FIVE LESSONS FOR BUILDING BUSINESS INTEGRITY IN THE MINING SECTOR

Lessons from Transparency International's Accountable Mining Programme

Transparency International's Accountable Mining Programme is working across TI's global network to look at where and how corruption can get a foothold in the mining sector. Using the Mining Awards Corruption Risk Assessment (MACRA) Tool, TI national chapters across 6 continents have identified and assessed corruption risks in mining approvals. By working collaboratively with governments, companies, civil society organisations and communities, we want to build a fairer, clearer and cleaner process for obtaining a mining permit. By building a better system and a fairer process we can prevent corruption before ground is even broken.

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Australian Government

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Transparency International's Accountable Mining Programme

Since 2016, Transparency International has been working with industry, governments, communities and civil society through the Accountable Mining Programme to research and address the corruption risks in mining licensing and approvals in more than 20 countries.

INTRODUCTION

Business integrity is an integral part of responsible business. A convergence of regulator, investor and consumer demand for responsible mining means that it is more important than ever for mining companies to demonstrate robust business integrity practices.

Business integrity refers to a company's policies, procedures and practices for preventing, detecting and addressing bribery and corruption in its business activities. Robust and effective integrity systems are essential for business as companies implicated in corruption face significant legal, reputational and financial consequences.

> **One in four corruption cases in the oil, gas and mining sectors occur during licensing and permitting according to the OECD.**

BUSINESS INTEGRITY IN MINING

Growing recognition of the mineral needs of the energy transition in parallel with increasing demands for responsibly sourced minerals and strong environmental, social and governance (ESG) performance have sharpened the focus on business integrity in the mining sector.

Corruption risks are present in all mining jurisdictions[1] and some jurisdictions, including those with significant reserves of energy transition minerals, are particularly corruption prone.[2]

This makes having effective business integrity systems a compliance, commercial and ethical imperative for all mining companies now and into the future.

A FOCUS ON LICENSING

The licensing phase of a mining project is particularly susceptible to corruption. According to the OECD, one in four corruption cases in the oil, gas and mining sectors occur during this initial phase.[3] To address this problem, Transparency International's Accountable Mining Programme has been working with stakeholders to tackle the systemic weaknesses in the public and private sectors that open the door to corruption in mining sector licensing and permitting.

RAISING BUSINESS STANDARDS AND AMBITION

Raising business integrity standards and ambition in the mining industry is a key focus for the Accountable Mining Programme. As part of these efforts, the programme has developed a range of industry-relevant guides and tools, informed by interviews with and surveys of companies of all sizes. The programme also works with global partners to bring together mining companies for dialogue on business integrity priorities and practices.

MINING COMPANIES CAN BE CATALYSTS OF CHANGE

Mining companies have an important role to play in preventing and detecting corruption. The Accountable Mining Programme has been working with mining companies of all sizes to promote stronger and more effective anti-corruption and business integrity policies, procedures and practices at the earliest stage – when companies are seeking to secure a mining licence or to invest in or acquire an existing project.

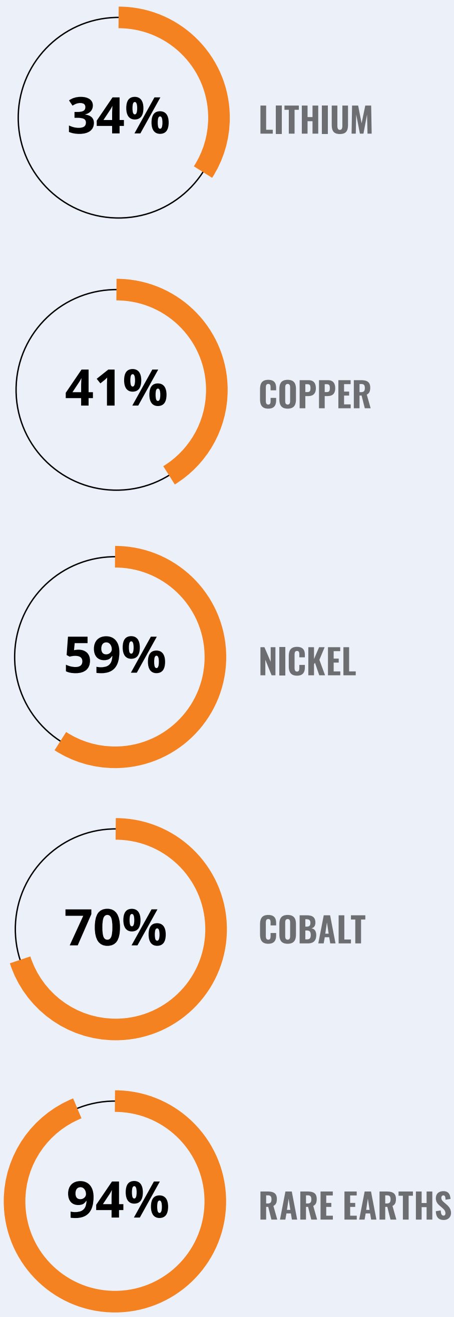
FIVE LESSONS FOR COMPANIES

This paper highlights a selection of lessons and recommendations from our work with the mining industry and is organised around five key lessons for business integrity:

1. Corruption risk management is central to business integrity
2. To embed integrity in the company, make it everybody's business
3. Business integrity extends to engagement with communities and Indigenous peoples
4. Corporate influence over political activities raises alarm bells for integrity
5. Greater transparency helps demonstrate business integrity

These insights come from Transparency International's engagement with small, medium and large mining companies and our work with our global partners, the World Economic Forum, the International Council on Mining and Metals (ICMM) and the Extractive Industries Transparency Initiative (EITI). By sharing these insights, we hope to promote higher anti-corruption standards and responsible business practices in the mining sector – and contribute to a just and equitable energy transition.

PERCENTAGE OF KEY ENERGY TRANSITION MINERALS IN CORRUPT JURISDICTIONS



Source: Based on Church and Crawford (2020) Minerals and the Metals for the Energy Transition using the Transparency International 2017 Corruption Perceptions Index.

1. CORRUPTION RISK MANAGEMENT IS CENTRAL TO BUSINESS INTEGRITY

Assessing corruption risks is a fundamental first step to ensuring business integrity. Companies need to understand the risks they could be exposed to and put in place measures to mitigate those risks. Guidance on leading anti-bribery and corruption laws, the UK Bribery Act 2010 and US Foreign Corrupt Practices Act of 1977, position risk assessment at the centre of corruption prevention and effective anti-corruption compliance programs.[4]

Lesson 1.1: The licensing and permitting stage presents significant corruption risks

- The licensing phase of a mining project is particularly susceptible to corruption due to companies' close interactions with government and communities, and the high business stakes to secure the deal. There are three inter-related areas of corruption risk that companies need to assess and be prepared to manage during licensing and permitting for a new project or expansion of an existing mine: (i) corruption risks in the jurisdiction where the project will be located, (ii) corruption risks in the relevant licensing and permitting process and (iii) corruption risks associated with the company's third-party relationships with business partners and contractors.
- Both the design and the implementation of laws governing the licensing process can create corruption risks. High-risk aspects of the licensing process include ambiguity around application requirements and fees, requests for facilitation payments, gifts and political engagement, community consultation and land access, local content requirements and third parties (joint venture partners, agents and major contractors).
- All companies – regardless of their size – need to have business integrity and corruption risk management systems in place to manage corruption risks during licensing and throughout the project lifecycle. The scale of those systems needs to be appropriate for the size of the company and the nature and location of its activities. Multinational companies with thousands of employees in multiple jurisdictions may need a strategically structured compliance function with sophisticated software and procedures to detect, track and manage business integrity risks.
- For smaller companies with fewer staff and more limited geographical reach, dedicated compliance personnel and technology may not be necessary (or affordable). However, appropriate and practical procedures for detecting and managing risks remain essential for small and junior miners as these companies are often highly exposed to corruption risks precisely because of their size, financing and the high-stakes nature of exploration.[5]

Lesson 1.2: Third-party risks are particularly high at the licensing stage

- When moving into a new jurisdiction, a company inevitably depends on third parties for advice and to assist with business activities and to navigate new terrain. Third parties that are commonly hired during licensing and permitting include lawyers and consultants to advise on legal requirements and to help prepare licence applications/bids, and agents to represent the company in interactions with government officials.
- However, third parties are a significant source of corruption risk for companies. The overwhelming majority of corruption cases prosecuted under the FCPA involve third party intermediaries or agents.[6] Companies planning to hire a third party to deal with government officials and assist with securing rights and permits need robust integrity due diligence and approvals procedures, with clear

guidelines about which high-risk third parties are off-limits. Contractual arrangements must not include performance incentives that encourage unethical or corrupt behaviour.

Lesson 1.3: The 'uneven playing field' is a challenge for mining companies of all sizes

- It is often challenging for companies to compete for licences and contracts against companies that are not bound by strict anti-corruption laws or that are state-owned or backed. Many of these companies are not as sensitive to reputational damage from a market or investor perspective, or are not under the same regulatory pressure, and so may be willing to get involved in projects, take on business partners and operate in locations that publicly listed companies would find too risky or incompatible with their business integrity standards.
- It is less common for state-owned or supported companies to participate in initiatives for responsible business conduct which means that they are less likely to be influenced or pressured by collective efforts or statements by industry peers for higher business integrity standards.
- While bigger companies may have the political clout and financial resources to refuse demands for bribery and corruption and to withstand significant delays, for smaller companies, adopting this approach in high-risk jurisdictions can be extremely costly. In some cases, withdrawal from a country due to the corruption risks may be the only viable option from a commercial perspective.

