



ICGN

International Corporate Governance Network

ICGN Political Lobbying and Donations

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About ICGN

Established in 1995, ICGN Members include institutional investors with global assets under management in excess of US\$26 trillion present in over 45 countries. Our mission is to promote effective standards of corporate governance and investor stewardship to advance efficient markets and sustainable economies world-wide. As such, ICGN offers an important investor perspective on corporate governance to help inform public policy development and the encouragement of good practices by capital market participants. For more information on the ICGN, please visit www.icgn.org or contact the Secretariat by telephone: **+44 (0) 207 612 7011**, email: secretariat@icgn.org.

Preamble

The ICGN Guidance on Political Lobbying and Donations addresses investor concerns about corporate involvement in the political process, as a matter of both business ethics and corporate governance. This latest version was updated by the ICGN Business Ethics Committee in 2017 following consultation with ICGN Members. It incorporates revisions to the original document, first issued in 2011, to help guide investor and company engagement on the issue.

A healthy system of corporate governance ensures that companies make proper use of power that is entrusted to them by their shareholders. This relates to all aspects of a company's activities and includes a company's involvement in seeking influence in the political process. Investors understand that companies, as creations of law, can be affected significantly by public policy, law and regulation. Moreover, it can be both legitimate and beneficial to investors for companies to take an active and constructive role in helping to inform public policy debate, particularly in those areas of policy that clearly impact company interests.

Conducted in the right way and for the right reasons, corporate political activity can be positive; however when corporate resources are deployed to seek political influence there is also potential for abuse. In the extreme this can lead to serious breaches of business ethics, particularly when influence is sought through corrupt practices or in ways that are not consistent with promoting the long-term interests of the company and its investors. Even in non-extreme cases there is scope for ethical lapses or disproportionate influence by corporations involved with political influence that can have negative impacts. Consequently, it is a matter of good corporate governance for companies to ensure that any political involvement is both legitimate and transparent, and that companies and their boards are held properly to account for their political activities.

At a macro level, corporate political activities can grant undue influence to corporations relative to other interest groups. The concentrated wealth and access to financial resources by companies can provide them with disproportionate power and create a non-level playing field. While many political activities may be permitted by law, and may in some cases have broad societal value, it is also the case that concentrations of political influence can create distortions that can impact not only civil society, but also the efficient operation of markets and the interests of investors.

At a micro, or company-specific level, corporate political activity also may not be in the ultimate interest of the company and its shareholders. Indeed, there is academic evidence suggesting that, in the US, corporate political involvement may be negatively related to firm value. The greatest concern is when company resources are deployed in a way that is either corrupt or where the primary beneficiaries of corporate political activity are the company's managers or individual shareholders, and not the company as a whole. Even when corporate political involvement is supported by a clear business case, the risk of inappropriate activity can create reputational risks with unintended consequences for the company and its investors.



The ICGN recognises that there are differing legal frameworks and cultural norms in countries around the world that govern corporate political activity, and that many companies have a clear business case for seeking to inform or influence the public policy process. However the ICGN also recognises that abuse of political influence can be detrimental to public welfare, can squander corporate resources and negatively impact corporate reputation. As such, the focus of this Guidance is on ensuring that any political activities undertaken by companies have appropriate ethical and legal foundations, are in the long term interests of the company, and are governed according to these guiding principles in a way that manages potential risks robustly and serves the interests of all investors.

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Part 1: Guiding Principles

1.1 Key principles

Political lobbying can be a legitimate activity, but only if companies seek to influence public policy, legislation and regulation in ways that are transparent, appropriately controlled and linked to the company's strategy. Any political lobbying activity should be clearly supportive of shareholders' interests and conducted within an ethical policy framework, which recognizes the interests of other stakeholders. In particular there should be a transparent policy framework, a business rationale, shareholder support, robust board oversight and clear public disclosures.

ICGN's guidance on political lobbying and donations elaborates on four key principles:

- Legitimacy - clearly serves the long-term interests of the company as a whole and its investors and respects the concerns of other stakeholders;
- Transparency - clarity on the purpose of the political activity, the policy framework, the decision makers, when and how the company seeks to influence public policy and the direct/indirect costs;
- Accountability - company managers involved with political activity are held accountable by the company's board. The board, in turn, is held accountable by the company's shareholders for the company's political policies and their implementation; and
- Responsibility - political influence is sought within the constraints of legal and ethical norms and does not seek undue influence for individual executives or for special interest groups at the expense of broader public welfare.

