

Regulating Corporate Political Engagement

Trends, challenges and the role for investors



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Regulating Corporate Political Engagement

**TRENDS, CHALLENGES AND
THE ROLE FOR INVESTORS**

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Preface

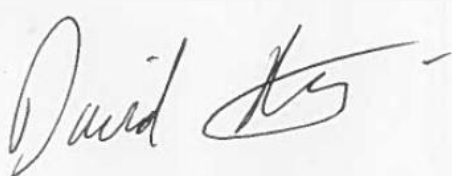
Corporate political engagement activities have crucial implications for how we, as a society, achieve progress on sustainability goals. These activities have the power to promote much-needed developments or, on the other hand, to cripple advancements towards a more sustainable future.

While companies have a legitimate role to play in informing policy decisions, concerns around undue influence are mounting. There is greater scrutiny than ever before on companies' political spending, lobbying and other direct and indirect forms of political engagement. Without adequate safeguards, questionable company practices can translate into governance risks and systemic implications for investors, ultimately undermining investment returns.

This is why the PRI, as a world's leading proponent of responsible investment, has prioritised this area of work and will continue to provide investors with support and resources for effective stewardship on this issue. The OECD has also been leading the global debate on regulating corporate political engagement through its *Recommendation on Principles for Transparency and Integrity in Lobbying* (2010), the first international standard for governments to address risks related to lobbying and influence. An integral part of this effort has been to support countries in finding the optimal relationship between businesses and government that allows for inclusive and informed policy-making while minimising the risk that public policies respond only to the needs of a few special interest groups.

As investors begin to advocate for more transparency, greater accountability and consistency in companies' political engagement practices, they will need to consider the norms and laws that shape corporate political activities in different jurisdictions. We are therefore delighted to join forces in this research examining the commonalities and differences in the regulation of various channels of influence and the effectiveness of these regulations in reducing risks of regulatory capture. The comparative analysis across 17 key jurisdictions spotlights areas of unregulated influence, providing insights on potential areas of investor advocacy with companies and policy makers.

We hope this will be a useful resource for PRI signatories and other stakeholders to spur further action on this issue.



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Methodology

This report provides an analysis of regulations and “soft law” instruments that shape corporate political engagement activities across 17 jurisdictions (Australia, Brazil, Canada, European Union, France, Germany, Hong Kong (China), India, Italy, Japan, Korea, Netherlands, People’s Republic of China (hereafter ‘China’), South Africa, Spain, United Kingdom, United States). It provides an analysis of high-level trends, examines commonalities and differences in regulatory scope across jurisdictions, and highlights key areas of unregulated influence. The report includes examples of leading as well as weaker regulatory frameworks in each of the assessed jurisdictions, and suggests critical areas for investor engagement with policy makers, companies and other relevant actors. The findings from the report are based on the analysis of extensive evidence compiled in a database mapping regulations and soft law instruments that shape corporate political engagement activities.

The database provides interested stakeholders – companies, investors, governments and civil society groups – with an understanding of the respective strengths and weaknesses of regulations covering corporate political engagement across the 17 jurisdictions. It is structured in four sections:

- **Lobbying.** This section focuses on laws, regulations and other guidelines or codes of conduct framing the interactions between lobbyists and the public decision-making process. This includes tools such as mandatory or voluntary lobbying registries, and requirements for public officials to disclose their meetings with lobbyists and other groups outside the public sector.
- **Political finance.** The second section provides information on the legislative and regulatory frameworks that govern the funding of political parties and election campaigns.
- **Conflicts of interest and pre/post-public employment.** The third section covers arrangements to effectively prevent and manage conflicts of interest, particularly in relation to the movement of personnel between the public and the private sectors.
- **Shareholder rights.** The fourth section assesses whether regulations grant shareholders or the board the right to approve political contributions across jurisdictions.

The following guiding questions were prepared by the Principles for Responsible Investment (PRI) and used to enable comparative analysis:

Table 1. Guiding questions for the regulatory mapping on political engagement

What are the key regulations covering corporate influence through lobbying, political contributions, and other forms of influence (including cross-border activities)? Do these regulations have clear oversight and enforcement mechanisms?
What are the definitions of 'lobbyist' and 'lobbying' in the regulations? Are there any actors or activities that could be perceived to be lobbying but excluded from obligations within the law? What are the branches of government and categories of public officials covered by lobbying definitions?
What types of tools are used to provide transparency for interactions between lobbyists and public officials? For instance, is there a public lobby register? Is there a requirement for key public officials to make their agendas public? Is information proactively provided on who was consulted in all legislative processes (i.e. the legislative footprint) for each legislation?
What is the level of transparency mandated for interactions between lobbyists and public officials? For example, what types of interactions must be recorded and made publicly available, and how often? What type of information is made publicly available?
Are there policies, rules or procedures regulating the functioning and/or composition of advisory expert groups for the legislative process?
Are there restrictions or caps to corporate political contributions made directly to a candidate or indirectly through political action committees, think tanks, charities or other third-party organisations (including within regulations pertaining to gift giving and corruption)? Do they stipulate disclosure thresholds for such contributions?
Do regulations or other soft law instruments limit the movement of individuals between positions of public office and jobs in the same sector in the private or voluntary sector, in either direction, or address other sources of conflict of interest?
Do regulations or other soft law instruments provide integrity standards for companies and lobbyists to ensure that they engage with public officials in a way that does not raise concerns over the integrity and inclusiveness of policy-making processes?
Do trade associations and industry bodies have an obligation to report memberships, political contributions or lobbying expenditure under hard laws?
Do regulations place restrictions on corporate funders or industry bodies on political advertising campaigns and sponsorships? Are there any regulations on the use of social media to influence public policy?
Do regulations on shareholder rights for publicly listed companies include the approval of political contributions and lobbying expenditure?
Source: OECD and PRI.

The OECD used several tools to collect evidence. This included desk research on each of the jurisdictions analysed and existing data on political engagement regulations, notably through the following surveys and databases:

- OECD 2020 Survey on Lobbying
- OECD Product Market Regulation indicators (PMR)
- IDEA Political Finance Database
- OECD 2014 Survey on Managing Conflict of Interest in the Executive Branch and Whistleblower Protection (updated in 2021 with additional research by the OECD Secretariat).

Finally, the report also builds on existing analysis from both the OECD and the PRI. The PRI has been working closely with investors on corporate climate lobbying for several years. In 2015, it co-ordinated collaborative engagement with 35 investors on corporate climate lobbying practices and published a

public statement of investor expectations on corporate climate lobbying (Principles for Responsible Investment, 2018^[1]). More recently, the PRI has published a paper on the investor case for responsible political engagement, outlining why investors should ensure that the companies in their portfolio are conducting political engagement activities in a responsible manner (Principles for Responsible Investment, 2022^[2]). The OECD has been leading the global debate on fostering transparency and integrity in lobbying over the past two decades. Introduced in 2010, the *OECD Recommendation on Principles for Transparency and Integrity in Lobbying* was the first international set of guidelines providing recommendations on how to promote open and equitable access to the public decision-making process (OECD, 2010^[3]). The OECD has published several reports addressing integrity and influence in public decision making, notably *Lobbying in the 21st Century. Transparency, Integrity and Access* (OECD, 2021^[4]), *Financing Democracy* (OECD, 2016^[5]), and *Preventing Policy Capture* (OECD, 2017^[6]).

Executive summary

The quality of the air we breathe, the cost of our food, or the amount of taxes we pay are determined by government policies, usually after intense political engagement by those that have an interest in such issues. This is natural and represents a democratic process at its core. Businesses and their representatives can provide governments with valuable insights and data on which to base public policies, allowing policy makers to learn about options and trade-offs. Nevertheless, public policies are not always inclusive or may not provide an optimal outcome for our societies, for instance as a result of one-sided influence by specific interest groups, influence through covert channels or deceptive evidence.

As a result, companies are now confronted with a higher degree of scrutiny from stakeholders -- including their own employees, shareholders and investors -- who increasingly see their political engagement activities, and their misalignment with sustainability pledges, as an investment risk, bringing with it significant reputational risks. Thus, fostering transparency and integrity in companies' political engagement is essential to increase public and investor confidence in the private sector and the public policy-making process. Providing an adequate level of transparency also enables stakeholders -- including civil society organisations, businesses, the media and the general public -- to scrutinise corporate political engagement activities and identify where lobbying and funding come from.

The analysis of existing regulatory models to tackle risks associated with the political engagement activities of companies and their representatives in 17 jurisdictions shows that these regulations still provide limited transparency on the range of measures companies use to influence public policy. In particular, regulations are ill-adapted to the 21st century context, which is marked by the increased use of digital platforms to engage with policy-making processes, and several shortcomings in countries' regulatory scope still exist. As a result, key areas of unregulated influence remain vulnerable to exploitation by powerful special interests.

- **A majority of the jurisdictions analysed have adopted lobbying regulations.** Among the 17 jurisdictions analysed, eight countries (Australia, Canada, France, Germany, Italy, Netherlands, the United Kingdom, and the United States) and the European Union have voluntary or mandatory public registries in place where lobbyists disclose information on their activities. A complementary approach to lobbying disclosures includes requiring certain public officials to disclose information on their meetings with lobbyists through open agendas. Spain, the United Kingdom and the European Union have adopted such requirements.
- **Transparency related to lobbying activities remains limited. A more comprehensive approach to defining lobbying is necessary to help investors understand how companies' lobbying activities are aligned with their long-term sustainability pledges.** Certain actors that are influencing the policy-making process, such as think tanks and non-governmental organisations, are not always covered by transparency requirements and many activities are exempted, for example the use of social media as a lobbying tool. The information captured through lobbying registers is usually incomplete and is shielded from public scrutiny, as disclosures tend to focus on who is conducting activities, but less on what decisions and public organisations were specifically targeted. Only two countries (France and the United States) and the European Union require lobbyists to disclose information on lobbying expenditures, and only one country (the United States) requires lobbyists to disclose information on both their lobbying spending and their contributions to political parties and candidates.
- **Political finance regulations are more robust if compared to lobbying activities, though loopholes and grey areas remain.**

Three countries and the European Union ban anonymous donations to political parties and candidates, and ten countries have bans on these types of donations above certain thresholds. Seven countries (Brazil, Canada, France, Germany, Korea, Spain and the United States) ban donations from corporate interests to political parties and six (Brazil, Canada, France, Japan, Korea and the United States) ban them to political candidates. The funding of digital advertisements for political parties and candidates remains a key area of unregulated influence in all jurisdictions.

- **Third-party spending remains a challenge and can constitute a means of re-channelling election spending through committees and interest groups that are independent in name only.** For example, Political Action Committees (PACs), which are ubiquitous in the United States but also present in other countries through different forms and names, fall within this category. Third parties may also include charities, foundations, think tanks or firms that conduct political activities. Only one country (Spain) bans third parties from making monetary contributions to political campaigns, while five jurisdictions (Canada, Hong Kong (China), India, Korea and the United Kingdom) impose limits on the amount that third parties can spend on election campaign activities. In seven countries (Brazil, France, Germany, Italy, Japan, the Netherlands and South Africa), laws do not provide any definition or provision on expenditures incurred by unaffiliated, non-party campaigners.
- **Pre/post-public employment practices remain an area of concern.** While most countries have established basic standards for preventing post-public employment conflict of interest, they usually cover members of the Executive branch while at times ignoring Members of Parliament. Where standards exist, they did not always prevent suspicions of former public officials misusing confidential information or privileged access to benefit vested interests. Indeed, few countries have tailored restrictions to risky areas or positions.

Enforcing established standards and imposing suitable sanctions also remains a challenge for many countries because most practices are committed by public officials who, by leaving the public sector, move beyond administrative government control. In addition, only three countries (France, Italy and the United States) have adopted standards for hiring private sector employees in the public sector.

- **Public officials and companies need a clearer integrity framework when engaging with the policy-making process.** The adoption of standards of conduct for public officials in their dealings with lobbyists – beyond the acceptance of gifts – is relatively limited. Only three countries (Australia, the Netherlands and the United Kingdom) and the European Union have enforceable standards on how to deal with lobbyists. More detailed integrity standards may also be needed to specify the due diligence requirements companies should follow to ensure that they, as well as the lobbying and industry associations they participate in, are aligned in terms of their government affairs and sustainability agendas.
- **Regulations on shareholder rights for publicly listed companies rarely include the approval of political contributions or lobbying expenditures.** Only two jurisdictions have regulations on mandatory approval of political activities and/or lobbying spending through shareholder (the United Kingdom) or board of directors (India) resolutions authorising such activities.

The key findings from this report are accompanied by a database that maps regulations and soft law instruments on corporate political engagement, which provides investors and interested stakeholders with a more detailed analysis of regulations in these jurisdictions.

Definition of terms

Advisory and/or expert groups: any committee, board, commission, council, conference, panel, task force, or similar group, or any subcommittee or other subgroup thereof that provides governments with advice, expertise, or recommendations. They are made up of public and/or private-sector members and/or representatives from civil society and may be put in place by the executive, legislative or judicial branches of government or government subdivisions, either on an ad hoc or permanent basis (OECD, 2014^[7]).

Anonymous donations: support, contributions or donations to political parties and/or candidates where the identity of the donor or contributor is not disclosed (IDEA, 2019^[8]).

Ban on contributions: prohibition to limit the influx of money or other types of support given to a candidate's campaign or political party by an individual or an organisation (IDEA, 2019^[8]).

Code of conduct, codes of ethics, or standards of conduct: codes of conduct and codes of ethics clearly present and illustrate the diverse legal and regulatory frameworks, and are a useful tool to guide behaviour. Codes of conduct clarify expected standards and prohibited situations, whereas codes of ethics identify the principles that guide behaviour and decision making (OECD, 2020^[9]).

