

## **Introduction**

The rationale for state ownership and management of assets may change over time. In this regard, G20 countries may consider private sector engagement, either through privatization or through a public-private partnership (PPP), as an effective means of delivering the national policy objectives. For example, private sector engagement may improve the delivery of public services through additional investment, transferring and sharing risk, exchanging experience, technology and innovation, access to appropriate expertise, such as compliance, and use of more efficient delivery mechanisms. Therefore, countries may choose private sector engagement to deliver new or existing services in the form of privatizing state assets, and/or the transfer of activities to the private sector.

Despite the benefits privatization and PPPs may offer, both approaches pose inherent corruption risks, which must be considered and appropriately mitigated. Acknowledging the differences between privatization and PPPs, for example, in objectives and mechanisms, there are significant commonalities with regard to these corruption risks; hence, for the purpose of this document they are considered together. Both privatization and PPPs are highly complex in nature, involve large scale, long-term commitment of public funds, and engagement of a large number of stakeholders including the public sector, private sector, and third-party advisors. As such, these engagements increase both the opportunity and incentive for those wishing to direct the process for personal gain, either individually or collectively (i.e. increasing the corruption risk). Such risks could include, among other acts, an improper or unclear rationale for the engagement, improper asset valuation, involvement of suspicious legal or natural persons, conflict of interest, and lack of transparency and accountability throughout the tendering process. While specific mechanisms to mitigate these corruption risks will vary depending on the exact nature of the engagement (PPP, part-transfer of assets, privatization etc.) and the national frameworks and legal systems in place, a common set of High-Level Principles can guide the engagement process.

The 2019-2021 Action Plan of the G20 Anti-Corruption Working Group (ACWG) recognizes the necessity to "address the risks of corruption in all identified high-risk sectors" and defines the sharing of experiences and information on promoting integrity and transparency within privatization processes as a priority issue for G20 countries. Based on this commitment, the Saudi G20 Presidency has tabled an innovative agenda aiming for pragmatic outputs, working with international organizations in developing among others, the following:

- *High-Level Principles for Promoting Integrity in Privatization and Public-Private Partnerships.*

These High-Level Principles build on existing international standards, including the *G20 Anti-Corruption Open Data Principles and the G20 Principles for Promoting Integrity for Public Procurement*, as well as the United Nations Convention against Corruption (UNCAC), in particular its articles 7(4), 9(1) and 9(2), 10, 12 and 13, as well as good practices. They are oriented towards identifying a set of key concrete actions that governments could consider undertaking when engaging the private sector in either privatization or PPP projects.

## **Applicability, scope, and definitions:**

The High-Level Principles cover the following activities: (1) privatization of state-owned assets; and (2) the transfer of activities to the private sector for the delivery of new or existing public services. For the purpose of these Principles, the word "privatization" generally refers to the sale of state-owned assets and rights either partially or entirely to private investors<sup>1</sup>, while "Public-Private Partnership" refers to the long-term contractual arrangement between the government and a private partner whereby the latter delivers and funds public services using a capital asset, and shares the associated risks<sup>2</sup>. However, each country is encouraged to define the term "Privatization" as well as "Public-Private Partnership" (PPP) and apply it in line with their national laws and public sector context.

## **A. Establishing Frameworks to Promote Integrity in Privatization and PPPs**

**Principle 1: Define clear rationales and frameworks for privatization and PPPs to reduce opportunities for corruption**

*Privatization and PPP engagements can be subject to illicit interference, such as collusion and bribery, by corrupt actors. Such interference can affect the assessment of related risks, expenses and timeframes and in addition could lead to the project failing to reflect national priorities. Before embarking on privatization or PPP arrangements, policymakers should have clear objectives, as well as appropriate tools and frameworks to support effective transparent decision-making to reduce opportunities for corruption and help mitigate the risk of illicit interference.*

- a. G20 countries should take appropriate measures to ensure that the initial decision to undertake a privatization or PPP project is free from undue influence. This could include developing appropriate tools to support effective and transparent decision-making and ensuring any assessment processes are protected against manipulation and are in line with national priorities.
- b. G20 countries should identify the optimal form of private sector engagement (e.g. privatization or PPP) to best meet the objectives and support the integrity of the engagement.
- c. G20 countries should ensure that objectives of the sale or contractual arrangement are pre-identified, clear and measurable from the outset to support effective and transparent decision-making throughout the privatization or PPP process, and to allow for an ongoing evaluation. The specific needs should be demonstrated and plausible, and whenever possible backed by a cost-benefit analysis.
- d. G20 countries should ensure that existing or developed frameworks covering privatization and/or PPP processes are based on high standards of integrity. These should be coherent with any related frameworks (for example, but not limited to, public procurement or infrastructure investment) as well as national legal systems. Any gaps should be identified and addressed appropriately.

