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5.0 Ethical Conduct – Introduction

Many countries rich in mineral resources are mired in poverty and weak governance. As a result of weak governance, struggles for control of resources often lead to conflict, human rights violations and sometimes civil war. Public revenues earned from resources are often squandered through corruption.

The relationship in many countries between natural resources, conflict and corruption has led to increasing focus on the extractive sector and its potential role in countering corruption. The mining sector is generally considered to be one of the business sectors particularly susceptible to corruption.¹ The high commercial value of natural resources makes them a target for acts of corruption, misappropriation, or plundering. The management of mineral rights is characterized by complicated regulations and high levels of government control that provide numerous opportunities for manipulation and corrupt practices.

5.1 What Are Corruption and Bribery?

Corruption² is the misuse of power and position for private gain. Corruption is a failure of governance; it erodes the integrity of social, political and judicial institutions and makes it difficult to enforce accountability and transparency. Corruption undermines sustainable development by diverting resources from their proper use. Resource income intended for infrastructure development, institutions and social services is siphoned off into the pockets and bank accounts of those with power and position. As a result, corruption's greatest impact is on the poor and disadvantaged. Money diverted through corrupt practices is used to finance armed conflict and, in many parts of the world, systemic corruption enables organized crime and civil conflict to flourish.

Bribery³ is the practice of offering someone money, services, or other valuables, in order to persuade them to do something in return. There are two sides to bribery: (1) the supply side, those that offer bribes; and (2) the demand side, those that demand and accept bribes.

Corruption and bribery come in many forms. They may be blatant – such as an outright demand for cash or commission in a contract – or they may come disguised as a gift, favour, donation, or political contribution. They may also be paid or accepted by agents and others working on behalf of the company and without the company's knowledge.

The difference between gifts and/or entertainment used to promote good relations and a bribe is the size of the gift and the intent of the giving. Lavish gifts and entertainment given with the express intent of gaining a business advantage are bribes. Many countries have laws regulating the types of gifts and entertainment that can be accepted by government personnel.

Key Terms

corruption is the misuse of entrusted power and position for private gain

bribery is the practice of offering someone money, services or other valuables, in order to persuade him or her to do something in return

sponsorship is financial or in-kind contribution given in support of a cause or event in exchange for advertising and other reputation benefits to the sponsoring organization

donation is avoluntary financial or in-kind gift to a charitable organization or cause with no direct benefit to the donor in return

political contribution is a contribution made to a politician or a political campaign or a political party

facilitation payment is a payment made to a public official for the purpose of expediting or facilitating the performance of a routine governmental action, not to obtain or retain business or any other improper advantage

Key International Instruments

[OECD Convention on Combating Bribery of Foreign Public Officials](#)

[UN Convention Against Corruption](#)

[Extractive Industries Transparency Initiative](#)

[Transparency International](#)

Publish What You Pay

¹ As confirmed by trends of the [Transparency International Bribe Payers Index \(TI-BPI\)](#). However, the BPI index shows that Canadian firms are seen as least likely to bribe abroad.

² Forms of corruption include: Bid-rigging, collusion by bidders, falsification and misrepresentation of costs, theft and embezzlement, bribery, fraud, extortion, cronyism, nepotism, patronage and graft.

³ Forms of bribery include: kickbacks, facilitation payments, gifts and gratuities, commissions and protection payments.

Facilitation payments (sometimes called “grease money”) are typically small amounts of money demanded by government officials to “facilitate” services to which you are entitled; examples include obtaining a visa or clearing equipment through customs. In many countries, they are very common and are often accepted as entitlements with government employment.

Regardless of its shape and size, bribery is corruption by definition and is widely criminalized through international and national laws. Even if the country in which the project is taking place does not have anti-bribery laws, the company’s country of origin may have laws that can enforce penalties for bribery of foreign officials.

