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OPEN BUSINESS

Principles and guidance for anti-corruption corporate transparency

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ABBREVIATIONS

ABC	Anti-Bribery and Corruption
ESG	Environmental, Social and Governance
EU	European Union
GDP	Gross Domestic Product
KPI	Key Performance Indicator
NBIM	Norges Bank Investment Management
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Co-operation and Development
PAC	Political Action Committee
PRI	Principles for Responsible Investment
PSC	Person of/with Significant Control
SEC	Securities Exchange Commission
UN	United Nations

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GLOSSARY[1]

Beneficial owner

A Person with Significant Control (PSC), is defined as the person who ultimately owns, controls or benefits from a company or trust fund and the income that it generates.

Bribery

The offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust. Inducements can take the form of gifts, loans, fees, rewards or other advantages.

Civil society

The arena outside the family, state and market where people associate to advance a common set of interests. Voluntary and community groups, non-governmental organisations (NGOs) and trade unions are all commonly included in this sphere.

Code of conduct

A statement of principles and values that establishes a set of expectations and standards as to how an organisation, government body, company, affiliated group or individual will behave, including minimum levels of compliance and disciplinary actions for the organisation, its staff and its volunteers.

Cooling-off period

Time-limited restrictions on the ability of former public officials to accept appointments to positions in the private sector.[2]

Corporate governance

Procedures, practices and processes for how organisations are directed, managed and controlled, including the relationship between, responsibilities of, and legitimate expectations among different stakeholders.

Corruption

The abuse of entrusted power for private gain. Corruption can be classified as grand, petty or political, depending on the amounts of money lost and the sector where it occurs.

Country-by-country reporting

A form of financial reporting in which multinational corporations produce certain financial data for each country in which they operate. This data includes sales and purchases within the corporation and externally, profits, losses, number of employees and staffing costs, taxes paid and tax obligations, and summaries of assets and liabilities. Currently, consolidated financial statements or aggregated reporting of the entire company are the norm.

1 Unless otherwise stated, all definitions are from Transparency International Secretariat's Anti-Corruption Glossary: www.transparency.org/glossary [accessed 13 January 2020].

2 Transparency International UK, *Wise Counsel or Dark Arts?* (London: Transparency International UK, December 2015), p. 56.

Country of incorporation

The jurisdiction in which the company is created. It defines rules of corporate governance, applicable regulatory and tax regimes.[3]

Country of operation

The country/countries in which a company actually engages in business (holds assets, enters into contracts, maintains premises, generates revenues, employs people, impacts on the environment).[4]

Illicit financial flows

The movements of money that is illegally acquired, transferred or spent across borders. The sources of the funds of these cross-border transfers come in three forms: corruption, such as bribery and theft by government officials; criminal activities, such as drug trading, human trafficking, illegal arms sales and more; and tax evasion and transfer mispricing.

Integrated approach

An approach which identifies all the political activities of a company and its related entities, and which establishes a framework that ensures those activities are managed consistently across the corporate group and with central oversight.[5]

Integrity

Behaviours and actions consistent with a set of moral or ethical principles and standards, embraced by individuals as well as institutions, that create a barrier to corruption.

Materiality

"In accounting, materiality refers to the impact of an omission or misstatement of information in a company's financial statements on the user of those statements. If it is probable that users of the financial statements would have altered their actions if the information had not been omitted or misstated, then the item is considered to be material".[6]

Money laundering

The process of concealing the origin, ownership or destination of illegally or dishonestly obtained money by hiding it within legitimate economic activities to make it appear legal.

Payments to government

Payments to government are calculated as revenues, sales, capital expenditure, pre-tax income, income tax, tax paid and community investments.[7]

3 Transparency International Belgium, Transparency in Corporate Reporting: Assessing 10 Listed Belgian Companies TRAC 2 Belgium, (Brussels: Transparency International Belgium, December 2012), p. 16, http://docplayer.net/11392162-Transparency-in-corporate-reporting-assessing-10-listed-belgian-companies-trac-2-belgium.html [accessed 18 February 2020].

4 Transparency International Belgium, December 2012: 16.

5 Transparency International UK, *Corporate Political Engagement Index 2018* (London: Transparency International UK, November 2018), p. 35.

6 www.accountingtools.com/articles/what-is-materiality-in-accounting-information.html [accessed 18 February 2020].

7 Transparency International, *Transparency in Corporate Reporting: Assessing Emerging Market Multinationals* (Berlin: Transparency International, July 2016), p. 30.

Private procurement

A multi-step process of established procedures which any individual, company or organisation in the private sector must take in order to acquire goods and services – from the initial needs assessment to awarding the contract and service delivery.

Public disclosure

The public provision of information as required under law or in good faith, regarding the activities of a private individual, public official, company or organisation.

Public procurement

Public procurement is procurement within the context of the public sector. In this context, the procurement typically occurs with a government affiliate.

Politically Exposed Persons (PEPs)

Individuals who hold or held a prominent public function, such as the head of state or government; senior politicians; senior government, judicial or military officials; senior executives of state-owned corporations; or important political party officials.

Revolving door

The movement of individuals between positions of public office and jobs in the private sector, in either direction. [8]

Secondment

The temporary placement of a company employee in a public position or a public sector employee in a position in the private sector. Typically, placements vary in length from a few weeks to a year or more. There are also secondment schemes for MPs to gain work experience in UK companies.[9]

Secrecy jurisdiction

Territories, including cities, states/provinces and countries, that encourage the relocation of otherwise foreign economic and financial transactions through strong privacy protection rules. These jurisdictions ensure that the identity of those relocating their money through them cannot be disclosed. This often undermines the legislation and regulation of another jurisdiction. Many secrecy jurisdictions are also tax havens.

Shell company

A shell company or corporation is a limited liability entity with no physical presence in its jurisdiction, no employees and no commercial activity. It is usually formed in a tax haven or secrecy jurisdiction, and its main or sole purpose is to insulate the real beneficial owner from taxes, disclosure or both.

8 Transparency International UK, November 2018: 35.
9 Transparency International UK, November 2018: 35.

Stakeholders

Those groups who affect and/or could be affected by an organisation's activities, products or services and associated performance. This does not include all those who may have knowledge of or views about an organisation. Organisations will have many stakeholders, each with distinct types and levels of involvement, and often with diverse and sometimes conflicting interests and concerns.[10]

Tax abuse

Tax practices that are contrary to domestic and international tax laws and policies, such as tax evasion and fraud.[11]

Tax avoidance

The legal practice of seeking to minimise a tax bill by taking advantage of a loophole or exception to the rules, or adopting an unintended interpretation of the tax code. The term usually refers to seeking to avoid paying tax by employing practices which adhere to the letter of the law but run contrary to its spirit. Proving intention is difficult, so the dividing line between avoidance and evasion is often unclear.

Tax evasion

The illegal non-payment or under-payment of taxes, usually by deliberately making no declaration or a false declaration to tax authorities. Falsifying a declaration could involve declaring less income, profits or gains than the amounts actually earned, or overstating deductions. Tax evasion entails criminal or civil legal penalties.

Tax havens

Jurisdictions, including cities, states or countries, that grant favourable tax treatment that can benefit non-residents. They attract the relocation of economic transactions to their territory by applying no or minimal tax rates. They typically host a range of financial service providers.

Third parties

Any associate with which a company carries out its activities. Third parties that companies are commonly involved with include vendors/suppliers; distributors/resellers; joint venture partners/consortium partners; advisors and consultants (tax, legal, financial, business); service providers (logistics, supply chain management, storage, maintenance, processing); contractors/subcontractors; lobbyists; marketing and sales agents; customs or visa agents; and other intermediaries.[12]

Whistleblowing

The making of a disclosure in the public interest by an employee, director or external person, in an attempt to reveal neglect or abuses within the activities of an organisation, government body or company (or one of its business partners) that threaten the public interest and its integrity and reputation.

10 AccountAbility, *AA1000 Stakeholder Engagement Standard 2015* (AccountAbility, 2015), p. 36.

11 International Bar Association, *Tax Abuses, Poverty and Human Rights* (London: International Bar Association, October 2013), p7.

12 Descriptions of each of the types of third parties are listed here: Transparency International, *Managing Third Party Risk: Only as Strong as Your Weakest Link* (London and Washington, DC: Transparency International, June 2016), p.14.

EXECUTIVE SUMMARY

Transparency is increasingly becoming a norm in the corporate world.[13] However, meaningful disclosures, particularly around governance and anti-corruption, are limited.[14]

After thorough analysis of the current transparency climate, Transparency International UK has developed ***Open Business***. This report responds to the need for practical and implementable guidance on corporate anti-corruption disclosures, which recognises transparency dilemmas but is also aspirational.

Having undertaken extensive research into the corporate transparency arena, this report seeks to fill the "guidance gap"' by:

- demonstrating the business case for corporate governance and anti-corruption transparency
- identifying and providing guidance on disclosure across five areas that are at high-risk of corporate corruption
- offering responses to some of the legal challenges that might inhibit companies from disclosing information

Business Case

Open Business outlines the business case for corporate transparency around governance and anti-corruption. This includes:

1.1 Consumer trust

Building and maintaining public trust is a key reason why companies are looking to become more transparent. According to a 2019 Sprout Social report, 86 per cent of surveyed consumers believe that transparency in business is more important than ever before.[15] This demonstrates the importance of corporate transparency in terms of securing and maintaining public trust. Additionally, "when brands are transparent and develop a history of transparency, nearly nine in 10 people are more likely to give them second chances after bad experiences and 85% are more likely to stick with them during crises."[16] Transparency not only builds public trust but also increases consumer loyalty.

1.2 Investor trust

The concerns of responsible investors are also important in relation to governance and anti-corruption disclosures. As of February 2020, there are over 2,900 signatories to the Principles for Responsible Investment (PRI).[17] Principles 1, 2 and 3 require signatories to confirm that they will: "incorporate ESG [(Environmental, Social and Governance)] issues into investment analysis"; "incorporate ESG issues into our ownership policies and practices" and "seek appropriate disclosure on ESG issues by the entities in which we invest".[18] These principles highlight responsible investors' drive for disclosures around governance and anti-corruption, as well as environmental and social disclosures. Many investors expect, if not require, companies to make meaningful disclosures around anti-corruption in order to demonstrate that they are adhering to the above principles. For example, investors such as EOS at Federated Hermes and Norges Bank Investment Management (NBIM) are demanding detailed information from companies on how they manage their non-financial risks, including those related to anti-bribery and corruption.

13 www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter [accessed 6 February 2020]; Transparency International, *The Benefits of Anti-Corruption and Corporate Transparency: Working Paper* (Berlin: Transparency International, January 2016), p.1.

14 Alliance for Corporate Transparency, 2019 Research Report: *An Analysis of the Sustainability Reports of 1000 Companies Pursuant to the EU Non-Financial Reporting Directive* (Alliance for Corporate Transparency, 2020), pp. 90-92.

15 Sprout Social, *From Risk to Responsibility: Social Media and the Evolution of Transparency* (Chicago, IL: Sprout Social, 2019), p. 3.

16 Sprout Social, (2019): 3.

17 www.unpri.org/searchresults?qkeyword=&PageSize=10&parametrics=WVSECTIONCODE%7C1018&cmd=GoToPage&val=8&SortOrder=2 [accessed 3 February 2020].

18 www.unpri.org/pri/an-introduction-to-responsible-investment/what-are-the-principles-for-responsible-investment [accessed 4 February 2020].

1.3 Employee trust

Employee trust is another reason why companies are looking to increase corporate disclosures. Not only does transparency help to keep current employees engaged, but it can also assist with the recruitment of new employees. Potential employees are taking into consideration a company's operating practices before making decisions on where they work. Transparency can allow a company to better demonstrate what its purpose is and how it is achieving it. This can help to develop a greater recruitment pool of potential new employees.[19]

1.4 Business-to-business trust

Transparency helps to foster business-to-business relationships. Business-to-business facing companies are facing the same pressures as customer facing companies to embrace greater transparency. Clients throughout the supply chain are driving demands and expectations for transparency.[20] Transparency is a tool with which companies can better understand one another's business practices.

2. Reputation

The 24-hour news cycle and the engagement of consumers and competitors on social media makes companies vulnerable to reputational damage. It is important for businesses to recognise that the public are now able to quickly share information and air grievances online. Reputation is built on what consumers think of a company, and without demonstrating what might already be happening internally, people will make their own assumptions. Companies which are transparent are able to better own their information and retain control of their image and reputation.

3. Legislation

The developing legislative environment is another reason why companies need to pay attention to governance and anti-corruption transparency. Legal obligations such as the EU Non-Financial Reporting Directive, which requires applicable entities to disclose material information on anti-bribery and anti-corruption matters, are advancing this corporate transparency.[21]

4. Competitive advantage

Transparency is also compatible with competitiveness. Companies which build a strong reputation of integrity and sustainability are able to use transparency as a competitive advantage. The company Patagonia is well-known for its commitment to sustainability, ethics and transparency, and these are major selling points of the brand. The clothing company, which includes a list of finished goods suppliers on its website, is reported to have quadrupled its profits between 2014-2018.[22] Patagonia's financial gains are, therefore, a good example which demonstrates how profitability and transparency can be synonymous.

19 www.forbes.com/sites/williamcraig/2018/10/16/10-things-transparency-can-do-for-your-company/#327d0dc625d0 [accessed 9 January 2020].

20 https://exchange.cim.co.uk/editorial/creating-transparency-in-b2b/ [accessed 16 January 2020].

21 https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en [accessed 28 November 2019].

22 www.patagonia.com/footprint.html [accessed 6 February 2020]; www.inc.com/lindsay-blakely/patagonia-2018-company-of-the-year-nominee.html [accessed 28 November 2019].

Guidance and Principles for Corporate Transparency

Open Business offers companies guidance on how to increase meaningful anti-corruption disclosure efforts. The report identifies five key anti-corruption risk areas and provides guidance and principles for meaningful disclosure around these areas.

Our principles are outlined below. These have been informed by a literature review (taking into account the most relevant legislation at an EU Directive, UK statute and US federal level), meetings with our expert Advisory Group, in-depth interviews with investors and our partners, and insights from other companies.

Note: Unless otherwise stated, the following principles apply to all employees and board members and, where applicable, are Group wide. All commitments, policies and procedures should be made available in all applicable languages.

1. Principles for anti-corruption programme transparency

1.1. Top-level commitment to anti-bribery and corruption

The company should publicly demonstrate top-level commitment to anti-bribery and corruption. This should include: a zero-tolerance statement authorised by leadership; evidence that the board or a board committee sets the anti-corruption tone; evidence that a senior executive has responsibility for the anti-bribery and corruption programme; and a public commitment to supporting and protecting employees who refuse to act unethically, even when it might result in the loss of business.

1.2. Anti-bribery and corruption policies

The company should publicly disclose a comprehensive anti-bribery and corruption policy, as well as other polices that contribute to its anti-corruption programme, and any supporting procedures to these policies. In addition, the company should publicly disclose how it implements these policies. These policies should all be overseen by an accountable senior executive.

1.3. Risk assessment

The company should explain its anti-corruption risk assessment and how this informs its anti-bribery and corruption programme. The company should also report its anti-bribery and corruption Key Performance Indicators (KPIs).

1.4. Human resources

The company should publicly commit to supporting and protecting employees who refuse to act unethically and should provide details of how their employees incentive programmes promote ethical behaviour.

1.5. Conflict of interest

The company should provide details of its policy and procedures that define, identify, declare and manage conflict of interest.

1.6. Charitable donations and sponsorships

The company should provide details of its policy on charitable donations and sponsorships. It should also publicly disclose details of such donations made, and sponsorship arrangements entered into, by the company and its subsidiaries.

