to ensure sustainable growth for itself and its suppliers, but also that ethics and transparency in this collaborative endeavour are a key factor in preventing bribery in the construction sector.

The second example is from the half-yearly conference with HDEC’s divisional managers, which was held at the start of 2024. In addition to repeating the message of zero tolerance for corruption, HDEC’s CEO underlined that this was no longer a choice for the company since changed market conditions have turned combatting corruption into an existential issue. This applies not least to the company’s recent business activities in Europe.¹²

¹¹ Transparency International. 2022. *Exporting Corruption 2022*, pp. 77–79, <https://www.transparency.org/en/publications/exporting-corruption-2022>.

¹² Teams meeting between HDEC and the Council on Ethics, 4 April 2024. Email from the Council on Ethics, dated 16 May 2024, and HDEC’s reply of 17 June 2024; email from HDEC of 9 September 2024.

5.2 Risk assessments

In its original recommendation, the Council stated its impression that HDEC's corruption risk analyses were still relatively early in the development phase. In its observation report from February 2023, the Council noted that HDEC had established a process and guidelines for assessing corruption risk in the company's operations and that this had also resulted in an overarching risk map for the entire enterprise. At the same time, the Council said it would have liked to see more detailed risk maps for the individual business areas and countries in which the company operates. In connection with its observation in 2024, the Council has therefore asked for more detailed information on HDEC's corruption risk assessments at both the overarching level and the country level, including tangible examples of how the company has followed up these assessments in its business operations.

At the overarching level, HDEC has shared some new findings from its risk assessments over the past two years. This includes identified weaknesses in its internal controls relating to accounting practices as well as risks linked to the physical inspection and approval of work carried out on site. With respect to the company's Corporate Social Responsibility (CSR) work, the potential for corruption on the recipient's side has also been exposed. Such philanthropic projects must therefore now be additionally approved by HDEC's Compliance Support Team (CST). To ensure that all business areas and functions pay greater attention to the risk of corruption/bribery, the CST has recently categorised it as a generic risk for the company.

HDEC has shared several examples of high-risk countries where the company has decided to participate/not to participate in tender processes, and high-risk countries where the company has either suspended all further operations indefinitely or has found that the identified risk is manageable. In this connection, HDEC highlights the following mitigating measures:

1. Anti-corruption clauses in relevant contracts with partners
2. Due diligence assessments
3. A requirement that joint-venture partners allocate sufficient resources to compliance activities and that they also engage third-parties to assist in this work if necessary
4. Anti-corruption training¹³

¹³ Teams meeting between HDEC and the Council on Ethics, 4 April 2024. Email from the Council on Ethics, dated 16 May 2024, and HDEC's reply of 17 June 2024.

5.3 Compliance organisation

HDEC has disclosed that the company's central compliance entity, the CST, had 11 employees (including three lawyers) as of June 2024. The three lawyers and three others with a legal background work specifically with anti-corruption matters. These figures remain unchanged from the previous observation report. There are plans to expand the CST with the addition of 1–2 new employees in the near future.

In connection with the previous observation round, HDEC disclosed that it had established the roles "senior ambassador" and "junior ambassador" within the different business areas. The task of these ambassadors is to assist the CST in its compliance work. In reply to the Council's query in connection with the 2024 observation round, HDEC stated that it has set no cap on the amount of time the individual ambassadors are meant to devote to compliance activities. The ambassadors participate in a monthly Compliance Council at which they receive updates on the company's guidelines, as well as relevant laws and regulations, and have the opportunity to discuss specific compliance-related matters. They play an important role in the day-to-day effort by assisting the individual teams/business units to perform due diligence assessments on relevant counterparties. The ambassadors also play a key role in the implementation of ISO 37001 requirements within the organisation and monitoring their performance. This monitoring activity is defined by HDEC as "internal auditing" and selected ambassadors receive specific training in this type of audit, which is performed annually.

HDEC also has its own Audit Group, which is responsible for undertaking the company's internal investigations (see below). The Audit Group is divided into three audit teams and comprised 20 employees as of June 2024. These employees are recruited from the company's various business units and have been specially selected to perform investigative work. Many of them have a background in finance/accounting or law, but all receive specialised training in the conduct of investigations.¹⁴

5.4 Training

In its observation report from February 2023, the Council expressed a desire to see more specifically tailored anti-corruption training and questioned whether it was possible to assess the efficacy of the training programme without mandatory evaluations or tests. In connection with the observation in 2024,

¹⁴ Teams meeting between HDEC and the Council on Ethics, 4 April 2024. Email from the Council on Ethics, dated 16 May 2024, and HDEC's reply of 17 June 2024.

HDEC has disclosed that it developed four new compliance and anti-corruption courses in 2023. These include a course for senior ambassadors on the identification of key actors and corruption risks in accordance with the ISO 37001 standard, a “customised” course for employees in the procurement division on compliance with international anti-corruption regulations, and a country-specific anti-corruption course for employees working at the country office concerned and in relevant divisions at head office. This latter course has been created for a country located in the Middle East, which has been selected as the first focus country due to a high corruption risk and because HDEC has extensive contracts there. HDEC has shared with the Council the course material for this and the course for employees in the procurement division.