The international legal framework that companies are facing is subject to rapid change and has been strengthened in recent years. The principle that it is illegal to bribe foreign officials is universally recognised in the U.N. Convention Against Corruption and is outlawed by the OECD Convention on Combating Bribery of Foreign Public Officials. It is also recognized in the following intergovernmental instruments:

- Inter-American Convention Against Corruption (1996);
- European Union Instruments on Corruption;
- Council of Europe Conventions on Corruption (1997-1999); and
- The African Union Convention on Preventing and Combating Corruption (2003)

The United States was the first country to impose extraterritorial obligations on U.S. corporations and foreign corporations listed on U.S. stock exchanges with respect to the bribery of foreign public officials. Today, most of the 37 OECD countries that have ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997) have passed enabling legislation in their countries, making it illegal for domestic corporations to bribe foreign public officials. Canada ratified the OECD Convention in 1998; in 1999, bribery of public foreign officials became an offence under the [Corruption of Foreign Public Officials Act S.C. 1998, c. 34](#) (CFPOA). Bribery is a criminal offence, which carries severe financial penalties and even the risk of imprisonment for directors and managers of the company involved. Depending on the circumstances, Canadian companies may be liable for the offences committed by their employees and representatives (i.e., agents).

Exploration companies often seek the assistance of a local partner or agent to help them do business in jurisdictions where they lack the contacts and local knowledge. Local agents and partners can be extremely beneficial and assist with leading a company through the complex tangle of regulations and bureaucracy. However, they also have the potential to increase legal and reputational risk to the company if they engage in unethical or illegal activities. The problem may be not just the local partner or agent, but their associates. In these situations, standard due diligence processes may not adequately provide explorers with the information they need to make prudent decisions about agency and partnership relationships.

As more and more countries move to criminalize bribery within their own jurisdictions and regulate domestic companies working abroad, more sophisticated forms of personal gain are being invented to avoid detection. This means that explorers may find it difficult to understand and respond appropriately to these disguised forms of corruption. Also, as more and more countries move to privatization of essential services, corruption is migrating to the private enterprises that provide these services. Often these private enterprises are in a position of

strength and control, which enables them to extract the monetary “inducements” that were once only the purview of the public service.

5.2 Why Is Countering Bribery and Corruption Important to Explorers?

There are many reasons why it is in the best interests of explorers to fight corruption in all its forms. These include:

- **Criminal prosecution:** Most forms of corruption are illegal. The reality that laws against corruption may not always be enforced in the foreign jurisdiction, in which they occur, is no protection and no reason not to resist corruption. Increasingly, countries are passing laws making it illegal for domestic companies to engage in corrupt practices in another country
- **Additional costs:** Studies show that corruption adds upward of 10 per cent to the cost of doing business
- **Extortion and blackmail:** Succumbing to pressure to pay bribes entangles companies in a cycle of corruption and exposes them and their personnel to blackmail. Once a company has demonstrated a willingness to pay a bribe, the company is more susceptible to additional demands. Since bribery is a criminal activity, it also exposes company personnel to extortion and blackmail.
- **Internal corruption:** Unethical behaviour is insidious. Companies that engage in or tolerate corrupt practices of public officials cannot expect respect for ethical behaviour within their own organization
- **Missed business opportunities:** Corruption distorts competition. Where bribes are the basis of granting access or tenure to natural resources, there is no security or legal protection. Explorers are vulnerable to exclusion or expulsion at the whim of corrupt officials
- **Project liability:** Corruption can impact the transaction value of an exploration project. If a mining company acquires a property from an exploration company that has engaged in or been complacent to bribery, the property can represent a financial and reputation risk to the acquirer. In some cases, concessions granted under corrupt practices are liable to be withdrawn or renegotiated by subsequent government administrations because of the allegations of corruption

5.3 Recommended Practices

Establish an internal management framework of procedures, processes and controls to prevent bribery and counter corruption. This should include:

- **A Code of Conduct or Statement of Business Principles:** This applies to all operations and business partners and commits the organization to:
 - conduct its business fairly, with integrity and with transparency; and
 - refrain from taking or offering bribes, whether directly or indirectly
- **Rules on gifts and entertainment:** This applies to what can be given and what can be accepted. These rules must be communicated and understood, not only by company personnel but also by business partners
- **A company policy governing charitable donations and sponsorships:** Payments of donations and sponsorships should always be paid directly to an organization and not an individual. Make sure there is a proper review of the legitimacy of the organizations to which donations and sponsorships are given. Personnel should be alerted to the fact that requests for donations and sponsorships by government officials could be disguised solicitations for bribes
- **A company policy for political contributions:** Some companies simply do not allow any company sponsored political contributions. However, if a company chooses to contribute to political parties, there should be clear rules as to how contributions are made. At a minimum these should include:
 - review and approval of the contribution by more than one individual in a company (e.g., legal counsel, the Board of Directors, senior management team);
 - contributions should be paid to political organizations and not to individuals;
 - restrictions on the timing of contributions – they should not coincide with negotiations, contract or approval processes with government; and
 - provisions for transparency – political donations should be reported to the Board of Directors, shareholders and the public
- **Project due diligence:** To understand the risks of corruption and how those risks can be mitigated, the following should be completed:
 - Determine whether the country and location where the company will be operating represents a high risk of corruption. Information on countries is available from embassies, trade organizations, and NGOs such as Transparency International
 - Pay special attentions to social indicators – such as the level of tribalism, nepotism and military control within local jurisdictions –

Related e3 Plus Guidance

[Writing and Implementing a Code of Conduct](#)

[Boundaries of Responsibility](#)

[Project Due Diligence](#)

[Grievance and Complaints Mechanisms](#)

Due Diligence Sources

Transparency International publishes surveys of perception of the level of corruption in most countries [Corruption Perception Index](#)

[Business and Anti-Corruption Due Diligence Tools](#)

Key Reference Sources

[Business Principles For Countering Bribery -Small and Medium Enterprise \(SME \) Edition](#) (Transparency International)

[Transparency International Website](#)

[Business and Anti-Corruption Portal.4](#)

[United Nations Mining, Environment and Development Website](#) – includes useful articles on wide range of topics

[OECD Fighting Corruption Page](#)

[U 4 Anti-corruption Resource Center](#)

⁴ The [Business Anti-Corruption Portal](#) is an information source for small and medium sized companies operating in emerging markets and developing countries. The portal has examples of procedures and checklists related to due diligence of suppliers and agents, although these are geared to anti-corruption they can provide explorers with excellent templates for due diligence review for all aspects of social and environmental performance.

that indicate the potential for increased risk for corruption and bribery. (For other risk flags, refer to the [Social Issue Table](#) under Project Due Diligence)

- Review the operations and activities and identify the areas where the potential for extortion or demands for bribes may occur. In a high risk environment, a careful examination of any aspects of the project where the company requires government approvals or services is highly recommended
- Identify and take the time to understand the applicable laws and regulations related to bribery and political contributions
- Determine what checks and balances the company will need to ensure the integrity of others conducting activities on the company's behalf (e.g., agents, suppliers, partners, contractors)
- **Reasonable measures to protect against the unethical conduct of business partners.** This should include the following:
 - Establishing a company policy to hire only those agents that are reputable and that demonstrate personal integrity and personal competence
 - Discussing company expectations of ethical behaviour upfront, when negotiating business relationships
 - Conducting simple due diligence process prior to selecting business partners to check that they are legitimate and do not have a record of unethical activity. This due diligence may include interviews and appropriate background checks into the following aspects of the organization:
 - structure and ownership;
 - financial position;
 - reputation with members of the local community, other business partners, business leaders, international firms and the local embassy; and
 - policies and positions on bribery and corruption
 - Considering their independence, when choosing agents to act on your behalf. Do they have involvement or ties to local interests that put them in a conflict of interest? (See guidance on [Conflict of Interest](#).)
 - Recording and reviewing the results of the due diligence process from time to time, to see if anything has changed or if new information has come to the attention of the company
 - Including provisions in contracts that require compliance with the company's Code of Conduct, and also making provision for:
 - expressly prohibiting payment of bribes;
 - terminating the agreement if the Code of Conduct is not