1.7. Facilitation payments

The company should publicly state that it explicitly prohibits facilitation payments, and it should explain how it manages this risk when making business decisions.

1.8. Gifts and hospitality

The company should publicly prohibit lavish gifts and hospitality, as outlined in its published gifts and hospitality policy. This policy should include a clearly defined approval process and consequences for non-compliance.

1.9. Training

The company should publicly state that it conducts training on its anti-bribery and corruption programme. It should also publicly disclose details of how it reviews and measures the effectiveness of this training.

1.10. Monitoring and review

The company should explain how it monitors and reviews its anti-bribery and corruption programme. This should include details of the extent to which this programme is subject to regular internal or external audit, and assurance that policies are updated according to recommendations.

1.11. Whistleblowing

The company should publicly disclose its policy on whistleblowing, which should include a statement on non-retaliation against whistleblowers and employees who report bribery and corruption incidents. It should also publicly state that it has a confidential and anonymous channel through which employees and whistleblowers can report bribery and corruption concerns. The company should also report on its anti-bribery and corruption whistleblowing statistics, including those reported through whistleblowing channels. Companies should explain which individual or function has oversight and responsibility for whistleblowing arrangements.

1.12. Dealing with incidents

The company should explain how it addresses material findings of bribery and corruption. It should also publicly disclose high-level results from incident investigations and disciplinary actions against employees and third parties.

1.13. Managing third parties

1.13.1. The company should explain (including by reference to supporting policies) how it addresses the corruption risk of third parties acting for or on behalf of the company.

1.13.2. The company should use anti-bribery and corruption clauses in its contracts with third parties, and should publicly state that it does so.

1.13.3. The company should publicly disclose details of how it conducts risk based anti-bribery and corruption due diligence when entering into business relationships with third parties. The company should also include reference to its audit rights in its contracts with third parties.

1.13.4. The company should publicly disclose information that identifies the agents, intermediaries, joint ventures and associates that are currently contracted to work with and on behalf of the company.

1.14. Private procurement transparency

1.14.1. The company should publicly disclose key information on its procurement cycle.

1.14.2. The company should consider using open contracting in its procurement process to increase transparency throughout the procurement cycle.

1.14.3. The company should explain how it addresses anti-bribery and corruption risks in its procurement process.

1.14.4. The company should publicly commit to fair-trading and adhere to a zero-tolerance policy on bribery throughout the procurement system.

2. Principles for beneficial ownership transparency

2.1. The company should publicly disclose its ultimate beneficial owners accurately and in a freely accessible format.

2.2. The company should recommend its third parties to publicly disclose their beneficial ownership.

2.3. The company should publicly advocate that governments adopt data standards for ownership disclosure; in countries where public beneficial ownership registers do not already exist, the company should advocate that governments set up public beneficial ownership registers.

3. Principles for organisational structure transparency

3.1. The company should publicly disclose all fully consolidated subsidiaries and non-fully consolidated holdings, and the percentages that it owns in each of these entities.

3.2. The company should publicly state that it will not work with businesses which operate with deliberately opaque structures.[23]

4. Principles for country-by-country reporting transparency

4.1. The company should publicly disclose the nature of work, the countries of operations and the countries of incorporation of its fully consolidated subsidiaries and non-fully consolidated holdings.

4.2. The company should publicly disclose country-by-country breakdowns of its payments to governments.

5. Principles for corporate political engagement transparency

5.1. Control environment

5.1.1. The company should publicly disclose a statement of the principles that guide its political activities and ensure that those principles are in accordance with Transparency International UK's Responsible Political Activities (RPA) guidelines.[24]

5.1.2. The company should publicly disclose evidence that the board or a board committee provides oversight of the company's political activities on at least an annual basis.

5.1.3. The company should take an integrated approach to its political activities, and should publicly disclose details of this – for example, a statement of all activities which it considers to be political activities, including but not limited to political contributions, lobbying and revolving door activities, and evidence that it manages these activities as a whole.

23 Indicators that a business may be deliberately opaque include: if it has operations in a secrecy jurisdiction, for example, the Cayman Islands; the use of 'nominee' directors; the use of a 'mailbox' address, where the company is registered at an address but there are no employees or operations there; and the use of corporate directors, partners, members, or shareholders from secrecy jurisdictions.

24 Transparency International UK, (November 2018): 35.

5.1.4. The company should publicly state that its policies regarding political activities apply to all employees, directors and entities over which the company has effective control.

5.1.5. The company should publicly state that all expenditure on any political activities must be approved by managers, in accordance with designated thresholds for approval.

5.1.6. The company should publicly disclose the monitoring and assurance activities that it conducts in connection with its political activities, and it should publicly disclose any steps that it has taken to correct non-compliant conduct and hold individuals accountable.

5.2. Political contributions

5.2.1. The company should publicly state that neither it nor any other entity acting on its behalf should make political contributions.

5.2.2. The company should publicly state, if applicable, that its management should not exercise control over Political Action Committees (PACs).

5.3. Lobbying

5.3.1. The company should publicly disclose a policy on lobbying and ensure that the policy is in accordance with Transparency International UK's Responsible Political Activity guidelines.[25] This policy should also explicitly apply to organisations contracted to lobby on the company's behalf.

5.3.2. The company should explain how it identifies and manages its memberships of organisations that engage in lobbying.

5.3.3. The company should publicly disclose details of consultations with stakeholders on relevant and material political activities, or it should publicly disclose evidence that demonstrates its willingness to consult. This includes, for example, highlighting and inviting feedback on the public policy objectives of the company and the activities undertaken to achieve these objectives.

5.3.4. The company should publicly disclose details of the aims and significant topics of its public policy development and lobbying, and the activities it carries out.

5.3.5. The company should publicly disclose details of its global lobbying expenditure.

5.3.6. The company should publicly report details of serving and recently retired politicians contracted to work at the company.

5.3.7. The company should publicly disclose a comprehensive list of organisations of which it is a member that lobby on topics relevant to the company.

5.4. Revolving door

5.4.1. The company should publicly disclose its policy and procedure covering the revolving door.

5.4.2. The company should publicly disclose details of how it manages the risks associated with the revolving door, and how it implements a cooling-off period before the employee is able to hold discussions on the company's behalf with their former organisation.

5.4.3. The company should publicly disclose details of secondments to or from the public sector, including the numbers of secondees and the locations and purpose of secondments.

25 Transparency International UK, (November 2018): 35.

Frequently cited legal challenges to disclosure

Open Business addresses some of the most frequently cited legal challenges to governance and anti-corruption disclosure. These challenges include: privacy legislation as a potential barrier to beneficial ownership disclosure; the legal risks of publishing alleged breaches of a company's code of conduct; competition law as a deterrent to the publication of third party information; the difficulties of managing differing public disclosure requirements across jurisdictions; and the practical difficulties of collating and publishing anti-bribery and corruption (ABC). *Open Business* demonstrates that these challenges are not insurmountable.

Open Business calls on companies to…

- increase meaningful disclosures on their anti-corruption programmes, particularly with reference to the frameworks behind, and implementation of, their policies and procedures
- improve meaningful disclosures around beneficial ownership and publicly advocate for governments to adopt data standards on beneficial ownership transparency
- publicly disclose all fully consolidated subsidiaries and non-fully consolidated holdings, and state publicly that they will not work with businesses which operate with deliberately opaque structures
- publicly disclose the nature of work, their countries of operation and the countries of incorporation of their fully consolidated subsidiaries and non-fully consolidated holdings; and publicly disclose country-by-country breakdowns of their payments to government
- increase meaningful disclosures on their corporate political engagement, including around their control environment, political contributions, lobbying and on the revolving door.

By offering consolidated guidance and outlining our corporate transparency principles, *Open Business* encourages and enables companies to take significant steps towards anti-corruption disclosure across the five areas identified. We anticipate that this guidance will serve as a foundation for better corporate practice by inspiring companies to become more transparent and demonstrating the commercial benefits of doing so. The guidance will also help to drive up standards across the business community and level the playing field both domestically and internationally. The question that companies need to start asking themselves is not "why disclose?" but rather "why not disclose?"

INTRODUCTION

A transparency revolution is underway. Driven by legislative requirements, investor pressures and societal demands, companies are beginning to drive forward the transparency agenda. However, notably, meaningful corporate disclosures around governance and anti-corruption are limited.[26]

There is a discrepancy between what companies do internally to fight corruption, and the information that they publicly disclose on this matter. Companies cite legal challenges to anti-corruption disclosures, as well as other non-legal disclosure challenges, as a deterrent to transparency.[27] However, these challenges are not insurmountable.[28] **It is no longer enough to simply do the right thing; increasingly, there is value in making it known that you are doing the right thing too.**

With this in mind, Transparency International UK has developed ***Open Business.*** *Open Business* offers high-level guidance on corporate transparency, as well as a set of transparency principles that companies can apply to their specific contexts and environments. The recommendations in this report are applicable across multiple corporate sectors and companies of varying size, and they cover multiple high-risk thematic areas. **This report is a tool that companies can use to achieve greater transparency.**

Open Business complements and advances the existing transparency climate, taking into account relative legislative requirements at an EU directive, UK statute and US federal level, as well as taking into account the increasing demands of responsible investors and the wider public. It offers consolidated and thorough guidance on governance and anti-corruption transparency.

The report is divided into three key sections, and the main goals of this research are as follows:

1. **to outline the business case for corporate governance transparency**
2. **to provide corporate transparency guidance and a set of corporate transparency principles to companies across five key areas:**
    - anti-corruption programme transparency (including managing third parties and procurement)
    - beneficial ownership transparency
    - organisational structure transparency
    - country-by-country reporting transparency
    - corporate political engagement transparency
3. **to advise companies on how to overcome disclosure challenges**

We begin this report by acknowledging the importance of making transparency work for companies. In **Chapter 1**, we identify and elaborate the four main ways in which corporate disclosure can benefit companies: increased trust, reputation management, legal compliance and competitive advantage.

26 Alliance for Corporate Transparency, 2020.

27 See Chapter 7 for legal challenges to transparency. Non-legal challenges include: (1) competing demands to publicly disclose across all Environmental, Social and Governance (ESG) strands; (2) trying to avoid over-disclosure or a data dump; (3) uncertainty around the format of disclosure.

28 See Chapter 7 for advice on how to overcome legal challenges to transparency. Solutions to non-legal challenges include: (1) Demands to publicly disclosure across all ESG strands should not be competing, nor are they mutually exclusive. The pressure to publicly disclose can be relieved by ensuring that appropriate resources are allocated to support disclosure efforts. (2) A company can mitigate the risks of over-disclosure or a data dump by making sure that disclosures are comprehensible and that they clearly demonstrate how a company manages its risks. (3) A company might choose to use one of many formats/structures for disclosure, including: its website, or a webpage dedicated to ethics and compliance; downloadable PDFs; sustainability reports (alongside annual reports); an external benchmark or index; and/or international frameworks (examples of these frameworks include the United Nations Global Compact and the International Organisation for Standardisation Anti-Bribery Management 37001): www.unglobalcompact.org [accessed 19 February 2020]; www.iso.org/iso-37001-anti-bribery-management.html [accessed 19 February 2020].

In Chapters 2, 3, 4, 5 and 6, we provide companies with corporate transparency guidance, which culminates in a set of corporate transparency principles across the five key areas. In each case, we explain why transparency in that area is important and how it can benefit companies. We then set principles for transparency: these principles incorporate the most relevant legislation at an EU directive, UK statute and US federal level; best practice; and Transparency International's recommendations.

In Chapter 7, we address the frequently cited challenges to disclosure, including challenges around privacy legislation, the risk of legal implications, competition law, jurisdiction disclosure requirements and data collation difficulties. Reynolds Porter Chamberlain has provided its support to address these challenges.

Throughout this report, we have highlighted examples where companies are already complying fully or in part with our principles. We have referred to these as "best practice" and "good practice" examples, as they fully or partially adhere to Transparency International UK's best practice recommendations, as outlined in our set of principles. The examples we have included are not an exhaustive list of corporate best practice, but nonetheless, they help to corroborate the value of our anti-corruption disclosure guidance by demonstrating that corporate transparency around anti-corruption is possible.

This report aims to inspire and encourage companies to take significant steps towards anti-corruption disclosure across the five areas identified. Significantly, it aims to drive corporate disclosures that not only focus on what a company says it does but also on how a company implements, manages, monitors and reviews what it says it does.

Methodology

Open Business has been informed by extensive research. This research has included a literature review of a range of academic, civil society, corporate and media sources and analysis of company disclosure to determine best practice. It has also included meetings with our expert Advisory Group (formed of three sponsor companies that are committed to leading the way in transparency – Anglo American PLC Group (Anglo American), GlaxoSmithKline (GSK) and HSBC Holdings PLC (HSBC) – and Transparency International UK board members), and a total of 19 in-depth interviews with our sponsor companies and with EOS at Federated Hermes, Norges Bank Investment Management and the Principles for Responsible Investment (PRI).

Where Transparency International UK has already published guidance and principles relevant to our five thematic areas, this has also informed our output. **We are, therefore, confident that the principles in this report are equally achievable and aspirational.**

DISCLAIMER

Although some of our transparency principles are more applicable to multinationals, there are many principles that are applicable to companies of all sizes. The legal requirements referred to in this report reflect the most relevant European Union Directives, UK statute and US federal laws across the five areas identified.

CHAPTER 1:
THE BUSINESS CASE FOR TRANSPARENCY

The business case for corporate transparency is strong. In this section of the report, we will outline the four main ways in which increased disclosure is advantageous to companies. Firstly, corporate transparency secures and maintains the trust of consumers, investors and employees. Secondly, transparency improves reputation: it shows that a company has nothing to hide. Thirdly, transparency ensures compliance: it enables a company to keep in line with legislative demands. Finally, transparency enhances competitive advantage.

1. Corporate transparency as a means to secure and maintain trust

1.1. Consumer and customer trust

Consumers will pay more for products that promise total transparency

Consumers need to have confidence in the company they are buying from, and transparency is vital to building or regaining consumer trust.[29] Label Insight's Transparency ROI Study surveyed how companies can drive long-term trust and loyalty through transparency and found that 73 per cent of consumers surveyed were willing to pay more for a product that promised total transparency.[30] Consumers want to know about more than just the product they are buying; they also want to know how the company they bought it from does business.[31]

Open and trusted companies are more likely to retain customers and have customers refer others to their services

Research by Grant Thornton UK shows that there is a correlation between customer retention and trust, and between trust and transparency.[32] One company interviewed for the research explained this correlation: "If a business is really serious about being trustworthy, they have to work hard to be transparent and connect to people to earn that trust. It is very hard to be trusted unless you're trustworthy."[33] Customer loyalty can have many benefits for a company, including financial and reputational.

1.2. Investor trust

Transparency helps to build trust, which can help to attract and maintain investment

Without transparency, investors may be limited in their ability to conduct a financial and/or risk assessment of a company and therefore unwilling to invest. In this respect, the business case for disclosure speaks for itself: disclosure helps to attract and maintain investment, largely because less information means less certainty for investors.[34] If a company's reporting is not transparent, investors cannot be certain about true risks.

Ensuring the quality of disclosure also helps to build investors' trust

Enhanced disclosure can enable investors to better understand the risks and opportunities linked to their investments. However, the quality of this disclosure is key. Responsible investors, such as Norges Bank Investment Management, now use "transparency expectation" documents in their engagement with companies before they commit to invest, in an attempt to improve the quality of corporate disclosures.[35]

29 www.theguardian.com/sustainable-business/corporate-transparency-honesty-best-policy [accessed 28 November 2019].

30 www.labelinsight.com/Transparency-ROI-Study [accessed 28 November 2019], p. 3.