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<sup>1</sup> OECD (2019) *A Policy Maker's Guide to Privatisation*.

<sup>2</sup> OECD (2012) *Recommendation of the Council on Principles for Public Governance of Public-Private Partnerships*.

## Principle 2: Ensure transparency and public awareness to build accountability

*Transparency, accessibility of information, and public consultation with concerned stakeholders regarding the costs and benefits of proposed and ongoing projects can help to build accountability, prevent corruption, and build public understanding, trust, and acceptance. This can also encourage citizens (e.g. as "tax-payers" and/or "end-users") to provide input in early stages of such projects.*

- a. G20 countries should ensure openness and transparency, and promote public awareness of the relevant frameworks, laws and processes governing privatization and PPP projects. This could be achieved through clear and accessible online publication as appropriate. Transparent, fair, informed, and inclusive decision-making processes are the cornerstone of good governance.
- b. G20 countries should consider ensuring end-to-end transparency and public awareness, for specific privatization or PPP projects, including objectives, benefits in terms of financing and official support, risks and proposed mitigations, and economic implications, including for debt sustainability (e.g. any explicit or contingent liabilities including government expenditure to ensure the affordability of the public finance, or off-balance sheet debt). For example, countries should consider the publication of project progress updates, and/or stakeholder consultations.

## Principle 3: Ensure that the sector's regulatory and competition frameworks are sound to prevent, detect, and respond to corruption risks

*An appropriate regulatory framework covers all stages of the process, including ex-ante decision-making about private sector participation in state activities, and provides effective anti-trust and anti-corruption regulations to ensure a healthy degree of competition, to avoid inappropriate purchases and/or contracts and to promote integrity.*

G20 countries should ensure that appropriate regulations and frameworks for the relevant sector are in place prior to moving towards privatization or a PPP undertaking, such as appropriate anti-corruption and competition frameworks, and market regulations. This is particularly important where a sector is moving substantially away from public sector delivery. These regulations should be clear, transparent, and enforceable to reduce corruption risks of unregulated environments.

## Principle 4: Ensure clear governance and integrity to address corruption risks

*Clear legislative measures to address corruption backed by a strong institutional framework promote good governance and integrity in privatization and PPP arrangements. The absence of such measures for privatization and PPPs can provide a smokescreen for corruption, allowing for opaqueness in management and decision-making processes.*

- a. G20 countries should ensure that criminal and non-criminal legislative measures exist and are enforced to address corruption in frameworks applying to privatization and PPPs. These measures may include temporary or permanent debarment of actors engaged in corrupt or other illegal activities as defined in national legislation.

- b. G20 countries should also ensure that, where applicable, policies and procedures are in place to eliminate, to the extent possible, or manage any potential conflict of interest on the part of those engaged in or having influence over a privatization or PPP project.
- c. G20 countries should ensure, where applicable, an effective division of roles, responsibilities, and commitments among different supervisory, regulatory and enforcement authorities involved in privatization and PPPs to avoid risks that may create loopholes or opportunities for abuse (e.g. overlap, duplication, fragmentation and/or concealment).
- d. G20 countries should promote integrity by ensuring, where applicable, that entities are separated, have clear lines of accountability, and have risk management functions that mitigate corruption risks in privatization or PPPs, as provided in the *G20 High-Level Principles on Organizing Against Corruption* or in other multilateral anti-corruption frameworks, instruments and knowledge products.

## **B. Defining Processes for Sale and Tendering to Safeguard Public Interest and Reduce Corruption Risks**

Principle 5: Use transparent methods to determine the modes of delivery, transaction and valuation of assets to help combat corruption

*Transparent methods to determine modes of delivery, transactions and valuation of assets help to demonstrate legitimacy and credibility, and to promote integrity of the project outcome (e.g. value for money) by reducing opportunities for bribery, collusion, illicit enrichment, trading in influence, and abuse of functions.*

- a. G20 countries should consider which approaches most effectively meet the objectives identified at the outset to create transparency and accountability. In particular, a clear justification should be provided where a non-competitive transaction mode is used (as permissible by the legal framework). In the case of privatization, this may include mode of sale and valuation of the asset; for PPPs this should include an evaluation of risk factors and, as appropriate, economic impact.
- b. G20 countries should, when appropriate, have an impartial and independent expert opinion on valuation to facilitate legitimate pricing and an optimal outcome for the country and the protection of public interest. As appropriate, an economic assessment and/or feasibility study can be used to compare options and identify how to best meet project objectives (e.g. identifying the options which represent best value for money).
- c. G20 countries should, where appropriate, have approval processes in place for decision-making regarding the modes of delivery, transaction and valuation of assets to reduce opportunities for illicit interference. This could include, for example, multi-layered approval processes.