- followed (e.g., bribes are paid or accepted);
- the right of the company to audit its business partners; and
- regular reporting of activities and their monitoring by a company employee
- Keeping clear records of commissions, payments and instructions given to business partners
- Reviewing commission payments to check that they are in proportion to the services provided to the company's business
- Establishing mechanisms (e.g., complaints procedures, whistleblower policies), so that personnel and business partners are comfortable reporting violations of the Code of Conduct and concerns about corruption without fear of reprisal
- Establishing procedures to receive, investigate and respond to allegations of corruption
- Training employees and, where necessary, appropriate business partners. This training should:
 - be tailored to the size of the organization and the potential risks – for a smaller organization, a roundtable discussion may be all that is required; what is important is the effectiveness of the training, not the size and sophistication of the training program;
 - help employees and business partners understand:
 - the purpose of the company's Code of Conduct;
 - the individual and corporate risks associated with bribery and corruption;
 - the various guises of bribery and corruption and ways to deal with each;
 - the individual responsibility for compliance with the business principles and for contributing to making the program work;
 - the idea that no-one will be penalized for losing business by not paying or accepting a bribe; equally, that accepting or offering a bribe or otherwise violating the business principles is subject to disciplinary action;
 - the individual responsibility to report concerns or suspicions of unethical conduct, and how to do so; and
 - where to get information and advice
- Initiating appropriate relationships with governmental officials by:
 - introducing the company to senior level government representatives and explaining that the company has a Code of Conduct and that it is company policy to conduct its activities with a high degree of integrity; and

- requesting government representatives establish a procedure to be followed when approvals or other matters that require government action are delayed by government officials without valid reasons
- Explorers are not expected to tackle corruption alone and should work with other business leaders and NGOs and institutions (e.g., the World Bank, industry associations, coalitions) to:
 - encourage government transparency in countries that are particularly relevant to the exploration industry; and
 - encourage policies and legislative reforms that:
 - reduce ministerial and bureaucratic discretion; and
 - promote transparency and accountability through an independent judiciary, freedom of the press and an efficient corruption-free police system and civil service

5.4 What Is Conflict of Interest?

“Conflict of interest” occurs when the interests of an individual or corporation conflicts with their duty or responsibility to another party and the trust vested in them. Conflicts of interest can prejudice the ability of the individual or corporation to act objectively and can lead to actions that are not honest and open.

The concept of conflict of interest covers a wide range of situations, all of which are not discussed here. A conflict of interest occurs when an individual or a corporation is in a position to exploit a position of trust in some way for personal or corporate benefit. The most obvious type of benefit is financial, but other types of benefit are equally relevant (e.g., prestige, power, career advancement, market position). A conflict can occur not only when the person or corporation benefits directly, but when there is benefit to an associated person or corporation, for example a family member, close associate, affiliated company. A conflict of interest may also arise if the matter causing the conflict involves a decision or action about a competitor or adversary.

A conflict of interest is “actual” or “real” where the person or corporation is or will be influenced by their private interests. In some cases, the mere perception that a conflict of interest might exist is enough to make such a conflict an issue for concern – whether or not it is “real”, or whether or not it tempts an individual to act inappropriately. In other cases, there is a foreseeable or “potential” conflict where the person or organization has an interest that may compromise their impartiality in the future. Some categories of behaviour that can give rise to conflict of interest include:

- **Self-interested investment, procurement, contracting or hiring:** When a person uses a position to influence a decision to invest resources in projects, or to contract with an organization in which they have an interest. This may also include giving a job to a friend or family member outside normal hiring processes
- **Improper influence:** When a person accepts some form of benefit in exchange for using their position to influence activities or decisions that are in someone else’s interest

Key Terms

conflict of interest occurs when an individual or a corporation (either private or governmental) is in a position to exploit his/her or their own professional or official capacity in some way for personal or corporate benefit (OECD definition)

