TRANSPARENCY INTERNATIONAL UK
fighting corruption worldwide

EXTERNAL ENGAGEMENT & REPORTING

ANTI-BRIBERY GUIDANCE CHAPTER 18

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.

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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

External engagement and public reporting build trust and drive improvement

Transparency International believes that comprehensive public reporting is a key component of the measures companies must take to address corruption and provide the transparency that is the basis for robust and accountable governance.

Global companies themselves increasingly understand the benefits of corporate reporting on a range of corporate responsibility issues, including their anti-corruption programmes, as an essential management tool rather than a burdensome and costly exercise that is carried out to satisfy stakeholders. The use of voluntary sustainability reporting guidelines such as those provided by the Global Reporting Initiative is on the rise.

Companies should ensure that clear and consistent messages are reaching stakeholders about its commitment to integrity and its anti-bribery policy and programme. In this way, public reporting can enhance the credibility of the anti-bribery programme. It can also help strengthen the programme, as good reporting will include information on targets and key indicators of progress. Intercompany comparisons and indices will also drive improvement.

There has been rapid progress in public reporting, including both voluntary efforts by companies and through laws and regulations. Methodologies are also evolving; these include standardised global reporting frameworks, continuous reporting and in-depth information on company websites.

Key elements

- **Integrate** the approach to external communications, public reporting and stakeholder engagement.
- Incorporate reporting on integrity and the **anti-bribery programme** in public reporting.
- Use public reporting as a means to **drive improvement**, making use of KPIs where possible.
- Provide **organisational transparency** and country-by-country reporting.
- Use **continuous reporting** to provide accessible, up-to-date information.
- Be transparent about **vulnerable processes**, such as contracting and procurement (subject to commercial confidentiality, privacy and data security laws).

BEST PRACTICE

- **Integrate your approach:** Adopt an integrated approach to external communications, corporate transparency, public reporting and stakeholder engagement to ensure consistent messaging. Align reporting to international reporting frameworks such as the Global Reporting Initiative, Sustainability Reporting Standards and the Sustainable Development Goals (SDG) targets and indicators.
- **Assign responsibilities:** Assign clearly who manages the input into the corporate reporting process and set responsibilities for setting and achieving targets and reporting progress.
- **Define the scope and methodology:** Define the key anti-bribery messages and information to be communicated, indicators for reporting, reporting frameworks to be used, stakeholders to be consulted and the methodology for consultation.
- **Use a range of reporting tools:** This will include annual reports, sustainability reports and supplements, newsletters and web pages. In the sustainability report, keep reports on the anti-bribery programme focused and short. Put full content on the website with a dedicated page for each key topic.
- **Include leadership statements:** Accompany reporting with keynote statements from the leadership.
- **Due prominence:** Anti-bribery reporting will form part of wider reporting on corporate responsibility but should be given appropriate attention according to the level of risk and stakeholder expectations.
- **Be transparent:** Provide organisational transparency and country-by-country reporting.
- **Monitor:** Monitor developments in public reporting. Check for changes in laws and regulations, seek feedback on your reporting, analyse web usage and monitor social media. Review how the company's communications and reporting meet its commitments to accountability and transparency.
- **Review by leadership:** Make periodic reports to senior management and the board on public reporting and stakeholder engagement, lessons learned and improvements.

GUIDANCE

18.1 Introduction

Legal requirements and stakeholder expectations are putting pressure on companies to be more open about their structures and operations. Shareholders, investors and third parties will feel confident in being associated with a company that can demonstrate that it operates to fair trading standards, has quality systems and has an effective anti-bribery programme. Communications about the anti-bribery programme may also deter those who might otherwise attempt to engage the company in bribery or other corruption.

To ensure transparency, laws and regulations have been introduced to require companies to report on risks and corporate responsibility commitments. With pressure from civil society, governments have also legislated for companies to provide details of their ownership and, in some industries, have mandated country-by-country reporting on income, profits, taxes and other payments to governments. While not part of the anti-bribery programme, these measures strengthen corporate commitments to integrity and reduce opportunities for bribery and corruption to flourish in countries prone to corruption.

18.2 Transparency

18.2.1 Reporting on the anti-bribery programme

The publication of the elements of an anti-corruption programme demonstrates a company's commitment to fighting corruption and increases its responsibility and accountability to stakeholders. Public reporting on anti-corruption programmes can also contribute to positive change as the process of reporting focuses the attention of the company on its own practices and drives improvements in policies and programmes.

