Anti-corruption compliance

The new competitive advantage
Speakers

Moderator:
- Ben Chalmers, Senior Vice-President, Canadian Association of Mining, Ottawa, Canada

Panelists:
- Robert Coleman, Director, Responsible Business Practices, Global Affairs Canada, Ottawa, Canada
- Diego Venegas, Director, Internal Audits and Ethics, Goldcorp Inc., Vancouver, Canada
- Pat Poitevin, Co-Founder, Canadian Centre of Excellence for Anti-Corruption (CCEAC), Ottawa, Canada
CORRUPTION PERCEPTIONS INDEX 2018

The perceived levels of public sector corruption in 180 countries/territories around the world.

[Map showing corruption perceptions index]
"As soon as you mark yourself as a company that's willing to play along, the demands usually increase in both number and value... Once you are in bed with these guys, you lose control of the situation very quickly"

Alexandra Wrage - Trace International
Effects of Corruption

**Economic effects:**
- Undermines economic development
- Corruption distorts the competitive playing field
- Reduces the quality of Government services and infrastructure

**Social effects:**
- No trust in Government/Laws
- May jeopardize National Security
- May support Smuggling (drugs, humans, cash, diamonds etc...)
- Lowers compliance rates in construction
- Theft / depletion of national resources
- Environmental laws are not respected

“More than $1 trillion is paid in bribes each year” (World Bank)
Global pushback on corruption

- Demand prosecution of the criminals
- Stop corruption
- Fight against corruption
- I'm as mad as hell... and I'm not going to take this anymore!
- Jail the corrupt politicians
- Expose corruption
High cost of corruption on businesses

**Legal costs and auditing costs**
- Ads millions of dollars on top of fines

**Impact on productivity**
- Company officials are busy building defence and dealing with repercussions instead on concentrating on core business
- Problems with employee retention and hiring

**Civil liability from shareholders**
- Shareholders can sue company officials and board for negligence - Drop in stock value

**Successor liability - Mergers and Acquisitions**
- Cie under investigation or suspected of corruption will scare away potential buyers
- Many M&A deals have failed because of fear by potential buyers of being stuck with past offences by targeted firm

**Impact on brand and potential business**
- Cie investigated and/or convicted of corruption may have difficulties getting financing, deals or even be allowed to bid for business
- Loss of arbitration clause due to contract being deemed illegal

**Higher costs to prove legitimacy**
- Higher costs or loss of liability insurance for directors and executives
- Higher costs and due diligence requirements from banks and other financial support
ELEMENTS OF AN EFFECTIVE COMPLIANCE PROGRAM

1. Leadership, Accountability & Structure
2. Written Standards
3. Education & Training
4. Auditing & Monitoring
5. Reporting
6. Enforcement & Discipline
7. Response & Prevention
### Legal case for compliance & ethics

- Protects the company and the brand
- Prevents fraudulent and other corrupt actions
- Meets legal requirement for compliance in a growing number of jurisdictions
- Can protect the company and senior management from criminal and civil liability
- Improve position in qualifying for Remediation Agreement / Deferred Prosecution Agreements
- Improve position in preventing debarment
## Business case for compliance & ethics

- Assist in securing financing
- Assist in securing better insurance terms
- Assist in attracting & securing JV partners
- Prevent, detect, deter & mitigate risks
- Improve business culture
- Protects the brand and reputation of the organization
- Improve productivity, retention, onboarding and efficiencies
Toolkit: Developing and Implementing a Compliance Program

The business environment around the world is changing. More aggressive enforcement, stricter laws, and greater demand for greater transparency and accountability is forcing public and private organizations to take a very serious look at ethics, compliance and anti-corruption programs. In this new environment, organizations recognize that ethics and compliance is not just necessary to manage risk and protect the company, but is now becoming a competitive business advantage.

This toolkit provides you with several tools that will guide you through the process of developing and implementing a robust compliance program for your organization.

Click on each title to open its description and link. Please search the CCEAC website for other related tools.

- Ti Canada Anti-Corruption Compliance Checklist
- Ti Canada Anti-Corruption Compliance Checklist: A guide for Canadian businesses
- Designing an anti-corruption compliance program – a guide for Canadian businesses

Latest Tools Added to the Tool Box

- Anti-Corruption Ethics and Compliance Handbook for Business
- Anti-Corruption Compliance – A guide for mid-sized companies in emerging markets
- Global Anti-Bribery Guidance – Best Practices For Companies Operating Overseas

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Increased collaboration and International Pressure

- Enforcement declination
- Collaboration credit
- Focus on individuals’ prosecution
- Governments falling – Guatemala, Peru, Brazil, etc.
- Transparency legislation – ESTMA
- USMCA

Sustainability focus

- Clear contradiction between sustainable prosperity and corruption

Anti-Bribery and Anti-Corruption Compliance – Not a “nice-to-have”
Anti-Bribery and Anti-Corruption Compliance – how does it look in practice?

