

POLITICAL ENGAGEMENT

Anti-Bribery Guidance
Chapter 12

Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 100 chapters worldwide, TI has extensive global expertise and understanding of corruption.

Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK.

Acknowledgements:

We would like to thank DLA Piper, FTI Consulting and the members of the Expert Advisory Committee for advising on the development of the guidance: Andrew Daniels, Anny Tubbs, Fiona Thompson, Harriet Campbell, Julian Glass, Joshua Domb, Sam Millar, Simon Airey, Warwick English and Will White. Special thanks to Jean-Pierre Mean and Moira Andrews.

Editorial:

Editor: Peter van Veen
Editorial staff: Alice Shone, Rory Donaldson
Content author: Peter Wilkinson
Project manager: Rory Donaldson
Publisher: Transparency International UK
Design: 89up, Jonathan Le Marquand, Dominic Kavakeb
Launched: October 2017

© 2018 Transparency International UK. All rights reserved.

Reproduction in whole or in parts is permitted providing that full credit is given to Transparency International UK and that any such reproduction, in whole or in parts, is not sold or incorporated in works that are sold. Written permission must be sought from Transparency International UK if any such reproduction would adapt or modify the original content. If any content is used then please credit Transparency International UK.

Legal Disclaimer:

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of October 2017. Nevertheless, Transparency International UK (TI-UK) cannot accept responsibility for the consequences of its use for other purposes or in other contexts. Policy recommendations and best practice guidance reflect TI-UK's opinion. They should not be taken to represent the views of any of those quoted or interviewed nor those of the companies or individuals that provided input or members of the Expert Advisory Committee, FTI Consulting or DLA Piper. Neither TI-UK, FTI Consulting nor DLA Piper assumes any liability for the information contained herein, its interpretation or for any reliance on it. The document should not be construed as a recommendation, endorsement, opinion or approval of any kind. This Guidance has been produced for information only and should not be relied on for legal purposes. Professional advice should always be sought before taking action based on the information provided.

Transparency International UK's Global Anti-Bribery Guidance

Best practice for companies operating internationally

This is a guidance section from Transparency International UK's Global Anti-Bribery Guidance. The full guidance is available at www.antibriberyguidance.org.

About the Guidance

This flagship guidance presents anti-bribery and corruption best practice for companies, drawing upon expertise from over 120 leading compliance and legal practitioners and Transparency International's extensive global experience.

This free-to-use online portal expands and updates all of TI-UK's Business Integrity guidance over the last decade. This includes our original Adequate Procedures Guidance to the UK Bribery Act; a leading resource for compliance and legal professionals, which has been downloaded over 45,000 times from TI-UK's website. The guidance has been kindly supported by FTI Consulting and DLA Piper.

For each area of practice, we provide a summary, best practice tips, full guidance, and links to further resources. This is a dynamic resource and we will continue to update it with new content and features. If you have anything you would like further guidance on, or other suggestions, please do contact us at businessintegrity@transparency.org.uk

Many companies are facing increased bribery risks as they continue to expand internationally and become increasingly reliant on diffuse supply chains and complex third-party networks. There are also additional risks around stakeholder expectations, a global strengthening of anti-bribery legislation – requiring better internal mechanisms to ensure compliance – and enhanced enforcement.

Companies will always design their own bribery programme according to their particular circumstances but those following this guidance can take reasonable assurance that they are well positioned to counter risks of bribery, comply with anti-bribery legislation in jurisdictions across the world and to act ethically and positively in the markets in which they operate.

Transparency International UK's Business Integrity Programme

The goal of our Business Integrity Programme is to raise anti-corruption standards in the private sector. We aim to ensure that individuals and organisations do not participate in, enable or endorse corruption. Our approach is to engage positively with the private sector, governments and leading anti-corruption initiatives to identify and advocate best practice.

For more information, please visit <http://www.transparency.org.uk/our-work/business-integrity/business-integrity-forum/>

QUICK READ

Corporate political engagement is a significant risk area for bribery and corruption, while public perceptions of lobbying and corporate influence in the political process threaten reputational damage.