- **Misuse of information or property:** When a person uses information or property to which the person has access at work for some personal benefit
- **Inappropriate outside activity:** When a person's activities outside of the corporation are in conflict with the interests of the corporation
- **Accepting undue benefits:** When significant gifts place an affected person under obligation to the donor of the gift

It is not always easy to determine whether a conflict exists, or whether a conflict will significantly impact on a person's actions. Consider the following three scenarios:

- 1) A contractor sends one of your project managers tickets to a major supporting event, in appreciation for all the business they received from your company
- 2) Your company hires a senior government employee that previously worked in the regulatory agency that grants exploration approvals
- 3) An employee working for your company owns shares in another exploration company, which stakes claims in the same geographical location where you have an active exploration program

Are these conflicts of interest? Potentially they are, depending on whether the person in conflict is in a position to exploit the situation for private gain. For example, if the project manager discloses the gift of the tickets, the gift falls within company gift policies and the manager follows all procurement rules in awarding contracts, is there a conflict? If the ex-government employee is given direct responsibility for negotiating mining approvals for your company, is the conflict of interest more or less likely? Finally, if the employee who owns shares in another exploration company discloses the ownership and is not privy to any information related to your exploration activities, is there still a conflict? These cases illustrate that there are many situations where an employee or corporation risks creating an actual, potential, or perceived conflict of interest.

These three examples also illustrate that, as with all other areas of ethical conduct, there are some common themes. The first is that disclosure and transparency is a key to managing risk and maintaining integrity. The second is that ethical issues often overlap. Conflict of interest can overlap with issues of bribery and corruption, with issues of confidentiality and use of corporate information, with appropriate use of company resources and responsible political engagement. Issues of ethical behaviour are rarely black and white; they depend on the facts of the specific situation. Therefore, it is difficult to lay down clear rules that will promote ethical behaviour. However, what companies can do is put into place the systems to promote a culture of ethical behaviour within the corporation.

Any person or corporation that is entrusted with information, authority or discretionary powers should take reasonable steps to ensure that they are not placed in a situation in which their judgment is likely to be compromised. Conflicts of interest are common in today's complex business environment and may not necessarily be unethical, or wrong. However, it is how conflicts of interest are identified and managed that is important. If conflict of interest situations are not properly managed, they can endanger the integrity of your company and contribute to corruption.

5.5 Why Is Managing Conflict of Interest Important?

When not identified and managed correctly, conflict of interest can have consequences to an individual or corporation that range from simple breakdown of internal controls to serious legal, financial and reputational consequences. When a conflict of interest results in economic or financial loss to the individual or corporation on whose behalf the person or corporation owes a duty, then a fraud has occurred. Conflict of interest can exist on its own, or can be an intricate part of other frauds (e.g., bribery, illegal gratuities, embezzlement, misappropriation or diversion of company property, contributing to abuse of power, breach of contract, insider trading).

5.6 Recommended Practices

The recommended practices suggested in the section on Ethical Conduct and Developing and Implementing a Code of Conduct are the backbone for managing issues of ethical conduct within a corporation, including conflict of interest. In those sections, explorers are encouraged to develop an ethical Code of Conduct. As part of, or complementary to, an ethical Code of Conduct, explorers should establish procedures to identify, manage and resolve conflict of interest situations. The recommendations outlined below provide additional guidance and some practical tips for identifying and managing conflicts of interest that can be incorporated into your corporation's conflict of interest procedures.