31 www.labelinsight.com/Transparency-ROI-Study [accessed 28 November 2019], p. 2; www.inc.com/kenny-kline/new-study-reveals-just-how-important-brand-transparency-really-is.html [accessed 28 November 2019].

32 Grant Thornton, *The Business Case for Trust*, Grant Thornton (London: Grant Thornton and Social Market Foundation, 2017), p.6.

33 Grant Thornton, 2017: 2.

34 www.investopedia.com/articles/fundamental/03/121703.asp [accessed 28 November 2019].

35 NBIM, *Tax and Transparency Expectations towards Companies* (Oslo: NBIM, 2017).

1.3. Employee trust

Transparency increases employee engagement

Not only does transparency help to keep current employees engaged, but it can also assist with the recruitment of new employees. More and more, job seekers look at companies' operating practices before making decisions on where they work. A transparent company can better demonstrate what its purpose is and how it is achieving it. This can help to develop a greater recruitment pool of potential new employees.[36]

1.4. Business-to-business trust

Transparency helps to foster business-to-business relationships

Business-to-business-facing companies are encountering the same pressures to embrace greater transparency as customer-facing companies. Clients throughout the supply chain are driving demands for and expectations of transparency.[37] Transparency can help to foster trust in relationships between a business and its clients, as described by the president of Cision EMIA: "Transparency is extremely beneficial because of the trust that's created between the client and the company. There has to be a sense that an organisation is being authentic with its clients, and open and real with them."[38] Business-to-business relationships can develop into long-term working relationships which are built on the trust that both parties will deliver what is required. Transparency can help a business to understand the way that a potential business partner works as a company and to get to know them as a company.[39]

2. Transparency as a key to reputation management

In an increasingly interconnected world, having a well-respected brand is critical

According to a 2018 Deloitte study, the importance of brand, reputation and culture risk is "underappreciated, underestimated and misunderstood".[40] This study surveyed 400 CEOs and board members from US organisations with US$1 billion[41] or more in annual revenue. It found that fewer than half of the leaders surveyed (42 per cent of CEOs and 50 per cent of board members) "have discussed risks to their respective organisations' reputation in the past year".[42] However, brand and reputation should be a top priority for companies. In this globalised world, the 24-hour news cycle and the active engagement of consumers and competitors on social media makes companies vulnerable to reputational damage.

Businesses need to recognise that the public can now quickly share information and air grievances online, and the best defence against any allegations is openness.[43] The power of social media to damage a company's reputation is undeniable. Some companies, including McDonald's and Patagonia, are attempting to overcome reputational risks by embracing transparency and incorporating it into their brand marketing.[44] By being transparent in this way, companies can rebuild or develop their brand. Reputation is key for companies, and transparency is the tool by which a company can keep this important asset intact.

Disclosure gives companies more control over brand and messaging

Reputation is built on what consumers think of a company, and without knowing what might be happening within a company, people will make their own assumptions. Companies which are transparent are able to retain control of their

36 www.forbes.com/sites/williamcraig/2018/10/16/10-things-transparency-can-do-for-your-company/#327d0dc625d0 [accessed 9 January 2020].
37 https://exchange.cim.co.uk/editorial/creating-transparency-in-b2b/ [accessed 16 January 2020].
38 https://exchange.cim.co.uk/editorial/creating-transparency-in-b2b/ [accessed 16 January 2020].
39 www.b2bmarketing.net/en-gb/resources/blog/why-transparency-b2b-marketing-will-yield-better-results [accessed 16 January 2020].
40 www2.deloitte.com/us/en/pages/about-deloitte/articles/press-releases/deloitte-survey-finds-many-ceos-and-boards-may-be-missing-the-mark-on-strategic-risk-investment-and-readiness.html [accessed 28 November 2019].
41 Transparency International takes "billion" to refer to one thousand million (1,000,000,000).
42 This is presumably despite risk mapping by boards and disclosure of key risks in annual reports. www2.deloitte.com/us/en/pages/about-deloitte/articles/press-releases/deloitte-survey-finds-many-ceos-and-boards-may-be-missing-the-mark-on-strategic-risk-investment-and-readiness.html [accessed 28 November 2019].
43 www.forbes.com/sites/csr/2011/07/12/transparency-social-media-is-forcing-you-to-tell-the-truth/#70d46ed62a25 [accessed 28 November 2019].
44 www.visioncritical.com/blog/5-brands-employed-transparency-marketing-and-won [accessed 28 November 2019].

image and reputation. If a company does not disclose information on its website, consumers will find this information elsewhere using third party sources. According to Vision Critical, a consumer insight platform, 80 per cent of consumers will change their mind about making a purchase due to negative articles or content online.[45] Therefore, control over brand and messaging is significant to companies and transparency is a way in which to retain and manage this control.

3. Increasing transparency legislation

Corporate disclosure is increasingly becoming a legislative requirement, and not just a "nice to have". At the European Union (EU), UK statute and US federal levels, there are greater legislative demands being placed upon companies which require them to publicly disclose anti-corruption information. This includes disclosures relating to anti-corruption programmes, beneficial ownership, organisational structure, country-by-country reporting and corporate political engagement. In this report, we highlight the most relevant legislation at an EU directive, UK statute and US federal level in Annex 1.

In this ever-evolving legal landscape, companies need to be ready and willing to embrace transparency. If nothing else, the potential financial and reputational damage of non-compliance should push companies towards disclosure. Failure to comply with the law could result in an injunction, a financial penalty, a criminal conviction or even imprisonment. It is likely that as the legislative demands on companies increase, so will the price for non-compliance.

4. Transparency and competitive advantage

Transparent and ethical companies attract greater investment

Companies that are reluctant to embrace transparency often cite losing their competitive advantage as one of the main reasons not to adopt greater openness. However, ethical investors have pushed companies on transparency and, more importantly, the necessity to improve the quality of disclosure: "transparency pays in the markets [and] evidence suggests that the market gives a higher value to firms that are upfront with investors".[46] The more a company discloses, the more confident investors are in them.[47]

Transparency is compatible with competitiveness

Companies whose reputation is built on an image of integrity and sustainability are able to use transparency as a competitive advantage. The company Patagonia is well known for its commitment to sustainability, ethics and transparency, and these are major selling points of the brand. The clothing company, which includes a list of finished goods suppliers on its website, is reported to have quadrupled its profits between 2014 and 2018.[48] Patagonia's financial gains are, therefore, a good example of how profitability and transparency can be synonymous.

45 Vision Critical infographic viewed at: www.entrepreneur.com/article/234603 [accessed 28 November 2019].
46 www.investopedia.com/articles/fundamental/03/121703.asp [accessed 28 November 2019].
47 www.investopedia.com/articles/fundamental/03/121703.asp [accessed 28 November 2019].
48 www.patagonia.com/footprint.html [accessed 6 February 2020]; www.inc.com/lindsay-blakely/patagonia-2018-company-of-the-year-nominee.html [accessed 28 November 2019].

CHAPTER 2:
ANTI-CORRUPTION PROGRAMME TRANSPARENCY

1. What is corporate anti-corruption programme transparency?

Anti-corruption programme transparency refers to the reporting and public disclosure around a company's governance, top-level commitment, anti-bribery and corruption policies and procedures, risk assessment, human resources, conflict of interest, charitable donations and sponsorships, facilitation payments, gifts and hospitality, training, anti-bribery and corruption programme, monitoring and review, whistleblowing, incident management, third party management, and private procurement.

2. Why does anti-corruption programme transparency matter?

It empowers stakeholders to monitor a company's anti-corruption programme

The reporting and public disclosure of a company's anti-corruption programme allows investors, civil society organisations and the public at large to monitor programme effectiveness and to encourage improvement.[49] Currently, "only 33.7% of companies describe main elements of their anti-corruption programme, that is, processes through which they implement their policies in practice."[50] Without these meaningful disclosures, externals stakeholders are unable to effectively evaluate a company's anti-corruption programme. Transparency around this area drives internal improvement of policies and procedures: if a company knows that it needs to disclose policies and procedures publicly, it will focus its attention on making sure that these policies and procedures are fit for purpose.

3. How does anti-corruption programme transparency help companies?

Attracting responsible investment

A growing number of investors are using a company's anti-bribery and corruption engagement as a "litmus test for the overall quality of companies' business practices and management".[51] Responsible investors expect companies to identify and manage corruption risks, and to publicly disclose their anti-corruption efforts. In its *Anti-Corruption Expectations towards Companies* document, Norges Bank Investment Management states that: "as an investor [we] analyse opportunities and risks to [our] investments. We expect companies to identify and manage corruption risk, and to report publicly on their anti-corruption efforts. We use such information to understand how the issue of corruption may affect the performance and prospects of companies and markets, and what steps companies are taking to address these challenges in their long-term business strategy."[52] Responsible investors are, therefore, demanding greater transparency around a company's anti-corruption programme.

Improved reputation

Anti-corruption programme transparency can have a positive effect on a company's reputation, which is economically advantageous.[53] Allegations of corruption can severely damage a company's reputation, and this can negatively impact the company's share price and/or revenue.

49 Transparency International, *Transparency in Corporate Reporting: Assessing the World's Largest Companies* (Berlin: Transparency International, 2014), p.6.
50 Alliance for Corporate Transparency, 2020: 90.
51 Principles of Responsible Investment (PRI) and UN Global Compact, *Engaging on Anti-Bribery and Corruption* (London: PRI, 2016), p.4.
52 NBIM, *Anti-Corruption Expectations towards Companies* (Oslo: NBIM, no date), p. 3.
53 UN Global Compact (UNGC) and Transparency International, *Reporting Guidance on the 10th Principle against Corruption* (New York: UNGC, 2009) p. 11.

Case study: Investigations and company reputation

The correlation between investigation, reputation and share price can be noted in the following example. Petrofac is a company whose reputation, because of an ongoing Serious Fraud Office (SFO) investigation, is likely to impact its profitability.[54] In 2017, following details of an SFO investigation, shares in Petrofac fell by 19.5 per cent.[55] In June 2019, Petrofac failed to win any of the work that it had been bidding for in Saudi Arabia and Iraq, amounting to a total of US$10 billion worth of work lost.[56] As it continues to struggle to win new orders, due to the SFO investigation, Petrofac has stated that it expects its revenue to decline in 2020.[57] This demonstrates the correlated relationship between investigation, reputation and potential revenue.

Risk management

Making anti-corruption policies and procedures public can also help to mitigate corruption risks. For example, when conducting third party due diligence, being able to view the anti-corruption policies and procedures of a potential third party can help a company to understand how seriously the third party takes anti-bribery and corruption.

Bottom line

Companies that make their anti-corruption programme public can also see a positive impact on their bottom line. This can include “an increase in sales from ethically concerned customers, a reduction in the cost of capital from risk-averse investors, the optimisation of internal processes, and, increased attractiveness as an employer of choice in increasingly competitive labour markets”.[58]

54 www.sfo.gov.uk/cases/petrofac-plc/ [accessed 14 February 2020].

55 www.hl.co.uk/shares/share-research/201705/petrofac-shares-fall-19-on-serious-fraud-office-investigation [accessed 14 February 2020].

56 www.ft.com/content/a0d04dcc-9715-11e9-9573-ee5cbb98ed36 [accessed 14 February 2020].

57 www.sfo.gov.uk/2017/05/12/sfo-confirms-investigation-petrofac-plc/ [accessed 14 February 2020]; www.sfo.gov.uk/cases/petrofac-plc/ [accessed 14 February 2020]; www.ft.com/content/fb8c8e42-c95b-11e9-af46-b09e8bfe60c0 [accessed 6 February 2020]; www.ft.com/content/a0d04dcc-9715-11e9-9573-ee5cbb98ed36 [accessed 14 February 2020].

58 Transparency International, January 2016: 3.

4. What are Transparency International's principles on anti-corruption programme transparency?

The following principles demonstrate the importance of strong anti-corruption frameworks and processes, which support the implementation, monitoring and review of anti-bribery and corruption policies and procedures. Public disclosure around implementation, monitoring and review helps us to identify if a company's policies and procedures are actually effective.

Case Study: The importance of transparency around implementation

Enron was involved in one of the biggest corporate scandals in the US. In December 2001, Enron filed for bankruptcy and went through multiple court cases.[59] The major reasons for its downfall were accountancy fraud, improper trade practices, corporate culture and ethical failings.[60] However, as it was well documented prior to the scandal, Enron had a thorough 68 page Code of Ethics.[61] This code painted a picture of a corporate entity that believed in anti-corruption. It only became clear with hindsight that this was far from the truth. This example demonstrates that whilst a company may say all the right things in its policies, what it does in practice might be an entirely different story. Transparency, therefore, has to go further. To fully enable an understanding of how a company conducts its business, disclosure also needs to include how a company's policies and procedures are implemented, monitored and reviewed.

1.1. Top-level commitment to anti-bribery and corruption

The company should publicly demonstrate top-level commitment to anti-bribery and corruption. This should include: a zero-tolerance statement authorised by leadership; evidence that the board or a board committee sets the anti-corruption tone; evidence that a senior executive has responsibility for the anti-bribery and corruption programme; and a public commitment to supporting and protecting employees who refuse to act unethically, even when it might result in the loss of business.

1.2. Anti-bribery and corruption policies

The company should publicly disclose a comprehensive anti-bribery and corruption policy, as well as other polices that contribute to its anti-corruption programme, and any supporting procedures to these policies. In addition, the company should publicly disclose how it implements these policies. These policies should all be overseen by an accountable senior executive.

59 www.nytimes.com/2001/12/03/business/enron-s-collapse-the-overview-enron-corp-files-largest-us-claim-for-bankruptcy.html [accessed 14 February 2020].

60 www.investopedia.com/updates/enron-scandal-summary/ [accessed 14 February 2020].

61 www.thesmokinggun.com/file/enrons-code-ethics [accessed 14 February 2020]; www.bizjournals.com/columbus/stories/2002/04/01/editorial3.html [accessed 16 January 2020]; www.forbes.com/sites/kensilverstein/2013/05/14/enron-ethics-and-todays-corporate-values/#56f1faac5ab8 [accessed 16 January 2020].

Best practice example of principle 1.2

BAE Systems' *Code of Conduct*[62] underpins the company's commitment to responsible culture and to legally and ethically doing the right thing. BAE Systems also provides summaries of the following policies on its website, in addition to its *Our Approach to Ethics and Anti-Corruption*[63] document: advisers policy; community investment policy; conflicts of interest policy; export control policy; facilitation payments policy; fraud prevention policy; gifts and hospitality policy; lobbying; political donations and other political activity policy; offset policy; procurement policy; product trading policy; pursuit of export opportunities policy; and risk management policy.[64] These policies are embedded within BAE's Operational Framework. According to the Code: "Failure to comply with the Code amounts to a failure to comply with BAE Systems' policies and processes, and may result in disciplinary action, which could include dismissal."[65] Compliance is monitored via the company's Operational Assurance Statement, Chief Executive Officer Business Review, and Quarterly Business Review processes, which are reviewed annually and are approved at board level.[66]

1.3. Risk assessment

The company should explain its anti-corruption risk assessment and how this informs its anti-bribery and corruption programme. The company should also report its anti-bribery and corruption Key Performance Indicators (KPIs).

1.4. Human resources

The company should publicly commit to supporting and protecting employees who refuse to act unethically and should provide details of how their employees incentive programmes promote ethical behaviour.

1.5. Conflict of interest

The company should provide details of its policy and procedures that define, identify, declare and manage conflict of interest.

1.6. Charitable donations and sponsorships

The company should provide details of its policy on charitable donations and sponsorships. It should also publicly disclose details of such donations made, and sponsorship arrangements entered into, by the company and its subsidiaries.

1.7. Facilitation payments

The company should publicly state that it explicitly prohibits facilitation payments, and it should explain how it manages this risk when making business decisions.