In response to the Council’s query, HDEC has disclosed that the Ethics & Transparency training they now carry out for suppliers also focuses on the risk of corruption and bribery. HDEC requires partners in joint ventures and consortia to have a compliance system equivalent to its own, including having the capability to manage corruption risk. Since training is an integral element in this system, HDEC therefore presumes that its business partners provide anti-corruption training to their own employees.

HDEC also discloses that it will perform its first evaluation of the company’s general anti-corruption training during the autumn of 2024.¹⁵

5.5 Third-party due diligence

In its original recommendation, the Council pointed out that HDEC had not yet adopted guidelines for third-party due diligence. In the observation report from February 2023, the Council noted that HDEC had started performing such assessments in a more systematic way. However, it questioned why it was not relevant for HDEC to perform due diligence on public authorities when they were the clients and why only simplified checks of subcontractors were initially carried out. HDEC has subsequently disclosed that it now also performs due diligence on public sector clients, with the help of a third-party service provider. HDEC has shared with the Council an excerpt from a report showing the results of a due diligence assessment on a state-owned energy company.

HDEC has also provided details of the various phases in the due diligence assessments it performs on clients, subcontractors and business partners in joint ventures/consortia, and the different groups of employees and external service

¹⁵ Teams meeting between HDEC and the Council on Ethics, 4 April 2024. Email from the Council on Ethics, dated 16 May 2024, and HDEC’s reply of 17 June 2024; email from HDEC of 9 September 2024.

providers involved in these processes. As to subcontractors in particular, it is HDEC's Procurement Management Team which is responsible for performing an initial review of questionnaires and associated documentation submitted by each potential subcontractor. According to HDEC's due diligence guidelines, the team member responsible must also perform their own desk research and checks against relevant databases to verify the answers provided in the questionnaire. If any of the answers indicate a high risk on HDEC's checklist of red flags, the CST will also be involved in the process. If the CST determines that further investigation is necessary, the employees in the procurement department who know the supplier in question best will also be consulted. In principle, these inquiries may have one of two outcomes. The contract will be terminated or the supplier requested to implement remedial measures.

HDEC has also shared an example of a due diligence assessment that resulted in it rejecting a potential joint-venture partner. In connection with the assessment process, HDEC discovered that the potential partner had been involved in a previous corruption case that they had not disclosed in the first round of background information-gathering. HDEC's request for further details of the corruption case in question was rejected by the potential partner, which qualified for the contract negotiations to be cancelled.

In the previous observation round, HDEC disclosed that certain Middle East countries require foreign companies to use local business partners as "commercial agents" and that it had contracts with three such agents in 2022. According to HDEC, these legal requirements have now been rescinded. As of June 2024, therefore, the company has no such contracts in effect.

The Council has once again requested a copy of the latest version of HDEC's due diligence guidelines. However, the company has declined to comply with this request on the grounds of confidentiality.¹⁶

5.6 Whistleblowing and inquiries

In its original recommendation, the Council noted that HDEC had had a whistleblowing system and procedures in place for a long time. Nevertheless, the Council would have liked to see more specific information about the number of whistleblowing reports relating to corruption and bribery that had been received, and how these had been dealt with by the company. In connection with the observation, HDEC has shared more information on this matter. In the most recent observation round, the company has disclosed the number of reports in

¹⁶ Teams meeting between HDEC and the Council on Ethics, 4 April 2024. Email from the Council on Ethics, dated 16 May 2024, and HDEC's reply of 17 June 2024.

2023 that were confirmed, how many of the confirmed reports related to corruption and how the company has responded to these cases. According to HDEC, all the cases related to passive corruption. In this connection, the company has also provided a brief account of two disciplinary cases that ended in dismissal in 2023.

The board's Audit Committee – which is composed solely of external board members – receives the results from the company's investigations into and follow-up of the individual whistleblowing reports on an annual basis. However, HDEC has still not facilitated reporting directly to the committee. HDEC has shared with the Council that part of the report to the Audit Committee that presents the overarching results of the investigations. According to HDEC, the investigations' results have also been shared with all company employees, although in anonymised form.

HDEC maintains that the company's manual for the performance of internal investigations is too confidential to share with the Council.¹⁷

5.7 ISO 37001 certification

HDEC was certified in accordance with the ISO 37001 anti-bribery management systems standard in November 2021. In 2022, HDEC provided the Council with a description of the actual certification process and the main results thereof. In connection with the 2024 round of observation, HDEC has given a brief account of the main findings from the past three years of annual ISO 37001 audits, which are performed by an external auditor, as well as the most important initiatives that have been adopted on the basis of these reviews. In particular, HDEC emphasised training in identifying key actors and corruption risks in accordance with the standard and the integrity agreement with business partners as key measures. The reports from these audits are also sent to board members, and HDEC has shared a brief summary of the 2023 audit with the Council. According to HDEC, no new nonconformities were identified in connection with this latest audit. A complete recertification audit is scheduled for October 2024.¹⁸

¹⁷ Teams meeting between HDEC and the Council on Ethics, 4 April 2024. Email from the Council on Ethics, dated 16 May 2024, and HDEC's reply of 17 June 2024.