- **Definition:** Procedures should provide a clear and realistic description of what circumstances and relationships can lead to a conflict of interest situation in your corporation
- **Screening:** Establish conflict screening where appropriate. Screens involve identifying upfront the type of interests that would prevent individuals from holding certain positions, or participating in certain decisions or activities. Screening is designed to prevent conflict of interest situations from arising. However, some corporations find screens difficult to administer and rely solely on declaration and mitigation procedures to manage conflicts when they arise
- **Self-Declaration:** Procedures should specify how employees and agents self-declare potential conflicts of interest. Although company executives and senior managers have an important role in ensuring conflict of interest situations are managed appropriately within an organization, the identification of conflict of interest is an individual responsibility. In most instances, only the person involved may be aware that a conflict of interest exists; therefore, the responsibility for disclosing the conflict rests with the individual. Disclosing the conflict of interest does not resolve the conflict, but provides the starting point for assessing the situation to determine what additional action is required. To encourage greater candour and to eliminate barriers to self-declaration, procedures should, to the extent possible, provide for confidentiality of the disclosure. Some mechanisms for declaring interests include:
 - **Interest registers:** A common conflict management tool, particularly for senior company management and executives. Registers require persons to periodically declare certain types of interests. The register is updated on a periodic basis (typically annually) but any interests that arise between updates are required to be reported. A standard form for declaring interests should be used, to ensure that information is clear

Related e3 Plus Guidance

[Ethical Conduct](#)

[Developing and Implementing a Code of Conduct](#)

[Training Staff and Contractors](#)

[Grievance Mechanisms](#)

Key Reference Sources

[OECD Guidelines for Managing Conflict of Interest In the Public Service and Toolkit for Managing Conflict if Interest in the public Service](#) – provides useful guidance for private organizations

and consistent

- **Declaration procedures prior to certain key events or decisions:** The corporation should define what key events trigger the need for a conflict check (e.g., major financial transactions or investments), and institute a due diligence check prior to such events, to enable anyone participating in the decision or transaction to declare or discuss a potential conflict
- **Honour system:** This makes practical sense, since most conflict of interest policies rely on employees to identify and self-declare. The following are some important questions that individuals should ask, when considering whether or not a conflict of interest exists:
 - Do I have personal or private interests that may conflict, or be perceived to conflict, with my responsibility to the corporation?
 - Could there be potential benefits for me, now or in the future, that could cast doubt on my objectivity?
 - How will my involvement in the decision/action be viewed by others? Perception is critically important. Are there risks associated for me/my corporation?
 - Does my involvement in the decision appear fair and reasonable in all the circumstances?
 - What are the consequences if I ignore a conflict of interest? What if my involvement is questioned?
 - Have I made any promises or commitments in relation to the matter?
 - Do I stand to gain or lose from the proposed decision/action?
- **Management:** Once a conflict is identified, there are a number of actions that can be taken to mitigate or eliminate the conflict. The appropriate action to be taken will depend on the circumstances of each situation and the severity of the consequences. The actions taken to address or eliminate the conflict should always be well documented. Some management options may include:
 - Restricting the role or involvement of the person(s) with the conflict in the decision or subject matter of the conflict. As an example: Having the person(s) refrain from participating in making decisions or abstaining from voting on decisions, or restricting access to information related to the conflict of interest
 - Recruiting an independent third party to assist in an action or decision (e.g., ask a disinterested party to sit on a hiring decision where there is a declaration of conflict). There will be situations where no appropriate third party is available
 - Removing the individual from affected duties. If it is not practical to restrict involvement, then complete separation or removal from the matter altogether may be required
 - Relinquishing the interest. In cases of serious conflict, the individual may choose to drop the private interest which is causing the conflict (e.g., divesting shares or membership in another organization,
 - Resign. In serious cases where other solutions are not possible, the individual may have to resign from the position creating the conflict
- **Communicate and enforce conflict of interest procedures:** Set clear rules on what is expected with conflict –of interest situations and train employees and agents to know what is required of them in identifying and declaring conflict of

interest situations. Define consequences for non-compliance with conflict of interest procedures, including disciplinary sanctions

5.7 Responsible Political Engagement

The right to play an active role in public policy debates that affect our interests is a fundamental cornerstone of democracy. This is not just the right of individuals, but also for organizations including business. However, the involvement of companies in politics has become increasingly controversial, following scandals over political contributions and heavy-handed tactics by organized business groups. When companies seek to influence public policy in areas related to their own immediate economic and operational interests, it is rarely seen as a force for the good. Business “lobbying” is seen as undue influence in the political domain and conjures up images of graft and backroom deals. It is seen as a practice that should be curtailed or at least heavily regulated. This has resulted in passing laws in many western democracies, limiting political contributions by business and regulating lobbying.