Although public reporting by companies on their anticorruption programmes cannot be equated with actual performance, there is empirical evidence that reporting by companies does tend to reflect the measures they actually have in place within their companies. Indeed, a Harvard Business School study concluded that "on average, firms' self-reported anticorruption efforts reflect real efforts to combat corruption and are not merely cheap talk."[1]

18.2.2 Organisational transparency

Large multinational companies operate as complex networks of interconnected entities involving subsidiaries, affiliates or joint ventures controlled to varying degrees by the parent company. These can

[1] Paul Healy and George Serafeim, Causes And Consequences Of Firms' Self-Reported Anticorruption Effort, Harvard Business School, November 2012: www.people.hbs.edu/kramanna/HBS_JAE_Conference/Healy_Serafeim.pdf

be registered and operate in several countries, including secrecy jurisdictions or tax havens. If companies choose not to disclose these structures and holdings it can be very difficult to identify them and understand how they relate to each other.

Organisational transparency is full disclosure by a company of its ownership structure and beneficial ownership holdings. This includes reporting details of its shareholders, subsidiaries, significant investments, associates and joint ventures. For subsidiaries, associates and joint ventures, this will cover the percentage interest held by the company, countries of incorporation and countries of operation. Transparency can also be extended to include reporting on agents and suppliers.

Organisational transparency is important for many reasons, not least because company structures can be made deliberately opaque for the purpose of hiding the proceeds of corruption. But more fundamentally, it is important because it allows local stakeholders to know which companies are operating in their territories, are bidding for government licences or contracts, or have applied for or obtained favourable tax treatment. It also informs local stakeholders about which international networks these companies may belong to and how they are related to other companies operating in the same country. In addition, through full disclosure of corporate holdings, stakeholders, including investors, can gain more complete knowledge of financial flows such as intra-company transfers and payments to governments. Organisational transparency allows citizens to hold companies accountable for the impact they have on their communities.

Organisational transparency supports the anti-bribery programme by helping to build integrity in the markets in which the company operates, aiding due diligence on business associates and ensuring that the company's structures do not facilitate corruption.

Transparency International assesses organisational transparency in its periodic reports entitled 'Transparency in Corporate Reporting' (TRAC) and only gives full points where there is disclosure of all holdings regardless of their materiality.

18.2.3 Country-by country reporting

The importance of country-by-country reporting was first recognised in the extractive sector as a way to ensure that revenues from natural resources are used to foster economic and social development rather than line the pockets of kleptocratic elites.

Country-by-country reporting provides a basic level of transparency needed for companies to be held accountable for their activities in a particular country. Disclosing key financial data enables citizens to evaluate whether the company is contributing in a manner appropriate to its level of activity and, in some instances, to provide entry points to identify potential cases of corruption. When stakeholders have information, they are able to research, question and challenge companies and governments on corporate operations, financial results and the extent to which companies contribute to the economies and societies where they make their wealth.

Furthermore, in light of the current debate on the practices of multinationals that shift profits to low-tax jurisdictions, it is increasingly recognised that country-by-country reporting of payments to governments would not only make global companies more transparent but could also provide a path to tackle aggressive tax avoidance.

In addition, country-by-country reporting provides investors with more comprehensive financial information about companies and helps them address investment risk more effectively. The publication of key financial data provides citizens with the opportunity to understand the activities of a particular company in their country and to monitor the appropriateness of their payments to governments.

We recommend that companies discloses its payments to governments on a country-by-country basis across all of its operations and all relevant payment types, such as turnover, profit, income tax, royalties, and fees.

Sector CbC initiatives

Country-by-country reporting (CbC reporting) is public reporting by global companies of financial data for the countries in which they operate. Reporting obligations have come into force for the financial and extractives sectors but can be expected to be extended to other sectors. Basic reporting lines are revenues, sales, pre-tax income, tax paid and capital expenditure.