Conflict of interest: a 'conflict of interest' involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities (OECD, 2004^[10]).

Contribution limit: a maximum amount of money that an individual, organisation or political party may contribute to a candidate's campaign or to a political party annually or per election period (IDEA, 2019^[8]).

Cooling-off period: time limits for managing the contacts of former officials with public sector organisations and warding off post-public employment offences (OECD, 2010^[11]).

Corporate donations: support, contributions or donations to political parties and/or candidates from entities such as corporations, companies and/or business enterprises (IDEA, 2019^[8]).

Donations/contributions: a gift (e.g., cash, services or anything else of value) given from an individual or an organisation with the purpose of supporting a certain political party or candidate (IDEA, 2019^[8]).

European Political Party: a European political party is an organisation following a political programme, that is composed of national parties and/or individuals as members, represented in several Member States and is registered with the Authority for European political parties and European political foundations (European Parliament, s.d.^[12]).

Foreign interests: in order to limit influence over national politics to forces within the country, it is quite common to ban foreign interests from making donations to political parties. Among the entities prohibited to contribute directly or indirectly are governments, corporations, organisations or individuals who are not citizens, do not reside in the country or have a large share of foreign ownership (IDEA, 2019^[8]).

Legislative/regulatory footprint: a comprehensive public record of private parties' influence on a of regulation or piece of legislation (OECD, 2021^[4]).

Lobbying: in its traditional sense, lobbying has often been defined as an oral or written communication with a public official to influence legislation, policy or administrative decisions. It can refer more broadly to the act of lawfully attempting to influence the design, implementation, execution and evaluation of public policies and regulations administered by executive, legislative or judicial public officials at the local, regional or national level (OECD, 2021^[4]).

Policy capture: this is a broad term encompassing any situation where the decisions taken in a policy cycle mainly reflect the interests of a narrow interest group (OECD, 2017^[6]).

Political Action Committees (PACs): In the United States, Political Action Committees are committees organised by candidates, corporations, labour unions, trade associations or organisations for the purpose of raising and spending money to elect or defeat candidates. Among them:

- **Separate Segregated funds (SSFs)** are political committees established and administered by corporations, labour unions, membership organisations or trade associations. They can solicit contributions only from individuals associated with a connected or sponsoring organisation.
- By contrast, **non-connected committees** are not sponsored by or connected to any of the aforementioned entities and are free to solicit contributions from the general public.
- **Super PACs** are committees that may receive unlimited contributions from individuals, corporations, labour unions and other PACs for the purpose of financing independent expenditures and other independent political activity, such as running ads or communications activities. There are no limits or restrictions on the sources of funds that may be used for these expenditures (FEC, s.d.^[13] ; Center for Responsive Politics, s.d.^[14]).

Political finance: the concept encompasses all financial flows to and from political parties and candidates. It includes formal and informal income and expenditure, as well as financial and in-kind contributions. These transactions are not limited to a certain time period (IDEA, 2019^[8]).

Public integrity: the consistent alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interests in the public sector (OECD, 2017^[15]).

Public official: elected or non-elected individuals carrying out duties in the public sector, whether appointed or elected, paid or unpaid, in a permanent or temporary position at the central and subnational levels of government (OECD, 2017^[15]).

Public sector: public sector includes the legislative, executive, administrative, and judicial bodies, and their public officials whether appointed or elected, paid or unpaid, in a permanent or temporary position at the central and subnational levels of government. It can include public corporations, state-owned enterprises and public-private partnerships and their officials, as well as officials and entities that deliver public services (e.g. health, education and public transport), which can be contracted out or privately funded in some countries (OECD, 2017^[15]).

Pre-post public employment: the movement of personnel between employment in the public and private sectors. These movements are often referred to as “the revolving door” phenomenon. (OECD, 2010^[11]).

Third-party spending: in many elections, not only political parties and candidates spend money trying to get elected – other actors (third parties) may produce and run TV commercials, put up billboards and in various ways attempt to support a given candidate or political party that aligns with their interests (IDEA, 2019^[8]).

Transparency: the disclosure and subsequent accessibility of relevant government data and information (OECD, 2020^[9]).

Undue influence: the act of attempting to influence the design, implementation, execution and evaluation of public policies and regulations administered by public officials, whether by providing covert, deceptive or misleading evidence or data, by manipulating public opinion or by using other practices intended to manipulate the decisions of public officials (OECD, 2021^[4]).

1 Introduction

Companies are critical actors in the policy-making process. By sharing their legitimate needs, expertise and evidence about policy problems and how to address them, businesses and their representatives can provide governments with valuable information on which to base their decisions. The key role of the private sector in delivering and financing the Sustainable Development Goals (SDGs) has also been recognised and reflected in companies' growing participation in policy debates on achieving sustainable and inclusive growth (OECD, 2018^[16]).

Lobbying, understood in its traditional sense as a communication with a public official to influence public policies, has been a core tool to facilitate access for companies to complex government decision-making processes. The avenues by which they engage with policy-making processes encompass a wider range of practices and actors, however, and are also changing in nature and format with wider societal evolutions such as digitalisation and the advent of social media (OECD, 2021^[4]). This context of corporate political engagement includes the following actors and practices (Table 1.1).

Table 1.1. Corporate political engagement practices

• Lobbying directly by companies, usually through their government affairs or public relations departments and in-house lobbyists
• Lobbying indirectly through industry associations
• Lobbying activities through contracting with professional lobbying or public relations firms, law firms and self-employed lobbyists mandated to represent a corporation's interests. These firms or individuals, usually established in key decision-making hubs, have an in-depth knowledge of policy-making processes in a given country and are able to better navigate institutional complexities
• The direct provision of contributions to political parties, candidates and electoral campaigns
• The provision of contributions to political parties, candidates and electoral campaigns through trade associations and third-party organisations
• The provision of gifts, benefits and other advantages to influence policy makers
• The movement of public officials, business executives and experts between the public and private sectors (the so-called 'revolving door' phenomenon)
• The influence of special interests through participation in established institutional arrangements such as government advisory and expert groups
• The use of information activities on social media and in traditional media to shape policy debates, inform or persuade members of the public to put pressure on policy makers and indirectly influence the government's decision-making process
• The financing of political advertising in both traditional and social media
• Funding or creating non-governmental organisations and grassroots organisations
• Funding academic institutions, think tanks, policy institutes, experts and practitioners that can provide knowledge on specific policy issues and propose solutions
• Engaging in voluntary business initiatives, global networks and alliances
Source: Adapted from (OECD, 2021 ^[4]) and (PRI, 2018 ^[16]).

Depending on how they are conducted, corporate political engagement activities can greatly advance or hamper progress in many policy areas (Box 1.1). At times, there may be a monopoly of influence by those that are financially and politically powerful, and/or policies may be unduly influenced through covert or deceptive activities (OECD, 2021^[4]). For example, when the financing of political parties or election campaigns takes advantage of legal loopholes, or social media is used to manipulate public opinion and shield influence from public scrutiny, public policies

may not provide an optimal outcome for our societies. Evidence has also shown that there is a risk that some parties and candidates, once in office, will be more responsive to the interests of a particular group of donors rather than to the wider public interest. Donors may expect a form of reciprocity for donations made during an election campaign, for example getting access to overpriced public contracts, receiving favourable conditions in public loans or other forms of illegal benefits from the respective public administration (OECD, 2016^[5]).

Box 1.1. Corporate influence can have a profound impact on the outcome of public policies

Lobbying on regulations designed to combat climate change in the United States

An analysis of a major oil and gas company's internal documents and communications between 1977 and 2014 found that, while its own research had established that climate change was caused by human activity, the company engaged in several practices, notably publishing opinion pieces in newspapers, to raise doubt, influence public opinion and reduce regulatory pressure (Supran et Oreskes, 2017^[17]).

Lobbying on obesity policy in China

A study of China's obesity science and policy shows that the Chinese branch of an international science organisation funded by major food and beverage companies, and chaired by a local nutritionist reputed to have powerful connections in the central government, became the leading sponsor of obesity research and policy making. From 1999 to 2015, China's obesity science and policy shifted markedly toward physical activity and away from the nutritional content of food products, as the organisation's influence in China increased (Greenhalgh, 2019^[18]).

Campaign donations and government contracts in Brazil

Another study in Brazil shows that firms specialising in public works projects in Brazil can expect a substantial boost in contracts - at least 14 times the value of their contributions - when they donate to a federal deputy (lower house) candidate from the ruling Workers' Party and that candidate wins office (Boas, Hidalgo et Richardson, 2013^[19]).

Source: (Supran et Oreskes, 2017^[17] ; Greenhalgh, 2019^[18] ; Boas, Hidalgo et Richardson, 2013^[19])

It is also problematic when the corporate political engagement practices of companies and of the trade associations they belong to are misaligned with their public commitments on sustainability issues such as climate change. For example, companies concentrated in the fossil fuel and energy-intensive sectors have been facing criticism for using climate

commitments or sustainability policies as a smoke screen to display a public image of climate responsibility while lobbying to delay or block binding climate policies, or providing donations to candidates who are against strengthening climate-related regulations (Lyon et al., 2018^[20] ; Favotto et Kollman, 2019^[21]).

REGULATING CORPORATE POLITICAL ENGAGEMENT

Where adequate governance standards are lacking within companies to address the abovementioned risks, corporate political engagement activities can have serious reputational repercussions and raise concerns for citizens, investors and shareholders:

- Lobbying is still perceived by **citizens** as an opaque activity leading to undue influence and policy capture. According to Edelman's latest trust barometer, 57% of the general population believe governments serve the interest of only the few (Edelman, 2020^[22]). The COVID-19 pandemic has added further weight on this public sentiment, with only 38% of the general population saying that businesses have been responding effectively in putting people over profits (Edelman, 2020^[23]). This may result in calls, usually from NGOs, to exclude businesses from public policy discussions, but this may go against the basic tenets of democratic participation.

- Similarly, **investors** increasingly see the lack of transparency over companies' lobbying and political engagements, and its inconsistencies with their positioning on environmental and societal issues, as an investment risk (PRI, 2018^[16]). In recent years, pressure from investors and leading asset managers to better take into account corporate lobbying and political financing as a risk to the environmental, social and governance (ESG) performance of companies has had a key influence on companies' business strategies (Mooney, 2018^[24]).
- The number of **shareholder** proposals concerning corporate political engagement disclosures has increased significantly over the last decade, to become one of the most popular types of shareholder resolutions that are put to a vote, in particular in the area of climate change lobbying (Box 1.2).

Box 1.2. Shareholder resolutions on climate corporate policy engagement in the United States

BNP Paribas Asset Management

In 2020, BNP Paribas Asset Management submitted proposals in three companies (Chevron, Delta Airlines and United Airlines) requiring them to disclose more information on how their lobbying activities align with the goals of the Paris Agreement. The resolution targeting Chevron received majority shareholder support (54%), while the two other resolutions at Delta and United received 46% and 32% respectively.

In 2021, BNP Paribas Asset Management targeted two companies (Delta Airlines and Exxon Mobil) with a request for more information on how their *"lobbying activities (direct and through trade associations) align with the [...] Paris Climate Agreement"*. The proposal won a majority of votes in both companies (63.8% of votes in Exxon Mobil; Delta has not reported the percentage). In the US, over the course of the 2021 proxy season, three other similar climate-lobbying proposals garnered a majority vote with support levels ranging from 76.4% (Norfolk Southern Corporation) to 62.5% (Phillips66). One proposal, submitted to Sempra Energy, received 38%.

These lobbying proposals required that companies disclose some of the following information on an annual or semi-annual basis:

- Policies and procedures governing direct and indirect lobbying as well as grassroots communications;
- Expenses made for the purpose of lobbying activities, and the recipients of such payments;
- Memberships in and payments to any tax-exempt organisation that drafts and endorses legislation; and
- A description of the board and management oversight of lobbying expenditures.

Boston Trust Walden Company

In 2020, the investment management firm Boston Trust Walden co-filed resolutions requiring companies to report on policies and procedures regarding direct, indirect and grassroots lobbying, as well as on payments used for lobbying and non-tax-exempt payments to trade associations and other entities to influence public policy. Companies included Chevron, Comcast (26% support), ExxonMobil (38% support), Pfizer (21% support), UPS (24% support) and Walt Disney (34% support).

Notes: the proposal filed by Boston Trust Walden targeting Chevron was omitted by the SEC because another investor was first to file a similar proposal on lobbying disclosure.

Source: BNP Paribas Investment Management: (InfluenceMap, 2021^[25] ; Glass Lewis, 2021^[26] ; Ceres, 2021^[27]); Boston Trust Walden Company: (Boston Trust Walden, 2021^[28])

Public expectations for addressing these concerns have led an increasing number of companies to take measures to improve transparency on political engagement activities and address perceived misalignment in positions. For example, an increasing number of private sector companies are voluntarily disclosing their political contributions and have implemented policies for general board oversight of political spending (Center for Political Accountability, 2020^[29]). Such disclosure is increasingly promoted by international principles, such as the G20/OECD Principles of Corporate Governance, which state that company disclosures “may include disclosure of donations for political purposes, particularly where such information is not easily available through other

disclosure channels” (OECD, 2015^[30]). Similarly, several companies in the US and the EU have taken action to publicly dissociate themselves, end their membership or resign from the boards of trade associations with divergent positions on climate-related policies (Shell, 2021^[31] ; Financial Times, 2020^[32]).