**Corporate Relevance**

- Unquestionable tone from the top and consistency of actions
- Multi-disciplinary senior management oversight committee
- Board involvement and oversight

**Policies and Standards**

- Ease of use + Tools to comply
- Code of Conduct
- Anti-Bribery and Anti-Corruption Policy
- Political Contributions Policy
- Government Payments and Contributions Policy
- Third Party Due Diligence Standards
- Standards for Political Exposure in Contracting

**Training & Awareness**

- Site in-person employee training every 2 years (high risk locations)
- On-line training to employees and certification every 2 years
- Live training to key (high-risk) third parties every 2 years (incl. re-certification)
- Sharing lessons learned
- Executive management training/refresher annually
- Ad-hoc in-person training to high-risk functions (e.g. Sustainability, Supply Chain, Government Relations)

**Proactive Detection and Deterrence**

- Real-time oversight of new vendor risk-profiling and due diligence (compliance-based).
- Monthly new vendor audit – to ensure compliance with third-party due diligence standards
- Bi-monthly anti-corruption detection data analytics
- Daily review of payments to be made (prior to disbursement) to high risk service providers
- Compliance validation of non-routine payments and contributions to governments/government officials
- Compliance review of employment candidates with political exposure, paired with a rotational audit of new hires
- Periodical independent assurance
**Anti-Bribery and Anti-Corruption Compliance – Increasing M&A relevance**

**M&A Anti-corruption compliance risks**

- Successor Liability
- Dilution of transaction value
- Key personnel continuity
- Negative media
- Deviation of management’s attention jeopardizing effective integration
- Share-price impact

**What Good Looks Like?**

1. Thorough pre-acquisition risk-based Due Diligence
2. Swift integration of target to your compliance practices and policies
3. Effective Training and Awareness of key staff of the acquired target
4. Compliance and detection reviews/audits
5. Timely and effective remediation of issues
6. Disclosure Decision

**Pre-acquisition due diligence steps**

- Desktop Intelligence and open source search of *Former entity names, Board, Management, Business partners (current and past)*
- Interviews with personnel responsible for compliance program and other internal stakeholders
- Review of top 10 – 25 customers by volume and by $$ (expand desktop intelligence database and open source searches).
- Review of top 10 – 25 suppliers/payees by volume and by $$ (expand desktop intelligence database and open source searches). Focusing on intangibles
- Review sales/payments and contracts with high risk third parties such as: Distributors, State-owned businesses, agents, customs brokers, political consultants/lobbying firms, permitting consultants, etc.
- Review key cost centre charges (direction, general management, government affairs, etc.)
- Review of charitable giving
- Local boots-on-the-ground procedures such as local databases, native language sources and discrete interviews
Anti-corruption compliance:
The new competitive advantage

Robert Coleman
Director
Responsible Business Practices
Global Affairs Canada
The TCS helps Canadian companies do business abroad.

On-the-ground in more than 160 cities worldwide
• Gain market intelligence & insight, uncover opportunities for Canadian companies
• Hands-on knowledge that comes from helping thousands of Canadian companies each year to tackle concrete problems and pursue opportunities in foreign markets
• Help Canadian companies understand foreign business practices and cultural differences
The TCS - helping reduce your corruption risk

Trade commissioners have intimate knowledge of the market where they are serving.

• Trade commissioners can provide knowledge and insight into the local risks of corruption and bribe-seeking, and how to mitigate them.

• Trade commissioners can guide companies on managing such corruption risk and provide referrals to anti-corruption specialists as needed.

• The TCS collaborates with anti-corruption specialists to provide tools to help Canadian
TCS Advocacy support

In certain situations, at their request, the TCS may advocate on a company’s behalf to foreign public officials. Before being considered, this would require a signed Integrity Declaration, which:

- Provides assurances that the company does business responsibly, takes corruption seriously and has measures in place to prevent it;
- Shows that the company representative has discussed the corruption risk in market with a trade commissioner, including the possible legal and reputational consequences of bribing foreign public officials.
Extractive Sector Transparency Measures Act (ESTMA - 2015)

- ESTMA requires Canadian extractive companies to report certain payments of $100,000 or more made to all levels of domestic and foreign governments.
- Contributes to a global transparency standard for extractive industries
- Applies to extractive companies listed on a Canadian stock exchange; or that have a place of business in Canada and meet certain financial or employment thresholds
- Reports published on the Natural Resources Canada website
Connect with the TCS
Restez branchés avec le SDC
tradecommissioner.gc.ca
deleguescommerciaux.gc.ca

Robert Coleman
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Responsible Business Practices
Global Affairs Canada