On the other hand, there is a growing expectation that companies should contribute to the public policy debate to promote policies that benefit the greater interest of society: human rights, community development and well-being, public security, ethical conduct and good governance. In this context, companies are increasingly expected to use their influence, perspective, knowledge and expertise with policymakers and regulatory authorities. Promoting public policies that contribute to sustainable development is embedded in many voluntary standards on social responsibility, for example the U.N. Global Compact and the ICMM Sustainable Development Framework. When companies contribute to the public policy debate in this context, it is labelled as “public advocacy” and is considered a force for the good and a practice that should be encouraged.

These two contradictory expectations of the appropriate role of companies in the political domain, as well as whether and how companies should use their influence and participate in public policy debate, are rooted in a number of facts, including:

- Lobbying by business has a long and sometimes tarnished history. It is also extremely prominent; in some jurisdictions, professional lobbyists outnumber policymakers. Once considered to be something unique to Washington, it is growing rapidly in fast-growing large economies (for example Russia, China, India, Brazil and South Africa) and around new rule-making institutions (like the WTO in Geneva)⁵
- Public advocacy by corporations is a new phenomenon in response to the changing role of corporations in society
- Transparency around business lobbying and political contributions has only recently started to improve and in a limited way
- Lobbying is not a level playing field. The lobbying efforts of a large company or an entire industry association are quite different from the letter written by the average citizen to his or her elected representative. The economic clout of business, the fact that lobbying by business has gone hand-in-hand with substantial political contributions, as well as the fact that companies have the money to fund professional lobbyists, raise legitimate concerns about the undue influence of business and the independence of policymakers

Key Terms

lobbying is the act of influencing decision-makers and promoting changes to laws and government policies, for the benefit of a specific company or organization.

advocacy is the act of influencing decision-makers and promoting changes to laws and government policies, for the good of society as a whole.

e3 Plus: A Framework for Responsible Exploration is the expanded framework that now includes not only principles and guidance related to environmental stewardship, but also to social responsibility, as well as health and safety

⁵ *AccountAbility and U.N. Global Compact, Towards Responsible Lobbying Leadership and Public Policy (2005)*
http://www.unglobalcompact.org/docs/news_events/8.1/rj_final.pdf

- Lobbying by business is often conducted by trade associations. The sheer size and cumulative resources of many of these associations dwarfs other actors participating in the public policy debate. In addition, these organizations may lack appropriate mechanisms for reaching consensus on public policy priorities and the dissenting or alternative opinions within an industry may be lost or muffled

Other factors that have fuelled these two contradictory expectations are some very well publicized examples, where socially responsible companies engage in public advocacy to support policies that promote sustainable development, while at the same time lobbying for self-interested policies that contradict them.

Despite a tarnished reputation, lobbying is a valid activity for companies to: (1) pursue commercial interests on behalf of their shareholders; and (2) promote good, such as fostering sustainable development. There are five ways in which businesses can and should – individually, through trade associations and in co-operation with others – try to improve public policymaking:⁶

- 1) Provide technical and scientific analysis that helps policymakers in increasingly complex policy arenas
- 2) Identify the likely economic, social and environmental impacts of public policies at local, national and global levels
- 3) Act as brokers, synthesizing disparate policy positions for officials, easing information flows and seeking potential compromises
- 4) Mitigate the short-term approach to policymaking imposed by electoral cycles, opinion polls, focus groups and institutional rivalries
- 5) Provide a voice for those unable or unwilling to participate in decision-making directly

But how do companies – large and small – exercise their legitimate right to participate in public policymaking in a responsible way? It is difficult to delineate strict rules for responsible behaviour, because it reflects three interrelated areas of ethical conduct:

- 1) Conflict of interest
- 2) Bribery and corruption
- 3) Responsible political engagement

