



Managing Corruption Risk and the Interface with CSR Implementation

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The New Rules of the Game

- International treaties (OECD, OAS, UN) and other initiatives (e.g., World Bank sanctions) have changed the international legal and business environment
- All 34 OECD member countries have now adopted strict laws against corruption
- Conduct once widely tolerated is increasingly subject to investigation and prosecution in multiple jurisdictions
- Penalties are growing in severity for both corporations and individuals



Trends in International Enforcement

- The US Justice Department and Securities and Exchange Commission vigorously enforce the Foreign Corrupt Practices Act. Fines now regularly run to the tens or hundreds of millions USD
- Germany, the UK, France, Norway, Italy, Korea, Japan Switzerland, and Sweden have brought successful prosecutions under their international bribery laws
- Investigations and prosecutions target:
 - Private companies
 - Public companies
 - Individuals



Trends in International Enforcement (Cont.)

2014

Total SA; US \$398 million, France?

Alcoa (2014 – US \$384 million)

Hewlett-Packard (2014 – US \$108)

2013

Griffiths Energy; Canada \$10.35 million

Weatherford; US \$153 million

Archer Daniels Midland; US \$54 million

2012

Marubeni; US \$54 million

Tyco International; US \$26 million

Niko Resources; Canada \$9.5 million

Johnson & Johnson; US \$78 million

2010

MAN; Germany €150 million

Alcatel/Lucent; US \$137 million

Daimler; US \$185 million

BAE; UK & US \$450 million

Agip; US \$338 million

ENI; US \$365 million

Innospec; UK & US \$23.9 million

2009

KBR; US \$579 million

2008

Siemens; US & Germany \$1.6 billion



Additional Commercial Consequences

- Allegations of corruption or the fact that a company is being investigated can have major reputational and commercial impact
- Government export finance agencies (EDC, Ex-Im, etc.) generally require anti-corruption certification and contractual undertakings as a condition of financing
- Companies found to be engaging in corrupt practices can be disqualified from:
 - Eligibility for financing
 - Participating in government funded projects
 - Bidding on government business (eg, supplying hospitals and other government institutions)



Canada's Response

- 1999: Corruption of Foreign Public Officials Act (CFPOA)
- 2007: RCMP International Anti-Corruption Unit established
- 2010: Karigar charged with bribery of Indian Minister
- 2011: Niko Resources fined \$9.5 million; search warrants executed against Blackfire Exploration, SNC-Lavalin and one other
- 2012: Second search of SNC-Lavalin; Karigar tried; CEO of SNC-Lavalin arrested; RCMP reports 34+ cases
- 2013: Griffiths Energy convicted and fined \$10.35 million for bribes in Chad; Bill S-14 amendments to CFPOA; preliminary inquiry for SNC-Lavalin employees; Cryptometrics/Karigar convicted and sentenced to 3 years imprisonment



The Bribery Offence

- Offer, promise or give
- A benefit or other advantage
- Directly or indirectly
- To a foreign public official
- As inducement to act or refrain from acting in performance of their duties
- In order to obtain a business advantage



Exceptions and Defences

- Reasonable promotion, demonstration and contract performance expenses
- Reasonable gifts, entertainment and hospitality
- Lawful under local law
- Facilitation payments (in some jurisdictions only)



International Enforcement Cooperation

- Mutual legal assistance – treaty and *ad hoc*
- Information sharing and joint/parallel investigations
- Search warrants and subpoenas
- Extradition
- World Bank and other IFIs



Penalties

- Contravention of the anti-bribery laws can expose the company to substantial criminal or civil fines
- Additional penalties may also be imposed for ancillary offences (eg, money-laundering and possession of proceeds of crime)
- In Canada
 - There is no maximum for corporations, and the court is free to set a fine at the level that it sees fit in the circumstances; and
 - E.g., Niko Resources (\$9 million), Griffiths Energy (\$10.3 million)
 - Individuals convicted of these offences are subject to imprisonment for up to fourteen (14) years



Strategies to Resist Demand-Side Corruption

- Compliance implementation in-country and strategies to respond to bribe solicitation
- Corporate Social Responsibility
- Resource Revenue Transparency



Compliance Implementation In-Country

Step 1: Conduct a risk assessment

Step 2: Adopt a clear anti-corruption policy

Step 3: Implement a tailored compliance that includes strategies to resist bribe solicitation



The Role of CSR

- CSR is voluntary but not entirely altruistic – it presents concrete business advantages
- Generates local goodwill and a "social license to operate"
 - Incentives for officials to solicit bribes are weakened when the success of the venture is intertwined with the well being of the community
- Pick your business and community partners strategically
 - Partners can be allies to resist a shakedown
- Contribute to the social and economic development of the host country



The Role of CSR (Cont'd)

- Governance issues in CSR projects are critical
- Reinforce ethical behaviour and standards that you uphold
- Be aware that CSR may itself attract corruption risks
 - Anti-corruption laws prohibit advantages conferred both directly and indirectly
 - Make use of risk mitigation strategies (documentation, transparent criteria, etc.)



Conclusion

- Anti-Corruption Compliance and CSR have different but complementary objectives
- An effective anti-corruption strategy will leverage CSR efforts
- A robust CSR program can indirectly establish a further line of defence against corruption if stakeholders are motivated to resist official and political conduct that jeopardizes your business



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