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OPEN BUSINESS

Summary of principles and guidance for anti-corruption corporate transparency

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EXECUTIVE SUMMARY

Transparency is increasingly becoming a norm in the corporate world.[1] However, meaningful disclosures, particularly around governance and anti-corruption, are limited.[2]

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.[3] 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."[4] 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).[5] 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".[6] 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.

1 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.

2 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.

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

4 Sprout Social, (2019): 3.

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

6 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.[7]

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.[8] 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.[9]

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.[10] Patagonia's financial gains are, therefore, a good example which demonstrates how profitability and transparency can be synonymous.

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

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

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

10 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.[11]

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.[12]

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.

11 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.

12 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.[13] 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.

13 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?"

The above guidance is further expanded in Chapters 1 to 7 of the Open Business report available at: transparency.org.uk/open-business

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