Top 50 biggest mining companies

In one global ranking of the top 50 most valuable mining companies, five Australian companies held 30.1% share of overall market value, followed by six US companies holding 13% and then nine Canadian companies at 12.5%. Eight Chinese and four Russian companies are next with 8.9% and 7.8% respectively.[7]

RECOMMENDATIONS

- **Assess corruption and business integrity risks as a core part of investment decision-making** before starting a new project or entering a new jurisdiction. This should include not only generalised corruption risks in the country, but also risks in the licensing process – including processes for environmental and social impact assessment and community consultation and consent. The risk assessment should inform the company's decision about whether and with what controls and mitigation measures to proceed.
- **Conduct due diligence when acquiring an existing mining project or company** to determine whether the original company obtained the rights to explore or mine for its project(s) in accordance with the law as the company may be held liable for corrupt practices of the company it has acquired.
- **Assess and manage the significant corruption risks presented by third parties at the licensing stage.** This involves screening the political connections of the beneficial owners and directors of joint venture partners and major suppliers to make sure their stake in the project is not part of a corrupt deal in exchange for the licence or approval of the mining project. Similarly, any agents or advisers hired to assist with securing licences and permits should be subject to appropriate due diligence and anti-corruption controls as any corrupt conduct of these high-risk third parties may be attributed to the company.

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RECOMMENDATIONS

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- **Make sure business integrity expectations of smaller mining companies are realistic and fit for purpose.** Work with smaller companies to improve their business integrity policies, procedures and practices should focus on making sure their systems are appropriate for their size and risk exposure and work in practice. This means taking into account their economic and political power relative to other companies in the jurisdiction where their project is located when delivering training and designing contractual obligations.

Read more:

- Transparency International Accountable Mining Programme, Corruption risks and ESG screening of mining investments - investor briefing paper – details the corruption risks and red flags to look for in company anti-bribery and corruption policies and practices and how to respond.
- Transparency International Accountable Mining Programme, Anti-Corruption Guide for Junior Mining Companies – explains the business case for company action against bribery and corruption, sets out the corruption risks and red flags in five high-risk areas in mining licensing, including third parties, and provides links to sample anti-corruption policies and training materials for smaller mining companies.
- OECD, Frequently Asked Questions on How to Address Bribery and Corruption Risks in Mineral Supply Chains – provides practical guidance on how companies can identify, prevent, mitigate and report on risks of contributing to bribery and corruption through their mineral sourcing.

2. TO EMBED INTEGRITY IN THE COMPANY, MAKE IT EVERYBODY'S BUSINESS

When mining companies look to pursue business opportunities in jurisdictions with weak governance, the need for effective anti-corruption compliance programs and a strong culture of business integrity becomes greater than ever.

Companies need to ensure their anti-corruption policies and procedures are effective in preventing and detecting corruption. The updated US Department of Justice guidelines, for example, emphasise that prosecutors should look at whether the company's anti-corruption compliance program is adequately resourced and empowered to function effectively and whether it works in practice.[8]

A key lesson from Transparency International's work with mining companies is that for anti-corruption programs to be effective, companies not only need to allocate sufficient resources but must *strategically deploy* those resources to successfully embed business integrity throughout their operations. The following lessons are examples of good practices to embed business integrity.

Lesson 2.1: Business units need to be equipped to take ownership of corruption risks

- Business units – in particular, the parts of the company in charge of investments and setting up and running mining projects – should be responsible for conducting and implementing risk assessments for their activities, including corruption risks. The compliance function (or external expert consultants in the case of smaller companies without a compliance function) should provide anti-bribery and corruption expertise, implementation support and oversight. Through this joint effort, business units will have a better understanding of the corruption risks they could face but, importantly, maintain ownership and responsibility for managing the risks when they arise.
- The compliance function should identify which employees are in high-risk roles by assessing, for example, to what extent they engage with government or communities or operate in a high-risk country. Those employees should receive additional, tailored anti-corruption training based on the scenarios and issues emerging from the specific corruption risk assessment conducted by their business unit. This ensures that training is based on real risks and is therefore practical and relevant.

Lesson 2.2: The compliance function needs to engage regularly with business units

- Developing policies and procedures and delivering tailored and targeted training is important, but only the first step toward an effective anti-corruption programme. Ongoing engagement both through informal and formal communications with employees in business units helps the anti-corruption compliance function to ensure that policies are understood and implemented. Ongoing engagement with business units also enables the compliance function to understand what is happening across the business in order to anticipate and respond to any emerging corruption risks.
- To detect red flags and risk areas requiring special intervention or targeted support, the compliance function needs to build relationships and be in regular contact with the business and investor parts of the company. The compliance function should be viewed by other parts of the company as an independent ally and source of expertise and integrity support, not a heavy-handed control and enforcement function.