While many of the above-mentioned initiatives remain voluntary, the risks associated with corporate political engagement activities call for increased transparency and integrity. The following chapter analyses key trends and challenges in the regulation of corporate political engagement in the 17 jurisdictions analysed.

2 Regulating corporate political engagement: Key trends and challenges

MORE TRANSPARENCY IS NEEDED ACROSS ALL FORMS OF LOBBYING

Concerns over the influence of private interests on official decisions have prompted ten jurisdictions to regulate lobbying

To address lobbying-related risks, a growing number of countries are opting to regulate lobbying activities. Transparency can be provided through various means (Table 2.1).

Table 2.1. Lobbying transparency tools

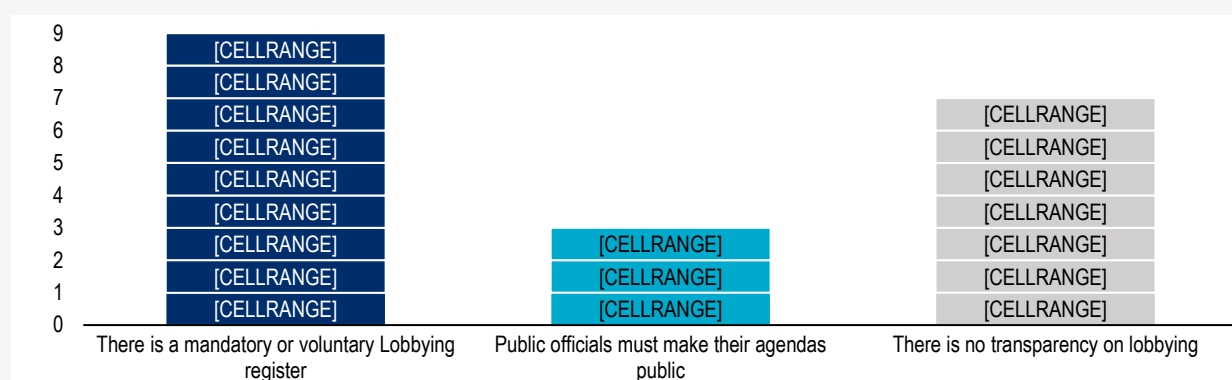
Lobbying registers	Voluntary or mandatory public registries in which lobbyists and/or public officials must disclose information on their interactions. Information disclosed may include the goal of the lobbying, its beneficiaries, and the targeted decisions.
Open agendas	A requirement for certain categories of public officials to publish their agendas online, including their meetings with external organisations and interest groups.
Legislative footprint	A comprehensive public record of private parties' influence on a decision or regulation/piece of legislation. The information disclosed can be a table or a document listing the identity of stakeholders met, public officials involved, the object and outcome of their meetings, as well as an assessment of how the inputs received were factored into the final decision.

Source: OECD

- **Eight countries** (Australia, Canada, France, Germany, Italy, Netherlands, the United Kingdom, the United States) and the European Union have voluntary or mandatory public registries in place where lobbyists disclose information on their activities;
- **Two countries** (Spain, the United Kingdom) and the European Union require certain categories of public officials to publish information on their meetings with lobbyists through open agendas. In the United Kingdom, the Ministerial Code requires cabinet ministers to make their ministerial diaries available to the public. The information includes ministers' external meetings and any meeting with the owners, editors or senior executives of newspapers

or other media, regardless of the purpose of the meeting. In October 2020, the Boards of both Houses of the Spanish Parliament adopted a Code of Conduct for members of the Congress and the Senate, which requires the publication of the senators' and deputies' agendas, including their meetings with lobbyists;

- Members of the European Parliament are also encouraged to disclose how lobbyists' contributions were taken into account in the law-making processes ("legislative footprint");
- **Seven jurisdictions** (Brazil, China, Hong Kong (China), India, Japan, Korea and South Africa) do not provide any form of transparency on lobbying activities (Figure 2.1).

Figure 2.1. Policies for transparency in lobbying

Note: the Netherlands's transparency register is voluntary.

Source: OECD 2020 Survey on Lobbying and additional research by the OECD Secretariat.

In countries where transparency in lobbying is provided, information on who is conducting activities, on what and how remains limited

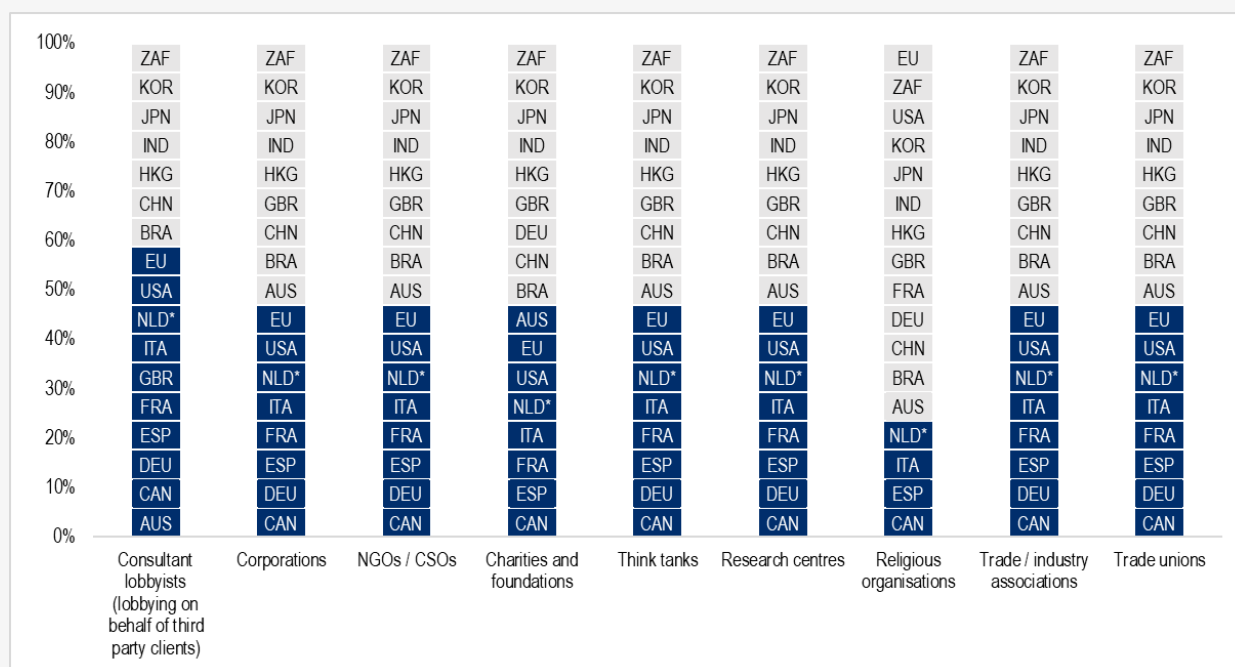
While transparency over lobbying activities should be carefully balanced with legitimate demands to protect market-sensitive information, disclosures should ensure that public officials, citizens and investors can obtain sufficient and pertinent information on key aspects of lobbying activities. However, even in the ten jurisdictions that provide transparency in lobbying, the specific types of actors or communications covered are not always clearly defined in the regulations analysed, and what constitutes “direct” and “indirect” influence is not always explicit either. The following points show that loopholes emerge:

- **Many actors who are *de facto* lobbyists are not always subject to disclosure requirements.** In Australia and the United Kingdom for example, corporations, NGOs, charities, foundations, think tanks and

religious organisations are not covered by the definition of “lobbyist” when they act on their own, as the registers only cover “consultant lobbyists” communicating on behalf of paying clients. Canada, the United Kingdom and the United States also explicitly exclude unpaid lobbying activities from their requirements on disclosing lobbying. Yet, unpaid lobbying activities may be just as effective as paid activities, especially if the lobbyist is a former public official who still has an active network. In sum, while lobbying activities conducted on behalf of paying clients are regulated in 59% of the jurisdictions analysed, less than half of countries have transparency requirements covering other actors that regularly engage in lobbying, including in-house lobbyists employed by corporations (Figure 2.2).

Figure 2.2. Actors bound by transparency requirements in their lobbying activities

% of 17 jurisdictions analysed



Note: * the Netherlands's transparency register is voluntary.

Source: OECD 2020 Survey on Lobbying and additional research by the OECD Secretariat.

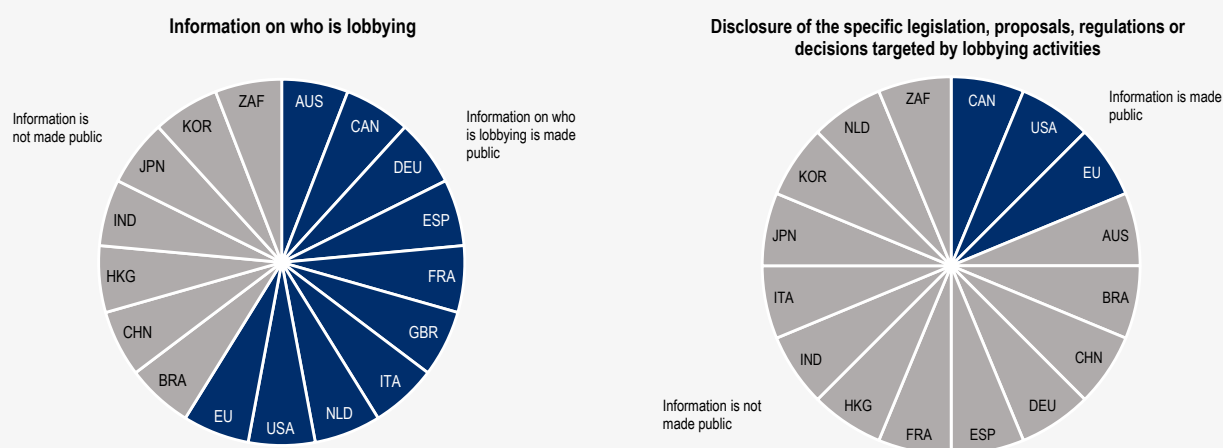
➤ **Only two jurisdictions consider the use of social media and grassroots communications to indirectly influence public policies as a lobbying activity** (the European Union and Canada). Australia, France and the United States have explicitly excluded grassroots campaigns and public awareness campaigns from registrable activities, while Germany and Spain mention “indirect lobbying” in their definitions but do not specify what it means. On the other hand, the Canadian Register of Lobbyists and the EU Transparency Register are the only frameworks analysed that require lobbyists to disclose information on the use of social media as a lobbying tool. In Canada, lobbyists are required to disclose all communication techniques used, which includes any appeals to members of the public through mass media, or by direct communication, aiming to persuade the

public to communicate with public office holders in order to pressure them to endorse a particular opinion. The Lobbying Act categorises this type of lobbying as “grassroots communication.” Similarly, the EU Transparency Register covers activities aimed at “indirectly influencing” EU institutions, including through the use of intermediate vectors such as media, public opinion, conferences or social events. The EU Transparency Register is also the only scheme requiring think tanks, research centres and academic institutions to disclose the source of their funding. In the absence of such requirements in other jurisdictions, regulations do not make it possible to distinguish genuine advocacy networks from so-called “astroturfing”, the practice of creating and funding citizen organisations to create an impression of widespread grassroots support for a policy or agenda.

- The public availability of the disclosed information does not provide enough scrutiny on the specific objectives of lobbying activities and the public officials or decisions targeted. The information

disclosed usually focuses on identifying who is behind lobbying activities, but not as much on which decisions are specifically targeted, how lobbying activities were conducted or through which means (Figure 2.3).

Figure 2.3. Limited transparency on the specifics of lobbying objectives



Note: Information on who is lobbying is available when the information disclosed identifies the organisation that is the beneficiary of lobbying activities (lobbyists disclose the name of their employers and the names of their clients, if applicable).

Source: OECD 2020 Survey on Lobbying and additional research by the OECD Secretariat.

KEY AREAS OF UNREGULATED INFLUENCE IN POLITICAL FINANCE REGULATIONS REMAIN VULNERABLE TO EXPLOITATION BY SPECIAL INTERESTS¹

Disclosures on political finance is greater than on lobbying, but loopholes remain in the regulation of private funding

A cornerstone of transparency and accountability in political finance is requiring political parties and candidates to disclose information on their sources of funding to enable public oversight institutions to check the books and accounts of parties, candidates and donors.

Among the 16 jurisdictions analysed for this section, 15 require political parties **to report on their sources of financing**, and 11 also require **reporting on finances of political campaigns**. In all 16 jurisdictions analysed, countries publish information in the financial reports of political parties and/or

candidates. In seven countries (Brazil, Canada, France, Italy, Hong Kong (China), Spain, the United Kingdom), the identity of the donors is reported in reports from political parties and/or websites. The identity is disclosed only above certain thresholds in eight jurisdictions (Australia, Germany, India, Japan, Netherlands, South Africa, the United States, the European Union), which can leave room for abuse. In Germany for example, donors are identified only if their contributions exceed EUR 500 and disclosed if the value of donations exceeds EUR 10 000 in one year (Lobby Control, 2020^[33]).

¹ For this section, China, which is a one-party state, is not included in the analysis.