Companies engage with the political process with the aim of benefiting the business and meeting the interests of stakeholders. Companies may, for example, be seeking to improve the business and economic environment, create new markets and opportunities, and improve, modify or even prevent commercially damaging legislation.

Despite the strong business case, corporate political engagement is a significant risk area for bribery and corruption, and public perceptions of lobbying and corporate influence in the political process threaten reputational damage. The consequences of improper, negligent or inadvertent engagement in political activities can be substantial. This includes exchanges of people between the public and private sector, such as secondments or senior hires (the 'revolving door'). Careful stewardship and transparency about these activities is needed to ensure there is no attempt at improper influence and that therefore stakeholder trust is not lost.

Amid growing legislation and pressure from investors, often sparked by political scandals, companies are becoming increasingly transparent about their political activities. Many companies have prohibited political contributions, and some are beginning to participate in policy debates more openly, for example by including government consultation submissions on their website.

The foundation of this guidance is that responsible corporate political engagement is carried out within a framework of good corporate governance and commitments by the board to integrity, accountability and transparency. By designing and implementing policies and procedures, companies that interact with the political process can ensure their activities contribute to the democratic process, benefit their business, and are carried out with integrity.

Key elements

- Ensure the board has oversight of the company's political engagement and the CEO or a senior manager has responsibility for managing political activities as a whole.
- Integrate the approach to managing all forms of political activity, even where different functions are responsible for different activities.
- Be transparent about your principles, policies and procedures for political engagement, as well as your public policy positions, political donations and lobbying activities.

BEST PRACTICE

- **Define the scope:** Define political engagement and all the forms of political activities that fall within this definition. Identify those activities that are relevant to your company.
- **Integrate your approach:** Ensure there is an integrated approach to managing all forms of political engagement even where different functions are responsible for different activities. These may include corporate responsibility, sustainability, public affairs, communications, compliance, legal and internal audit, as well as functions interested in a particular public policy area, such as a regulatory issues.
- **Ensure board oversight:** Ensure the board is accountable for the company's political engagement, providing direction and oversight and assigning overall responsibility for implementation to the chief executive or a senior manager.
- **Make a public commitment:** The company's leadership commits to responsible political engagement. The commitment is supported by guiding principles and policies.
- **Design controls:** Design and implement controls to ensure that transactions related to political activities are bona fide, effective and free from improper practice.
- **Report publicly:** Shareholders and other stakeholders with material interests in the company's operations need to know that the company is managing its political engagement responsibly and effectively. Report regularly on the company's guiding principles, objectives, political expenditures, lobbying activities and any other issues.

GUIDANCE

12.1 Introduction

This guidance outlines various types of political activities and related risks, and sets out TI-UK's view of best practice to ensure responsible political engagement and counter bribery. It draws on the TI-UK publication [Wise Counsel or Dark Arts? Principles and Guidance for Responsible Corporate Political Engagement \(2016\)](#).

Political engagement is a legitimate activity and can contribute to the development of high quality laws and regulations and an economic and social environment in which businesses and societies can prosper. While most large companies engage to some extent in political activities, the extent of engagement will vary according to a company's circumstances. Even if companies decide not to engage with the political process, they will nevertheless need to enforce a policy of non-engagement and be prepared to respond should they be drawn into a public policy debate.

When not managed properly, the consequences can be substantial:

- Reputational damage
- Public campaigns against the company
- Media attention and investigations
- Legal fines and associated costs
- Debarment from public contracts
- Market and financing issues
- Loss of confidence by business partners
- Increased vulnerability to bribery demands
- Damage to employee trust and morale
- Loss of key board members or executives

12.1.1 Increasing scrutiny and expectations

There is growing investor attention to how companies interact with politicians and the risks that such interactions may bring. Increasingly, shareholder resolutions are demanding that companies prohibit political donations and declare their policies and expenditures for political activities.

Laws are increasingly restricting political expenditure and some countries, such as France, Brazil and Chile, have banned corporate political contributions altogether. In the UK, The Political Parties, Elections and Referendums Act 2000 controls donations received by political parties. Some countries have introduced voluntary or mandatory lobbyist registers. The USA has legislated at both federal and state levels for disclosure of expenditures on lobbying. The revolving door - the movement of politicians, public officials and business executives between the public and private sectors - is being regulated too with Germany, the UK and the USA among the countries which have introduced new rules and laws.