Lesson 2.3: Anti-corruption procedures should be realistic and hardwired into general business systems

- Effective systems are ones that take into account the day-to-day pressures on employees and the barriers and challenges they come up against when it comes to implementing anti-corruption policies and procedures. The anti-corruption compliance function should focus on addressing common roadblocks by designing practical systems that are as easy as possible for employees to follow and that make red line issues clear to staff.
- Where possible, procedures should be designed with the realistic expectation that some employees will not be familiar with every aspect of the requirements or will not follow them perfectly. To avoid non-compliance, one effective approach is to 'hardwire' anti-corruption procedures into standard company operating procedures so that employees – by necessity – must follow the procedures.

Lesson 2.4: The tone from the top needs to be echoed by the message from the middle

- Company leaders in the C-suite and Board directors need to be role models for a culture of integrity and should clearly and frequently communicate to employees their commitment to integrity and zero tolerance for corruption. Equally, middle managers at a country and site level need to communicate this commitment as they are the ones who set the tone 'on the ground'.
- Employees should receive a clear, regular and consistent message that they have the company's support to resist requests or demands for bribery or corrupt conduct and to report any concerns without fear of reprisal through the company's whistleblower channel. Companies with a healthy culture of integrity are those companies whose employees are willing to speak up about corruption and integrity concerns.

RECOMMENDATIONS

- **Treat anti-corruption and ethics as a responsibility of all employees**, not just the compliance team. The company's business integrity systems should be designed to foster a sense of accountability for preventing and detecting corruption as well as a culture of integrity among all employees. Board endorsement and oversight is essential – for companies of all sizes. In mid-tier and major companies, the dedicated compliance team should have a direct reporting line to the Board and be led by a senior executive, such as a Chief Compliance Officer.
- **Empower integrity champions to engage with the rest of the business.** Mid-tier and major mining companies should set up a dedicated anti-corruption and ethics team that is empowered and resourced to engage on a regular basis with business units in all regions where the company operates or is planning to operate. Communication should happen through a combination of scheduled, periodic discussions as well as unscheduled, informal check-ins and ad hoc meetings, for example, when there is a lesson to share from a relevant enforcement action.
- **Design smart anti-bribery and anti-corruption procedures** that are automatically triggered without employees needing to recall every detail of the relevant policies and procedures. For example, hardwiring third-party due diligence and pre-approval steps into the company's procurement system means that employees will automatically trigger the due diligence processes when they attempt to hire a third party, even if they are not aware of these requirements. In this way, due diligence comes to be accepted as a standard business or operating procedure.
- **Send a clear and consistent message about integrity** from top, middle and county-level management. Performance metrics and indicators that are purely commercial targets can create incentives for conduct that is inconsistent with efforts to create a culture of integrity. Assess employee performance incentives and recalibrate performance indicators so that they are consistent with messages from leadership about integrity.

Read more:

- Transparency International Accountable Mining Programme, Responsible Mining Business Integrity Tool – is an online, interactive self-assessment tool bringing together indicators from best practice standards, reporting frameworks and anti-bribery laws to help companies evaluate and improve their anti-corruption and business integrity policies and practices.
- Transparency International UK, Global Anti-Bribery Guidance – sets out best practice on anti-bribery and anti-corruption programs, including policies and procedures, communications and training, whistleblowing, monitoring and review.
- Transparency International UK, Incentivising Ethics – provides guidance on incentives to deter bribery and corruption and other unethical conduct and to encourage good behaviour.

3. BUSINESS INTEGRITY EXTENDS TO ENGAGEMENT WITH COMMUNITIES AND INDIGENOUS PEOPLES

Business integrity is fundamental to meaningful and inclusive community engagement and responsible business conduct. Corruption in the course of engaging with communities can erode trust in the company and damage relationships with women and men in host communities. In some cases, it can also result in human rights violations, with disproportionate impacts on women.

Transparency International's series Building a fairer process from the ground up presents several case studies on the links between corruption and human rights in community engagement.[9]

Lesson 3.1: Corruption risks in community engagement can compromise social performance

- Community engagement can be a complex area for business integrity. It is an area prone to corruption risk, as research in more than twenty countries by Transparency International's Accountable Mining Programme has found.[10] Several companies have indicated to Transparency International that some of the most significant challenges for integrity they face are in relation to community engagement and agreement-making.
- Addressing these integrity challenges and minimising the scope for corruption in community engagement is necessary to ensure that the company respects the human rights of all individuals and groups within the stakeholder community. Indeed, an integrated approach to risk management that recognises the links between corruption and human rights[11] can enhance the quality of company efforts to develop projects that bring benefits to the local community as a whole.
- Companies that deal with corruption and human rights risks in community engagement in an integrated way are taking a stakeholder-centric rather than company-centric approach to risk management, consistent with the United Nations Guiding Principles on Business and Human Rights.