It is also by no means made any easier by the fact that cultural attitudes and laws related to lobbying and political engagement by business vary – often widely – between countries.⁷ In recent years, however, a number of different sources have made recommendations for responsible corporate political engagement⁸ that fall into five common themes:

- 1) **Legitimacy:** The methods used for political engagement should be broadly accepted, or meet the standard or care of a reasonable person. This represents a wide range of standards of behaviour, including practices related to political contributions, funding lobbying activities,

⁶ Extracted from AccountAbility and U.N. Global Compact, *Towards Responsible Lobbying Leadership and Public Policy* (2005) http://www.unglobalcompact.org/docs/news_events/8.1/rl_final.pdf

⁷ For example, in the U.K., payments associated with lobbying would be seen as corruption, while in the U.S. they are the price of doing business.

⁸ These include recommendations by the Ethical Business Council in the U.K. [The Ethics of Influence](#), the [EU Principles for Ethical Conduct on Lobbying](#), the joint U.N. Global Compact and AccountAbility report on [Towards Responsible Lobbying Leadership and Public Policy](#) (2005), and [Woodstock Principles for Responsible Lobbying](#)

undue influence, accuracy and truth of information used in supporting policy positions, and conflict of interest

- 2) **Accountability:** Organizations should conduct their business in accordance with well-defined, clear, open policies and be accountable to the organization's stakeholders
- 3) **Opportunity:** Activities should assist a company to become a more sustainable enterprise, as well as promote the common good
- 4) **Consistency:** Organizations should align their work with the organization's social and environmental commitments and policies
- 5) **Transparency:** Organizations should be open to public scrutiny. Organizations should publicly disclose their public policy positions, political contributions and affiliations

Of these five themes, transparency has emerged as key to bridging the different legal and cultural standards that apply to corporate political engagement worldwide. Transparency is the one universal constant that should be brought to bear, since full and open disclosure enables society to know the players in the formation of public policy and promotes accountability. This has resulted in initiatives such as the Extractive Industries Transparency Initiative (EITI) that supports improved governance in resource-rich countries, through the verification and full publication of company payments and government revenues from oil, gas and mining.

5.8 Recommended Practices

- Establish policies that set the ground rules for responsible political engagement, or integrate requirements into the company's code of conduct. Policies need not be elaborate, but should include:
 - responsible lobbying practices;
 - transparency related to political engagement activities;
 - how political donations are handled by the company; and
 - how the company deals with conflict of interest in public policy issues, hiring government officials to management or executive positions, or participating in government-led initiatives
- Review company lobbying activities to determine whether they are aligned with the company's social and environmental policies and commitments, including the commitment to e3 Plus: A Framework for Responsible Exploration
- Responsible public engagement should serve a valuable educational function, providing policymakers with relevant information and incisive arguments and analysis bearing on matters of public debate. Public policy positions should be based upon current, complete and accurate information and should not mislead or misinform
- In promoting their public policy positions, companies should not disguise their identity by acting confidentially through lobbyists or other organizations. Policymakers and the public are entitled to be accurately informed about who is promoting a particular policy and who is funding and supporting the promotion of specific policy positions
- Review the trade associations and other organizations that the company funds, to determine:
 - the lobbying positions of these organizations;
 - whether the policy positions align with the company's social and environmental policies and commitments;
 - whether they uphold standards of conduct are consistent with the company's social and environmental policies and commitments; and
 - how they represent members as a proxy force and how they account for minority opinions on public policy issues, when members do not agree with the majority position
- Be open and transparent about the political engagement, to the extent that it is possible within legal constraints and commercial confidentiality. Disclosure should include:
 - the organizations of which the company and its operating subsidiaries are members, if they engage in lobbying;
 - formal public policy positions, such as submissions to regulators and lawmakers and position on key industry issues;
 - political donations – to whom they went and how much; and
 - decision-making processes for political donations

Related e3 Plus Guidance

[Developing and Implementing a Code of Conduct](#)

Key Reference Sources

[Towards Responsible Lobbying Leadership and Public Policy \(2005\)](#)