12.2 Political donations and indirect political expenditure

In drawing up a policy for political donations and indirect political expenditure, the company must decide their scope since laws provide only broad definitions. By definition, a donation is a gift made without expectation of return and any political contributions must not be linked in any way to a direct business benefit. Corporate political donations can be general party support or campaign funding to support a party, politician or a candidate. Political expenditure can be to support or oppose a party, candidate or referendum issue. The board needs to decide its position by considering the purpose, benefits, risks and boundaries of this type of expenditure.

A principle of this guidance is that companies should not make political donations. Even if a company does prohibit them, it should understand that uncertainty about what constitutes a donation and the risks of improper, inadvertent or negligent behaviour require that controls are put in place to prevent the policy being breached. Also, consideration should be given to how the policy on political donations extends to personal donations by directors and employees. The company will need to balance respect for the rights of individuals to their political views and affiliations with the need to manage potential conflicts with the company's political position.

If, in exceptional circumstances, political donations are made, they should be only as an expression of corporate responsibility, providing general support on a balanced and proportionate basis to the main political parties to support a genuine democratic process. This will typically be in emerging or fragile democracies when there is agreement by the international community that funding for fledgling parties would strengthen the democratic process.

How political contributions are made:

- Financial donations
- Secondments to political parties
- Loans of money at less than market interest rates
- Discounted fees or rates for products, services or loans
- Sponsorship of an event or publication
- Subscriptions or affiliation payments
- Free or discounted use of facilities or services such as offices, transport, printing, telecommunications, advertising and media coverage
- Sponsorship or support for fundraising events, such as a fundraising dinner

Grey areas

- Release of employees without pay for political campaigning
- Travel for public officials on company planes or vehicles
- Purchasing a stand or event at a party conference
- Honoraria for politicians or civil servants to speak at company events or sponsored events
- U.S. Political Action Committees

Case Study: Tata Group policy of political non-alignment

The Tata Group in India has a policy of political non-alignment and gives to political parties based on the ratio of seats held. Donations are made through the Tata Sons Electoral Trust, one of the biggest trusts in the country and the largest contributor to the two largest national parties.

Extract from the Tata Code of Conduct, Tata Group

Clause 7: A Tata company shall be committed to and support the constitution and governance systems of the country in which it operates. A Tata company shall not support any specific political party or candidate for political office. The company's conduct shall preclude any activity that could be interpreted as mutual dependence/favour with any political body or person, and it shall not offer or give any company funds or property as donations to any political party, candidate or campaign.

12.2.1 Political contributions: best practice

- **Prohibit political contributions:** Corporate political contributions should not be made other than in exceptional circumstances where they provide general support for a genuine democratic process, with full transparency and full explanation or are required by law.
- **Communications and training:** Provide guidance and tailored training on political contributions covering any "grey areas", such as attending a fundraising event or purchasing a stand at a political conference.
- **Limit leadership donations:** Ensure that board directors or senior managers are prohibited from making personal political donations in their capacity as representatives of the company.

12.3 Lobbying

Lobbying, whether directly or through intermediaries such as trade associations, is the main way in which companies engage with and influence the political process. Lobbying can be carried out through a wide range of activities involving both formal and informal contact with politicians and senior public officials by in-house lobbyists, consultant lobbyists and professional firms, as well as board members and management.

When carried out responsibly, lobbying is a legitimate and beneficial activity, allowing companies to provide policy makers with information, expertise and resources and stimulate or contribute to public debate. On the other hand, the scale, pervasiveness and opacity of lobbying, compounded by scandals and abuses by companies and politicians, have created deep public suspicion that companies have privileged access and behave improperly. One of the aims of a responsible approach to political engagement must be to build public trust in the company's approach and activities, including lobbying.