Corruption in community engagement is more likely to occur when:

- Engagement and agreement-making only occurs with local elites in an opaque and non-transparent way, excluding women and men of the affected community from participating.
- Accountability is weak because the rules and requirements for consultation and engagement with communities are not clear.
- Transparency is low because critical information about project plans and impacts is not available or is not provided in a form that is accessible to women and men in affected communities.
- Agreements between community representatives and the company are not available to community members to enable them to see the agreements made and hold company and leaders to account.

Source: M. Erdiaw-Kwasie and L. Caripis (2021), Stronger Community Voices: Addressing Corruption Risks in Community Consultation in Mining. *Transparency International: Melbourne.*

Lesson 3.2: Company policies and procedures should specifically address community engagement corruption risks

- Policies should recognise that community leaders hold a position of responsibility and represent the interests of a broader group. For this reason, the company's policy on providing gifts and benefits to government officials should also apply to traditional leaders to ensure the company does not provide a leader with a benefit that is disproportionate to the rest of the community and that could improperly influence the leader's decisions.
- Similarly, donations and social investment can be vehicles for corruption when they favour a particular individual or group rather than the entire community. Policies should outline the purposes for which such funds may be given and the risk assessment, due diligence and approval processes, as well as the record-keeping, public reporting and governance requirements.
- Policies and training should include examples of conflict-of-interest situations that can arise in community engagement such as where the company intends to provide community development assistance or donations during negotiations for land access or other compensation, or as part of obtaining the Free, Prior and Informed Consent (FPIC) of Indigenous peoples.
- Pre-approval from an independent part of the company such as the compliance function should be required for any gifts, funds or benefits the company intends to provide to communities to detect and manage any real or potential conflicts of interest or integrity red flags. Absolute prohibitions may be appropriate in certain circumstances such as on gifts or benefits that would improperly influence decisions or favour particular individuals or group of individuals, for example, in relation to land access or to cultural heritage.
- Transparency is critical to minimising corruption risks. Record keeping and public reporting should, at a minimum, cover community contributions and payments, the purpose of the payments and the recipients, and whether these contributions are made voluntarily or to meet regulatory requirements for local/community development funds.
- Documenting discussions with community members about company commitments and undertakings can help to ensure that all company representatives interacting with the community are on the same page. This can assist in preventing and resolving any potential misunderstandings with the community.

Lesson 3.3: Business integrity policies need to reflect an understanding of the reality on the ground

- Compliance teams need to recognise that the unique dynamics in individual communities and cultures, especially around traditional decision-making processes, mean that it can be challenging for employees to implement business integrity procedures in the field.
- Companies need to understand and respect traditional community decision-making processes and governance while still adhering to solid integrity principles and ensuring they engage appropriately and inclusively with different groups of women and men. This means being sensitive to the form in which they communicate information about the project and the timing, location and setting of meetings with community members.
- It is necessary for companies to adopt a nuanced approach to governance issues when engaging with Indigenous communities. Imposing disclosure requirements or anti-corruption controls in agreements without first building a relationship of trust may be counterproductive. Companies need to enter into engagement with Indigenous communities recognising the historical and often ongoing dispossession of these communities and their lack of self-determination and power.

RECOMMENDATIONS

- **Support the compliance function to work with functions responsible for human rights and community engagement** so that the compliance team can better understand the reality on the ground and the challenges employees encounter when it comes to implementing the company's business integrity policies and procedures. Greater communication between these functions would also help to improve collective understanding of the links between business integrity and human rights risks and enable the company to manage the impacts of its activities on local communities more effectively.
- **Where appropriate, employ or hire experts who understand the local culture and traditional decision-making process** to work with the compliance and community engagement teams to ensure that integrity and anti-bribery and corruption policies and procedures are implemented in a culturally appropriate way.
- **Update anti-corruption policies and training in response to feedback from frontline employees** to ensure they are appropriate and effective in different community contexts. Policies and trainings should make use of practical scenarios to raise awareness of corruption red flags in community engagement.
- **Create opportunities for sharing experiences, challenges and good practices for managing business integrity risks in community engagement** between relevant employees from projects in different regions of the world. This could even be formalised through an internal working group. Such discussions could also help to uncover and address conflicting performance metrics and incentives that put pressure on employees to progress the project at the cost of meaningful community engagement and integrity standards.
- **Take steps to ensure that the company's engagement with communities is inclusive and gender-responsive** so that women's voices are heard, and community decisions are representative of the views of both men and women. This could include providing training on the links between gender, human rights and corruption risks for employees engaging with communities and responsible for gender impact assessments.