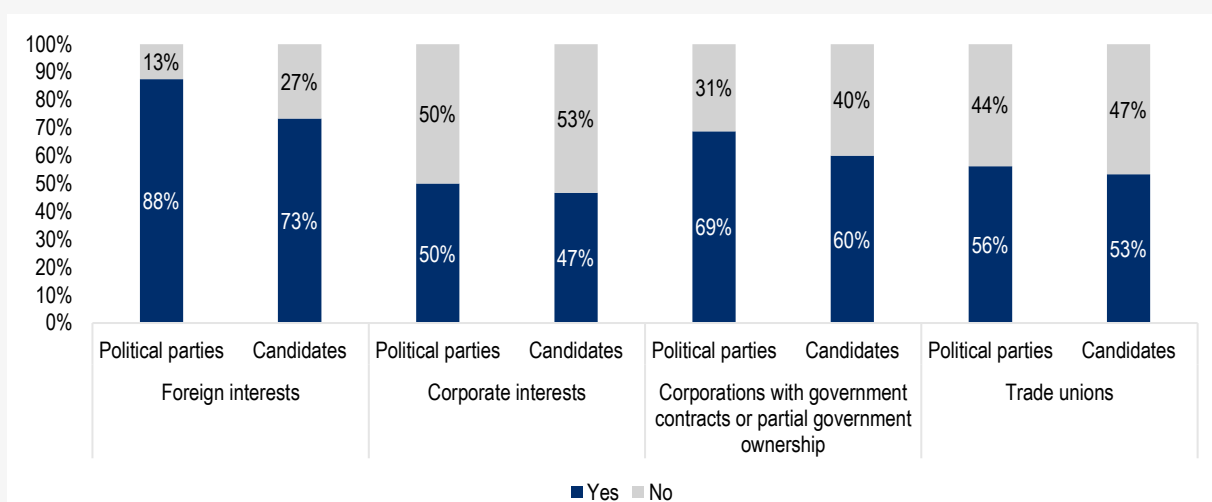
REGULATING CORPORATE POLITICAL ENGAGEMENT

Despite this higher level of transparency, a key challenge for countries is the **regulation of private funding**. Limiting private donations from foreign interests, corporations, state-owned enterprises or trade unions can reduce the extent of influence of single donors on the outcome of elections or on the process of policy making after election day (Figure 2.4). Yet, where bans on private funding exist, a variety of techniques are often used to circumvent them. For example, the United States bans donations from foreign sources, but records

show that foreign-connected interests poured USD 23.8 million into the 2020 US elections, through Political Action Committees created by American subsidiaries of foreign companies (Center for Responsive Politics, s.d.^[34]). As a result, even where bans on foreign and corporate funding exist in certain jurisdictions, the question of whose money, and thus whose political preferences, influences a country's elections and political parties is also becoming more complex (OECD, 2016^[35]).

Figure 2.4. Types of banned private contributions

% of 16 jurisdictions analysed



Source: Adapted from IDEA (n.d.), Political Finance Database, <https://www.idea.int/data-tools/data/political-finance-database>.

Many countries also set the maximum **ceiling for donations** from natural and legal persons to political parties. Such a ceiling plays an important role in preventing policy capture from large donors, but it is very difficult to strike the right balance (OECD, 2016^[35]). If the limit is very high, it will have little impact. If the limit is very low, donors, political parties and candidates will find ways to circumvent the limit, most likely through splitting and channelling donations through multiple donors. In Brazil for example, the Supreme Court ruled in 2015 the unconstitutionality of contributions from private legal entities, which previously allowed corporate

donations to political parties and candidates. However, data from the 2018 elections showed that 90% of elected deputies received donations from individuals linked to private companies in Brazil (Parlametria, 2019^[36]).

Lastly, another source of concern is **anonymous donations**. Brazil and Spain ban all anonymous donations to parties and 10 other countries ban anonymous donations to parties above certain thresholds (Canada, Germany, France, India, Italy, Japan, Korea, the Netherlands, the United Kingdom, the United States). This means that during campaigns there is room for private interests - whose influence

cannot be tracked - to operate covertly in decision making undetected. For example, some donors in Australia strategically choose to make

multiple donations below the threshold as a means to avoid public disclosure of their donations by political parties (Pender, 2016^[37] ; Tham, 2019^[38]).

The regulation of third-party funding is challenging in many countries

While all jurisdictions require political parties and/or candidates to disclose their sources of funding, this is rarely the case for persons or organisations who contribute to the funding of political parties and candidates ("lobbying through political finance"). Some companies have adopted a global policy on using company resources for contributions to political parties and candidates, which is often set forth in their code of conduct or their guidelines on internal business practices. Yet, very few include disclosures of corporate political spending (OECD, 2021^[41]). The United States is the only country with a lobbying regulation that requires all lobbyists who have to report on their lobbying activities to also report their financial contributions to political parties and election campaigns. Other than this specific case, there are no requirements for private sector

contributors to disclose their donations or other political activities.

Among these contributors, the donations and political activities of **"third parties"** remain a major source of concern. Indeed, private contributions can be rechannelled through supposedly independent committees and interest groups such as charities, faith groups, trade associations, individuals or private firms that campaign in the run-up to elections, but do not stand as political parties or candidates and are not always required to disclose their donors. At the moment, only a few countries have regulations for third-party campaigning (Table 2.2). In the remaining countries, there are no explicit provisions regarding third parties' expenditures.

Table 2.2. Third-party campaigning regulations

	Definition of third parties	Method of regulation
Australia	"Third parties": a person or entity (other than a political entity or a member of the House of Representatives or the Senate) incurring electoral expenditure that is more than the disclosure threshold during a financial year; but below the amount that would require registration as a 'political campaigner'. "Political campaigners": (a) a person or entity whose electoral expenditure is AUD 500 000 or more during a financial year, or any one of the previous three financial years; (b) or is AUD 100 000 or more during that financial year, and electoral expenditure during the previous financial year was at least two-thirds of the revenue of the person or entity for that year.	A 'third party' must provide an annual report to the Australian Electoral Commission by 17 November each year, and comply with restrictions on foreign donations. Political campaigners must register through an 'Application for Registration as a Political Campaigner'.
Canada	A third party is a person or group seeking to participate in (or influence) elections but not as a political party, electoral district association, nomination contestant or candidate.	For general elections, a third party cannot make donations totalling an aggregate amount of more than CAD 350 000 on partisan activity expenses, election advertising expenses, and election survey expenses. No more than CAD 3 000 of the maximum amount must be incurred to promote or oppose the election of one or more candidates in a given electoral district.
Hong Kong (China)	For Legislative Council elections, persons other than the candidates and election expense agents are not permitted to incur any election expenses.	A third party (other than a candidate and his/her election expense agents) that publishes an advertisement on the internet is exempted from criminal liability if the only election expenses incurred are either electricity charges and/or charges necessary for accessing the Internet.
Spain	No definition	Third parties are banned from campaign spending. Political parties must not accept that, directly or indirectly, third parties effectively assume the cost of their acquisitions of goods, works or services or of any other expenses generated by their activity.

	Definition of third parties	Method of regulation
United Kingdom	"Third party" means individuals and organisations that campaign in the run-up to elections but do not stand as political parties or candidates.	There is a spending limit of GBP 10 000 for England and GBP 5 000 for Scotland, Wales and Northern Ireland. A register of non-party campaigners is made public on the UK Electoral Commission website.
United States	Political Action Committees are committees organised for the purpose of raising and spending money to elect and defeat candidates. Among them, Separate Segregated funds (SSFs) are political committees established and administered by corporations, labour unions, membership organisations or trade associations. By contrast, non-connected committees are not sponsored by or connected to any of the aforementioned entities. Super PACs (independent expenditure-only political committees) are committees that may receive unlimited contributions from individuals, corporations, labour unions and other PACs for the purpose of financing independent expenditures and other independent political activity, such as running ads or communications activities. Other third-party organisations may include party committees and politically active non-profit organisations formed under Sections 527 (advocacy groups) and 501(c) of the Internal Revenue Code.	Since the Supreme Court's decision <i>Citizens United v. FEC</i>, corporations and labour unions have a constitutionally protected right to make unlimited 'outside spending,' independent of candidates and political parties, that explicitly advocate for or against the election of a candidate. In order to be considered independent, outside spending must not be co-ordinated with a candidate or a political party. There are also specific rules governing PACs: SSFs can solicit contributions only from individuals associated with a connected or sponsoring organisation. Non-connected committees are free to solicit contributions from the general public. There are no limits or restrictions on the sources of funds that may be used for Super PAC expenditures. While PACs are required to disclose their donors, not all organisations under section 501(c) of the Internal Revenue Code are required to disclose their donors.

Source: Adapted from IDEA (n.d.), Political Finance Database, <https://www.idea.int/data-tools/data/political-finance-database>

Political advertisements remain a key area of unregulated influence

To uphold the integrity of elections, it is increasingly important, in today's context, to monitor closely the way in which political parties use data and digital platforms to influence voters. Whereas electoral campaigns naturally involve the collection of voters' opinions and political advertising, how and the extent to which this is being done has dramatically changed. Recent evidence shows that spending on online political advertisements has increased significantly in recent years (Forbes, 2020^[39]), particularly during the COVID-19 pandemic. Yet, regulation for expenditures on online campaigns is lacking in many countries (Hamada et Agrawal, 2020^[40]). In Canada, election messages communicated over the Internet are deemed to constitute election advertising unless they are free of charge. In Hong Kong (China), rules on election advertisement also cover online advertisements, while the French Electoral Code prohibits "any commercial advertising process through the press or any means of audio-visual communication (including social networks)" during

the six months preceding the first day of the month of an election. Yet, these rules are sometimes incomplete and do not cover the range of actors and practices in online campaigning. For example, the prohibitions in France do not apply to 'sponsored ads' from other political groups, associations and think tanks.

The European Union, in its Democracy Action Plan published in December 2020, recognises that online platforms have made it more difficult to maintain the integrity of elections and protect the democratic process from disinformation and other forms of manipulation. It includes, as a key priority action, the introduction of a proposal to enhance the transparency of political advertising and communication, and the commercial activities surrounding it. The objective was to more clearly identify the source and purpose of such paid political material (European Commission, 2020^[41]).

PRE/POST PUBLIC EMPLOYMENT REMAINS A CONCERN

The ultimate responsibility for safeguarding the public interest and rejecting undue influence lies with public officials. Thus, campaign finance and lobbying regulations need to be part of an overall strategy that promotes public integrity and ensures the management of conflict of interests, including the revolving-door phenomenon. While mobility between the private and public sectors can result in many positive outcomes, notably the transfer of knowledge and competencies, it can also provide an

undue or unfair advantage to influence government policies if not properly regulated. Most countries have established rules governing how members of the executive branch may join the private sector. However, fewer countries have adopted provisions for members of legislative bodies. Similarly, pre/post public employment measures at the EU level are provided for members of the EC, although there is no cooling-off period for Members of Parliament (Table 2.3).

Table 2.3. Provisions on cooling-off periods (post-public employment)

	Ministers or members of Cabinet	Appointed public officials (e.g. political advisors and appointees)	Members of legislative bodies	Senior civil servants (not elected)
Australia	•	•	○	•
Brazil	•	•	○	•
Canada	•	•	•	•
China	•	•	•	•
France	•	•	•	•
Germany	•	○	○	○
India	○	○	○	○
Italy	•	•	○	•
Hong Kong (China)	○	○	○	•
Japan	•	•	○	•
Korea	○	○	○	•
Netherlands	•	•	•	•
Spain	○	•	•	○
South Africa	○	○	○	○
United Kingdom	•	•	•	•
United States	•	•	•	•
• Yes	11	11	7	12
○ No	5	5	9	4

	Members of the European Commission	Appointed public officials (special advisers)	Members of the European Parliament	Senior members of the European civil service
European Union	•	•	○	•

Source: OECD Product Market Regulation Indicators (2018) and additional research by the OECD Secretariat

In three countries (France, Italy and the United States), pre/post public employment regulations also cover lobbyists joining the public sector. Most pre-public employment measures take effect during the recruitment processes. They can take various forms,

such as bans and restrictions for a limited period, interest disclosure prior to or upon entry into functions, ethical guidance, pre-screening integrity checks or reference checks.

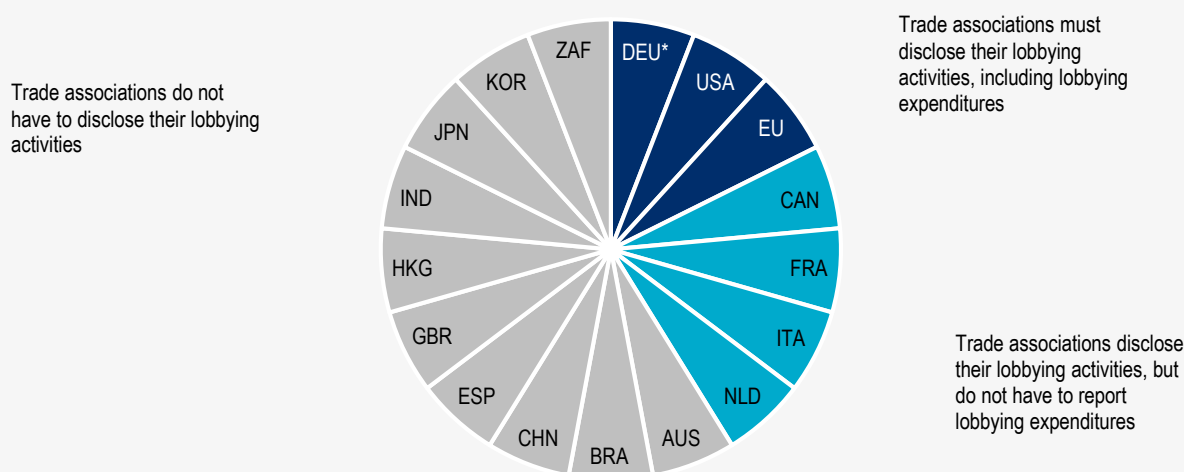
INDUSTRY ASSOCIATIONS ARE KEY ACTORS REGARDING WHICH TRANSPARENCY AND INTEGRITY RULES ARE LACKING

Disclosures on lobbying through lobbying associations is limited

Many companies form cross-sector groups or industry associations that lobby on their behalf, including sector specific associations or general associations such as Chambers of Commerce. These groups can have considerable influence as representatives of a wide group of businesses. While in those countries with some level of transparency on lobbying, it is disclosed when an industry association acts as a lobbyist advocating on behalf of all its

members, none of the countries reviewed have introduced disclosure requirements that would oblige industry associations to make policy makers aware of certain policy positions that represent only some of their members. In addition, in countries with lobbying registers in place, only a few require trade associations and industry bodies to report their lobbying expenditures (Figure 2.5).