There are continuing legislative developments, notably for the *extractives and financial sectors*. In 2013, the European Parliament passed a directive requiring large listed companies operating in the extractive and logging industries to report the payments they make to governments.[2] The UK, in accordance with the EU Directive, introduced into law in December 2016 the Reports on Payments to Governments Regulations 2014. In the opinion of Publish What You Pay, an international civil society collation, the first year of reporting succeeded in making host governments more accountable to their citizens, with no evidence of competitive disadvantage to companies.[3] In the USA, however, in February 2017 Congress voted to 'disapprove' the rule implementing Section 1504 of the Dodd-Frank Act requiring CbC reporting by extractives companies.[4]

In the **financial sector**, there have been developments related to *transfer pricing*, on which all OECD and G20 countries have committed to implementing CbC reporting. A 2014 OECD/G20 action plan requires multinational corporations to provide detailed income tax information on an annual basis for each country in which they do business.[5]

Regardless of the legal obligations, Transparency International and other civil society organisations advocate that companies should be transparent about their operations at country level. The lack of disclosure on transactions between governments and companies and the use of offshore centres pose integrity risks for global companies and their stakeholders, as well as potentially robbing the local communities in which the wealth is generated. When communities and other stakeholders have information, they are able to research, question and challenge companies and governments on corporate operations, financial results and the extent to which companies contribute to their societies.

The process of CbC reporting is more than information disclosure. It succeeds when there is stakeholder engagement, as explored in Enabling Factors, Chapter 3. This is exemplified by the **Extractive Industries Transparency Initiative (EITI)** which has led the way in preventing wealth from extraction being stolen by bribery and other corruption. For instance, the Democratic Republic of the Congo had a five-fold

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[2] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013

[3] Letter from PWYP to Margot James MP, Parliamentary Under Secretary of State for Small Business, Consumers and Corporate Responsibility, 17 February 2017.

[4] The SEC approved in June 2016 Rule 13-q1 of the U.S. 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act which requires resource extractive companies registered on U.S. stock exchanges to report payments to governments on a country and a project-by-project basis. See Release No. 34-78167; File No. S7-25-15. RIN 3235-AL53. Disclosure of Payments, SEC., 27 Jun 2016. *https://www.sec.gov/rules/final/2016/34-78167.pdf*

[5] Base Erosion and Profit Shifting Project, Action 13: Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting, OECD, 2014.
http://www.oecd-ilibrary.org/taxation/guidance-on-transfer-pricing-documentation-and-country-by-country-reporting_9789264219236-en

increase in extractives industries revenues between 2005 and 2015 as a result of the application of EITI methodologies.[6] Over 800 civil society organisations and 200 oil, gas and mining companies participated in this initiative. By taking part in collective action initiatives such as EITI and working with civil society, companies can contribute to eliminating opportunities for governments and corrupt individuals to carry out bribery and benefit from opaque transactions.

18.2.4 Operational transparency

Operational transparency is one of the best defences against corruption. It is where the company opens up key processes vulnerable to corruption, within the limits of commercial confidentiality, privacy, data protection and security. Processes include tendering, lobbying activities, community investment and recruitment processes.

Examples of transparency initiatives in community investment and sustainability include BP's Tangguh Independent Advisory Panel and Baku-Tbilisi-Ceyhan Advisory Group. Common aspects included transparency around the governance as well as operations and all included regular stakeholder consultations and external reporting.[7]

Network Rail in the UK has also responded to stakeholders in relation to increasing transparency in its operations.[8] Another example from the public sector is the Open Government movement, which aims to open up government processes, documents and data for public scrutiny and involvement.[9]

18.3 Public reporting

18.3.1 The growth of public reporting

Public reporting is a form of managed communication in which a company provides non-financial information on topics of material interest to its stakeholders. It can be on a voluntary basis but may be required under law. Material topics can be identified by stakeholder surveys and consultation, discussions with frontline employees, third party relationship managers, business units and support functions.

Most global companies' reporting is driven by legislation, peer behaviour, its inherent value and in response to advocacy by civil society. Public reporting on anti-bribery programmes is developing in a context of increasing legislation for non-financial corporate reporting on culture and corporate governance.

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[6] 2016 Progress Report, Extractives Industries Transparency Initiative.
[7] See the following links for examples of what BP report externally:
http://www.bp.com/en_id/indonesia/press-center/documents.html
http://www.bp.com/en_ge/bp-georgia/press-and-reports.html
[8] https://www.networkrail.co.uk/who-we-are/transparency-and-ethics/transparency/
[9] See the Open Government Partnership, https://www.opengovpartnership.org/

Legislation and corporate reporting

- **Corporate governance:** Legislation and regulations require companies to report on their non-financial risks. For instance, the UK Companies Act 2006 requires the directors of a company to include in their annual report a description of the principal risks and uncertainties facing the company.10

- **Organisational transparency:** EU legislation requires country-by-country reporting for the financial and extractive sectors. See the sections on organisational transparency and country-by-country reporting.