Read more:

- Transparency International Accountable Mining Programme, Why Tackling Gender Inequality is Key to Addressing Corruption in the Mining Licensing Process – explains the links between gender and corruption in the licensing process with a section on community engagement.
- Transparency International Accountable Mining Programme, Stronger Community Voices: Addressing Corruption Risks in Community Consultation in Mining – explains the risk factors for corruption in community consultation about mining projects with sections on FPIC and engagement with Indigenous Peoples.

4. CORPORATE INFLUENCE OVER POLITICAL ACTIVITIES RAISES ALARM BELLS FOR INTEGRITY

Political donations, lobbying and recruitment from government can be a grey zone for corruption. To demonstrate respect for democratic institutions, companies must ensure that their involvement in any of these activities does not – and is not perceived to – unduly influence laws, policies and government decisions.

The way the company engages in political activity can create corruption risks. While these activities may be a less obvious form of corruption than conventional payment of bribes, they are no less insidious or damaging to public decision-making and to public trust in both industry and the government. Business integrity policies need to regulate the company's involvement in political activities to ensure that the company respects the integrity of political institutions and processes at all times.

Lesson 4.1: Banning political donations and contributions is best practice

- Providing financial contributions to political parties, candidates and politically connected committees or foundations creates – at the very least – the perception that the company seeks to buy influence or some kind of favour in return.
- At its most entrenched, this can lead to what the OECD has termed policy capture which is 'the process of consistently or repeatedly directing public policy decisions away from the public interest towards the interest of a specific interest group or person.' [12]
- Some companies ban all political contributions[13] which helps to eliminate any risk of corruption or perception of corporate influence and interference in political activity and government decision-making.

Lesson 4.2: Responsible political engagement means being transparent about the company's lobbying activities

- Companies and industry associations can provide useful perspectives to assist in the development of public policies and legislation. However, when lobbying is done in the dark, it fuels the perception that certain companies or industries have excessive access to and influence over lawmakers, which damages public trust in the political process and hurts the social licence of the industry as a whole.
- Companies need to do better when it comes to being transparent about the lobbying they conduct directly and through industry associations. Of the 40 companies reviewed in the 2020 Responsible Mining Index, very few fully disclosed their lobbying activities.[14]

Lesson 4.3: Company policies on recruitment from government must be transparent about integrity safeguards

- Employing or hiring a government official who previously worked in a position of influence over the company's business interests raises red flags, particularly if that person is hired to lobby government or as an advisor or agent to secure a business advantage on the company's behalf or to assist with licensing, permitting and other government approvals.

- According to the Transparency International UK 2018 Corporate Political Engagement Index, company performance is weak across all industries – including the mining industry – when it comes to being transparent about measures to manage conflicts of interests involving the hiring of government officials.[15]
- Companies may have internal approvals processes for managing the integrity risks associated with hiring former or serving government officials, but unless the details are publicly available, the mere statement that such procedures exist does not provide much confidence to external stakeholders.

RECOMMENDATIONS

- **Ban political donations.** Where companies do not ban political donations and contributions, they should at least disclose details on a country-by-country basis including the value of the donations and in-kind contributions, when they were made and the details of the recipients, consistent with global sustainability standards such as the Global Reporting Initiative (GRI) Standard 415: Public Policy.
- **Disclose all lobbying activities**, specifying the public official the company has engaged with, and consistent with GRI 415, the topic or issues in discussion and the outcomes sought by the company.
- **Stipulate a cooling-off period before certain categories of government official can be employed or hired** – particularly if they are to be engaged as a lobbyist or agent. This should be contained in publicly available company policies to demonstrate that the company respects the independence of government decision-makers.
- **Disclose approval criteria for recruitment from government** where the company has chosen not to set cooling-off periods. This transparency would help to give confidence to external stakeholders that the company is committed to and has effective systems for managing the business integrity and social licence risks associated with employing or contracting individuals from government.

Read more:

- Transparency International UK, Wise Counsel or Dark Arts: Principles and Guidance for Responsible Corporate Political Engagement – sets out the different types of political activity and the measures and reporting that companies should put in place to ensure they are carried out responsibly.

5. GREATER TRANSPARENCY HELPS DEMONSTRATE BUSINESS INTEGRITY

Disclosure of public interest information about the company and its projects is an opportunity to demonstrate leadership and commitment to business integrity to stakeholders such as investors, regulators, affected communities and the public more generally.

Public interest information

Host communities and interested members of the public need accurate information about the company and its projects to be able to engage with the company in an informed way. Public interest information demonstrates the company's commitment to transparency and accountability.