62 www.baesystems.com/en/our-company/corporate-responsibility/trust-and-integrity/code-of-conduct [accessed 18 February 2020].

63 BAE Systems, *Our Approach to Ethics and Anti-Corruption* (London: BAE Systems, 2020), www.baesystems.com/en/download-en/20200121113819/1434636829917.pdf [accessed 18 February 2020].

64 www.baesystems.com/en/our-company/corporate-responsibility/useful-links/policy-summaries [accessed 18 February 2020].

65 www.baesystems.com/en/our-company/corporate-responsibility/trust-and-integrity/code-of-conduct, p.12 [accessed 18 February 2020].

66 BAE Systems, *Our Approach to Ethics and Anti-Corruption* (London: BAE Systems, 2020), www.baesystems.com/en/download-en/20200121113819/1434636829917.pdf [accessed 18 February 2020].

Good practice example of principle 1.7

In its *2018 Sustainability Report*,[67] Maersk reflects on its 2018 target to comply with legislation on anti-corrupt practices, including working toward zero facilitation payments. In 2018, Maersk "managed, in close collaboration between crew and shore, to decrease facilitation payments over the last three years by 99.97%. In 2018, 98% of chartered vessels reported monthly, and approximately 88% [were] in compliance with the A.P. Møller – Maersk Anti-Corruption Policy. These results [were] achieved through clear communication and collaboration between the vessels, the ship-owners and Maersk, making it very clear that we support the crew in avoiding any payments."[68] The company's 2019 anti-corruption targets included continued compliance with legislation and working towards zero facilitation payments.

1.8. Gifts and hospitality

The company should publicly prohibit lavish gifts and hospitality, as outlined in its published gifts and hospitality policy. This policy should include a clearly defined approval process and consequences for non-compliance.

1.9. Training

The company should publicly state that it conducts training on its anti-bribery and corruption programme. It should also publicly disclose details of how it reviews and measures the effectiveness of this training.

1.10. Monitoring and review

The company should explain how it monitors and reviews its anti-bribery and corruption programme. This should include details of the extent to which this programme is subject to regular internal or external audit, and assurance that policies are updated according to recommendations.

1.11. Whistleblowing

The company should publicly disclose its policy on whistleblowing, which should include a statement on non-retaliation against whistleblowers and employees who report bribery and corruption incidents. It should also publicly state that it has a confidential and anonymous channel through which employees and whistleblowers can report bribery and corruption concerns. The company should also report on its anti-bribery and corruption whistleblowing statistics, including those reported through whistleblowing channels. Companies should explain which individual or function has oversight and responsibility for whistleblowing arrangements.

Good practice example of principle 1.11

Anglo American has a published *Whistleblowing Policy*[69] which includes a statement of non-retaliation against whistleblowers, including those who report on anti-bribery and corruption incidents. Anglo American also has a whistleblowing channel (YourVoice[70]) through which employees, suppliers and business partners can report anti-corruption concerns. The channel is confidential and uses an external provider to fully protect the identity of the individual. YourVoice can take calls in many languages and can be contacted directly from most locations.

1.12. Dealing with incidents

The company should explain how it addresses material findings of bribery and corruption. It should also publicly disclose high-level results from incident investigations and disciplinary actions against employees and third parties.

67 A.P. Møller – Maersk A/S, *2018 Sustainability Report* (Copenhagen: A.P. Møller – Maersk, 2019), www.maersk.com/~/media_sc9/maersk/about/files/sustainability/sustainability-reports/apmm_sustainability_report_2018_a3_190228.pdf [accessed 18 February 2020].
68 A.P. Møller – Maersk A/S, *2018 Sustainability Report* (Copenhagen: A.P. Møller – Maersk, 2019), p.31, www.maersk.com/~/media_sc9/maersk/about/files/sustainability/sustainability-reports/apmm_sustainability_report_2018_a3_190228.pdf [accessed 18 February 2020].
69 Anglo American *Group Whistleblowing Policy 2018-2021* (Anglo American, September 2018).
70 https://app.convercent.com/en-us/LandingPage/891d5ecc-bf20-e911-80e9-000d3ab6ebad [accessed 18 February 2020].

Third parties and private procurement are particularly high-risk areas for companies, and as a result we provide additional recommendations and guidance for these two areas. In these principles, the term 'third parties' refers to suppliers, joint ventures, agents and intermediaries. Private procurement is defined as the acquiring of goods and services by an individual, company or organisation completed within the context of the private sectors between for-profit organisations.

1.13. Managing third parties

1.13.1. The company should explain (including by reference to supporting policies) how it addresses the corruption risk of third parties acting for or on behalf of the company.

The company should expect third parties to commit to the company's anti-bribery and corruption policy or provide evidence that the third party's own anti-bribery and corruption policy adheres to the same, or higher, standards as that of the company.

Best practice example of principle 1.13.1

On its website, Microsoft states: "We require our partners, suppliers, and other representatives to comply with the Anti-Corruption Policy for Microsoft Representatives. We conduct risk-based due diligence and vetting of our representatives. The vetting process now uses data analytics to identify higher risk representatives through an algorithm that calculates a risk score for representatives based on internal and external data attributes. We began using these data analytics in 2019 to conduct due diligence on some representatives and continue to work on expanding this unique program. We require that higher risk representatives undergo enhanced vetting allowing us to determine whether they will be permitted to start or renew a business relationship with us. Our partner compliance analytics also provide real-time insights, allowing Microsoft to make more informed compliance and business decisions."[71]

1.13.2. The company should use anti-bribery and corruption clauses in its contracts with third parties, and should publicly state that it does so.

Anti-corruption clauses in third party contracts reinforce the anti-corruption message, provide important leverage in the event of suspected misconduct and can help to demonstrate a company's disassociation from any corrupt practices of third parties.

1.13.3. The company should publicly disclose details of how it conducts risk-based anti-bribery and corruption due diligence when entering into business relationships with third parties. The company should also include reference to its audit rights in its contracts with third parties.

This vetting process should take the form of anti-bribery and corruption due diligence. The company should identify, understand and mitigate relevant risks and seek to ensure that third parties operate to aligned anti-corruption standards. There should be ongoing monitoring of third parties to ensure that any future misalignment of standards is identified, and where possible, any potential legal, financial or reputational damage is averted. By disclosing evidence of this due diligence, the company will also gain the trust of stakeholders, including investors, consumers and employees. These stakeholders will feel confident that third party relationships have been thoroughly vetted, and thus will feel more confident that third party risks have been reduced. The company should also include audit rights in its contracts with third parties.

1.13.4. The company should publicly disclose information that identifies the agents, intermediaries, joint ventures and associates that are currently contracted to work with and on behalf of the company.

Disclosing such details demonstrates the company's commitment to transparency and accountability. It also creates a consolidated information point from which all upstream supply chain information can be located and extracted.

71 www.microsoft.com/en-us/legal/compliance/anticorruption/default.aspx [accessed 18 February 2020].

This helps to manage the complexity of a company's supply chain. Due to the potential scrutiny that revelations of improper business relations can bring, it also encourages companies to ensure that they are involved only in legitimate and respectable business relationships. Additionally, if it has to publicly disclose information that identifies its agents, intermediaries, joint ventures and associates, a company is forced to assess which parties are critical to its business dealings and which come with unnecessary risks.

1.14. Private procurement transparency[72]

1.14.1. The company should publicly disclose key information on its procurement cycle.

This builds transparency into each phase of a company's procurement process. Disclosed information should include award criteria, bidding information and judgement criteria. Stakeholders should also be able to see calls for tender and award announcements. The data should be meaningful and should ensure that all companies operate on a level playing field. The company should provide all bidding companies with information and guidance on all stages of the bidding process and give a commitment that no bidder will be given confidential information or preferential treatment.

1.14.2. The company should consider using open contracting in its procurement process to increase transparency throughout the procurement cycle.

Open contracting can help to open up the procurement system and reduce the risk of conflict of interest, providing an open, transparent and competitive environment. An example of open contracting is e-procurement, which is the purchase and sale of supplies, equipment, works and services through a web interface. This can be a way for companies to improve the speed, efficacy and transparency of their procurement work, and also to supply all stakeholders with relevant information. Contracts are often susceptible to conflict of interest, and bid-rigging can distort the business environment. This can reduce the quality of work or services and can cost lives, as contracts may be awarded unfairly to bidders who have made shortcuts to lower the costs, such as reducing employees' pay and working conditions or the quality of materials used.

1.14.3. The company should explain how it addresses anti-bribery and corruption risks in its procurement process.

This should include a review of contracting processes, decisions and major contracts for red flags of collusion or bribery. During the procurement process, the company should require that companies which wish to tender must have anti-bribery and corruption policies and procedures in place.

1.14.4. The company should publicly commit to fair-trading and adhere to a zero-tolerance policy on bribery throughout the procurement system.[73]

The company's code of conduct should state that it is committed to integrity and will operate transparently and fairly in its business dealings. This commitment and policy of zero tolerance of bribery should be made clear to third parties. This will enhance the reputation of the company, set the tone for the bidding process and, over time, deter demands for bribes and discourage corrupt bidders from participating in company tenders.[74]

72 Transparency has been introduced in a number of aspects of public procurement, and governments are now expected to disclose key elements of their procurement cycles and the resulting contracts. The Public Contracts Regulations 2015 requires in-scope bodies to publish all UK public sector procurement opportunities and contract awards on Contracts Finder. Further to this, in May 2016 the UK government published the UK Open Government National Action Plan 2016-18, which commits to implementing the Open Contracting Data Standard. Civil society groups such as Open Contracting Partnership and Open Government Partnership have created a number of recommendations for public procurement, including the Open Contracting Data Standard. It is likely that in the future, private procurement will be expected to be held to the same standard as public procurement. The following recommendations are where we see the biggest anti-bribery and corruption risks. See www.legislation.gov.uk/uksi/2015/102/contents/made [accessed 6 February 2020]; www.gov.uk/government/publications/uk-open-government-national-action-plan-2016-18/uk-open-government-national-action-plan-2016-18 [accessed 6 February 2020]; www.open-contracting.org/data-standard [accessed 6 February 2020].

73 For more detail on fair trading see: www.antibriberyguidance.org/guidance/14-contractors-suppliers/guidance#1 [accessed 11 February 2020].

74 www.antibriberyguidance.org/guidance/14-contractors-suppliers [accessed 6 February 2020].

Case Study: Corruption risks of an opaque procurement process

In 2013, Foxconn, a technology multinational, was investigated for bribery within its supply chain.[75] Employees were alleged to have accepted a total of US$5 million dollars for preferential treatment during the procurement process.[76] In return for these bribes, suppliers were selected for contracts and got better prices.[77] In some cases, they were even paid faster than other suppliers who were not involved in the bribery.[78] Following the investigation, Foxconn implemented sustainable procurement requirements. The company now requires that its procurement division and suppliers must: "prohibit corruption, discrimination, unfair or non-competitive practices throughout the procurement process by signing a 'letter of undertaking' that they will adhere to the principles of fair competition and transparency".[79] These requirements set the tone for the bidding process, and this will over time deter demands for bribes and discourage corrupt bidders from participating in company tenders.

75 https://money.cnn.com/2013/01/09/technology/foxconn-china-bribery/index.html [accessed 14 February 2020].

76 https://bgr.com/2014/05/21/foxconn-bribery-scandal/ [accessed 30 August 2019]; www.nytimes.com/2014/01/23/business/foxconn-ex-managers-detained-in-bribery-inquiry.html [accessed 14 February 2020].

77 https://bgr.com/2014/05/21/foxconn-bribery-scandal [accessed 30 August 2019].

78 https://bgr.com/2014/05/21/foxconn-bribery-scandal [accessed 30 August 2019].

79 Foxconn, *Social and Environmental Responsibility Report* (New Taipei City: Hon Hai Precision Industry Co., Ltd, June 2016) p. 48.

CHAPTER 3:
BENEFICIAL OWNERSHIP TRANSPARENCY

1. What is beneficial ownership transparency?

Beneficial ownership transparency is the disclosure of the natural person who directly or indirectly ultimately owns or controls a corporate entity.[80] This person is referred to as a beneficial owner, or a Person of/with Significant Control (PSC). A PSC is defined as the person who ultimately owns, controls or benefits from a company or trust fund and the income that it generates.[81] EU and UK legislation define a PSC as a person with more than 25 per cent of the shares or voting rights in a legal entity.[82]

2. Why does beneficial ownership transparency matter?

It helps to trace criminals

One hurdle when it comes to identifying a beneficial owner is that the real owner of a company can engage a nominee to be listed on paper as the owner of the company. The nominee holds the company for the benefit of the hidden owner. The name of the true owner is not found on any company documents, allowing them to run the company behind the scenes and away from the scrutiny of authorities.[83] Access to information about the beneficial owner of a company is thus a "key factor in tracing criminals who might otherwise hide their identity behind corporate structures".[84]

It reduces the risk of money laundering

Identifying beneficial ownership information is also critical in the fight against money laundering, which in itself is a crucial enabler of corruption. Corrupt individuals can "use anonymous company ownership to hide the links to the sources of their illicit wealth, giving that wealth the appearance of legitimacy".[85] It is therefore essential to know who the beneficial owners of companies are.

It reduces the risk of tax abuse

Anonymous company ownership "bears an unacceptably high cost for society, allowing criminals and corrupt individuals to escape accountability or evade tax".[86] For tax authorities, it is easier to track and detect whether companies and individuals are paying the correct taxes if properties, bank accounts and investments are disclosed in the name of the relevant individual.

Case study: the Panama Papers and the importance of beneficial ownership transparency

The 2016 Panama Papers and the 2017 Paradise Papers leaks demonstrated that individuals who control assets can remain behind the scenes by setting up anonymous companies and using these companies for tax abuse. The leaks revealed high-level politicians and other high-profile individuals using offshore companies and trusts for unlawful purposes such as tax evasion.[87] These revelations led to investigations in 79 countries, and by 2018, the recovery of more than US$500 million in taxes by tax authorities.[88] Beneficial ownership transparency is a key resource when trying to reduce tax evasion, as it provides access to information to help track criminals who might otherwise hide their identity behind opaque corporate structures.

80 Transparency International UK, *Beneficial Ownership Transparency* (London: Transparency International UK, no date), www.wiltonpark.org.uk/wp-content/uploads/WP1654-Beneficial-Ownership-Transparency.pdf [accessed 18 February 2020].
81 www.transparency.org/glossary/term/beneficial_ownership [accessed 28 November 2019].
82 www.gov.uk/government/news/people-with-significant-control-psc-who-controls-your-company [accessed 28 November 2019].
83 www.financierworldwide.com/beneficial-ownership-registers-a-global-fight-against-corruption#.XO6QyYhKiUk [accessed 28 November 2019].
84 Directive (EU) 2015/849 of the European Parliament and the Council, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015L0849&from=EN [accessed 28 November 2019]; Directive (EU) 2018/843 of the European Council of 30 May 2018 amending Directive (EU) 2015/849, https://eur-lex.europa.eu/eli/dir/2018/843/oj [accessed 28 November 2019].
85 Transparency International UK, *Beneficial Ownership Transparency* (no date).
86 Open Ownership, *Briefing: The Case for Public Beneficial Ownership Registers* (London: Open Ownership, no date), p. 2.
87 https://transparency.eu/project/european-beneficial-ownership-transparency [accessed 18 February 2020].
88 https://transparency.eu/project/european-beneficial-ownership-transparency [accessed 18 February 2020].