1.2 Legitimacy of political lobbying and donations activity

Legitimate corporate political activities are those that are conducted legally and transparently, are clearly linked to a company's business purposes and strategic intent and carry the support of its shareholders. Such activities serve the interests of the company as a whole, not interests specific to individual managers or shareholders. Legitimacy is enhanced when corporate political activities occur within a clear policy framework that is overseen by the company's board and carries investor support.

Illegitimate political activities have the opposite characteristics. Corrupt political activity is a breach of business ethics and can also be in violation of the law. This should be avoided in all instances. But often there may be shades of grey, where "legal" political activity may be an inefficient use of company resources or only serve narrow interests. Company support of generic political issues, candidates or parties can be less compelling to investor interests than political involvement that seeks to influence or support specific strategic or corporate objectives. Moreover, donating that is non-specific leads to concerns about the misuse of corporate funds for the political objectives of individuals within the corporation rather the interests of investors.

The practice of monetary donations, or donations of other company resources, comes under particular scrutiny, both in terms of direct corporate donations to political parties or candidates, but also in terms of indirect donations through trade associations or other third parties. While corporate political donations are permitted in many jurisdictions, the fact that they are not permitted in some jurisdictions suggests that this is an area of potential controversy and abuse. As a general principle the ICGN discourages companies from making monetary political donations either directly or through third-party organisations/trade associations. In particular, donations to individual candidates should not be undertaken without careful consideration of the risks involved and without specific board approval.

The legitimacy of corporate political activity can be enhanced by shareholder support. The evidence suggests that shareholder engagement, including conscientious use of available voting rights, can be an important driver of change. For example, shareholder proposals that provide shareholders a chance to vote on political lobbying and spending practices are an increasingly common feature in US annual meetings.

It is also important to stress that companies should not discourage employees from participating in the political process on their own behalf, whatever their political conviction, even if that contradicts the political views advocated by official company lobbying or donations. Companies should neither inhibit nor penalise such employee activity; nor should they pressure in any way individuals to support particular political positions or make donations against their will. However, board directors and other senior decision-makers should be aware of the need to avoid conflicts of interests. In many jurisdictions, it is the duty of directors to act in the interests of the company. This precludes using a position of authority to promote a personal political view.

1.3 Concepts and definitions

Several key concepts warrant definition and which are presented below in order of increasing severity in terms of how political involvement can create risks and negatively impact long term corporate value.

Corporate political lobbying

Corporate lobbying is a common practice which seeks to inform and influence political decisions, regulation, legislation and policies according to the interests of an individual corporation, a sector or grouping of businesses, or business-at-large. Corporations that devote monetary or other resources to lobbying

activity typically do so to promote the interests of the company, and ultimately its investors. In some cases it could be argued that informational input is a social responsibility of business, particularly when there is important corporate knowledge about issues or technologies that can help to inform intelligent legislation and public policy. However, while corporate lobbying can be positive in certain contexts, concerns could arise when businesses seek to apply pressure to government officials or abuse their expertise in their advocacy. Hence, the focus of this Guidance is on ensuring that any corporations involved with lobbying avoid seeking undue influence and that corporate lobbying is clearly and legitimately linked to long-term corporate interests.

The Guidance takes a broad view of the meaning of the expression “corporate interest.” This recognizes that it can be in the narrow short-term interest of corporations to adopt lobbying policies that reflect a focus on short-term profits and business advantage regardless of the longer-term consequences for the company or society as a whole. Examples might be campaigns against environmental, tax, trade policy or consumer protection regulation that, if enacted, might impact profits in the short term. However, the broad interest of the company in these circumstances should be to support such legislation in the belief that it will create a healthy framework for longer-term corporate activity. Lobbying is

positive when it supports the creation of a healthy and sustainable market in which the company can operate over the longer term, and when it recognises the interests of a broad range of stakeholders. It may be unhelpful or even harmful when this objective is ignored and is directed solely to the narrow short-term interests of the company concerned.

Corporate political donations

Political donations can be regarded as providing corporate monetary resources, services, or other gifts-in-kind, directly or indirectly, to a political party, candidate, trade association, charity or other third-party. While donations, by definition, are typically provided without return consideration, the nature of political donations is such that some degree of influence can be sought through donations, both legitimately and illegitimately. Political donations are legal in most jurisdictions however the risks of impropriety are arguably greater with political donations than with corporate lobbying. This requires particular attention and scrutiny by boards and investors for those companies that choose to make political donations, especially in the case of donations to political parties and individual candidates. It is important for both boards and investors to understand the intent and business rationale for political donations.