Lobbying abuses can take many forms:

- Use of bribes, gifts and excessive hospitality

- Use of front organisations and covert support for research reports, community movements and social media activity ('astro-turfing')
- Manipulation of data, research and reports to support a policy position
- Hiding lobbying activities and expenditures by working through professional advisers
- Drafting legislation for a politician which favours the company (a heightened risk if it can be linked to political donations made *quid pro quo*)
- Trading in influence (including via the 'revolving door')

12.3.1 Trading in influence

Trading in influence occurs when someone close to a key decision maker improperly exchanges the influence they have over that person for some advantage. An example would be a senior civil servant accepting gifts and hospitality from a lobbyist in order to influence a government minister. Another risk area is a variation of the [revolving door](#) where a public official has retired or left office and uses influence with former colleagues.

Trading in influence can be complex and hard to prove. For this reason, many countries have not enacted laws to cover this form of corruption. It can be a particular risk in lobbying particularly in countries where power is concentrated and companies wishing to influence decisions must go through intermediaries.

For a note on laws on trading in influence, [click here](#).

12.3.2 Lobbying: best practice

- **Define lobbying:** Define what is meant by lobbying and who might be classed as a lobbyist. This may include in-house lobbyists, such as public affairs personnel, and consultant lobbyists, such as lobbying agencies, political consultants, PR firms, law firms and politicians, as well as agents who have dealings with political actors. Make a record of anyone lobbying on the company's behalf.
- **Conduct due diligence:** Conduct due diligence on consultant lobbyists before appointment and repeat the process at regular intervals. This will include checking the reputation and standards of the lobbyist, the level of their anti-bribery programme and the reputation of their other clients to ensure there are no conflicts or risks.
- **Manage conflicts of interest:** A consultant lobbyist will most likely act for multiple clients whether on a particular issue or in meetings and relationships with politicians and public officials. This may lead to conflicts of interest or confusion in external perceptions of the company's stance on a topic.

- **Implement policies and procedures:** Design and implement a policy and procedure for ensuring that anyone who lobbies on the company's behalf adheres to its values and principles. Manage and monitor consultant lobbyists to ensure that, when acting for the company or other clients, they do not cause the company to be associated with practices that conflict with its anti-bribery programme.
- **Communications and training:** Through tone from the top, communications and training, ensure that all those who lobby on behalf of the company, formally or informally, understand and implement the company's policies on responsible political engagement.
- **Design controls:** Design and implement controls to check that lobbyists' fees are appropriate for the services rendered and that any gifts and hospitality provided by lobbyists accord with the company's policies. Ensure that all transactions are fully documented and accurately recorded.

12.4 Trade associations and business chambers

Trade associations and business chambers of commerce are a common route for corporate lobbying. They bring several advantages, including access to politicians, expertise, authority, research, resources and collective power. Depending on their approach, trade associations can provide an independent and impartial viewpoint. Lobbying through a trade association, when properly aligned with the company's objectives, may have greater legitimacy as it is in the collective interest and not only that of a single company. It may also be more effective, as government is more likely to listen to a group of companies than a single voice. Trade associations can be attractive as a shield to protect from the glare of attention that a company attracts when it lobbies on its own.

That said, lobbying by trade associations can be opaque and may conflict with either the anti-bribery and responsible lobbying standards or the public policy positions of the member company. Trade associations may make political contributions in contravention of the company's policy not to make them. Finally, the opacity of their lobbying activities and spending may not live up to the company's commitment to transparency.

One of the main risks of lobbying through a trade associations is that the association's lobbying position may contradict that of a member company:

- It might represent the view of those members most fiercely opposed to an issue
- It might represent the view of its largest members
- It might represent the "lowest common denominator" among its members
- It might not reflect the nuances in a member's policy position
- It might have an array of positions on a key issue, causing the company's position on the issue to become confused

Other risks include:

- Membership of several trade associations with contradictory positions on an issue
- Difficulties tracking and monitoring the lobbying positions of trade associations
- A trade association might not have controls to ensure responsible lobbying or counter corruption to the same standards as the member company

- A trade association's advocacy on a topic might associate the company with an issue unrelated to the company, but which nevertheless brings reputational damage

12.4.1 Trade associations: best practice

- **Conduct due diligence:** Check that a trade association has appropriate standards, policies and procedures for lobbying and an anti-bribery programme equivalent to that of the company.
- **Assign responsibilities:** Assign a relationship manager for each trade association membership. Appoint a senior manager with responsibility for memberships as a whole.
- **Manage relationships:** Monitor the lobbying activities of trade associations and manage relationships to ensure that they align with the company's guiding principles for responsible political engagement. Require or encourage trade associations to be transparent about their lobbying activities and expenditure. Implement a procedure for managing conflicts between a trade association's policy position and that of the company.