Figure 2.5. Few countries require trade associations and industry bodies to report lobbying expenditures under hard law



Notes: In Germany, lobbyists may refuse to disclose financial information but the refusal is recorded in the register and interest representatives are identified in a separate public list within the lobby register.

Source: OECD 2020 Survey on Lobbying and additional research by the OECD Secretariat.

There is very limited transparency on the other political activities of trade associations

Trade associations and industry groups may be involved in political activities to influence the outcome of an election. In jurisdictions with rules on third-party campaigning, trade associations may be covered by these regulations. Yet, transparency remains limited. For example, trade associations in the United States covered under 501(c)(6) of the

Internal Revenue Code (business leagues, chambers of commerce, real estate boards and trade associations) may engage in political activity as long as these activities do not become their primary purpose. These organisations are not required to publicly disclose the identity of their donors or sources of money.

There are no integrity standards for companies regarding their engagement with trade associations

Misalignments between the political engagement activities of a company and the trade associations it belongs to can raise serious credibility issues for companies, and can affect investor and consumer decisions. To address misalignment risks and in response to pressure from investors and civil society, certain companies have started reviewing whether their values and commitments match those of the industry associations of which they are members. For example, Shell reviewed its relationship with 19 industry associations (of the more than 100 to which it belongs) to assess whether its participation in

industry associations was undermining the goals of the Paris Agreement. The review showed that Shell's position was aligned with nine industry associations and had "some misalignment" with nine others. As a result, the company decided not to renew its membership with one industry association (Shell, 2019^[42]). Total and BP have also withdrawn from some industry associations. There are currently no governmental guidelines or standards of conduct adopted in the jurisdictions analysed that require companies to address these misalignment risks.



FEW REGULATIONS REQUIRE THE APPROVAL OF POLITICAL CONTRIBUTIONS BY SHAREHOLDERS OR CORPORATE BOARDS

Shareholders are increasingly requiring more transparency on corporate political engagement to ensure that a company's practices do not contradict its commitments (Section 1 "Introduction"). Companies must also ensure board members have a

role in regularly monitoring the company's political engagement practices. Among the 17 jurisdictions analysed, only two have relevant regulations on the mandatory approval of political contributions (Box 2.1).

Box 2.1. Only two countries have rules on the mandatory approval of political contributions by the board or shareholders

India

Article 182 (“Prohibitions and restrictions regarding political contributions”) of the Company Act of 2013 includes a mandatory approval of political contributions by the Board of Directors: “companies may contribute directly or indirectly to any political party provided that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall be deemed to be justification in law for the making and the acceptance of the contribution authorised by it”.

The United Kingdom

Under the Companies Act (Part 14 “Control of political donations and expenditures), a company must not make a political donation to a political party or other political organisation, or to an independent election candidate, or incur any political expenditure, unless the donation or expenditure is authorised by a resolution of the members of the company (for companies that are not a subsidiary of another company), and a resolution of the members of any relevant holding company.

Source: (PRI, 2018^[16]) and additional research by the OECD Secretariat

3 Critical areas for investor engagement

To address the systemic risks related to corporate political engagement practices, institutional investors could consider the following areas for engagement with policy makers and investee companies. These areas build on existing benchmarks and frameworks, such as the 2018 “*Investor expectations on corporate climate lobbying*”, a statement developed by PRI and the Institutional Investors Group on Climate Change (IIGCC), disclosure indicators developed by Climate Action 100+, an investor initiative of more than 300

institutional shareholders (Climate Action 100+, s.d.^[43]), the OECD’s Due Diligence Guidance for Responsible Business Conduct (OECD, 2018^[16]), as well as Preventable Surprises’ “Action points for stakeholders in the institutional investment chain” (Preventable Surprises, 2021^[44]).

Further work in this direction is encouraged in order to continue monitoring evolving legal frameworks in the 17 jurisdictions analysed, emerging practices and risks, and key areas of unregulated influence.

INVESTOR ENGAGEMENT WITH COMPANIES

Enhanced disclosures on corporate political engagement practices, including lobbying through social media and political finance

With uneven formal government regulations on lobbying and political contributions, investors can encourage further reporting on corporate political engagement practices, and shareholders can further support or lead the filing of shareholder resolutions demanding systematic lobbying disclosures. Research from Preventable Surprises showed that concentration of lobbying power in the top listed companies is significant for a range of sectors with systemic ESG impact. This means investors should start focusing their engagements on leading lobbying spenders in concentrated sectors (Preventable Surprises, 2021^[44]).

Lobbying disclosures could include:

- The ultimate beneficiaries of a company’s lobbying activities. This means that lobbying disclosures should clearly identify where lobbying pressures come from (for example,

a parent company), as well as any parent company or subsidiary company benefitting from these activities;

- The specific decisions or pieces of legislation targeted and the intended results of the lobbying activities in relation to these;
- The specific methods and practices used, including indirect forms of influence, and the amount of money spent on national or subnational lobbying.

Similarly, disclosures on political donations could include:

- The beneficiaries of political donations, including third-party organisations that conduct political activities;
- The amounts of political donations.

Responsible lobbying standards and due diligence requirements on lobbying and trade association alignment

To better understand how they address corporate political engagement risks, investors can also encourage companies to formalise responsible engagement standards and internal processes that address the full scope of corporate and trade association conduct in the policy-making process. The standards and processes could cover the following areas:

- Explaining how lobbying and influence activities align with public commitments to support goals on climate change and other shared sustainability challenges.
- Establishing adequate due diligence measures to ensure that the positions and practices of those who lobby on a company's behalf (industry and lobby associations) do not run afoul of the organisation's values and commitments. This may include:
 - Processes to regularly review membership of trade associations and third-party organisations and identify misalignment;
 - Transparency on memberships of trade associations or other third-party organisations that may engage in political activities (charities, foundations, PACs, fundraising organisations);

- The level of funding and engagement in these organisations (e.g. representation on the board, funding beyond membership, participation in specific committees or working groups);
- Actions taken when the positions and lobbying practices of these organisations do not align with the company's own lobbying practices and commitments.

- Mainstreaming these standards across all business lines – including government affairs and sustainability functions to create a coherent position across the company's government affairs activities and CSR/ESG branches. These policies should ensure that CSR/ESG teams have sufficient access to information on a company's lobbying activities and trade association membership.
- Adopting transparency and integrity measures on the hiring of former public officials.
- Specifying the role of board members, top management and senior executives in regularly monitoring the implementation of the standards.
- Ensuring that employees have the knowledge and capacity to implement the standards in their daily work.

INVESTOR ENGAGEMENT WITH POLICY MAKERS

Scaling up disclosure requirements on lobbying activities

Investors can make strong arguments to regulators and public policy makers about the importance of updating lobbying regulations to provide greater transparency and integrity.

In jurisdictions with no lobbying regulations (Brazil, China, Hong Kong (China), India, Japan, Korea and South Africa), investors could encourage the adoption of lobbying related rules and guidelines in line with the OECD Recommendation on Principles for Transparency and Integrity in Lobbying. This could alter the current context where indirect influence pedalling constitutes an increasing part of

companies' influence strategies. To ensure greater transparency over the specific interests lobbied, governments can consider several complementary policy options:

- First, governments can adopt lobbying registers that include information on the objective of lobbying activities, their beneficiaries, the targeted decisions and the types of practices used, including the use of social media as a lobbying tool.

- Second, key public officials involved in decision-making processes can make their agendas public.
- Lastly, governments can mandate *ex post* disclosures of how legislative or regulatory decisions were made.

In countries with existing transparency requirements on lobbying activities, investors could advocate for more comprehensive and uniform lobbying rules as well as enhanced disclosures that capture:

- “WHO” are the ultimate beneficiaries of lobbying activities. For example, countries only covering consultant lobbying activities (Australia and the United Kingdom) could strengthen their framework to include all actors who conduct lobbying activities, in particular corporate in-house lobbyists.
- “WHAT” are the objectives of lobbying activities and the specific decisions targeted.

Except for Canada, the United States and the EU, other countries with existing transparency requirements (Australia, Germany, France, the United Kingdom, Italy and the Netherlands) do not enable stakeholders to know which decisions are specifically targeted.

- “HOW” lobbying activities are conducted, including the types of direct or indirect practices used and the money spent on lobbying. Very few countries require the disclosure of information on how lobbying activities were conducted, including methods used and lobbying expenses.

It may also be necessary to go further and introduce disclosure requirements for industry associations, so that they make policy makers aware of positions that represent only some of their members.

Addressing third party spending and online political advertisements in political finance laws

Disclosures on political finance are greater than on lobbying in the 17 jurisdictions analysed, but investors can engage policy makers on two key areas that remain vulnerable to exploitation by powerful special interests:

- The regulation of third-party spending;
- Online political advertisements.

Enhancing transparency and integrity over corporations’ engagement with outside organisations such as trade groups, think tanks, and research centres

Investors can also encourage governments to set standards or norms on responsible engagement that clarify how to ensure integrity in the range of activities that companies can use to influence public policy. For example, standards could cover issues such as disclosing information on the funding of

grassroots organisations, research bodies and think tanks, managing conflicts of interests in the research process, providing impartial and reliable evidence and data to policy makers, and clarifying expectations for recruiting former public officials.

Adopting a detailed integrity framework for public officials

While the majority of public sector employees have high standards of integrity, legislators and public officials with key decision-making powers (such as members of cabinet, political advisers, senior managers) are the main focus of much corporate influence spending and revolving door benefits, and need a tailored integrity framework. Investors could encourage the adoption of more detailed integrity

standards and guidance that clarify how public officials are permitted to interact with lobbyists and donors. Other areas of reform include strengthening both rules of procedure for joining the public sector from the private sector and vice-versa, as well as establishing cooling-off periods tailored to the level of seniority of public officials.

INVESTOR LEADERSHIP ON POLITICAL ENGAGEMENT

Lastly, investors should also lead by example and adopt robust political engagement standards in their own practices. A review conducted by the think tank Preventable Surprises of 50 leading asset managers showed that only 17 (10 in North America and 7 in Europe) assessed public information on their own trade and industry association memberships, and on associated climate policy alignment between their internal company policies and trade association

memberships (Preventable Surprises, 2021^[44]) (Figure 3.1). Another study by InfluenceMap assessing financial institutions found that most organisations have either remained silent or stated only high-level support on European sustainable finance policy, while their industry associations pose a barrier to progressive sustainable finance policy (Influence Map, 2020^[45]).

Figure 3.1. Asset managers who publicly disclose their lobbying trade association memberships



Source: (Preventable Surprises, 2021^[44])

Annex A. Country-level analysis

AUSTRALIA

Lobbying

Lobbying was first regulated in Australia through the Lobbyist Registration Scheme of 1983, but the scheme was abolished in 1996 and replaced in 2008 with the Lobbying Code of Conduct. Like the United Kingdom, the Code only applies to lobbyists conducting activities on behalf of clients and thus to a very narrow portion of lobbyists who have contact with government representatives. In 2020, the Australian National Audit Office (ANAO) released an audit report which concluded that the Register does not, *“on its own, provide transparency into the integrity of the contact between lobbyists and Government representatives or the matters discussed”* because the information disclosed is limited and does not include the objective of the lobbying activity (ANAO, 2018^[46] ; ANAO, 2020^[47]).

Political finance

Public disclosures on corporate donations to political parties also remains limited. Indeed, corporate donations must be disclosed to the Australian Electoral Commission above a certain threshold; in practice, donors can make multiple donations below the threshold as a means of avoiding public disclosure of their donations by political parties.

Pre/post-public employment

Ministers and Parliamentary Secretaries cannot, for a period of 18 months after they cease to hold office, engage in lobbying activities relating to any matter that they had official dealings within their last 18 months in office. Similarly, persons employed in the Offices of Ministers or Parliamentary Secretaries at Adviser level and above, as well as certain categories of senior officials, may not, for a period of 12 months after they cease their employment, engage in lobbying activities relating to any matter that they

had official dealings with in their last 12 months of employment.

Shareholder rights

Apart from the general voting rights established in the Companies Act 2001, there are no special provisions on the rights of shareholders to vote for particular expenses such as contributions to political parties or lobbying activities.

CANADA

Lobbying

Canada has more than three decades of experience administering legislation on lobbying. The first piece of federal legislation was the *Lobbyists Registration Act* which came into force in 1989, and was supplemented by the Lobbying Act of 2008. The Lobbying Act is one of strictest and strongest lobbying frameworks among OECD countries (OECD, 2021^[4]). Under the Lobbying Act, lobbyists must disclose any communications techniques used to influence public officials in a public Register of Lobbyists. This includes “grassroots communication”, which is defined in the lobbying Act as *“appeals to members of the public through the mass media or by direct communication that seek to persuade those members of the public to communicate directly with a public office holder in an attempt to place pressure on the public office holder to endorse a particular opinion”*. In addition, the requirement that lobbyists publish monthly communication reports allows publication of timely information on lobbying activities, including on the objectives and the public officials and policies targeted. This allowed introduction of a specific feature to the online Registry of Lobbyists, enabling users to view lobbying registrations related to COVID-19. The Office also issued guidelines on COVID-19 emergency funding and registration requirements to guide lobbyists on

whether applying for a federal government funding programme linked to COVID-19 should be disclosed as a lobbying activity (Office of the Commissioner of Lobbying of Canada, 2020^[48]).