At the licensing and permitting stage, public interest information includes the following:

- The company's corporate structure, beneficial owners, joint venture partners and subsidiaries
- The company's projects, including details of the rights and obligations and potential environmental and social impacts
- The company's anti-bribery and corruption policies and procedures, and performance

Lesson 5.1: Companies have an opportunity to lead on corporate structure and ownership transparency

- Beneficial ownership disclosure and corporate transparency is a prominent issue on the global transparency agenda. Over 50 governments have committed as part of the Extractive Industries Transparency Initiative (EITI) to require the oil, gas and mining companies applying for or holding a licence in their country to disclose their beneficial owners.
- Listed companies must disclose their stock exchange listing on the assumption that the ownership disclosure requirements of the stock exchange are sufficient.[16] However, this requires stakeholders to sift through and make sense of information disclosed in disparate company filings. Moreover, not all stock exchanges require the same level of transparency and disclosure about shareholders.
- According to the Responsible Mining Index 2020, some companies are disclosing the names of directors holding shares and the number of shares held.[17] In rare cases, companies have disclosed the legal owners of joint venture partners and their share of ownership.
- Some publicly listed companies are required by the laws of the countries where they are listed, such as the United Kingdom and Australia, to disclose shareholders with significant holdings or voting rights over a certain threshold and any changes to their holdings. However, the listing requirements often permit disclosure of the legal owners – generally an investment fund – rather than requiring disclosure of the ultimate beneficial owners (i.e. natural persons).

Lesson 5.2: Companies can do more to enhance access to public interest information about their projects

- Mining company websites commonly display information about the location of their projects and operations. However, only a few companies disclose the legal titles (licences, contracts etc) granting them the right to explore or mine.[18] Public access to the agreements and licences setting out the terms and obligations attached to the exploration or mining right, builds public confidence in the accountability of the company. Reliance on government licence registers or cadastres to provide this information is not enough to guarantee transparency as these registers are often incomplete or out of date.[19]

- EITI member governments are required to publish the oil, gas and mining contracts and licences amended, granted or entered into with companies from 1 January 2021.[20] Company supporters of the EITI, of which there are 40 mining companies, are expected to support disclosure by EITI member governments.[21] While a 2021 review found that one-third of member companies supported government disclosure, the majority of member companies had not yet issued public statements to that effect.[22]
- Details of company environmental and social impact assessments (ESIAs) and related management plans are public interest documents, particularly for the communities affected by the mine. Few companies publish this information, relying instead on government registers to be complete and up to date.

Lesson 5.3: Company disclosure of business integrity policies and performance can be improved

- Transparency about the company's business integrity standards is fundamental to building trust with consumers, investors and business partners. Most of the mining companies reviewed in the Responsible Mining Index 2020 have made a formal and public commitment to prevent all forms of bribery and corruption.[23] To show the company has mechanisms in place to implement this commitment, companies need to disclose their business integrity policies and procedures. Some companies disclose policies with general principles, such as a Code of Conduct, but more detailed policies and procedures are not always available or easy to find on the company's website.
- Beyond disclosure of company policies, investors are starting to require companies to publicly report on how they evaluate the effectiveness of their anti-bribery and corruption policies and procedures.[24] This echoes the expectations of law enforcement such as the US Department of Justice and UK Serious Fraud Office that companies will review their anti-corruption compliance programs to ensure that they work in practice.[25] Few companies currently provide meaningful disclosures on the outcomes and impact of their anti-bribery and corruption policies and procedures.[26]
- Better transparency and disclosure on anti-corruption and integrity risk management would also support company compliance with the OECD Guidance for Responsible Supply Chains of Minerals[27] which has been integrated into legal frameworks of producing and importing countries, as well as various metal exchanges and member requirements of industry initiatives. The Guidance requires companies to publicly report on an annual basis on how they identified, mitigated and prevented a set of adverse impacts, including integrity risks, linked to their mineral supply chains.

RECOMMENDATIONS

- **Commit to corporate ownership transparency.** Companies that support the EITI have endorsed the EITI's requirement that all oil, gas and mining companies should publicly disclose their beneficial owners. To demonstrate active support for this important anti-corruption measure, companies should sign and implement the commitments in the Statement by Companies on Beneficial Ownership Transparency. [28] As part of this, companies should disclose their holdings in all subsidiaries and joint ventures, the legal owners of any partially owned entities and their respective shareholding.
- **Make information about the company's ownership more readily available.** Ownership information should be published on the company's website as regulatory and listing requirements

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RECOMMENDATIONS

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regarding ownership disclosure are not always transparent, accessible or adequate. For listed companies, this means disclosing the company's legal owners and, where possible, the beneficial owners meeting applicable criteria or thresholds, along with their percentage ownership. The company should clearly state which ownership is legal ownership and which ownership is beneficial ownership. The company should also publish the thresholds and criteria it uses to determine when a natural person has an interest in the company that makes them a beneficial owner – citing the applicable laws or, where none apply, the company's policy on voluntary beneficial ownership disclosure.[29] Ownership information should be updated on a semi-annual basis and published in line with international open data standards.

