

# Managing bribery and corruption risks in the mining and metals industry



## As the search for raw materials widens, so do the gaps in corporate process.

Moving into new, rapid growth markets not only poses cultural difficulties, but places stress on standards. How mining and metals companies conduct themselves and maintain their established principles of governance in these new markets is critical to realise the opportunities these markets present.

This publication provides an overview of the current trends in anti-bribery and anti-corruption in this industry and steps companies can take to mitigate this risk.

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# Introduction

Mining executives need no reminding that they are operating in a world where not everybody plays by the same rules, nor are the rules enforced with the same degree of effectiveness in all locations. In the past decade many have increased their presence in some of the most lightly-regulated regions of the world from South-East Asia to the remotest parts of South America and Africa.

There are two distinct movements in the world of resources extraction that should give industry leaders serious pause for thought.

The first is the increasingly multinational character of the sector and the cultural and governance consequences. The second is the increasing levels of global legislative and enforcement alignment. Both the number and severity of overseas anti-bribery and anti-corruption (ABAC) laws – and the increasing scope of their reach – are increasingly influencing not only the resources sector, but corporations conducting business outside their home markets.

Over the past five years, the United States government has renewed its push to enforce actions related to foreign bribery and corruption. In July 2010, it introduced the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) which contained a whistle blowing provision, allowing people with information on security violations to report information to the government for a reward. According to prosecutors, the Dodd-Frank Act has markedly increased both the quantity and quality of whistleblower claims.<sup>1</sup>

More recently the US Securities and Exchange Commission (SEC) approved rules mandated by the Dodd-Frank Act requiring companies to disclose their use of 'conflict minerals'. One rule requires oil, gas and mineral extraction companies to disclose payments they or entities they control make to the US or foreign governments.

In 2004, the US pursued only five cases under its Foreign Corrupt Practices Act (FCPA). By 2010, 74 cases were being prosecuted. Penalties ranged from \$US56 million to \$US800 million. It is not just companies which are being held liable – in the same period, FCPA actions against individuals rose five-fold.

In May last year China expanded its anti-corruption law to include the bribery of foreign officials. Russia followed suit only a few weeks later, enacting a similar law with harsh penalties. Brazil and India are now drafting laws to either establish or broaden bribery offences. In 2011, countries such as Australia, Canada, South Korea and Costa Rica have embarked on their first significant anti-bribery enforcement actions.

Of all the new anti-corruption laws, The Bribery Act 2010 (UK) is now considered to have gone further beyond previously established norms. In force since July 2011, it is unquestionably the most wide-ranging in terms of the types of offences it outlaws.

Practical accommodation in laws such as the FCPA for 'facilitating' or 'grease' payments to government officials are not tolerated under the UK Bribery Act. Nor does it deal solely with government officials – it also recognises and outlaws commercial bribery – that is, business to business transactions.

The UK law stipulates that directors distant from the scene can still be prosecuted for failing to prevent bribery or even for failing to identify an agent illicitly engaged or associated with the company. In the firing line are not just British companies, but the global operations of foreign corporations doing business in the UK as well as UK citizens working in foreign companies.

Ernst & Young's latest survey of business risks facing mining and metals companies places fraud and corruption as one of the top 10 on the scale of risks<sup>2</sup> and there are clear signs that Directors are paying more attention to the risk.

The sector's share of merger and acquisition investment into high risk destinations increased from 13% in 2009 to 22% in 2011 and we are seeing this trend continue.

The very frontier countries most targeted by mining and metals companies typically rate very high on international corruption. Guinea ranks at 154 of 183 countries surveyed on the most recent Transparency International Corruption Perceptions Index, while the Democratic Republic of Congo comes in even lower at 168.<sup>3</sup> In 2010, Africa as a whole attracted US\$84b of direct foreign investment, which is estimated to reach US\$150b by 2015.