The Office of the Commissioner of Lobbying recommended improvements regarding enforcement of these provisions. Indeed, the Lobbying Act provides for criminal sanctions but does not include a range of measures (e.g., training or administrative monetary penalties (AMPs) or temporary prohibitions) to allow for greater flexibility and proportionality in addressing contraventions of the Lobbying Act.

Political finance

The financing of political parties and candidates is regulated under the Canada Elections Act. Only Canadian citizens or permanent residents can contribute to registered parties and candidates, and a strict ban applies to donations from foreign interests, corporations and trade unions. The legal framework also provides for limits on the amount of election advertising expenses that a third party may incur to promote or oppose a registered party or the election of a candidate, including by naming them, showing their likeness, identifying them by their respective political affiliation, and taking a position on an issue with which the registered party or the candidate is associated. Financial reports from political parties, candidates and third parties are made public on Election Canada's website. The reports identify the names of donors for contributions that are in excess of CAD 200.

The Canada Elections Act can be enforced only through the criminal courts, not administrative penalties, even for purely regulatory matters. As a result, only a very small portion of non-compliance incidents ever get sanctioned (Elections Canada, 2018^[49]).

Pre/post-public employment

Certain categories of public office holders (minister of the Crown, minister of state or parliamentary secretary, Chief Electoral Officer, members of ministerial staff who work on average 15 hours or more a week, ministerial advisers, Governor in Council appointee, certain ministerial appointees, Parliamentary Budget Officers) face specific

restrictions one year after leaving office. In addition, former ministers of the Crown or ministers of state cannot make representations to current ministers for two years after their last day of office.

Lastly, a specific lobbying ban applies for former designated public office holders under the Lobbying Act, but the post-employment restrictions differ depending on whether they are employed by a corporation or an organisation. During the five-year period after they cease to hold office, former designated public office holders are prohibited from engaging in any consultant lobbying activities or in-house lobbying activities (if they are employed by an organisation). However, the Act allows former designated public officer holders to engage in in-house lobbying on behalf of corporations as long as such lobbying does not amount to a significant part of their work.

Shareholder rights

The Canada Business Corporations Act establishes the rights of shareholders but does not include specific provisions for voting rights on donations to political parties or lobbying activities.

FRANCE

Lobbying

Since 2014, France has taken major steps to reinforce the integrity of decision-making processes, for example new transparency requirements for health professionals and pharmaceutical companies, which are required to disclose their ties in a dedicated registry (www.transparence.sante.gouv.fr). In 2017, France introduced a legal framework on lobbying, one of the most comprehensive frameworks among OECD countries. Yet, a Parliamentary review recently concluded that the legislative framework on lobbying failed to achieve its objective of allowing citizens to assess the real impact of lobbying activities on law making. The findings of the review revealed that many actions aiming to influence the legislative process were not accounted for in the legislative framework. For example, hearings made at the request of a Member of Parliament are not included in the definition of lobbying, even if the practice is widespread. As a result, companies who have built close, regular contacts with

decision makers may have fewer reporting obligations than interest groups with more limited contacts, who are almost always the initiators of such exchanges (Waserman, 2020^[50]).

The High Authority for Transparency in Public Life (HATVP), entrusted with the management of the lobbying register, also recommended in its activity reports to introduce a graduated system of administrative sanctions, allowing it to provide a rapid, proportionate response through direct financial penalties (HATVP, 2019^[51] ; 2021^[52]). The current choice of criminal sanctions for breaches to the lobbying regulation involves long and cumbersome procedures, potentially leading to a sentence that is likely to be perceived as light (maximum EUR 75 000).

Political finance

Since 1988, France has adopted a series of measures to regulate and make transparent the financing of political parties and election campaigns. Political parties and candidates receive direct public funding as their main source of funding, depending on their previous election results. In return, donations from other legal entities are prohibited and candidates in

elections must respect a spending limit. Violations of private donation rules, including donations from a banned source or exceeding the maximum legal limit of EUR 7 500, are subject to a maximum fine of EUR 3 750 and a one-year prison sentence.

The legal framework, however, does not specify any rules regarding expenditures incurred by third parties, which can present a potential means of circumventing donation and spending limits.

Pre/post-public employment

France is one of the only countries to apply post- and pre-public employment restrictions. In 2020, the entry into force of Law No. 2019-828 of 6 August 2019 on the transformation of the civil service profoundly modified the rules on the ethics of public servants in order to better manage mobility between the public and private sectors and prevent ethical and criminal risks. The main purpose and effect of this reform was to make administrations more accountable in the context of monitoring the departure of their staff to the private sector and, on the contrary, the recruitment of staff from the private sector (Box A A.1).

Box A A.1. Pre- and post- public employment restrictions in France

Post-employment restrictions

- For a period of three years, former ministers, local executive chairmen and members of an independent administrative authority must refer to the HATVP to examine whether the new private activities that they plan to exercise are compatible with their former functions.
- Public organisations also control the movement of former public civil servants to the private sector, which is carried out by the hierarchical superior of the official concerned. The manager can refer the matter to the HATVP in case of doubts on individual cases. Referral to the High Authority is compulsory for certain senior public servants.

Pre-post employment restrictions

- For a period of three years after the termination of their functions in their previous employment, private-sector employees appointed to fill a post in the public administration may not be entrusted with the supervision or control of a private undertaking. Moreover, they are not allowed to conclude contracts of any kind with a private undertaking or give an opinion on such contracts. They must not receive advice from or acquire any capital in such a company. Any breach of this provision is punished by two years' imprisonment and a fine of EUR 30 000.

- In 2020, the HATVP was tasked with a new “pre-nomination” control for certain high-ranking positions. A preventive control is carried out before an appointment to certain senior positions (including members of a ministerial cabinet, collaborators of the President of the Republic, directors of central administration), if an individual has held positions in the private sector in the three years prior to the appointment.

Source: (OECD, 2021^[4])

Shareholder rights

The Commercial Code of France does not establish special provisions on the rights of shareholders to vote on matters of political donations or lobbying activities.

GERMANY

Lobbying

Lobbying was first regulated through Article 73 of the Rules of Procedure of the German Bundestag in 1951. On 25 and 26 March 2021, the two chambers of the German parliament approved the Federal Act Introducing a Lobbying Register for the Representation of Special Interests vis-à-vis the German Bundestag and the Federal Government (Lobbying Register Act – Lobbyregistergesetz), which entered into force on 1 January 2022. While the adoption of the lobbying law marked a significant step forward, the law also drew criticism due to its insufficient coverage and list of exemptions. For example, lobbyists do not have to state the exact goal of their lobbying efforts, which hampers transparency. The disclosure of financial expenditure is optional and may be refused by lobbyists (LobbyControl, 2021^[53]).

Political finance

The Political Parties Act requires political parties to report on their sources of funding, but the identity of donors is disclosed only if their contributions exceed EUR 500 and if the value of donations exceeds EUR 10 000 in one year. The expenses of third parties for lobbying activities are not regulated.

Pre/post-public employment

Members of government who intend to seek employment outside the public service within the first 18 months after leaving office must notify the federal government in writing. The federal government, through its advisory body consisting of three members, can prohibit the employment for a period of one year if there are reasons to believe the employment could impair the public interest.

Members of the Bundestag are allowed to keep outside activities alongside the exercise of their mandate. The Code of Conduct for Members of the German Bundestag requires every Member to provide the President (Speaker) of the Bundestag with certain information relating to their income derived from outside activities.

Shareholder rights

The Stock Corporation Act of 6 September 1965, which was last amended in 2017, does not include any provision on the rights of shareholders to approve political funding or lobbying activities.

ITALY

Lobbying

Lobbying is regulated in the Chamber of Deputies, but there is no lobbying law at the national level covering the executive branch of Government. This has prompted several entities within the executive branch to adopt their own lobbying transparency measures. The Directive of 24 September 2018 established a lobbying register for the Ministry of Economic Development and the Ministry of Labour and Social Policies. Similarly, the Anti-Corruption

Authority publishes weekly agendas of meetings between key decision makers of the authority (the president, members of the authority's council, secretary-general and senior managers) with external stakeholders. Agendas are published online and contain information on the purpose of the meetings, the date and time, the names of persons present at the meeting, the topics of discussion, as well as any document transmitted. This means lobbyists are covered by more than one transparency framework, which gives rise to issues of coherence, interpretation and excessive administrative burden for lobbyists.

Political finance

Italy is the only country at the European level with no direct public funding for political parties. The reimbursement of election expenses was abolished by Law no. 13, 21/2/2014 "on the abolition of direct public financing, provisions for the transparency and democracy of parties and regulation of voluntary and indirect contributions in their favour". There is a lack of clarity on the regulation of third parties spending during electoral campaigns (Transparency International Italia, 2018^[54]).

Pre/post-public employment

Italy applies post- and pre-public employment restrictions. Ministers may not, during a period of 12 months after they leave office, be employed in public-law entities and for-profit entities that operate predominantly in sectors connected with the office held. Persons who hold or have held office in the last two years in political parties or trade unions may not be appointed to direct personnel management structures, while those who have held offices in the last two years in bodies governed by private law may not be appointed to top managerial positions in the civil service. In spite of these rules, the move of former Members of Parliament to the lobbying industry has recurrently been signalled as a source of concern. (Marta Cartabia, 2021^[55]).

Shareholder rights

The laws governing companies in Italy are stated in book V of the Italian Civil Code (articles 2325 onwards) and do not contain special provisions on

shareholders' rights to vote on the company's political and lobbying expenditures.

JAPAN

Lobbying

Lobbying remains unregulated in Japan.

Political finance

The financing of political parties and candidates is regulated under the Political Subsidies Act (1994), the Public Office Elections Act (1945) and the Political Funds Control Act (1952). Corporations and other organisations can only donate to political parties and cannot donate to particular candidates or politicians. Corporations have an annual limit of JPY 7.5 million to JPY 30 million. Under the Political Funds Control Law, names of donors who give less than JPY 50 000 annually are not required to be listed in political fund reports, which limits transparency.

Pre/post-public employment

The practice of revolving door ("*amakudari*" in Japanese, meaning "descent from heaven") remains a challenge despite the adoption in 2007 of tighter post-employment provisions (The Japan Times, 2017^[56]; Colignon et Usui, 2003^[57]). The amendments to the Public Service Act prohibit ministers from arranging the employment of retiring public officials at companies or organisations over which their ministry or agency held powers, for example on matters such as issuing business permits or granting subsidies. The amendment was adopted following allegations involving a government agency that was found to have favoured companies that hired retired officials with advantageous conditions in their contracts (Mizoguchi et Van Quyen, 2012^[58]).

Shareholder rights

The Company Act no. 86 of 2005 does not stipulate any special rights to shareholders to vote in cases of donations to political parties or lobbying expenditures. The rules applied are for the general voting rules for shareholders' meetings.

KOREA***Lobbying***

Lobbying remains unregulated in Korea.

Political finance

Since being enacted in 1965, the Political Fund Act in Korea has undergone several revisions. In particular, the National Assembly of the Republic revised the Act in August 2005 to include a ban on corporations or groups to make political contributions. Similarly, a revision of the Act in 2010 prohibited political parties from raising campaign funds from the public, which was previously allowed through fundraising associations. National Assembly members or candidates in public office elections (except candidates running for local council member elections) can designate an association for fundraising allowed to collect political contributions when registered with the Election Commission.

However, the Act does not set an upper limit on the amount of fees that may be paid by an individual political party member. Fundraising associations for a National Assembly member or a candidate running in an election have a duty to submit financial reports including the personal information of donors who make contributions exceeding a set amount. In comparison, political parties are only required to disclose the total amount of membership fees collected; therefore, the general public has no way of accessing the information on party members who paid extremely high membership fees. According to financial reports submitted by political parties, membership fees collected from party members can amount up to one-quarter of their total income.

Pre/post-public employment

The Public Service Ethics Act includes a two-year cooling-off period for senior public officials joining companies they have monitored during the previous five years. Public officials may receive an exemption from the prohibition by seeking approval from their agency's public service ethics committee. No cooling-off periods apply to former government members or Members of Parliament.

Shareholder rights

The Commercial Act, as amended on 25 June 2019, does not contemplate any special provision for shareholders to vote on particular expenditures such as donations to political parties or lobbying activities.

THE NETHERLANDS***Lobbying***

Similar to Italy, lobbying is regulated in the House of Representatives through a voluntary lobbying register, but there is no lobbying law at the national level covering the executive branch of government. Lobbyists' registration is voluntary but is necessary to obtain a pass giving access to certain areas of the premises of the House of Representatives. In 2015, two members of Parliament published a consultation document – “Lobby in daylight: Listen and show” – with a set of proposals to increase transparency in lobbying activities. The proposals included the publication of Members of Parliament's meetings with lobbyists, and the introduction of a legislative footprint for each major policy topic and bill, indicating which interests contributed and how their proposals were considered (Netherlands Parliamentary Monitor, 2015^[59]). The proposals have not been adopted into law.

Political finance

All political parties and candidates may receive unlimited contributions from private individuals and legal entities. Foreign donations are allowed, as well as anonymous donations of up to EUR 1 000. The reports from political parties include an overview of the contributions of a total of EUR 4 500 or more that the party received from a donor in that calendar year, leaving considerable room for undisclosed donors.