Trade associations can play a useful role in public policy formulation when their approach reflects the broad interest principle outlined above. Sometimes, however, there is a risk that they too will

take a short-term approach based on the leverage of one or a few powerful members. It is important that trade associations have a constitution which enables them to balance the interests of all their members. This should include a bar on accepting individual donations in support of particular policies, a pre-agreed level of subscriptions and fully transparent policy positions arrived at through representative consultation with members. As part of their engagement shareholders are encouraged to discuss with companies their membership of, and policy towards trade associations.

Corruption

As in the ICGN Guidance on Anti-Corruption Practices, ICGN employs the definition of corruption from Transparency International, a leading civil society group. This defines corruption as “the misuse of entrusted power for private gain.” In the context of corporate political activity, corrupt practices can occur when a company seeks influence illegally, or when a corporation’s lobbying or donations serve individual interests and not the broad interests of the company and its investors as a whole. As such, corporate political activities that involve bribery or are corrupt in other contexts are clearly the most severe, and the ICGN Anti-corruption Guidance emphasises that investors should not accept any form of corrupt practice by companies.

Part 2: ICGN Guidance

2.1 Policy framework

Given reputational risks associated with monetary political donations, the parent company should set the policy framework and exercise oversight over its subsidiaries in this domain. Companies that take part in political activity should do so on the basis of a clearly articulated policy framework which should take into consideration the following:

- It should be grounded in a code of conduct that reflects the company's broader approach to business ethics.
- It should clearly establish that any company political activity is conducted for the purpose of promoting the longer-term commercial interests of the company as a whole, is in the interests of its investors while recognizing the interests of other stakeholders.
- Bearing in mind the overarching principle of responsibility, company lobbying and political activity should be conducted within the constraints of legal and ethical norms and should not seek undue benefits for special interest groups at the expense of broader public welfare. The names of lobbyist firms retained should be publicly disclosed.
- It should commit the company to public disclosures of its lobbying activities and any direct or indirect expenditure beyond a de minimis level (e.g., a contribution equal or less than \$10,000). For any donations to individual political candidates, disclosure should be made, even if this falls below a de minimis level.
- It should also articulate how any political spending occurs and who within the company is responsible for making spending decisions.

- It should pertain to direct political donations as well as to third-party organisations or trade associations that might in turn make political donations.
- It should apply to all company employees, including company agents and external representatives.
- It should clarify the board's ultimate accountability both for approving the company's policies for political activity and for overseeing the implementation of these policies.

2.2 Procedures

- The company policy towards political lobbying and donations should be communicated clearly by company management throughout the organisation, and should apply to company agents and external representatives when representing company interests.
- Training in company policies should be given on a regular basis for all company representatives who engage in corporate political activity.
- The company should establish robust internal controls and reporting processes as part of a risk management system to monitor compliance with its policies on corporate political activity. Clear sanctions should be in place for individuals who are found to be in breach of these policies.

- The board should also monitor the effectiveness of political lobbying and donations in terms of how this investment of time and resources benefits the long-term interests of the company.

2.3 Board oversight

- It is the responsibility of the board to understand and explicitly approve the company's policies with regard to political lobbying and donations. This includes charitable donations and donations to trade associations or related third-party organisations.
- The board should appreciate the legal and reputational risks associated with improper political activity and be responsible for oversight of political activity. This could come under the purview of board corporate governance or risk management committee, and includes monitoring and approving political and related charitable donations.
- In its monitoring the board should ensure that lobbying and political spending do not reflect narrow political preferences of the company's executives that have little or no bearing on the company's own commercial performance.

2.4 Transparency and disclosure

- Company policies on political activity should be publicly disclosed and easily found on a company's website.
- Companies should disclose lobbying positions on key policy issues and how these are reflected in written submissions to politicians, regulators, political parties or civil society groups. Companies should identify key relationships with trade associations that engage in lobbying on the corporation's behalf. For US companies with Political Action Committees (PACs), the details of political donations by the PAC should be made publicly available in a company's annual reporting.
- Companies should disclose their policies and processes for political donations. Direct and indirect political spending by corporations beyond a de minimis amount should be publicly disclosed and reported annually in terms of amount and stated purpose of the donation. For US companies, disclosure should include all state and local donations including gifts to "rule 527" organizations and ballot initiatives. The timing of such disclosures should also be disclosed, particularly in cases surrounding the election of political officials or legislative voting on key policy decisions. For example, in Germany, donations above €50,000 should be reported to the head of the Federal Parliament within one week. The intent and business rationale for any donations should also be disclosed.