3. How does beneficial ownership transparency help companies?

Attracting responsible investment

There is a rising trend in responsible investors calling for more transparency about beneficial ownership. In 2016, global investors managing over US$740 billion called on the US government to implement legislation on corporate beneficial ownership transparency.[89] According to Heather Lowe, Legal Counsel and Director of Government Affairs at Global Financial Integrity, investors realise the risks associated with the use of anonymous companies, as they "are seeing case after case of fraud, corruption and other dirty dealings involving anonymous companies hitting companies they have invested in, chipping away at company profits and distracting corporate executives from the company's main business".[90] Thus, from an investor's perspective, it is important to know who companies are ultimately doing business with.

Risk management

For businesses, not knowing the ultimate owners of a company opens up a considerable amount of risk. Bribery and fraud can be facilitated by anonymously owned companies, which can lead to investigations and legal proceedings. Through legal investigations and proceedings, a company can incur legal fines and fees, long-term reputational damage, and subsequent compliance costs.

Due diligence

If a company knows who it is doing business with, this reduces the complexity of the due diligence process.[91] The importance of beneficial ownership transparency is highlighted by the fact that data from beneficial ownership registries has been incorporated into a range of risk and compliance products.[92] Companies have recognised obtaining verified beneficial ownership information is an important part of screening and managing third party risks: 85 per cent of respondents to a poll conducted by the company Bureau van Dijk, a publisher of business information, agreed on the importance of monitoring beneficial ownership information for the duration of a company's relationship with a third party.[93]

Increased competitiveness

Beneficial ownership transparency increases market competitiveness at a national level and ensures that companies play by the same rules in all jurisdictions.[94] It helps to level the playing field for all companies and therefore bolsters competitiveness. In contrast, corruption enabled by anonymous companies can distort markets and deplete public monies that otherwise drive economic development.[95] Thus, identifying and disclosing the identity of beneficial owners acts as a counter to this type of corruption.

89 Global Witness, *Investors Managing over $740 Billion Call for Transparency over American Company Owners* (London: Global Witness, September 2016).

90 Global Witness, September 2016.

91 Transparency International UK, *Beneficial Ownership Transparency* (no date).

92 www.trulioo.com/blog/enhanced-due-diligence/ [6 February 2020].

93 www.trulioo.com/blog/poll-beneficial-ownership/ [6 February 2020].

94 The B Team, *Ending Anonymous Companies: Tackling Corruption and Promoting Stability through Beneficial Ownership Transparency* (New York and London: The B Team, January 2015) p. 8.

95 www.globalwitness.org/es/blog/business-case-ending-anonymous-companies [accessed 18 February 2020].

4. What are Transparency International's principles on beneficial ownership transparency?

2.1. The company should publicly disclose its ultimate beneficial owners accurately and in a freely accessible format.

In the UK, public companies already must openly disclose this information when registering on the stock exchange and must keep this up to date. We recommend that all companies, both private and public, publicly disclose information on their beneficial owners on their website.

2.2. The company should recommend its third parties to publicly disclose their beneficial ownership.

All companies, both private and publicly listed, should also recommend their third parties to publicly disclose their beneficial ownership information. It is not only best practice to understand who you are doing business with: it is increasingly becoming a legal requirement.[96]

2.3. The company should publicly advocate that governments adopt data standards for ownership disclosure; in countries where public beneficial ownership registers do not already exist, the company should advocate that governments set up public beneficial ownership registers.

Companies should advocate governments to provide them with guidance on how to collect and publish beneficial ownership data in these registers. In the UK context, there is currently little verification of the disclosed information on Companies House[97], "turning beneficial ownership registries into depositaries of self-declared information, regardless of the accuracy or truthfulness of the data".[98]

Open Ownership has created a Beneficial Ownership Data Standard which provides a practical framework for collecting and publishing beneficial ownership data.[99] Using this standard enables the exchange of information between implementing countries, and also showcases best practice for collecting, storing and publishing beneficial ownership information. The more governments that adopt the beneficial ownership data standard, the less time-consuming and more cost-effective it will be for companies to publicly disclose beneficial ownership information.[100]

Good practice example of principle 2.3

In its 2016 *Economic Contribution and Payments to Government Report,*[101] BHP states: "We also support the introduction of public disclosure requirements relating to beneficial ownership. These are issues that require leadership and a changed approach. We recognise this and seek to be an industry and global leader in our level of public disclosure to foster an informed public policy debate."[102]

Good practice example of principle 2.3

In its Transparency Statement,[103] Rio Tinto states: "We actively engage with governments and other stakeholders to share our experiences on disclosure and transparency, and encourage the harmonisation of reporting obligations aligned with global best practice."[104]

96 www.financierworldwide.com/integrity-in-third-party-due-diligence#.XO_gTYhKiUk [accessed 28 November 2019].

97 Companies House is a register of information on UK companies, including information related to Persons with Significant Control.

98 Andres Knobel, *Beneficial Ownership Verification: Ensuring the Truthfulness and Accuracy of Registered Ownership Information* (Chesham, Buckinghamshire: Tax Justice Network, January 2019), p. 2.

99 www.openownership.org/what-we-do/the-beneficial-ownership-data-standard [accessed 28 November 2019].

100 www.openownership.org/news/faqs-openownership [accessed 28 November 2019].

101 BHP Billiton, *Integrity Resilience Growth: Economic Contribution and Payments to Governments Report 2016* (Melbourne: BHP Billiton, 2016), www.bhp.com/~/media/bhp/documents/investors/annual-reports/2016/bhpbillitoneconomiccontributionandpaymentstogovernments2016.pdf?utm_source=Website&utm_medium=Organic&utm_term=CFOIntro&utm_campaign=AR2016 [accessed 18 February 2020].

102 BHP Billiton, *Integrity Resilience Growth: Economic Contribution and Payments to Governments Report 2016* (Melbourne: BHP Billiton, 2016), www.bhp.com/~/media/bhp/documents/investors/annual-reports/2016/bhpbillitoneconomiccontributionandpaymentstogovernments2016.pdf?utm_source=Website&utm_medium=Organic&utm_term=CFOIntro&utm_campaign=AR2016 [accessed 18 February 2020].

103 www.riotinto.com/en/sustainability/ethics-integrity/Transparency [accessed 18 February 2020].

104 www.riotinto.com/en/sustainability/ethics-integrity/Transparency [accessed 18 February 2020].

CHAPTER 4:

ORGANISATIONAL STRUCTURE TRANSPARENCY

1. What is organisational structure transparency?

Organisational structure transparency is the disclosure of a company's fully consolidated subsidiaries and non-fully consolidated holdings. 'Non-fully consolidated holdings' refers to entities in which the parent company owns between 20 per cent and 50 per cent. This includes associated companies and joint ventures. Some companies try to make their organisational structure opaque in an attempt to distance themselves from associated companies, joint ventures and subsidiaries which are being used to pay bribes, to launder money or to set up structures to shift profits (in order to avoid paying taxes).

2. Why does organisational structure transparency matter?

It shines a light on deliberately opaque structures

Large companies, especially multinational companies, often consist of numerous fully consolidated subsidiaries and non-fully consolidated holdings, controlled to varying degrees by the parent company. These subsidiaries and holdings can be registered and operate in tax havens, or secrecy jurisdictions. Companies may choose to use such jurisdictions to hide illicit funds or for tax abuses. Greater organisational structure transparency requires companies to publicly disclose all fully consolidated subsidiaries, shining a light on potential corrupt activity.

It makes global operations accountable

The disclosure of corporate structures allows stakeholders to better identify and understand a company's global operations. This makes companies more accountable for their economic and social impact in the societies and communities in which they operate. Through organisational structure transparency, local stakeholders know which companies are operating in their country or territory, the tax that these companies are required to pay, and how companies relate to each other.

3. How does organisational structure transparency help companies?

Attracting responsible investment

According to Norges Bank Investment Management, "[c]omplex or opaque ownership and organisational structures hamper transparency and may compromise investors' fundamental financial analysis".[105] Without full disclosure of its organisational structure, a company may be deemed too risky for an investor to have an interest in it.

Reputation management

An opaque corporate structure, or an association with other companies that have opaque structures, will trigger concerns, particularly if there are suspicions or indications that such opaque structures mask impropriety. The World Economic Forum has found that more than 25 per cent of a company's market value is attributable to its reputation.[106]

Preventing illicit activity

Companies must be wary of illicit activities undertaken by subsidiaries or joint ventures. Illicit behaviour can result in bribery and fraud investigations or legal proceedings. For companies to be able to make responsible decisions, they must know who they are dealing with. Organisational structure transparency enables a company to know the full structure of the business that they are dealing with, and this can help a company to protect itself against fraud or losses.

105 www.nbim.no/en/the-fund/responsible-investment/principles/expectations-to-companies/tax-and-transparency [accessed 6 February 2020].

106 WEF data found in: GEC Risk Advisory and Reputation Inc., *Understanding Reputation Risk* (New York: GEC Risk Advisory and Reputation Inc., October 2016) p. 3.

4. What are Transparency International's principles on organisational structure transparency?

3.1. The company should publicly disclose all fully consolidated subsidiaries and non-fully consolidated holdings, and the percentages that it owns in each of these entities.

Most laws and regulations only require the disclosure of material investments. However, it is important to publicly disclose an exhaustive list of all subsidiaries, affiliates, joint ventures and other entities. In 2016, Transparency International assessed the corporate reporting of a number of multinational companies and found that the average score for companies was 47 per cent, demonstrating a lack of commitment to the full disclosure of subsidiaries and significant holdings.[107] With varying legislative requirements in different countries, companies should push for best practice and encourage greater reporting requirements.

Best practice example of principle 3.1

In its *2018 Annual Report,*[108] GlaxoSmithKline (GSK) publicly discloses, in accordance with Section 409 of the Companies Act 2006, "a full list of subsidiaries, associates, joint ventures and joint arrangements, the address of the registered office and effective percentage of equity owned, as at 31 December 2018… Unless otherwise stated the share capital disclosed comprises ordinary shares which are indirectly held by GSK. The percentage held by class of share is stated where this is less than 100%. Unless otherwise stated, all subsidiary companies have their registered office in their country of incorporation. All subsidiary companies are resident for tax purposes in their country of incorporation unless otherwise stated."[109] **While this disclosure adheres to the UK Companies Partnership and Groups Regulations 2015, it demonstrates the feasibility of organisational structure transparency for companies which do not fall under this, or similar, legislation.**

Best practice example of principle 3.1

In its *2018 Annual Report*,[110] HSBC discloses an exhaustive list of its subsidiaries, joint ventures and associates (including the percentage of share class held by the immediate parent company or by the group where this varies). **While this disclosure adheres to the UK Companies Partnership and Groups Regulations 2015, it demonstrates the feasibility of organisational structure transparency for companies which do not fall under this, or similar, legislation.**

3.2. The company should publicly state that it will not work with businesses which operate with deliberately opaque structures.[108]

To enable this, companies should recommend that their third parties publicly disclose their subsidiaries, joint ventures and other entities, and should publicly state that they will not work with companies that operate with deliberately opaque structures.

107 Transparency International, July 2016: 24.

108 GSK, *Annual Report 2018* (Brentford, Middlesex: GlaxoSmithKline plc, no date), www.gsk.com/media/5349/annual-report-2018.pdf [accessed 18 February 2020].

109 GSK, *Annual Report 2018* (Brentford, Middlesex: GlaxoSmithKline plc, no date), p.260, www.gsk.com/media/5349/annual-report-2018.pdf [accessed 18 February 2020].

110 HSBC Holdings plc, Annual Report and Accounts 2018 (London: HSBC Holdings plc, 2019), www.annualreports.com/HostedData/AnnualReports/PDF/NYSE_HSBC_2018.pdf [accessed 18 February 2020].

111 Indicators that a business may be deliberately opaque include: if it has operations in a secrecy jurisdiction, for example, the Cayman Islands; the use of 'nominee' directors; the use of a 'mailbox' address, where the company is registered at an address but there are no employees or operations there; and the use of corporate directors, partners, members, or shareholders from secrecy jurisdictions.

CHAPTER 5:
COUNTRY-BY-COUNTRY REPORTING TRANSPARENCY

1. What is country-by-country reporting transparency?

Country-by-country reporting transparency is the public reporting and disclosure by multinational companies of financial data for countries in which they operate. The financial data that should be disclosed includes revenues/sales, capital expenditure, pre-tax income, income tax, and community contributions.[112] This financial data is sometimes referred to as 'payments to government'.

2. Why does country-by-country reporting transparency matter?

It makes government funds accountable

Multinational companies transfer considerable funds to host governments, including licence fees, royalties and taxes. This should contribute substantially to the social and economic development of a country; however, this is not often the case, as these funds are not always managed transparently and with accountability. The Extractive Industries Transparency Initiative (EITI) has highlighted the importance of country-by-country reporting, and it is now a requirement for companies that support EITI to report on a country-by-country basis.[113] This helps to mitigate corruption risks, including the misappropriation of money and bribery.

There is accountability for tax abuses

Country-by-country reporting helps to reduce the opportunity for tax abuses.[114] Without disclosing the profits where economic value is created, it is difficult to determine whether an operation has been set up to exploit tax loopholes.[115] Companies often publicly disclose key financial data in a consolidated annual financial statement. However, this consolidated data does not always disclose the profits and taxes paid in each country. This means that multinational enterprises are able to exploit gaps and mismatches between countries' tax systems. The OECD estimates that this costs countries US$ 100-240 billion annually, or approximately between 4-10 per cent of global corporate income tax revenue.[116] In 2016, Transparency International assessed the reporting practices of multinationals and found that the average score for country-by-country reporting was just 9 per cent, with 49 companies out of 100 scoring 0 per cent.[117]

3. How does country-by-country reporting transparency help companies?

Attracting responsible investment

Country-by-country reporting helps to improve investors' trust in companies. If a company's profits are substantially dependent on aggressive tax planning, changes in legislation or an increase in the tax rate can have a significant impact on the company's profit. This is a risk not only for the company but also for investors and shareholders.[118] Country-by-country reporting allows investors to determine how healthy a company really is. If all companies report through the same country-by-country methods, regardless of size or business activity, investors can make more accurate risk assessments.[119] This is highlighted in NBIM's expectations document, which explains that "appropriate, prudent and transparent tax behaviour" is a key component of corporate responsibility and that therefore public country-by-country reporting should be a core element of a company's transparent tax disclosure.[120]

112 Transparency International, July 2016: 30.
113 https://eiti.org [accessed 12 February 2020]; https://eiti.org/explore-data-portal [accessed 12 February 2020].
114 International Bar Association, October 2013: 7.
115 Financial Transparency Coalition, *Why Public Country-by-Country Reporting for Large Multinationals is a Must: Questions and Answers* (Boston, MA: Financial Transparency Coalition, February 2016), p. 3.
116 www.oecd.org/tax/beps [accessed 6 December 2019].
117 Transparency International, July 2016: 6.
118 PRI, *Engagement Guidance on Corporate Tax Responsibility* (London: PRI, 2015).
119 Publish What You Pay, *Guide to Extended Country-by-Country Reporting for Businesses* (Oslo: Publish What You Pay Norway, December 2018), p. 5.
120 NBIM, 2017.

Reputation management

In 2017, a survey conducted on behalf of Christian Aid found that nine out of ten people surveyed believed tax abuse by large multinational companies to be morally wrong. One in four boycotted a company's products or services because the company did not pay its fair share of taxes, with a further 43 per cent considering a boycott.[121] Due to public awareness of the issue, society is increasingly raising objection to companies that use loopholes to reduce their contributions to governments. By not disclosing this information, companies open themselves up to considerable reputational damage. For those companies that do not abuse tax loopholes, country-by-country reporting can demonstrate the contribution they make and avoid any false accusations of tax abuses.