¹⁸ Teams meeting between HDEC and the Council on Ethics, 4 April 2024. Email from the Council on Ethics, dated 16 May 2024, and HDEC's reply of 17 June 2024.

5.8 Corporate governance

In both the original recommendation and the observation report from February 2023, the Council pointed out that having the same person serving as CEO and Board Chair was a source of weakness with respect to HDEC's corporate governance. The Council also considered that this made it more difficult for the board to exercise an independent control function in the area of corruption. In connection with the 2024 observation round, HDEC has disclosed that it still has no plans to change this practice.

The Council has also asked HDEC whether any of the members of its current board of directors have a background which makes them especially qualified to monitor the company's anti-corruption endeavours. In response, the company has pointed to the fact that one member of the Audit Committee is a law professor specialising in competition-related crime, and that this person also has extensive experience as a judge.¹⁹

6 The Council's assessment

In April 2021, the Council recommended that HDEC be placed under observation both because the Council considered that the company had not taken the various allegations against it seriously enough and because there was much work still to be done to develop and implement the company's systems and procedures to prevent and detect corruption.

In its observation report from February 2023, the Council concluded that, in several key areas, the company had substantiated that it had improved its capacity to prevent, detect and deal with corruption since the initial recommendation was issued. The impression now is that this positive development has continued in 2023 and 2024.

In both its initial recommendation and the February 2023-observation report, the Council stated it would have liked to see more tangible examples of steps taken by the CEO/Board Chair to communicate zero tolerance for corruption to employees and others. The impression is that the company's senior executives now have a much stronger focus on anti-corruption than when the Council originally assessed the company, and that this is communicated to employees and third parties.

¹⁹ Teams meeting between HDEC and the Council on Ethics, 4 April 2024. Email from the Council on Ethics, dated 16 May 2024, and HDEC's reply of 17 June 2024.

When it initially assessed the company, the Council's impression was that corruption risk analyses were relatively underdeveloped. In the previous observation round, however, HDEC had established a process and guidelines for assessing corruption risk in the company's operations. In 2024, the company has shared with the Council even more detailed information about the findings from such analyses. This applies in particular to HDEC's handling of several high-risk countries. The Council also notes that the company's anti-corruption training has become more risk-based, such that HDEC has now developed its first country-specific anti-corruption course. The Council also notes that HDEC is planning to perform its first evaluation of the anti-corruption training courses.

One of the most important findings in the Council's original assessment was that HDEC had still not adopted guidelines for third-party due diligence. In 2023 the Council noted that the company had started to do so more systematically. Nevertheless, it had several questions regarding the performance of due diligence assessments on public sector clients and on subcontractors. HDEC has shared with the Council details of a background check on a state-owned energy company, which indicates that it is also focusing on corruption risk relating to this group of counterparties. Furthermore, HDEC has provided an updated account of the performance of due diligence assessments on all groups of counterparties/third parties, including subcontractors. Although HDEC has not shared the latest version of the company's due diligence guidelines, it is the Council's impression that the company's capacity to perform such assessments is starting to be fairly well established in the organisation.

Although HDEC has not shared its manual for the performance of internal investigations, its description of investigations and follow-up of corruption-related whistleblowing reports leaves the clear impression that HDEC also has good systems and procedures in place to deal with such reports.

The Council notes that HDEC has no plans to change its practice of having the same person serving as both CEO and Board Chair. The Council maintains the view that this is a weak point with respect to the board's control function in the area of corruption. Furthermore, the Council considers that emphasis should be placed on the fact the company operates in a sector with a high risk of corruption and that sentencing levels in South Korea still appear to be too low, while the investigation and prosecution of corruption cases is too weak.

Notwithstanding the above, it is the Council's overall impression that HDEC has done much to reduce the risk of corruption in its business operations since observation started in 2021. This impression is underpinned by the company's openness and willingness to share information throughout the observation process.

HDEC now seems to have put in place an anti-corruption system that, in the majority of areas, is in accordance with internationally recognised recommendations. Also, during the observation period, the Council has not uncovered any new allegations of corruption relating to the company's business. The Council therefore finds that there are no longer grounds for the risk of HDEC contributing to gross corruption to be considered unacceptable.

7 Recommendation

The Council on Ethics considers that the risk of gross corruption in the company's operations no longer is unacceptable, and recommends that observation of Hyundai Engineering & Construction Co Ltd be discontinued.

Svein Richard Brandtzæg Chair (Sign.)	Siv Helen Rygh Torstensen (Sign.)	Cecilie Hellestveit (Sign.)	Vigdis Vandvik (Sign.)	Egil Matsen (Sign.)
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