<sup>1</sup> Growing Beyond: a place for integrity, Ernst & Young's 12th Global Fraud Survey, 2012, p15

<sup>2</sup> The Business risk report: mining and metals 2012-2013, p40-41

<sup>3</sup> Transparency International Corruption Perception Index 2011

# Facilitating payments are relatively more common where inefficient bureaucratic procedures delay routine processes

Worryingly for the mining and metals sector is the corporate response to checks on mergers and acquisitions. Ernst & Young's latest global fraud survey found that as many as 32% of companies said they either ignored or infrequently performed checks on companies before they acquired them.<sup>4</sup> Given the resource's sector's reliance on M&A activity in their foreign operations, there is a real risk here of corruption 'contagion'.

At the very time that laws are tightening, pressure on management is slipping. The global fraud survey reveals that 15% of respondents believed that misstating financial performance or making cash payments to help a business survive in a downturn is justified. Only 9% accepted this in the survey two years previously. The effect is more pronounced in some markets. For example, in Vietnam 36% agreed, and in Indonesia and India, more than half the respondents acknowledged these practices.

Bribery and corruption risk, like any other risk, can be mitigated and managed to tolerable levels. The existence of risk is not a sufficient reason to stay away from foreign operations. Ernst & Young has collected a wealth of experience and distilled it into practical risk management steps. The steps include a corruption risk assessment program, embedding anti-corruption policies and risk-based controls and financial safeguards.<sup>5</sup>

There is a host of guidance materials to help companies comply with the major anti-corruption laws. Supply chain and acquisition risks can be mitigated through allowing the right to audit clauses in contracts, and managing exposure to appropriate due diligence, background checks and monitoring of third parties.

Mining and metals companies are often exposed not just to government patronage, but also to requests to consider local third party agents, vendors or applications for employment. These requests, especially where associated with a decision by the official, carry an elevated risk as the official might have an undisclosed interest. It is no surprise that mining and metals companies have felt forced to ink deals which 'compensate' a number of interested third parties, just to be able to do business.

## Defining facilitating payments

Facilitating payments<sup>6</sup> are a form of bribery made with the purpose of expediting or facilitating the performance by a public official of a routine governmental action and not to obtain or retain business or any other undue advantage.

Facilitating payments are relatively more common where inefficient bureaucratic procedures delay routine processes. These payments represent a risk both because of their frequency and because such payments are frequently not legal under local laws.

A senior manager of an Australian copper and cobalt mining company, involved in African projects for 30 years, told the Australian Financial Review that recent legislative changes (such as the UK Bribery Act) which forbid any form of facilitating payments revealed 'a naivety and a lack of understanding for the operating environment in Africa'.<sup>7</sup>

In remote locations, facilitating payments and normal business processes can easily be misconstrued, and remaining compliant with legislative requirements is a challenge.

There are five key areas where Ernst & Young is helping clients to not just implement the right procedures, but also establish the right tone at the top.

We have identified five areas in which leading practices are emerging. These are:

- ▶ Effective contract management
- ▶ Performing thorough third party due diligence
- ▶ Insightful corruption risk assessment techniques
- ▶ The use of Anti-Bribery and Corruption data analytics
- ▶ Targeted control procedures in high risk geographies

<sup>4</sup> Growing Beyond: a place for integrity – Ernst & Young 12th Global Fraud Survey, May 2012

<sup>5</sup> Dangerous world: practical steps for global companies to evaluate and address corruption risk

<sup>6</sup> Source: <http://www.business-anti-corruption.com/about-corruption/vocabulary/>

<sup>7</sup> Australian Financial Review – Miners reject anti-corruption reforms, March 1, 2012



# effective contracts

# Effective contract management

Mining and metals companies enter into large procurement and capital expenditure projects, in multiple locations. Ineffective contract management processes can result in weakened controls, fraudulent or corrupt activities, waste and inefficiency. Contracts which state clearly what they will and won't tolerate are becoming an essential part of the mining company's risk management. Companies also need the right systems which help to validate payments made to suppliers as well as the development of key performance indicators at the individual contractor/project level.

Most companies have sound procurement practices, including more competitive procurement requirements for larger contracts and an appropriate balance between more tightly controlled centralised procurement and more flexible local procurement.