- Given the occasional "revolving doors" between business and politics, companies should be transparent about the issue of accepting employees, including board directors, have or have had influential roles in politics

2.5 Shareholder approval

- Shareholders should be able to vote on a company's political donations policy, preferably through a company-proposed resolution or, secondly, through a shareholder resolution.
- Shareholders should be able to vote on the maximum amount of company donations for political purposes.
- Shareholders also should be in a position to vote on material changes to the company's donations policy.

Part 3: Different jurisdictional approaches to corporate political activity

Political activity by corporations varies considerably among countries. There is not a uniform approach to corporate political lobbying and donations globally. For example, in France there exists an outright ban on corporate political donations. At the other extreme, in the US, the Supreme Court's 2010 *Citizens United* ruling¹ confirmed the rights of US companies to provide funding for political purposes. This was a 5-4 Supreme Court ruling that confirmed the right of corporations to provide funding for political purposes, as legal "persons" whose freedom of speech is protected by the US Constitution's First Amendment. The case focused considerable attention, in the US and globally, about the appropriateness of corporate political spending. The controversy surrounding this split court decision and the subsequent public debate of this issue raise important questions about the legitimacy of corporate political spending and how such activities should be governed.

In markets where political donations are relatively unrestricted, Germany, for example, a history of public funding of elections reduces the prevalence of corporate money in the political process. In other markets, like Australia, there are strict donation limits, which in recent years have become lower in the context of a changing political environment. In the UK, political donations are not a common practice; however they are allowable by law.

The UK Companies Act of 2006 requires shareholders to approve an aggregate sum for any political expenditure. Hence, even for those companies whose own policy is not to make political donations, it is not uncommon to see resolutions on shareholder meeting ballots seeking approval for political expenditures up to a specified limit.

¹ *Citizens United v Federal Election Commission*, 130 S.Ct. 876 (2010).

Disclosure requirements may also act as a deterrent to large political spending by corporations. For example, in Germany any donation of €50,000 must be reported to the Head of the Federal Parliament, producing an almost de facto ceiling on large political donations. Donations above €10,000 must be disclosed in an annual report by the political party in receipt of the donation, but this is less significant in impacting a decision to donate. Generally speaking, many countries require annual disclosure of donations or only after an election, rules which mean disclosure will usually not have an immediate effect on the corporation's reputation.

Practices also vary when it comes to making donations to individual candidates. For example, in Japan it is permissible to donate to a political party or a political fund raising entity, but not to an individual candidate. In the US, following the *Citizens United* case, donations may be made by corporations to individual candidates. The issue of direct donations to candidates is probably the most fraught. Such donations can be interpreted as being closer to a bribe or a corrupt practice than donations to a political party or other entity. While direct donations may be made to a candidate supporting a position that is favourable to the corporation, the candidate's position on other unrelated issues may cause reputational risks for the corporation that are unexpected. Making a donation to a particular candidate can lead to "guilt by association" for the corporation. While this is also quite possible for party donations, it carries even higher risk for individual candidate donations.

A specific feature of the US framework is Political Action Committees (PACs), a mechanism dating back to the 1940s, which enables interest groups, which can include corporations, to raise money from individuals to support specific legislation, political candidates or an issue more generally. Corporations often serve as sponsors of PACs in which they can collect donations from employees and their families and from shareholders. While such donations are intended to be voluntary by nature, it can be the case that companies encourage employee contributions to PACs. Individual donations are limited in size, and PACs must be registered with and provide disclosures to the US Federal Election Commission. PACs can also be sponsored by unions, political parties and political candidates.

Data compiled for the Center for Political Accountability's 2016 CPA-Zicklin index meanwhile shows that 89.5 per cent of S&P 500 companies have policies addressing political spending. A slowly growing number of US companies are addressing "dark money" by adopting or strengthening policies on disclosure of policies on/or funding of trade associations. The number of companies with robust board oversight of political spending rose to 111 in 2016 from only 87 a year earlier².

2 For more detail see *The 2016 CPA-Zicklin Index of Corporate Political Disclosure and Accountability on politicalaccountability.net*

While this document is intended to be of relevance to companies in all jurisdictions globally, authoritarian regimes pose particular challenges for companies. In such regimes, where rule of law is often limited, corporate lobbying and influence-seeking may be essential for businesses to operate, but arguably run the greatest risk of corruption. Yet business can also play an important role in influencing positively public policy in such jurisdictions. For example, it may be of interest to companies to engage with governments to support the protection of an efficient democracy and human rights in accordance with Principles 1 and 2 of the UN Global Compact (UNGC) and the “Protect, Respect and Remedy” framework proposed by John Ruggie, the Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises.

Annex 1: Acknowledgements

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