- **Corporate responsibility:** Some countries have also introduced legislation on corporate social responsibility reporting. The UK Companies Act 2006 extends the scope of directors' duties by introducing a concept of 'enlightened shareholder value', requiring directors to have regard for the impact of the company's operations on the community and the environment, and for maintaining a reputation for high standards of business conduct.11 In 2007, Indonesia became the first country to adopt a mandatory approach to corporate responsibility.12 Denmark passed a law in 2008 requiring companies to report on CSR or explain why they are not reporting, and Norway introduced legislation in 2013 requiring large companies to provide information on how they integrate social responsibility into their business strategies.

18.3.2 The scope of public reporting

Bribery can be a risk to any company and there should be always a basic level of reporting on the anti-bribery programme. That said, reporting on countering bribery is one of many issues of material interest to stakeholders and the compliance function may have to negotiate for space to report on the programme. The extent of reporting will be shaped by the view of the leadership, stakeholders and the level of risk to the company. For instance, a company may judge that bribery risks are being mitigated satisfactorily and that stakeholders are comfortable with its approach. As such, the space in the annual reports will be modest.

The company website is the most accessible way to publish in-depth information on a continuous basis. The pages on the website should provide a range of information, including the company's values, commitment to integrity, code of conduct, no-bribes policy, the design of the anti-bribery programme and corporate governance arrangements. This information will be fairly static and should be supported by dynamic reporting on risk assessments, training, collective action and community impacts.

KPIs and targets should be used in public reporting. This will enable the company to demonstrate both ambition and progress and drive change internally.

[10] *UK Companies Act 2006, section 417. Contents of directors' report: business review.*
[11] *UK Companies Act, section 172, Duty to promote the success of the company.*
[12] Law No. 40 on Limited Liability Companies

18.3.3 Voluntary reporting initiatives

Recognising that individual reporting approaches by companies can confuse and overwhelm stakeholders and encourage cherry-picking and spin, global frameworks have been introduced to standardise reporting and ensure a high and consistent quality. The main initiatives for shaping anti-corruption reporting include:

- **Global Reporting Initiative (GRI):** The GRI was formed in 2000 to encourage sustainability reporting. GRI upped its approach in 2016 by moving from a reporting framework to a range of Global Sustainability Reporting Standards. An overarching standard covers mandatory reporting on ethics and integrity and basic elements of an anti-corruption programme. This is supported by a specific standard for anti-corruption reporting.[13]

- **UN Global Compact (UNGC):** The UNGC requires signatory companies to commit to its ten principles, including the 10th Principle against Corruption. Signatories are required to make an annual Communication on Progress, which includes reporting on anti-corruption. The UNGC, in partnership with Transparency International, has published a guide to reporting on the 10th Principle.

18.3.4 Indices and reports

As voluntary disclosures have increased, indices have been developed to measure performance and allow for intercompany comparisons.

- **Transparency International (TI):** TI has been at the forefront of assessing companies' reporting on anti-bribery programmes. TI publishes periodic Transparency in Corporate Reporting (TRAC) indices which assess different groups of companies (e.g. by size, industry and jurisdiction) against a set of indicators. These reports use proxy measures to determine whether companies have designed and implemented certain anti-bribery policies and procedures. They do not attempt to evaluate the effectiveness of companies' programmes.

- **Transparency International UK (TI-UK):** TI-UK measures public reporting through the Defence Companies Anti-Corruption Index and the Corporate Anti-Corruption Benchmark. It also measures public reporting on political activities in the Corporate Political Engagement Index.

- **FTSE4Good:** This series of indices assesses environmental, social and governance practices, and includes anti-corruption indicators.

- **The CPA-Zicklin Index:** This index is published annually and benchmarks the political disclosure and accountability policies and practices of leading U.S. public companies.

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[13] *GRI 102: General Disclosures, section 3, Ethics and Integrity*, GRI, Amsterdam, 2016.

Pointer: These frameworks are evolving and companies should consider engaging with the reporting organisations and NGOs to contribute to the development of reporting standards and indicators.

18.4 External communication

External communication should inform stakeholders of the company's integrity and fair trading commitments and of the design and implementation of the anti-bribery programme.

Communication can be through a range of channels including the website, social media, annual reports and promotional literature. Tailored communications can inform third parties about the company's expectations, requirements and operating procedures. These can be set out in specific publications, such as supplier codes of conduct, or dedicated channels, such as a supplier intranet.

RESOURCES

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