In 2021, the Netherlands was the first country to adopt a voluntary Code of Conduct on Transparency in Online Political Advertisements. Developed with the International Institute for Democracy and Electoral Assistance (International IDEA), the Code commits political parties and online platforms that adhere to it in order to provide transparency on political advertisements during election campaigns (IDEA, Ministry of the Interior and Kingdom Relations, 2021^[60]).

Pre/post-public employment

Specific provisions were adopted to regulate lobbying activities by former ministers. A circular adopted in October 2020 – “Lobbying ban on former ministries” – prohibits ministers and any officials employed in ministries to take up employment as lobbyists, mediators or intermediaries in business contacts with a ministry representing a policy area for which they previously had public responsibilities. The length of the lobbying ban is two years. The objective of the ban is to prevent retiring or resigning ministers from using their position, and the knowledge and network they acquired in public office, to benefit an organisation employing them after their resignation. The secretary general of the relevant ministry has the option of granting a justified request to former ministers who request an exception to the lobbying ban (Overheid.nl, 2020^[61]). In addition, the Dutch Code of Conduct on Integrity in Central Government includes provisions on lobbying and reminds public officials to consider indirect ways they may be influenced by special interest groups (Government of the Netherlands, s.d.^[62])

Shareholder rights

Book 2, title 2.5, section 2.5.4 of the Civil Code of the Netherlands establishes general rules on the vote of shareholders in general meetings, with no specific provisions on political donations or lobbying activities.

SPAIN***Lobbying***

Spain does not have a specific framework regulating lobbying activities, though the adoption of a lobbying regulation features in Spain's Open Government Plan 2020-2014 (Action 5.2). However, transparency is provided through open agenda initiatives. The agendas of elected members of the government have been published online since 2012 on the government website. The agenda lists, on a daily basis, the visits and meetings in which members of the government participate. In October 2020, the Boards of both

houses of the Spanish Parliament adopted a Code of Conduct for members of the Congress and the Senate, which requires the publication of the senators' and deputies' agendas, including their meetings with lobbyists. An agenda section must be made available on the webpage dedicated to each deputy, though not all deputies have set up this webpage yet.

Political finance

The Organic Law on Political Parties (2002) and the Organic Law on the Funding of Political Parties (2007) are the main laws regulating political finance. The legal framework covers political parties but not candidates. While political parties cannot receive private donations from legal persons or entities without legal personality, they may receive donations from foreign natural persons. Political parties may not accept that, directly or indirectly, third parties effectively assume the cost of their acquisitions of goods, works or services or of any other expenses generated by their activity.

Loans granted to parties, which may be considered hidden private funding, is an emerging risk in Spain where the high indebtedness of parties was recognised by the Third Evaluation Round of GRECO² as a challenge to the independence of parties *vis-à-vis* credit institutions. The Spanish Court of Audit – also a main institution responsible for the control of party funding, but with non-binding recommendations – had already highlighted this risk to parties in particular as it observed many irregularities in the management of the loans granted to parties (OECD, 2016^[35]).

Pre/post-public employment

Specific prohibitions and restrictions focus primarily on decision makers in the executive branch. Law 3/2015 regulating the exercise of high office in the General State Administration provides for a two-year cooling-off period for members of government and high-ranking officials, excluding advisors, during which they are prohibited from working for — or providing services to — businesses or organisations that have been affected by decisions they took part

² The Council of Europe's Group of States against corruption

in. However, members of government and high-ranking officials in Spain do not breach regulations when they return to the private company where they worked before being appointed, as long as the activity they are going to carry out in the private sector is not directly related to the competencies of their previous office, or where they do not take decisions related to that office. The Office of Conflict of Interest is the central authority managing the post-employment measures of members of government and senior civil servants.

However, international reports from GRECO highlighted that the oversight and accountability regime, which applies to post-public employment, needs to be upgraded. The Court of Auditors has regularly pointed to deficiencies in the Office's monitoring and control. One shortcoming, for instance, was that the Office takes a formalistic approach (not going beyond the presumed good faith of the official requesting authorisation) leading to a high authorisation rate and very few sanctions applied. The media has revealed cases in which the responsibilities of former high-ranking officials were directly linked to their new position in the private sector during the two-year cooling-off period (GRECO, 2019^[63]).

Shareholder rights

Spanish corporate law (Ley de Sociedades de Capital), does not include specific provisions on the rights of shareholders to vote on expenditures such as donations to political parties or lobbying activities.

THE UNITED KINGDOM

Lobbying

The United Kingdom is the only country to combine both a lobbying register and the requirement for certain categories of public officials to publish their agendas. The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act introduced a mandatory Register of Consultant Lobbyists. Transparency of lobbying activities is further enhanced with the publication of ministerial diaries on a quarterly basis. The Office of the Registrar of Consultant Lobbyists cross-checks lobbyists registered with ministerial open agendas, to monitor and enforce compliance with the

requirements set out by the Transparency of Lobbying Act.

Yet, most of the lobbying activities in the United Kingdom are not covered by the register. Indeed, Transparency International UK estimates that over 90% of lobbyists operating in the United Kingdom operate in-house, but in-house lobbyists working for companies, NGOs, charities, trade associations, think tanks, and other organisations are excluded from the definition of "lobbyist" and are exempt from disclosure requirements when they lobby on their own behalf. Similarly, the definition of "lobbying" only includes paid activities targeting ministers or permanent secretaries, excluding other public officials with key decision-making powers such as members of parliament or political advisers (Transparency International UK, 2021^[64]).

Political finance

The Political Parties and Referendums Act (2000) and the Representation of the People Act (1983) are the main laws regulating political finance. The Lobbying, Non-Party Campaigning and Trade Union Administration Act enacted in 2014 does not directly require lobbyists to disclose their political contributions, but it has increased transparency in relation to spending by some non-party campaigners/third-party campaigners by requiring them to publish and record more information about their spending, donations, accounts and board members.

Pre/post-public employment

Post-public employment is regulated through the Ministerial Code and the Rules on Business Appointments and is overseen by a special Advisory Committee on Business Appointments, though their opinions are not legally binding. Independent regulators who are neither ministers nor civil servants, for example board members and staff of regulatory bodies, are not covered by the rules. A review from the Committee on Standards in Public Life found that less than one-third of the 63 regulatory agencies had policies in place on movement into the sector they regulate, and even fewer had policies on hiring staff from the regulated sector, which raises serious risks for integrity and independence (Committee on Standards in Public Life, 2017^[65]).

Shareholder rights

Under the Companies Act (Part 14 “Control of political donations and expenditures”), a company must not make a political donation to a political party or other political organisation, or to an independent election candidate, or incur any political expenditure, unless the donation or expenditure is authorised by a resolution of the board members of the company and a resolution of the members of any relevant holding company.

THE UNITED STATES

Lobbying and political finance

Lobbying has been regulated in the United States since 1946 and the Federal Regulation of Lobbying Act, which was replaced in 1995 by the Lobbying Disclosure Act. International reports from GRECO and

the OECD have acknowledged that both the U.S. Federal Election Commission website and the public disclosures of lobbying activities are an impressive and exemplary source of information and transparency of political financing and lobbying (GRECO, 2011^[66]). This transparency is seen as a form of soft regulation and has led to increased scrutiny from the media and civil society on large corporate donations. The website OpenSecrets.org, developed by the Center for Responsive Politics (a non-profit, nonpartisan research group based in Washington, D.C.) allows users to track the effects of money and lobbying on elections and public policy. The Government Accountability Office also relies on the accessibility of databases as well as on the informal exchange of information between entities to cross-check lobbying disclosure requirements and political contributions. As such, the United States is the only country among the jurisdictions analysed with such a cross-checking mechanism (Box A A.2).

Box A A.2. Cross-checking lobbying disclosures and political contributions in the United States

The Lobbying Disclosure Act requires disclosures on both lobbying activity and political contributions. To determine whether lobbyists reported their federal political contributions, as required by the Act, the Government Accountability Office (GAO) analysed stratified random samples of year-end 2017 and mid-year 2018 semi-annual political contributions reports. The samples contained 80 reports listing contributions and 80 that listed no contributions. Contributions listed on lobbyists’ and lobbying firms’ political contributions reports were compared against political contributions reported in the Federal Election Commission database, to identify whether the reports omitted any contributions.

The GAO estimated that in 2018, lobbyists failed to disclose one or more reportable contributions in 33% of all reports. Eight political contributions reports were amended in response to its review.

Source: (GAO, 2019^[67])

Despite high levels of transparency, the role of corporate money in politics remains a source of concern. For example, disclosures of lobbying activities showed that over one-quarter (28%) of total corporate lobbying spending at the federal level in the United States in 2020 was concentrated among corporate interests in the pharmaceutical, electronics, insurance, real estate, and oil and gas

industries, as well as business associations. Among these industries, the top ten spenders account for up to 90% of the total expenditure on lobbying (OECD, 2021^[4]).

In addition, outside spending is a key area of influence that remains insufficiently covered by transparency requirements (Box A A.3). The 2010 U.S. Supreme Court decision *Citizens United v. Federal*

Election Commission allowed corporations and unions to make political expenditures from their treasuries directly and through other organisations – as long the money is spent independently of any candidate or political party. These expenditures include independent spending (expressly advocating support for a candidate), electioneering communications (message linked to a candidate and targeted to the relevant electorate, but that does not explicitly advocate for or against a particular candidate) and “issue ads” (communications addressing public policy issues). There are no limits on the total amount of money these outside groups

can spend on an election, and not all of them must disclose the source of their money and how they spend it (Table A A.2). For this reason, the term “dark money” is often applied to this category of political spending. Similarly, many companies participate in the political process through setting up a political action committee (PAC), which is funded by voluntary contributions from their employees and subject to several integrity measures. Through this means, American divisions of foreign companies can form PACs and collect contributions from their American employees.

Box A A.3. Regulation of third-party and outside spending in the United States

Political Action Committees (PACs)

Political Action Committees are groups organised for the purpose of raising and spending money to elect and defeat candidates. Among them, **Separate Segregated funds (SSFs)** are political committees established and administered by corporations, labour unions, membership organisations or trade associations. SSFs can solicit contributions only from individuals associated with a connected or sponsoring organisation (USD 5 000 per year and per individual). By contrast, **non-connected committees** are not sponsored by or connected to any of the aforementioned entities and are free to solicit contributions from the general public.

Super PACs (independent expenditure-only political committees) are committees that may receive unlimited contributions from individuals, corporations, labour unions and other PACs for the purpose of financing independent expenditures and other independent political activities, such as running ads or communications activities. They cannot donate directly to political candidates. Super PACs must identify all of their donors to the Federal Election Commission (FEC). These PACs must file regular financial reports with the FEC which include their donors along with their expenditures.

Candidates or individuals holding federal office may also establish and finance **Leadership PACs** as a way of raising money to help fund campaigns.

Lastly, **Hybrid PACs** can operate both as a traditional PAC (contributing to a candidate’s committee) and as a Super PAC. To do so, they must have a separate bank account for each purpose.

Advocacy groups [527]

Advocacy groups formed under section 527 of the Internal Revenue Code may engage in political activities, including asking the public to vote for or against a candidate. Some large, national party-connected groups are formed as 527s.

Political non-profits [501(c)]

Nonprofit, tax-exempt groups regulated under section 501(c) of the Internal Revenue Code may engage in varying amounts of lobbying and political activities. Like Super PACs, these organisations cannot co-ordinate spending with political parties or candidates, and can receive an unlimited amount of corporate, individual or union contributions that they do not have to make public. They include:

- **Organisations operating for religious, charitable, scientific or educational purposes [501(c)3].** They are not allowed to engage in any political activity, though some voter registration activities are permitted.

They may engage in lobbying activities, as long as these activities do not constitute a substantial part of their activities. The Internal Revenue Service determines this on a case-by-case basis, based on the amount of time spent (by both volunteers and staff), as well as the amount of money spent on lobbying activities.

- **Social welfare organisations [501(c)(4)].** These non-profits can engage in political activities, as long as these activities do not become their primary purpose. According to the Center for Responsive Politics, the Internal Revenue Service has not defined what “primary” means, so the current de facto rule is 49.9% of overall expenditures.
- **Labor and agricultural groups [501(c)5].** These groups may engage in political activities, as long as they adhere to the same limits as 501(c)4 organisations.
- **Business leagues, trade associations [501(c)6].** These include business leagues, chambers of commerce, real estate boards and trade associations, which may engage in political activity as long as they adhere to the same general limits as 501(c)(4) organisations.

According to data from the Center for Responsive Politics, spending by outside organisations that do not have to disclose their donors has increased from less than USD 5.2 million in 2006 to over USD 300 million in the 2012 presidential cycle, and later decreased to USD 118 in the 2020 presidential cycle.

LLCs and Shell Companies

Limited Liability Companies (LLC) may be established to help disguise the identity of a donor or source of money spent on behalf of a political candidate. They make major contributions to Super PACs each election cycle.