Case Study: Country-by-country reporting and offshore structures

In 2011, an investigation by Action Aid found that Barclays Bank, a British multinational, had made extensive use of tax havens.[122] At the time, the bank was criticised for using offshore structures to systemically avoid tax.[123] Barclays has since introduced country-by-country reporting, and the number of its subsidiaries in tax havens has dramatically reduced. In the Cayman Islands, the Isle of Man and Jersey, the number of Barclays' subsidiaries has dropped from 181 to 0, from 30 to 1 and from 38 to 9 respectively.[124] More information on Barclays' commitment to country-by-country reporting can be found in 'Principle 4.1: best practice'. This story demonstrates how country-by-country reporting enables companies to clearly demonstrate their commitment to tax transparency and ensure that their use of subsidiaries in tax havens is legitimate.

121 www.comresglobal.com/polls/christian-aid-tax-avoidance-november-2017 [accessed 12 February 2020]; www.theguardian.com/business/2017/nov/27/tax-avoidance-by-big-f75irms-is-morally-wrong-say-nine-out-of-10-in-uk [accessed 11 February 2020].

122 Action Aid, *Addicted to Tax Havens: The Secret Life of the FTSE 100* (Chard, Somerset: Action-Aid, October 2011), p.1.

123 https://transparency.eu/open-data-for-tax-justice-project [accessed 14 January 2020].

124 https://transparency.eu/open-data-for-tax-justice-project [accessed 14 January 2020].

4. What are Transparency International's principles on country-by-country reporting transparency?

4.1. The company should publicly disclose the nature of work, the countries of operations and the countries of incorporation of its fully consolidated subsidiaries and non-fully consolidated holdings.

Multinational companies have a responsibility to pay taxes in the countries where value is created. Companies may set up subsidiaries in tax havens in order to shift their profits and reduce tax.[125] In order to determine if the company's operations have been set up for legitimate purposes, the company should disclose the nature of the activity of its subsidiaries, the countries of operation and the countries of incorporation. Companies should publicly explain the business case for locating subsidiaries in tax havens. This disclosure allows external stakeholders to question why a company has operations in tax havens, where there are no or limited local employees and where little or no genuine economic value is created.

Best practice example of principle 4.1

Barclays Bank has created a *Country Snapshot*[126] which not only provides country-by-country breakdowns of its payments to government but also discloses and the nature of the work of each of its subsidiaries.[127] In its *Country Snapshot*, Barclays Bank commits to maintaining enhanced tax disclosures.

4.2. The company should publicly disclose country-by-country breakdowns of its payments to governments.

This includes revenue/sales, capital expenditure, pre-tax income, income tax and community contributions in all countries in which the company operates.[128] It is also important for a company to publicly disclose the contributions that it makes beyond taxation of its corporate income, including sales taxes, payroll taxes, customs duties, property taxes and environmental levies.[129] This additional information is key to understanding the context of the taxes that are included in country-by-country reporting. The range of information reported helps to paint a picture of the nature of a company's operations, where it creates value and where it should be paying taxes.

Best practice example of principle 4.2

In its report, *Taxation and Our Total Economic Contribution to Public Finances 2018*,[130] Vodafone discloses its payments to government on a country-by-country basis. For each country where it pays tax, Vodafone provides a summary of its in-country activities. In its 2016-17 report, its Chief Financial Officer (CFO) outlined the importance of country-by-country reporting for Vodafone: "If governments cannot reliably secure the funds they require to develop and maintain civil infrastructure and public services, communities and societies begin to suffer, reducing productivity and harming economic growth."[131] Vodafone's CFO also reflected that increasing transparency and understanding is vital to address the "erosion of public trust".[132] Reporting on a country-by-country basis can remove any perceived ambiguity.[133]

125 Fair Tax, *How Do Companies Avoid Tax?* (Downham Market, Norfolk: The Fair Tax Campaign, 2013), p.1.

126 Barclays PLC, Country Snapshot 2019 (London: Barclays PCL, 2020), https://home.barclays/citizenship/our-reporting-and-policy-positions/country-snapshot [accessed 18 February 2020]; Barclays PLC, *Creating Opportunities to Rise: Country Snapshot 2018* (London: Barclays PLC, 2019).

127 Barclays PLC, Country Snapshot 2019 (London: Barclays PCL, 2020), https://home.barclays/citizenship/our-reporting-and-policy-positions/country-snapshot [accessed 18 February 2020]; Barclays PLC, *Creating Opportunities to Rise: Country Snapshot 2018* (London: Barclays PLC, 2019).

128 https://www.antibriberyguidance.org/guidance/18-reporting/guidance#5 [accessed 28 November 2019].

129 NBIM, 2017.

130 Vodafone, *Taxation and Our Total Economic Contribution to Public Finances 2018* (Newbury, Berkshire: Vodafone, 2018), www.vodafone.com/content/dam/vodcom/sustainability/pdfs/vodafone_2018_tax.pdf [accessed 18 February 2020].

131 Vodafone, *Taxation and Our Total Economic Contribution to Public Finances 2016-17* (Newbury, Berkshire: Vodafone, 2017), www.vodafone.com/content/dam/vodcom/sustainability/pdfs/vodafone_2017_tax.pdf [accessed 18 February 2020], p. 3.

132 Vodafone, 2017: 3.

133 Vodafone, 2017: 3.

CHAPTER 6:
CORPORATE POLITICAL ENGAGEMENT TRANSPARENCY

1. What is corporate political engagement transparency?

Corporate political engagement is the engagement of companies in political activities. Some principle ways in which companies participate in the political process include political contributions, lobbying, and the revolving door between the public and private sectors.

Corporate political engagement is a legitimate activity when done responsibly. It can result in laws and regulations that are well designed and in the public interest. It can even be viewed as a critical element of public decision-making processes, as it enables interest groups to understand, track and shape the development of legislation and regulation.[134] However, when engagement is disproportionate and opaque, it can lead to corruption and conflict of interest. Companies may have privileged access and potential influence through networks or patronage, nepotism or other improper conduct.

Companies can regulate their engagement in the political arena through a control environment, which includes board oversight, guiding principles and the monitoring of corporate political engagement activities. This will help to ensure that a company's engagement in the political arena remains ethical and does not attract reputational damage.

Case Study: Conflict of interest

In August 2015, BNY Mellon settled Securities Exchange Commission (SEC) charges worth US$14.8 million related to its hiring practices.[135] The SEC alleged that BNY Mellon had sought to influence foreign officials overseeing a Middle Eastern sovereign wealth fund by offering internships for family members.[136] The SEC specifically alleged that BNY had deviated from standard hiring procedures to place unqualified candidates in "customised" internships.[137] Inevitably, this can "lead to undue influence, unfair competition, and regulatory capture to the detriment of the public interest and effective public policies".[138] This example highlights the importance of transparency around corporate political engagement, in order to mitigate risks associated with conflict of interest.

2. Why does corporate political engagement transparency matter?

It demonstrates a company's commitment to ethical conduct

Transparency around engagement in political activities enables investors and the public to hold a company to account. Corporate political engagement scandals have led to a high level of mistrust in democratic institutions and businesses. Scandals have fostered a belief that laws and policies are often designed to suit the largest companies to the detriment of the public interest.

134 Dieter Zinnbauer, 'Corrupting the Rules of the Game: From Legitimate Lobbying to Capturing Regulations and Policies', in Transparency International, *Global Corruption Report: Corruption and the Private Sector* (Cambridge: Cambridge University Press, 2009), pp. 32-39.

135 United States of America before the Securities and Exchange Commission in the Matter of the Bank of New York Mellon Corporation (2015) www.sec.gov/litigation/admin/2015/34-75720.pdf [accessed 18 February 2020].

136 www.sec.gov/litigation/admin/2015/34-75720.pdf [accessed 18 February 2020].

137 Andrew E. Costa, Jeremy I. Levin and Louis E. Layrisson, III, 'Managing Corruption Risk When Hiring and Training Foreign Officials and Their Relatives Overseas: Risks and Challenges (Part One of Two)' in *The FCPA Report- Volume 5, Number 1,* July 2016; www.sec.gov/litigation/admin/2015/34-75720.pdf [accessed 18 February 2020]; www.reuters.com/article/us-bny-mellon-sec-corruption-idUSKCN0QN1PJ20150818 [accessed 11 February 2020].

138 OECD, *Transparency and Integrity in Lobbying* (Paris: OECD, 2013) p. 1.

Case Study: Revolving door between public and private sector

Between 2008 and 2017, four of the five directors from the European Commission's Directorate General for Financial Services went to work for companies they once oversaw, or lobbying firms hired by these companies.[139] This information was revealed just weeks after the European Ombudsman has criticised the Commission's handling of revolving door cases.[140] Such movement between public office and private industry poses severe risks of conflict of interest, and many of the department's top officials may not have had the necessary distance from and neutrality towards the entities that they were supposed to regulate. Effective legislation at an EU directive, UK statute and US federal level is lacking, but companies should themselves step forward and impose strong internal controls. In doing so, they will avoid contributing to a breakdown in the independence and effectiveness of regulators, and will also avoid the associated reputational damage.

3. How does corporate political engagement transparency help companies?

Attracting responsible investment

Responsible investors are interested in how businesses engage politically. The International Corporate Governance Network has noted in its guidance on lobbying and political donations that "a matter of good corporate governance for companies [is] to ensure that any political involvement is both legitimate and transparent, and that companies and their boards are held properly to account for their political activities".[141] The Center for Political Accountability allows shareholders to raise concerns through its model political spending disclosure resolution.[142] Shareholders can then ask companies to adopt political disclosure practices and accountability policies.

Shareholders are clearly concerned with the issue of political engagement. According to the Institutional Shareholder Services, shareholders filed 227 resolutions between 2015 and 2016, all related to political issues, including requests for donations to be prohibited or for the business's policies on political activities to be declared.[143]

Reputation

Consumers and the wider public place greater trust in businesses which operate ethically and transparently. According to Transparency International's 2016 Global Corruption Barometer, 76 per cent of UK respondents surveyed believe that corporations exert undue influence on governments and that action needs to be taken to stop this.[144]

139 https://corporateeurope.org/en/pressreleases/2018/04/third-top-staff-eu-commission-financial-regulator-came-or-went-industry [accessed 19 February 2019].

140 https://corporateeurope.org/en/pressreleases/2018/04/third-top-staff-eu-commission-financial-regulator-came-or-went-industry [accessed 19 February 2019].

141 International Corporate Governance Network (ICGN), *ICGN Political Lobbying and Donations* (London: IGCN, 2017) p. 4.

142 https://politicalaccountability.net [accessed 12 February 2020].

143 www.trackyourcompany.org/shareholders.html [accessed 28 November 2019].

144 Transparency International, *Take Back Control: How Big Money Undermines Trust in Politics* (London: Transparency International UK, October 2016), p. 2.

4. What are Transparency International's principles on corporate political engagement transparency?

Control environment

The board should have accountability for and oversight of the company's political activities either directly or through a specified board committee. The board should approve policies relating to all forms of political engagement, ensure that the policies are in line with the company's values and oversee political expenditure.

5.1. Control Environment

5.1.1. The company should publicly disclose a statement of the principles that guide its political activities and ensure that those principles are in accordance with Transparency International UK's Responsible Political Activities (RPA) guidelines.[145]

Best practice example of principle 5.1.1

> National Grid's Guiding Principles underpin the organisation's political activities: "Our overall approach is framed around and consistent with the requirements of the Responsible Political Activities (RPA) and are based on the values of integrity, legitimacy, materiality, accountability and oversight, consistency and transparency."[146]

5.1.2. The company should publicly disclose evidence that the board or a board committee provides oversight of the company's political activities on at least an annual basis.

5.1.3. The company should take an integrated approach to its political activities, and should publicly disclose details of this – for example, a statement of all activities which it considers to be political activities, including but not limited to political contributions, lobbying and revolving door activities, and evidence that it manages these activities as a whole.

5.1.4. The company should publicly state that its policies regarding political activities apply to all employees, directors and entities over which the company has effective control.

5.1.5. The company should publicly state that all expenditure on any political activities must be approved by managers, in accordance with designated thresholds for approval.

Best practice example of principle 5.1.5

> With reference to political expenditure, GSK states (in its *Public Policy Positions*[147] document): "Financial controls and thresholds aligned with management seniority, including line-manager oversight of any expenditure on public policy activities by GSK staff, are in place across the company. The effectiveness of these controls is regularly monitored to ensure that all expenditure, including payments to approved third parties, follows appropriate due diligence and background checks and is in line with formal agreements. In this way, GSK aims to ensure that no unauthorized or inappropriate payments, contributions or sponsorships are made."[148]

145 Transparency International UK, November 2018: 35.
146 www.nationalgrid.com/sites/default/files/documents/Political%20activities%20guiding%20principles3_0.pdf, p.1 [accessed 18 February 2020].
147 GSK, *Public Policy Positions* (Brentford, Middlesex: GSK, May 2019), www.gsk.com/media/3374/public-policy-on-political-advocacy.pdf [accessed 18 February 2020].
148 GSK, *Public Policy Positions* (Brentford, Middlesex: GSK, May 2019), www.gsk.com/media/3374/public-policy-on-political-advocacy.pdf, p.2 [accessed 18 February 2020].

5.1.6. The company should publicly disclose the monitoring and assurance activities that it conducts in connection with its political activities, and it should publicly disclose any steps that it has taken to correct non-compliant conduct and hold individuals accountable.

Good practice example of principle 5.1.6

In its *2018 Sustainability Report,*[149] Anglo American states: "Our government engagement follows a clear and accountable set of parameters, including an annual planning and assurance process. Requirements are set out in our Government Relations Handbook, which is aligned with our Code of Conduct. For each material jurisdiction, government relations plans are approved annually by the Group and relevant business unit CEOs."[150]

Political contributions

Companies should state that they do not make political contributions. According to Transparency International UK's Corporate Political Engagement Index 2018, only 32 per cent of companies prohibit political donations and publish a statement that they have made none.[145] The company should also state that no entities acting on its behalf make political contributions. Where a company has Political Action Committees (PACs) the company should ensure that its management does not exercise control over them.

5.2. Political contributions

5.2.1. The company should publicly state that neither it nor any other entity acting on its behalf should make political contributions.

Best practice example of principle 5.2.1

In its 2020 *Code of Conduct*[152], SNC-Lavalin states: "We must never make political contributions on behalf of SNC-Lavalin to political candidates, parties, organizations or any other political entity, at any level of government."[153]

5.2.2. The company should publicly state, if applicable, that its management should not exercise control over Political Action Committees (PACs).

149 Anglo American, *Unlocking our Full Potential Disciplined Growth for a Sustainable Future. Sustainability Report 2018* (London: Anglo American, 2018), https://brasil.angloamerican.com/~/media/Files/A/Anglo-American-Group/Brazil/sustentabilidade/aa-sustainability-report-2018.pdf [accessed 27 February 2020].

150 Anglo American, *Unlocking our Full Potential Disciplined Growth for a Sustainable Future. Sustainability Report 2018* (London: Anglo American, 2018), https://brasil.angloamerican.com/~/media/Files/A/Anglo-American-Group/Brazil/sustentabilidade/aa-sustainability-report-2018.pdf, p.59 [accessed 27 February 2020].

151 Transparency International UK, November 2018: 12.

152 Code of Conduct 2020 (Montreal: SNC Lavalin, 2019), www.snclavalin.com/~/media/Files/S/SNC-Lavalin/documents/policies/1003_en.pdf [accessed 18 February 2020].

153 Code of Conduct 2020 (Montreal: SNC Lavalin, 2019), www.snclavalin.com/~/media/Files/S/SNC-Lavalin/documents/policies/1003_en.pdf, p.35 [accessed 18 February 2020].