- **Demonstrate leadership on ownership transparency.** Three key actions that companies can take to champion ownership transparency are to 1) Report on the company's efforts to encourage joint venture partners and contractors and suppliers to publicly disclose their beneficial owners. 2) Publicly state that they will not do business with companies that do not disclose their beneficial owners or with deliberately opaque structures.[30] 3) Express support for governments to screen the beneficial owners of companies applying for exploration and mining rights.[31]
- **Disclose contracts and licences granting mining rights and setting obligations.** Company members of the EITI are expected to 'deliver data required for high standards of accountability' and to support countries to disclose their licences and contracts. To both encourage and complement systematic disclosure by governments, companies can show leadership on transparency by disclosing their licences and contracts, where it is legally possible, in a location that is easy to find on their website. Companies should also publish their policies on contract disclosure and make public statements of support for contract and licence transparency.
- **Make ESIAs and impact management plans available on the company website** where government websites are not complete or up to date. In their engagement with affected communities, it is also important that companies provide information about the project plans and potential impacts in a way that all community members – women and men, youth and elders – can access and understand. This may involve developing translations, summaries and graphical depiction, and ensuring the community can access independent advisors and experts.
- **Make the company's anti-corruption and business integrity policies and procedures easy to find on their website.** Companies should also work towards publicly reporting on how they measure their business integrity performance, giving careful consideration to what constitute meaningful metrics for the company and for stakeholders. This could include, for example, statistics on the outcomes of third-party due diligence, changes in employee understanding as a result of anti-corruption training, use of the whistleblower hotline and management of integrity incidents.

Read more:

- Transparency International UK (2020) Open Business – offers companies guidance on how to make business integrity disclosures meaningful. The report includes best practice company examples.
- Transparency International UK (2021) Make it Count – details current and emerging trends in methods to evaluate the effectiveness of corporate approaches to anti-corruption.

CONCLUSION: COMPANIES HAVE AN OPPORTUNITY TO BUILD ON PROGRESS SO FAR

Mining companies can be powerful advocates for integrity in the mining sector through their anti-corruption and business integrity policies, procedures and practices – but they must get things right from the start. This means having and implementing robust and effective anti-corruption policies and procedures when seeking to secure mining licences and permits or to invest in or acquire an existing project. From Transparency International's experience, company commitment and action to improve business integrity practices is growing. To build on progress to date, Transparency International's Accountable Mining Programme will continue to work with companies of all sizes, investors and industry bodies to raise business integrity standards and contribute to a more responsible mining sector.

ENDNOTES

1 Since 2016, Transparency International has assessed the corruption risks in the licensing and permitting processes in 23 countries across all regions. See, L. Caripis (2017) *Combatting Corruption in Mining Approvals*. Berlin: Transparency International and Transparency International Accountable Mining Programme, 'What we learned from our latest national research' (web), 24 February 2021.

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4 See US Department of Justice, 'Evaluation of Corporate Compliance Programs (updated 1 June 2020)' available at www.justice.gov/criminal-fraud/page/file/937501/download and UK Serious Fraud Office, 'Evaluating a Compliance Programme' (web), 1 January 2020. Available at www.sfo.gov.uk/publications/guidance-policy-and-protocols/guidance-for-corporates/evaluating-a-compliance-programme.

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14 *Responsible Mining Index 2020*, Business Conduct, B.07.1.

15 Transparency International UK (2018) Corporate Political Engagement Index.

16 EITI Standard 2019, requirement 2.5(f).

17 *Responsible Mining Index 2020*, Business Conduct, B.05.1.

18 R*esponsible Mining Index 2020*, Business Conduct, B.03.1.

19 L. Caripis (2017) *Combatting Corruption in Mining Approvals* also Resource Governance Index (web), available at www.resourcegovernanceindex.org. Accessed 27 August 2021.

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22 EITI, 'Meeting the EITI supporting company expectations: An assessment of current practice', 11 June 2021 (web).

23 *Responsible Mining Index 2020*, Business Conduct, B.01.1.

24 See, for example, Norges Bank Investment Management (2020) *Expectations to Companies – Anti-corruption*. Oslo: Norges Bank Investment Management.

25 US Department of Justice, 'Evaluation of Corporate Compliance Programs (updated 1 June 2020)'; UK Serious Fraud Office, 'Evaluating a Compliance Programme' (web), 1 January 2020.

26 Responsible Mining Index 2020, Business Conduct, B.01.2. This is common in other sectors too. See, Alliance for Corporate Transparency (2020) *2019 Research Report: An Analysis of the Sustainability Reports of 1000 Companies Pursuant to the EU Non-Financial Reporting Directive*. Brussel: Alliance for Corporate Transparency: 90–92.

27 OECD Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas available at www.oecd.org/corporate/mne/mining.htm. Accessed 31 August 2021.

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