Source: Open Secrets, Foreign-connected PACS, <https://www.opensecrets.org/political-action-committees-pacs/foreign-connected-pacs/2020>; Open Secrets, Dark Money, <https://www.opensecrets.org/dark-money/basics>

Table A A.2. What Super Pacs, Non-Profits, and other groups spending outside money must disclose about the source and use of their funds

Type of entity engaging in outside activities	501(c)4 and 501(c)6 (social welfare organisations, business associations)	501(c)5 (labour unions)	Tax exempt organisations under 26 USC 527 of the Internal Revenue Code* (advocacy groups)	Super PACs	All other political committees required to register with the FEC (SSFs, non-connected committees, Leadership PACs, 527 advocacy groups**)
<i>Are there limits on the size of contributions that can be made to entity?</i>	○	○	○	○	●
<i>Is entity making Independent Expenditures required to disclose most of its contributors?</i>	○	●	●	●	●
<i>Is entity making Electioneering Communications required to disclose most of its contributors?</i>	○ (corporations)	●	●	●	●
<i>Is entity engaging in Issue Ads required to disclose most of its contributors?</i>	○	●	●	●	●
<i>Must entity disclose contributions it makes to other entities?</i>	●	●	●	●	●

● Yes

○ No

Notes:

*organisations not considered as a political committee under the Federal Election Campaign Act because their major purpose is not the election of candidates.

** organisations required to report to the FEC as a political committee because its major purpose is the election or defeat of one or more candidates

Source: Open Secrets, What Super Pacs, Non-Profits, and other Groups Spending Outside Money Must Disclose about the Source and Use of their Funds, <https://www.opensecrets.org/outsidespending/rules.php>

Thus, a significant part of political activities and contributions still take place without disclosing any information about who funds them, thus preventing voters, investors and shareholders from identifying who is truly behind many political messages.

Pre/post-public employment

Section 207 of the United States Code imposes a one-year “cooling-off period” on certain former officers, employees, and elected officials of the executive and legislative branches. As a general matter, for one year after leaving office, those individuals may not act on behalf of anyone else by either communicating with or appearing before specified current officials with the intent to influence them.

Shareholder rights

Most major corporations are incorporated under the Delaware General Corporation Law (DGCL). The DGCL includes laws governing annual and special meetings of shareholders voting thresholds for approving corporate actions, requests by shareholders for books and records, and appraisal rights. It does not include specific provisions for voting rights on donations to political parties or lobbying activities.

BRAZIL

Lobbying

Lobbying remains unregulated, despite several bills introduced in the lower house of Parliament, including one in 2019 still under proceedings.

Political finance

Recent allegations of corruption have led to a revision of political finance laws. Rules on electoral campaigns previously allowed corporate donations to political parties and candidates, with a contribution limit equal to 2% of gross revenues earned in the year preceding the election. Individuals on the other hand, were limited to 10% of their total income of the year preceding the election. As a result, the share of corporate donations accounted for more than 75% of the funding of state and national campaigns in the general elections of 2010. In 2015, the Supreme Court of Brazil, called upon by the Brazilian Bar

Association, ruled on the unconstitutionality of contributions from private legal entities. The ruling went into effect immediately and was enforced by Congress through the Law No. 9.504 amendment of 2015. Yet, private corporate money is still channelled through individual donations. Data from the 2018 elections analysed by the Brazilian NGO *Parlametria* shows that 90% of elected deputies received donations from individuals linked to private companies (Parlametria, 2019^[36]).

Pre/post-public employment

During a period of four months after leaving office, the President and Vice President of the Republic, federal ministers, executive secretaries, secretaries and other categories of supervisory and management officials face certain restrictions. For example, they may not accept a position as administrator or director, or establish a professional link with an individual or legal entity with which they have maintained a direct and relevant official relationship in the six months prior to the end of their public office.

Shareholder rights

The Corporation Law (Law No. 6404 of 1976) establishes shareholder rights but does not include specific provisions on the right to vote on political donations or lobbying activities.

CHINA (PEOPLE’S REPUBLIC OF)

Lobbying

Lobbying remains unregulated in China.

Political finance

China has a one-party system under the leadership of the Chinese Communist Party (CCP). Local “People’s Congresses” are directly elected. People’s Congresses for higher hierarchical levels, up to the National People’s Congress, are elected indirectly by the People’s Congress of the level immediately below. Electoral expense of the National People’s Congress and local people’s congresses is included in the fiscal budget and is borne by the National Treasury.

Pre/post-public employment

Under the Civil Servants Law, senior civil servants may not engage in profit-making activities in areas directly related to their former duties within three years after they leave office. A two-year cooling-off period applies to other civil servants. The “Regulations on Leading Cadres’ Report of Relevant Personal Matters”, which applies to leaders of the CCP, provides for a three-year cooling-off period during which former cadres may not accept positions in private companies or foreign-funded companies whose activities fall under the scope of their former duties.

Shareholder rights

The Company Law of the People's Republic of China does not include specific provisions on the approval of political spending and lobbying activities.

HONG KONG (CHINA)

Lobbying

Lobbying remains unregulated in Hong Kong (China).

Political finance

There is no specific political party law in Hong Kong (China), and thus no definition of what a political party is. Most parties in Hong Kong (China) are registered under the Companies Ordinance, which means they have the same disclosure responsibilities as private companies. Instead, the funding of individual candidates related to specific elections – Chief Executive, Legislative Council and District Council elections – is governed by several statutes, including the Legislative Council Ordinance (LCO), the District Council Ordinance (DCO), the electoral Affairs Commission Ordinance (EACO) and the Elections Corrupt and Illegal Conduct Ordinance (ECICO). Following the pro-democracy protests in 2019, China’s National People’s Congress passed in March 2021 a “Patriots governing Hong Kong” resolution to amend annexes of Hong Kong’s constitution, the Basic Law, which was meant to last until 2047.

Pre/post-public employment

As a general rule, former civil servants must avoid seeking work that might place them in a situation of conflict of interest. Directorate civil servants on final leave or former directorate civil servants are required to apply for prior permission from the Secretary for the Civil Service (SCS) in order work in the private sector. Information on approved and taken-up post-service outside work by directorate civil servants is kept on a register for public inspection.

Shareholder rights

Apart from the general rules on voting, which was established in the Companies Ordinance (Cap. 622), there are no special rules on the rights of shareholders to vote on spending on political parties or lobbying activities.

INDIA

Lobbying

Lobbying is currently not regulated in India. A “Disclosure of Lobbying Activities” Bill was introduced in the Lok Sabha in 2013 and reintroduced again in 2015 (Bill No 208) by a Member of Parliament belonging to the Biju Janata Dal (BJD) party. The Bill required lobbyists to register with the authorities and declare information about lobbying activities, but was never voted into law (A. et Nakray, 2021^[68]).

Political finance

Transparency over political finance is very limited. Indeed, political parties are required to disclose to the Election Commission the amount of election expenses they incurred, but they are not required to disclose one-time contributions made by a person that does not exceed INR 20 000. In practice, these lax reporting requirements make it difficult to identify who has donated money to a politician or party or from where a politician has obtained his or her campaign funds. In addition, several organisations reported that few donors are willing to disclose their political donations for fear of retribution should their preferred party or candidate fail to be voted into office (Vaishnav, 2019^[69]).

In 2017, several legal amendments on political donations were introduced through the enactment of the Finance Act. Among the law amendments, the Finance Act lifted the cap on corporations' contributions to political parties and removed the obligation to report these contributions in companies' financial reports.

Similarly, the Finance Act retroactively amended the Foreign Contribution Act, which initially banned foreign contributions to political parties or office bearers, following a decision in 2014 from the Delhi High Court, which found both the BJP and the Congress party guilty of accepting donations from foreign corporations. The amended Foreign Contribution Act now states a company is no longer deemed a foreign source as long as the '*nominal value of share capital is within the limits specified for foreign investment*'.

Lastly, the Ministry of Finance issued in 2018 an Electoral Bond Scheme, which allows certain political parties that secured at least 1% of votes in the last General Election to the House of the People or the Legislative Assembly of the State to be eligible to receive Electoral Bonds. Though the bonds enable a digital paper trail for oversight purposes, information on bond holders is not made public, allowing "moneyed interests to legally give unlimited sums to political parties who, in turn, can accept unlimited sums of money – all without having to disclose a single rupee" (Vaishnav, 2019^[69] ; Sahoo et Tiwari, 2019^[70]).

Pre/post-public employment

There are no revolving door rules in India. This gave rise to several cases, for example Transparency International reported that the former chairman of the Securities and Exchange Board began serving the companies that he used to regulate once he 'retired' from public service (Nayar, 2010^[71]).

Shareholder rights

Article 182 "Prohibitions and restrictions regarding political contributions" of the Company Act specifies that companies may contribute directly or indirectly to any political party provided that a resolution is passed by the Board of Directors.

SOUTH AFRICA

Lobbying

Lobbying remains unregulated in South Africa.

Political finance

The financing of political parties and candidates is regulated under the Political Party Funding Act (PPFA). The law prohibits donations from foreign governments, agencies, persons or legal entities but allows some funding from such sources for training and policy development. There is a lack of clarity on what "skills development and training" includes. Corporations and other organisations can donate to political parties and candidates.

Pre/post-public employment

There are no rules on pre/post-public employment in South Africa.

Shareholder rights

Apart from the general rules on voting established in the Companies Act (2008), there are no special rules on the rights of shareholders to vote on expenditures in favour of political parties or lobbying activities.

EUROPEAN UNION (EU)

Lobbying

The EU has a comprehensive regulatory framework on lobbying, covering both direct and indirect activities targeting three main European institutions, irrespective of where they are undertaken and of the channel or medium of communication used, for example via outsourcing, media, contracts with professional intermediaries, think tanks, platforms, forums, campaigns and grassroots initiatives. The initial 2011 agreement to set up a joint Transparency Register at the EU level was a response to increased pressure for a transparency policy in Brussels (OECD, 2014^[7]).

On 15 December 2020, the European Parliament, the Council of the EU and the European Commission reached an agreement to strengthen the existing lobbying transparency register, which entered into force in 2021 (European Commission, European

Parliament, Council of the EU, 2021^[72]). However, each institution applies its own conditions regarding registration, which do not always cover key senior public officials with decision-making capacities, for examples Heads of Unit in the EU Commission

(Table A A.1). The Transparency Register is open to the voluntary participation of other EU institutions, bodies, offices and agencies, as well as of the member countries' permanent representations to the Union.

Table A A.1. EU Public officials covered by lobbying transparency requirements

	European Parliament		European Commission		Council of the European Union	
Head of Institution	European Parliament President	Voluntary transparency	President of the European Commission	Mandatory transparency	President of the Council of the European Union	No transparency
Heads of administration	Secretary General, Secretary generals of political groups	No transparency	Secretary General, Directors General	Mandatory transparency	Secretary General, Directors General	Mandatory transparency
Negotiators on EU legislation	MEPs who are rapporteurs or committee chairs	Mandatory transparency	Commissioners, Directors General	Mandatory transparency	Acting presidency	Voluntary transparency
Negotiators for positions for legislative negotiations	MEPs who are shadow rapporteurs	Mandatory transparency	Directors Generals and Commissioners' cabinets	Mandatory transparency	Staff of permanent representatives participating in Council working groups	No transparency
Assistants to draft internal negotiations	Accredited Parliamentary Assistants, Group advisers	Voluntary transparency	Heads of Unit, and below	No transparency	Staff of national ministries preparing EU positions	No transparency

Note: "Mandatory transparency" means that lobbying activities targeting officials in this category trigger a mandatory transparency requirement (i.e. the lobbyist must register to meet the targeted public official and/or the official must publish his/her meetings with lobbyists); "Voluntary transparency" means transparency is encouraged and voluntary; "No transparency" means there is no transparency requirement.

Source: Information provided by M. Daniel Freund, MEP. OECD 2020 Survey on Lobbying, (Joint Transparency Register Secretariat, 2020^[73] ; European Parliament, 2019^[74]).

Political finance

EU elections are governed by the regulations on political finance from the 27 member states, and the regulations that apply to European political parties. The EU regulations do not apply to individual political parties at the national level, which is where almost all campaigning for the EU elections currently takes place. The EU Democracy Action Plan (EDAP), published in December 2020, still identified the promotion of election integrity as a priority area, and proposes a review of the legislation on the funding of European political parties, with a view to addressing challenges related to funding by foreign interests channelled through national means or private donations (European Commission, 2020^[41]).

Pre/post-public employment

The EU applies post-employment rules for Members of the European Commission (EC) and the European Civil Service, but there are no specific rules for Members of the European Parliament:

- The Code of Conduct for Members of the EC observes a two-year “scrutiny period” (three years for the former Commission President) during which commissioners must notify the EC of the professional activities in which they intend to engage during this period. If the intended activity is linked to the commissioner’s former portfolio, the Commission must first consult an Independent Ethical Committee before approving the activities.
- Similarly, members of the European civil service leaving their position and beginning a new job within two years must obtain authorisation from the relevant institution. If the activity is related to work carried out during their last three years in service and might conflict with the legitimate interests of the institution, the institution may forbid it or approve it subject to conditions. Senior officials (directors-general and directors) are prohibited, in the 12 months after leaving service, from engaging in lobbying activities targeting their former institutions on matters for which they were responsible in their last three years in service.
- The Code of Conduct for Members of the European Parliament (MEPs), Article 6, requires former MEPs who engage in professional lobbying activities directly linked to the EU decision-making process to inform the Parliament. During the period they are engaging in those activities, they may not benefit from the facilities or privileges granted to former MEPs. These include, for example, access to Parliament premises and use of Parliament documentation.

A key challenge regarding pre/post-public employment policies in the EU is the robust implementation and enforcement of these rules, and the risk that significant revolving door cases remain unchecked. In 2021, the EU Ombudsman launched a wide-ranging enquiry into how the Commission handles revolving door cases. This includes an inspection of 100 case files and is part of a reinforced monitoring of how the EU administration implements integrity standards on EU senior officials who move into the private sector. The Ombudsman pointed to a lack of awareness among members of the EU administration of revolving door risks and standards (EU Ombudsman, 2021^[75]).

Shareholder rights

There are no special provisions on the approval of political contributions and lobbying expenditure in the Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies.

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