1. THE BUSINESS CASE FOR TRANSPARENCY
2. ANTI-CORRUPTION PROGRAMME TRANSPARENCY
3. BENEFICIAL OWNERSHIP TRANSPARENCY
4. ORGANISATIONAL STRUCTURE TRANSPARENCY
5. COUNTRY-BY-COUNTRY REPORTING TRANSPARENCY
6. CORPORATE POLITICAL ENGAGEMENT TRANSPARENCY
7. FREQUENTLY ASKED QUESTIONS

Lobbying

The company should publicly disclose its lobbying positions, lobbying activities, and involvement in trade and industry associations.[147] Full disclosure of these active relationships enables stakeholders to compare what a company says it lobbies on with what a company actually lobbies on. Lobbying risks increase when the company uses third party lobbyists. The company should have publicly available policies and procedures that require third parties to comply fully with the company's policy on lobbying, or with the third party's own corporate policy if that policy sets a standard equivalent to or higher than that of the company.[148]

The risks associated with lobbying through trade associations and business chambers also need to be managed carefully. The company should require trade associations to be aligned to its guiding principles for responsible political engagement, and should implement a procedure to monitor, review and manage cases where lobbying by the trade association does not match the company's policy position.

5.3. Lobbying

5.3.1. The company should publicly disclose a policy on lobbying and ensure that the policy is in accordance with Transparency International UK's Responsible Political Activity guidelines.[157] This policy should also explicitly apply to organisations contracted to lobby on the company's behalf.

5.3.2. The company should explain how it identifies and manages its memberships of organisations that engage in lobbying.

5.3.3. The company should publicly disclose details of consultations with stakeholders on relevant and material political activities, or it should publicly disclose evidence that demonstrates its willingness to consult. This includes, for example, highlighting and inviting feedback on the public policy objectives of the company and the activities undertaken to achieve these objectives.

Best practice example of principle 5.3.3

Standard Chartered states on its website: "We are members of a wide range of financial services and other relevant professional and trade associations, some of which may engage with political stakeholders on topics that are of relevance to our business. We are members of an estimated 200 associations globally. As a matter of procedure, trade association memberships are reviewed annually. As with any expenditure related to public policy engagement, changes to those memberships are subject to the Bank's general expenditure policies and procedures and approved in line with the delegated authority structures in place at country, regional and Group levels."[158]

5.3.4. The company should publicly disclose details of the aims and significant topics of its public policy development and lobbying, and the activities it carries out.

5.3.5. The company should publicly disclose details of its global lobbying expenditure.

5.3.6. The company should publicly report details of serving and recently retired politicians contracted to work at the company.

5.3.7. The company should publicly disclose a comprehensive list of organisations of which it is a member that lobby on topics relevant to the company.

154 Transparency International UK, November 2018: 14.
155 Transparency International UK, Wise Counsel (December 2015) p. 42.
156 Transparency International UK, December 2015: 23.
157 Transparency International UK, November 2018: 35.
158 www.sc.com/en/sustainability/political-engagement [accessed 18 February 2020].

Revolving door

The company should publicly disclose information on how it manages the risks associated with the movement of individuals, in either direction, between positions in the public and private sectors. The revolving door brings risk of improper access and undue influence, whether intentional or inadvertent. The company should have a published policy, which includes controls on employment and offers of employment, relating to current and recently departed public officials.

Individuals who have recently joined a company from the public sector may be able to influence their former colleagues to make decisions that favour the public policy positions of their new employer. They may also be able to use their knowledge from previous work to inform their new employer of confidential information that is advantageous, for example in procurement bids. To reduce these risks, the company should publicly disclose its relevant policies and procedures, which should include details of controls on employment and offers of employment for current and recently departed political officials, and of a cooling-off period for individuals moving between the sectors.

5.4. Revolving door

5.4.1. The company should publicly disclose its policy and procedure covering the revolving door.

5.4.2. The company should publicly disclose details of how it manages the risks associated with the revolving door, and how it implements a cooling-off period before the employee is able to hold discussions on the company's behalf with their former organisation.

Best practice example of principle 5.4.2

In its *Political Activities and Engagement Policy,*[160] WPP states: "When recruiting new employees directly from elected office a 'cooling-off' period of six months should be implemented, or such longer period as may be required in the jurisdiction in which a Group company operates. During the cooling-off period, the new employee should not work on any projects directly related to their previous role or conduct discussions on behalf of the company with their former department."[161]

5.4.3. The company should publicly disclose details of secondments to or from the public sector, including the numbers of secondees and the locations and purpose of secondments.

159 Transparency International UK, December 2015: 27.

160 WPP, *Political Activities and Engagement Policy* (London: WPP plc, 2018), www.wpp.com/-/media/sustainability/wpp-political-activities-and-engagement-policy/wpp-political-activities-and-engagement-policy.pdf?la=en [accessed 18 February 2020].

161 WPP, *Political Activities and Engagement Policy* (London: WPP plc, 2018), p.3, www.wpp.com/-/media/sustainability/wpp-political-activities-and-engagement-policy/wpp-political-activities-and-engagement-policy.pdf?la=en [accessed 18 February 2020].

CHAPTER 7:
FREQUENTLY ASKED QUESTIONS

This final section of the report provides answers to frequently cited legal challenges to public to disclosure. Our thanks to Reynolds Porter Chamberlain, who have provided these legal insights to help companies navigate through the challenges.

Q1: To what extent does data privacy legislation inhibit a company from publishing details of its beneficial owners?

Introduction

Ownership transparency is an increasing area of focus for governments, investors, corporations and civil society. Knowing a company's ultimate beneficial owners increases trust, gives comfort to business partners and investors, simplifies on-boarding and due diligence processes, and clearly demonstrates corporate transparency.

Some companies may be concerned that publicly disclosing basic information about their beneficial owners may violate those owners' right to privacy and personal data. However, the requirements of data privacy law do not necessarily render ownership transparency incompatible with data protection.

GDPR and legal obligations for disclosure

Pursuant to the EU General Data Protection Regulation (GDPR), the current gold standard of data protection legislation worldwide, publicly disclosing beneficial ownership information would constitute processing of personal data[162] and must therefore have a lawful basis.[163]

In many countries, this lawful basis is fulfilled by specific legislation requiring disclosure of ownership information, as processing of personal data is explicitly rendered lawful when it is necessary for compliance with a legal obligation. For example, in the UK, private companies are legally required to record the details of their ultimate owners and controllers at Companies House, including the owners' names, dates of birth, nationalities and countries of residence.[164] In addition, within the EU, the 5th Anti-Money Laundering Directive required EU Member States to make government-compiled registers of beneficial ownership of corporate entities publicly accessible by January 2020.[165]

Voluntary disclosure

Data privacy legislation, including GDPR, also allows for companies to voluntarily publicise information related to their beneficial owners in cases where there is no explicit legal obligation to do so.[166] Outside of a legal obligation, there are five other lawful bases for processing personal data under GDPR:[167]

- Consent
- Contractual (that is, processing an individual's personal data is required to fulfil a contract between companies)
- Vital interest (that is, the processing is necessary to protect someone's life)
- Public task (the processing is necessary to perform a task that is in the public interest)
- Legitimate interest

Of these, the two that are most relevant in the case of a company voluntarily publicly disclosing basic information about its beneficial owners are consent and legitimate interest.

162 Article 4(1), (2), EU GDPR.
163 Article 5(1)(b), EU GDPR.
164 Part 21A, UK Companies Act 2006.
165 Article 1(11), EU 5th Anti-Money Laundering Directive.
166 See, for example, section 60(1), UK Data Protection Act 2018.
167 Article 6(1), EU GDPR.

Consent

Obtaining the consent of the company's beneficial owners to publish their basic information is a potentially straightforward means of complying with data privacy requirements.

However, there are some risks associated with this approach. To rely on consent as a legal basis for data processing, the consent must be freely given, specific, informed and unambiguous.[168] In order to be freely given, the data subject (that is, the beneficial owner) must have a genuine choice, and be free of any inappropriate pressure or influence.[169] A company should also be aware that, if the consent is specifically declined, or is given but later withdrawn, the company will most likely not then be able to rely on the legitimate interest basis for publishing the information.[170]

Legitimate interest

As an alternative to obtaining explicit consent, the company could also potentially rely on legitimate interests as the lawful basis for publishing basic beneficial ownership information.[171] As previously discussed, there are many potential benefits to ownership transparency for both a company and society in general, including increasing trust, enhancing reputation, and combatting tax evasion, corruption, money laundering and financing of terrorism. These interests must then be balanced against the owners' own interests, rights and freedoms.

Before publishing beneficial ownership information on the basis of a legitimate interest, the company should assess the potential risks to the affected individuals' right to privacy and how these risks can be mitigated.[172] This assessment, which can take the form of a Data Protection Impact Assessment,[173] should record the nature, scope, context and purposes of processing the beneficial owners' personal data.[174] Mitigations may then include limiting the public disclosure to only basic information about the beneficial owner, such as their name, date of birth, nationality and/or country of residence, and not publishing other more personal information such as their address or personal contact details.

Appropriately assessing and mitigating the data privacy risks in this fashion demonstrates to regulators that the company has given due consideration to data privacy considerations. The company should then be in a position to be voluntarily transparent about its ownership when not required to by law, while at the same time respecting its owners' rights to privacy and remaining compliant with data privacy law.

Given the relative newness of data privacy regulations, companies will also often seek specific legal advice if they are in any doubt as to their obligations.

168 Recital 32, EU GDPR; Article 7, EU GDPR.
169 Recitals 42-43, EU GDPR; Article 7(4), EU GDPR.
170 Article 7(3), EU GDPR.
171 Article 6(1)(f), EU GDPR.
172 Section 64(1), UK Data Protection Act 2018; Article 35(1), EU GDPR.
173 Article 35, EU GDPR.
174 Section 64(4), UK Data Protection 2018; Recital 90, EU GDPR.

Q2: What legal risk does a company assume by publishing details of alleged breaches of its code of conduct, in particular if these alleged breaches are sufficiently particularised such that bribery and corruption are identified as a subcategory of an incident? Are there ways of mitigating this risk?

Legal risks

Bribery and corruption are crimes for which corporates may potentially be held criminally responsible.[175] Companies may therefore be concerned that publishing details of alleged code of conduct breaches that identify bribery and corruption as a subcategory of incidents could lead others to believe that the company itself may be guilty of a criminal offence. The possible legal risks associated with this include regulators making their own enquiries into the incidents, and third party contractors or purchasers seeking to terminate, suspend or declare void contracts on the basis of the company's potentially illegal conduct.

Nevertheless, it is increasingly common for companies to publish the number of their code of conduct investigations and other salient information. This is because the above risks can be mitigated by limiting the publication of alleged breaches to general information that does not include specific details of the parties involved. The company can also accompany the publication with details of how it responded to the alleged code of conduct breaches. If the company makes clear that the alleged breaches were promptly and thoroughly investigated and that appropriate disciplinary and remedial action were taken where necessary, this will help to demonstrate that the misconduct in question was confined to the specific perpetrators and was not systemic within the company. The company can then build additional confidence in its commitment to ethical conduct by reporting on the lessons learnt from the bribery and corruption incidents and the improvements made to its compliance programme as a result of them.

The company should also consider making a public commitment to reporting material findings of active bribery and corruption to its board and to any relevant prosecutorial authority, as appropriate. This will indicate to external stakeholders that genuine and material criminal misconduct found within the business is treated with the appropriate seriousness, and that the company actively engages with law enforcement to investigate bribery and corruption when they occur.

Anti-bribery programme

Alleged code of conduct breaches involving potential bribery and corruption should be presented within the context of the company's wider anti-bribery programme. Embracing anti-corruption programme transparency, for example through publicly disclosing the company's policies and procedures, risk factors, and data on programme effectiveness, will clearly indicate to external stakeholders that the company has systems and controls in place to prevent and detect bribery within its business. This will give them comfort that the alleged code of conduct breaches involving bribery and corruption are unlikely to result in the company being criminally liable for the misconduct. Indeed, the fact that these breaches have been detected and addressed by the company can demonstrate that its anti-bribery programme is working effectively, giving confidence to prosecutors, stakeholders and civil society that bribery is not tolerated within the business.

175 Section 7, UK Bribery Act 2010.

Q3: Could the publication of the identity of a company's business partners and service providers contravene competition law?

Introduction

There are many potential advantages to a business publicising who its business partners and service providers are, either on its website or in other public documents. Such disclosure can foster credibility and build confidence among investors and other external stakeholders that the business only enters relationships with legitimate business partners. It can also demonstrate the company's commitment to ethics and sustainability, by highlighting from whom it sources its own requirements. Furthermore, it is often mutually beneficial for a customer and business partner to publicly confirm that they do business with each other or otherwise endorse each other, which can serve to strengthen their business relationship.

UK and EU competition law

UK and EU competition law prohibit an agreement between undertakings, a decision or a concerted practice that may affect trade within the UK or between EU Member States and that has as its object or effect the prevention, restriction or distortion of competition within the UK or EU respectively.

The exchange of commercially sensitive information, whether directly or indirectly, between competitors or the disclosure of such information, even on a non-reciprocal basis, can infringe competition law and can result in significant fines for participants. The disclosure of such information reduces the uncertainty as to how competitors will behave and increases the likelihood of anti-competitive co-ordination. Businesses should always be cautious about disclosing any commercially sensitive information and should consider carefully whether there is a legitimate objective reason for its disclosure and limit its disclosure to what is absolutely necessary.

Issues to consider

As a first step when considering whether to publish basic information about the company's business partners and service providers, the company should always confirm that it is not subject to any confidentiality obligations that would prohibit such disclosure, such as confidentiality restrictions imposed under the contract with the supplier.

Assuming no such confidentiality obligations apply, the important questions from a competition law perspective are as follows:

1. What level of information is to be made public?

2. What could a competitor do with this information? That is, in the particular circumstances of the company's industry, would this disclosure give a competitor of either the company or of its business partners/service providers any relevant commercial insight into how the business is run?

Generally, unless there are exceptional circumstances, it is unlikely that disclosing the identity of the company's business partners/service providers would give rise to a competition law concern. In practice, in many sectors it may be common knowledge who supplies a particular business, meaning that such information is not commercially sensitive.

However, disclosure of the specific terms on which a business is supplied with goods or services can raise potential competition concerns, as this will often comprise commercially sensitive information. As a result, this level of detail should not be made public or otherwise be disclosed to competitors.

In summary, absent any confidentiality restrictions or exceptional circumstances, publishing basic information about the identity of the company's business partners and service providers is unlikely to contravene EU and UK competition law, and can provide many benefits in terms of building trust, enhancing reputation and attracting ethical business partners.

Q4: How do companies that conduct business in multiple jurisdictions determine what public disclosure requirements might be applicable, and how do they address different requirements in these various jurisdictions?

Legal requirements

As a first step, the company should look to the law to determine what public disclosure requirements might be applicable to it in its country or countries of operation. Legal regimes that require the disclosure of information in relation to anti-corruption matters include the EU Non-Financial Reporting Directive (Directive 2014/95/EU) and the requirement pursuant to Chapter 10 of the EU Accounting Directive for companies in the extractives or logging industries to disclose their payments to governments. If they are in any doubt, companies should speak with their legal advisers in the first instance to establish what information they are legally obliged to disclose in the countries where they operate. As the position is complex, the general rule is that companies will be more likely to comply with relevant laws if they are already meeting the global best practices set out below.

Developing global standards

The company may find that some jurisdictions where it operates impose stricter disclosure requirements than others. On such occasions it is best practice for the company to comply with the highest legal standard applicable to it across the entirety of its global business, insofar as it is reasonable and proportionate to do so. While this approach may require additional work and resources in the short term, it will reduce variations in local practices and allow for a consistent and unified approach across the entire business that will produce long-term benefits. In relation to a base-line standard, as well as Transparency International guidance global companies often follow the requirements of the US Foreign Corrupt Practices Act and/or the UK Bribery Act 2010, given the wide extraterritorial reach of these laws and their relatively active enforcement.