12.5 The 'revolving door'

Movements of people between the private and public sectors are a valuable way for actors in both sectors to build and access skills and knowledge, and facilitate understanding and cooperation. They can also be used by companies to further their lobbying aims but, if not managed to acceptable criteria and transparency, they run risks of public mistrust, scandal or even outright corruption.

The main forms of such movements are described below. They are not limited to moves between the public sector and the company directly but also include moves of a politician or public official to a consultant lobbyist position or to a professional firm advising a company.

Revolving door: The term 'revolving door' refers to the movement of high-level employees between the public and private sectors. These movements can be in either direction and they bring risks of improper access or influence, whether intentional or inadvertent. Movements tend to be from the public sector to the private sector.

The main risks of the revolving door are:

- Ministers and public officials favour the company with a view to securing future employment
- Current or former politicians and public officials who have accepted a role in a company:
 - Influence their former colleagues to make decisions that favour their new employer
 - Use confidential information to benefit their new employer
 - Trade in influence by providing introductions to and securing favours from their former contacts
- Directors or employees who move to public office from a company may:
 - Favour their previous employer
 - Allow the lobbying agenda of their previous employer to influence their government work
 - Bring insider information with them if they return to their former company

Secondments: These are temporary placements of managers or employees in another organisation and can be two-way between the public and private sectors. Their benefits include the training and development of people, providing essential technical and specialist skills for particular projects or providing resources to expedite completion of a project or programme of activity. Short-term assignments are used to give parliamentarians or business people an understanding of how a particular sector works. Risks include (real or perceived) undue influence and potential conflicts of interest, e.g. secondees from industry being instructed to design specifications for contract tenders.

Board membership and consultant roles: In some countries, elected politicians are permitted to sit on boards or receive fees for consultancy work as long as it is declared and does not involve lobbying. Risks can include conflicts of interest, trading in influence and public perception or suspicion of improper influence or access to knowledge.

12.5.1 The 'revolving door': best practice

- **Implement policies and procedures:** Implement policies and procedures for hiring people from the public sector and interacting with former employees in public office (or running for public office). This will include checking whether a cooling-off period is required by law.
- **Manage conflicts of interest:** Set a procedure for managing potential conflicts of interest. This may include conflicts of interest arising from negotiations with the company before an official leaves office and once they take up their role with the company. It might also cover conflicts of interest caused by continued ties to the company (whether financial or personal) once an individual has entered public office. The company must ensure it is not at risk of using - or being perceived as using - a former employee or board member to gain improper access or influence.

CHAPTER APPENDIX

12.7 Laws on trading in influence

There is a recommendation in the United Nations Convention against Corruption (UNCAC), that countries should consider creating a criminal offence of trading in influence when committed intentionally. Article 18 UNCAC states:

- (a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;
- (b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

There is also a provision in the Council of Europe Convention and some national laws such as in France and Sweden but not in UK law. While UNCAC provides that countries should enact laws, in practice many have not followed this route because of concern that an offence would be difficult to prove and it would be hard to draw a line between undue influence and use of legitimate influence such as advocacy and lobbying. The Council of Europe Convention recognises the need for this distinction by criminalising only the trading of improper influence, *i.e.*, the person trading influence must have a corrupt intent. Similarly, the offence under the UN Convention only covers those who 'abuse' their influence.

RESOURCES

- [*Wise Counsel or Dark Arts? Principles and guidance for responsible corporate political engagement*](#), Transparency International UK, 2015.
- [*Corporate Political Engagement Index 2015: Assessing the UK's Largest Public Companies*](#)

Transparency International UK

7 - 14 Great Dover Street,
London,
SE1 4YR

www.antibriberyguidance.org
twitter.com/transparencyuk