### Principle 6: Ensure high standard of participants' integrity

*Privatization and PPPs occur through a series of complex processes, which require a combination of data collection, analysis, technical activities, strategy formulation, and decision-making. A diverse range of participants (e.g. in-house resources and/or external advisors) are involved in these processes and their integrity risks must be properly managed.*

- a. G20 countries should ensure that participants involved in steering privatization and PPP transactions are selected based on competency, experience and adherence to high-standards of integrity, in accordance with fundamental principles of domestic law.
- b. G20 countries should also establish appropriate measures aimed at preventing and managing any actual, potential, or perceived conflict of interest situations to safeguard the public interest and bring the intended impartiality to the process, as agreed in the *G20 High-Level Principles for Preventing and Managing 'Conflict of Interest' in the Public Sector*. G20 countries, where appropriate, and in accordance with fundamental principles of domestic law, should promote the implementation of integrity mechanisms. They should also consider providing clear guidelines of what is expected in terms of integrity mechanisms. Within these measures, countries should ensure that conflict of interest provisions are in place for decisions made by government officials, state-owned enterprise employees, and, as appropriate, private sector employees.
- c. G20 countries should have appropriate risk management and due diligence processes in place for the engagement of external advisors, including measures aimed at ensuring that external advisors are free from undue influence.

### Principle 7: Implement mechanisms to promote accountability, transparency and competition in tendering and sale

*The sale/tendering process of privatization and PPPs, similar to public procurement, is vulnerable to corruption. Demonstrating accountability, transparency, and legitimacy in the sale or PPP process will serve to attract serious investors while deterring those with illicit intentions. This can offer potential investors comfort regarding the circumstances according to which the sale or tendering process will be implemented.*

- a. G20 countries should, guided by article 9 of UNCAC and the *G20 High Level Principles for Promoting Integrity in Public Procurement*, apply procedures that ensure transparency and accountability in tendering and sale related to privatization and PPPs. This could include inter alia, the fair and equitable treatment of prospective bidders during the tendering and sale process, as well as a guarantee for the application of remedies and exclusion criteria for participants who are found guilty of fraud or corruption.
- b. G20 countries can further enhance transparency efforts through the effective implementation of international standards, including the Financial Action Task Force Standards regarding beneficial ownership.

## **C. Assessing and Monitoring the Processes to Better Prevent, Detect, and Investigate Corruption**

### **Principle 8: Establish mechanisms for monitoring and evaluating privatization and PPPs to promote transparency and accountability**

Establishing mechanisms, such as appropriate record keeping and auditing procedures, to assess the process during and after the privatization or PPP transaction is made will help safeguard transparency and accountability, while facilitating the prevention, detection, and investigation of corrupt activities.

- a. G20 countries should safeguard accountability and transparency during and after privatization and PPPs by ensuring that privatization and PPP projects are subject to a clear, comprehensive, independent, and efficient audit and evaluation process during and after the selection process, in accordance with fundamental principles of domestic legal systems, and based upon the objectives agreed at the outset.
- b. G20 countries should consider ensuring that the associated outcome of the monitoring and performance management systems may include auditing procedures or occasional or regular reporting to the national legislature or other elected or governing bodies.
- c. G20 countries should ensure that mechanisms are in place for monitoring and evaluation systems aimed at preventing, detecting, and investigating corruption and related serious issues or concerns during and after the privatization or PPP processes.

### **Principle 9: Promote stakeholder scrutiny and enable access to information to enhance the effectiveness of anti-corruption measures**

*A wide range of stakeholders, including civil society, can help prevent and detect corrupt practices in privatization and PPPs. Easily discoverable, accessible, equal, and simultaneous disclosure of information is key to facilitating input from concerned stakeholders.*

G20 countries should, with reference to articles 10 and 13 of UNCAC and where appropriate and in accordance with fundamental principles of their legal systems, promote opportunities for concerned stakeholders such as civil society, and private and public sector representatives to track the development of privatization and PPPs, and report any suspected corrupt conduct to the competent authorities.