Best practice

Beyond strict legal requirements, the company should also consider growing international best practices in relation to public disclosure of information related to its anti-bribery programme. In this respect, it is now generally expected that multinational companies will make their key policy and procedure documents publicly available, such as their code of conduct, anti-bribery policy and/or supplier code of conduct, regardless of where they operate in the world. Companies are also increasingly publishing information in relation to the effectiveness of their compliance programme, including data on potential incidents that have been detected and managed. While often not a strict legal requirement, such disclosure can have numerous advantages for a company, including conveying a strong "tone from the top" and commitment to an ethical culture, attracting ethical and deterring unethical business partners, and demonstrating to key stakeholders, including investors, prospective employees and regulators, that appropriate anti-bribery procedures have been put in place.

These developing best practices for public disclosure are not confined to specific regions or jurisdictions but apply across any global business.

Managing conflicting requirements

On some occasions, it is possible that the legal disclosure requirements in one jurisdiction where the company operates are directly incompatible with those of another. For example, such conflicts may arise in instances where data protection laws in one country prohibit disclosure of information that is required to be disclosed in another. On such occasions, there may be a need for local policy exceptions or variations in order to avoid the conflict, although insofar as possible these should be kept to a minimum.

In practice, however, it is unlikely that the laws of any country would specifically prohibit the company from publicly disclosing its ethical and anti-bribery policies and procedures, commitments, identified risk factors, and programme effectiveness data. As such, the company should usually be free to follow international best practice in publishing these documents.

Q5: It is really difficult for me to collate all the ABC data from across my multinational organisation to publicly report on all this – what is required and what is nice to have?

Introduction

Collecting ABC data has many practical advantages and can serve as an important part of the company's defence in the event that something goes wrong.

Monitoring and review

Under the UK Bribery Act 2010, the only defence available to a company charged with the offence of "Failure to Prevent Bribery" is to demonstrate that it had in place adequate procedures to prevent bribery.[176] In the Ministry of Justice's 2011 Guidance on the Bribery Act, one of the "six principles" constituting adequate procedures is "monitoring and review".[177] According to this principle, commercial organisations should monitor and evaluate the effectiveness of their bribery prevention procedures and adapt them where necessary.[178] The "failure to prevent bribery" offence has a wide extraterritorial scope,[179] and any company that carries on part of its business in the UK is expected to monitor and evaluate the effectiveness of its bribery prevention procedures across the entirety of its multinational business, using data and statistics in a reasonable and proportionate manner.

Similarly, the US Department of Justice's 2019 guidance on how prosecutors evaluate corporate compliance programmes specifically states that "prosecutors should consider whether the company has engaged in meaningful efforts to review its compliance program and ensure that it is not stale."[180] Again, the expectation of US prosecutors is that commercial organisations review implementation of bribery controls across their global operations using relevant metrics as appropriate.[181]

Collecting appropriate ABC data from across the multinational business is therefore a key regulatory expectation, and not doing so to a sufficient degree could deprive the company of an essential defence if a criminal investigation ever arose.

Required versus nice to have

There is no hard-and-fast rule on what ABC data the company should collect, or how much; this will depend, among other things, on the business's size and industry, the maturity of its compliance programme, and the sophistication of its data collection tools. As a general principle, however, data collected should be proportionate to the risk.[182] In a multinational business, understanding and demonstrating the effective operation of the company's ABC compliance programme in relation to higher risk jurisdictions and/or activities is a greater priority than in areas where bribery is less likely to occur. A comprehensive risk assessment is therefore an essential first step in determining what ABC data the company requires. However, many companies are also increasingly collecting data throughout the year, and not just annually or when a risk assessment takes place.

In general, it is best practice to collect ABC data that indicates whether a company's compliance programme is working effectively. In this respect, data points such as whether training completion rates are increasing or decreasing over time can often be as useful as data on the number of people trained. As another example, it can be helpful to know how quickly compliance issues are escalated in different regions, and not just the total number raised. This type of meta-analysis is more than simply "nice to have": it can be an invaluable resource for keeping track of how well the company's compliance programme is embedded, where attention may be required and if investment is paying off.

176 Section 7(2), UK Bribery Act 2010.

177 UK Ministry of Justice's 2011 Guidance on the Bribery Act, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/832011/bribery-act-2010-guidance.pdf [accessed 18 February 2020], Principle 6, p. 31.

178 UK Ministry of Justice's 2011 Guidance on the Bribery Act, Paragraph 6.1, p. 31.

179 Section 12(5), UK Bribery Act 2010.

180 US Department of Justice Criminal Division's Evaluation of Corporate Compliance Programs (updated April 2019), p. 14.

181 For example, by conducting internal audits, control testing and evolving updates and measuring its culture of compliance. See US Department of Justice Criminal Division's Evaluation of Corporate Compliance Programs (updated April 2019), www.justice.gov/criminal-fraud/page/file/937501/download [accessed 18 February 2020], pp. 14-15.

182 See, for example, the expectations under Principle 1 – Proportionate procedures, UK Ministry of Justice's 2011 Guidance on the Bribery Act, pp. 21-22.

Increasingly, technology is easing the difficulty of collating data across multiple jurisdictions. The upfront costs of introducing new data collection software, such as automated third party management and screening tools, can often quickly be recovered by the efficiencies that come from streamlining processes, comprehensive data analysis and collection of new statistics.

Publicly reporting data

Again, while there are usually no specific legal requirements to make the company's ABC data public, there are many potential advantages in doing so and companies are increasingly moving in this direction. Publishing this data demonstrates a company's commitment to ethical conduct and effective compliance controls to its external stakeholders, such as business partners, investors, regulators and prospective employees. This can foster stronger relationships, boost confidence in the business and generate positive publicity, showing that compliance can have a commercial advantage.

Public disclosure can include making the company's ABC-related policies and procedures publicly available in all the languages into which they have been translated. These documents should give an indication of what specific bribery and corruption risks have been identified in the business and what steps the company is taking to address them, including relevant and consistent statistics – for instance, shortlisting risks key to its sector, such as number of franchised businesses bought versus managed businesses. It is also particularly useful to publish procedures for dealing with third parties such as agents, as this both demonstrates the company's commitment to maintaining ethical relationships and deters unethical third parties from attempting to engage with the business.

The company may also wish to include more specific ABC data in its annual report or other public disclosures. In this respect, investors are particularly interested in data that illustrates the effectiveness of the company's compliance programme and the specific measures being undertaken to deal with its high-risk agents. For example, one company that scored well on Transparency International's Corporate Political Engagement Index 2018 included data in its annual report on the number of third party assessments conducted and approximate number of corrective and preventive actions taken in response.

ANNEX 1: RELEVANT TRANSPARENCY LEGISLATION (EU, UK AND US)

For links to all referenced laws, and additional sources, please see page 56.

Key:

EU directives

UK laws (including implementation of EU Directives)

US federal legislation

Anti-corruption programme transparency

The EU Non-Financial Reporting Directive (Directive 2014/95/EU) requires public companies with more than 500 employees to disclose information on environmental, social, human rights, employee and anti-corruption matters necessary for understanding a company's impact.

According to the directive, applicable companies must: "disclose material information on how they manage anti-corruption and bribery matters and occurrences; consider making disclosures on organisation, decisions, management instruments, and on the resources allocated to fighting corruption and bribery; and consider explaining how they assess fighting corruption and bribery, take action to prevent or mitigate adverse impacts, monitor effectiveness, and communicate on the matter internally and externally".

Companies which fall under the remit of this legislation include listed companies, banks, insurance companies and other companies designated by national authorities as public interest entities. Since 2018, these companies have been required, by law, to include non-financial statements in their annual reports.

In 2016, the UK government published the Companies, Partnerships and Groups (Accounts and Non-Financial Reporting) Regulations 2016, which is the UK implementation of Directive 2014/95/EU. The 2016 regulations make amendments to the Companies Act 2006 requirements for the Strategic Report. The 2016 regulations apply for financial years which began on or have begun after 1 January 2017.

The new non-financial reporting regulations apply to certain companies and qualifying partnerships with more than 500 employees. This includes traded companies, banking companies, authorised insurance companies and companies carrying on insurance market activity. The new regulations require the aforementioned companies to provide non-financial information within the Strategic Report that was already required by the Companies Act. These regulation introduce, among other disclosure requirements, the need to disclose material information on anti-bribery and anti-corruption matters.

At the time of research, no legislation has been passed at a US federal level concerning anti-corruption programme transparency.

Beneficial ownership transparency

The EU Fifth Money Laundering Directive (Directive (EU) 2018/843/EC) brought in a series of amendments to the Fourth Money Laundering Directive. It came into force in June 2018, and Member States were required to implement the directive by 10 January 2020. The most significant amendments, in terms of beneficial ownership transparency, are around increasing the beneficial ownership transparency of corporates (amendments to article 30) and the beneficial ownership of trusts (article 26).

The directive improves transparency on the real owners of companies by requiring beneficial ownership registers for legal entities, such as companies, to be made public. Any member of the public will also be able to access basic information without needing to demonstrate their "legitimate interest". Finally, obliged entities will need to report discrepancies between the information they hold and the information on the register.

Private companies:

Under the UK Small Business, Enterprise and Employment Act 2015, private limited companies, limited liability partnerships and Scottish limited partnerships have to report a Person with Significant Control (beneficial owner). A Person with Significant Control is defined as someone with more than 25 per cent of the shares or voting rights in a legal entity, either directly or indirectly. Applicable entities must report this information to Companies House, including any changes that may occur to the Person with Significant Control. This information is then made publicly available via Companies House.

Public companies:

Publicly listed entities, including the wholly owned subsidiaries of publicly listed entities, are subject to the specific disclosure requirements of the relevant stock exchanges.

There is currently no US legislation at a federal level which requires companies to publish beneficial ownership information. However, in October 2019, the US House of Representatives approved the Corporate Transparency Act, which would require those forming corporations or limited liability companies to disclose their beneficial owners. The act will now go to the Senate for passing. The act defines a beneficial owner as a natural person who owns 25 per cent or more of the equity interests of the company, exercises significant control or receives substantial economic benefits from the entity's assets. A company that would be subject to this law would be a corporation or LLC that is formed under local state law, and any non-US company eligible for registration in the US.

Organisational structure transparency

The EU Accounting Directive (Directive 2013/34/EU) introduced further corporate social responsibility reporting obligations for all large public interest entities (employing, on a consolidated basis, an average of 500 employees during the financial year). Such entities are required to include, in their annual management report, an additional non-financial statement including a brief description of an undertaking's business model.

The UK Companies Partnership and Groups (Accounts and Reports) Regulations 2015, which implemented Directive 2013/34/EU in the UK, removes the concession under s410 Companies Act which allowed companies to list only their "principal" subsidiaries in their annual financial statements. The Companies Act 2006 and the Companies Partnership and Groups Regulation 2015 now require companies to disclose their full list of subsidiaries and other significant holdings in their annual reports.

In the US, under the Federal Securities Laws, most public companies are required to produce a 10-K report, which needs to be filed with the US Security Exchange Commission (SEC). The SEC requires that companies report on set topics, including an overview of business, company risks, and operating and financial results. These reports are publicly available and searchable on the SEC database, Edgar.

Country-by-country reporting transparency

Under EU legislation, the EU Accounting Directive (Directive 2013/34/EU) (for the extractives sector) and the Capital Requirements Directive (Directive 2013/36/EU) and Capital Requirements Regulation (575/2013) collectively known as the Capital Requirements Directive IV (for the financial sector) require companies to disclose the payments that they make to governments.

In 2014, the UK's implementation of the Directive 2013/36/EU and the Capital Requirements Regulation (575/2013) came into force under Statutory Instrument 2013 No. 3118, Financial Services and Markets: Capital Requirements (Country-by-Country reporting) Regulations 2013.

The Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016 require multinational enterprises with a UK presence to provide HM Revenue and Customs (HMRC) with an annual UK country-by-country report. This report must show, for each tax jurisdiction in which they do business, the amount of revenue, profit before income tax, and income tax paid and accrued, and their total employment, capital, retained earnings and tangible assets.

Multinational enterprises will be required to identify each entity within the group doing business in a particular tax jurisdiction and provide an indication of the business activities within a selection of broad areas in which each entity engages in.

Section 1504 of the Dodd-Frank Act would require extractive companies "to disclose payments made by the issuers to foreign governments or the U.S. federal government for the purpose of the commercial development of oil, natural gas or minerals. Issuers would also be required to disclose payments made by a subsidiary or any entity controlled by the issuer."[182] However at the time of research, this legislation has not been implemented.

182 https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-sec-tries-to-solve-cra-conundrum-on-resource-payments, [accessed 2 March 2020].

Corporate political engagement transparency

Although there is no EU legislation on corporate political engagement, in 2011, the European Parliament and European Commission jointly launched a voluntary **Transparency Register.** The register is intended to cover all activities designed to influence policy-making, policy implementation and decision-making in EU institutions. In February 2019, the European Parliament, the European Commission and the European Council met to discuss a proposal to make the register mandatory. Although no definite conclusion was reached, it was agreed that discussions would remain ongoing. Interestingly, Commissioners and many members of the European Parliament refuse to meet with anyone not on the voluntary register.

In 2015, the UK government introduced the **Register of Consultant Lobbyists.** This register was introduced with the intended effect of enhancing the transparency of those seeking to lobby ministers and permanent secretaries on behalf of a third party. However, many organisations that engage in lobbying do not fall under the statutory rules, including lobbyists for NGOs, industry associations, trade unions. It is worth companies noting that face-to-face discussions with ministers, senior civil servants and special advisors are reported by government departments on a quarterly basis. There is also a statutory **Register of Lobbyists** in Scotland, which requires the disclosures of in-house lobbyists who meet with ministers, members of the Scottish Parliament and senior public servants.

In the UK, the **Advisory Committee on Business Appointments (ACoBA)** advises former public employees to seek and abide by its advice before taking up appointments after leaving the office.

The regulation of political financing affects who is elected, and in whose interest they serve. In the UK, political party finance is regulated by the **Political Parties Elections and Referendums Act 2000 (PPERA).** This act created a regulator, the Electoral Commission, which banned donations from outside the UK and limited the amount that could be spent by political parties and those seeking to influence the outcome of elections beyond just one constituency. Political parties must disclose donations above £1,500 to an accounting unit and above £7,500 to the central party.

In 1995, the US introduced the **Lobbying Disclosure Act,** which applies at the federal level. This was amended by the **Honest Leadership and Open Government Act of 2007.** Under this act, there are registration and disclosure requirements which are intended to uphold transparency in relation to lobbyist activities. Non-US companies that are engaged in US political lobbying are subject to requirements under the **Foreign Agents Registration Act.**

According to **US Federal Conflict of Interest Law, at 18 U.S.C. Section 207,** federal employees in the executive branch of government are limited in their ability to perform certain representational activities on behalf of private parties, after leaving office. The cooling-off period for former employees in the legislative branch is one year. For United State Senators who have left the Senate, the cooling-off period is two years. Within this period, they cannot lobby Congress.

Companies are legally allowed to spend unlimited amounts of money on political activities, as long as expenditure is made independently of a party or candidate. However, in 2002 the US enacted the H.R. 2356 (107th): **Bipartisan Campaign Reform Act,** which made amendments to the Federal Election Campaign Act of 1971. The Bipartisan Campaign Reform Act seeks to regulate political campaign spending. It prohibits companies from making direct contributions or expenditures in connection with federal elections, although companies may sponsor a "separate segregated fund" known as a Political Action Committee. PACs are limited to donating US$5,000 to a single candidate and US$15,000 to a political party per election.

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For more from Transparency International UK's Business Integrity Programme, please visit:
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