The inclusion of anti-corruption clauses in template contractual agreements with business partners, consultants and vendors is becoming more common. Many of these contracts will include requirements on compliance with anti-corruption laws, rights to terminate and rights to audit. These clauses can be effective in preventing problems and invaluable in allowing the company to defend itself should an issue arise.

Perhaps the key factor in all relationships is the right to audit which must be stipulated in the terms and conditions of a contract, should there be questionable amounts reported for revenue or payment, or concerns over whether a contract has been correctly complied with. The right to audit is all about transparency which will be of benefit to all parties whose rights deserve protection. Audits are generally triggered only where there are grounds for concern, such as whistleblower allegations, significant cost overruns or undisclosed conflicts of interest.

Validation of payments has historically referred to checks on basic procedural compliance, such as the three-way match (of purchase order, invoice and proof of delivery) or procedural compliance with competitive procurement policies.

Validation of payments can be better assessed where contracts have 'right to audit' clauses – this can be done through forensic data analytics, inventory counts and even through an interview process – where both parties are asked to confirm that the work has been properly done and correctly paid for.

Ernst & Young recommends the need for developing key performance indicators at the individual contractor/project level, which can be most effective when distributed to mine site management.

This can be visually demonstrated in a 'dashboard' layout – the signals at management fingertips which reflect mine site accountability.

Accountability of contract managers is an important element of an effective contract management strategy. They are the 'eyes and ears' of the company and in many organisations the most critical line of defence. Dashboards should include specific metrics to manage their accountability and enable the early identification of red flags.

Having clear responsibilities laid out prior to writing contracts is essential for any company working abroad, as is the ability to write the contracts with as little ambiguity as possible. There is value in clear financial definitions – what, for example, entails profit, gross margin and revenue? Companies should also be establishing key milestone dates for projects as well as making it a requirement that all contractors maintain appropriate records which reflect your relationship with them – including provisions that they understand and will comply with all anti-bribery and anti-corruption (ABAC) controls.

# Third party due diligence

One of the more troubling findings from Ernst & Young's 12th Global Fraud Survey was the clear lack of safeguards among global companies to protect themselves from the risk of corruption through the actions of certain third parties. This comes despite the fact that US Sentencing Guidelines and FCPA settlement agreements clearly state the need for due diligence and monitoring of all external relationships. The UK Bribery Act also demands the same kind of rigour, and goes to even greater lengths to assert liability – both personal and corporate – on those with ineffective vendor controls.

About 60% of respondents to the survey used approved supplier databases, but less than 50% asserted 'the right to audit' on these relationships and only three in ten used software and/or technology checks to assess and monitor third parties.

Third party relationships can be many and varied – in the mining and metals sector local sourcing is not just part of the way of doing business, but an expected part of building long-term relationships and contributing to the development of local economies. Relationships range from

advice on government relations to the routine supply of canteen facilities, transport, security, utilities and commodities such as oil and fuel. Relationships can also cover a multitude of business types – agents, consultants, business partners, intermediaries, distributors, contractors, suppliers and joint venture partners.

Third party due diligence procedures should be proportionate to the identified risk. Not all third parties will pose the same risks. One of the first things to

estimate is the nature, scope and value of intended relationships and transactions, before any scrutiny on the selection of business partners.

Many global corporations have vendor masters and third party databases spanning in the hundreds of thousands. Collecting initial data on potential partners will involve serious vetting of government owned or controlled entities, possible high risk business relationships as well as checking histories of investigations for criminal and civil violations.

**We recommend defining high, moderate and low risk categories of third parties and ranking them.**

<b>Low risk</b> level I – open source background checks	<b>Moderate risk</b> level II – enhanced due diligence	<b>High risk</b> level III – deep dive
Low risk is about looking for published conviction, sanctions and penalties as well as identifying high risk individuals, politically exposed persons as well as trawling through local media outlets for any adverse information.	Moderate risk demands a higher degree of drilling – the use of more sophisticated public databases, public records such as court filings, seeking out any detailed background reports from bona fide data providers and research into corporate relationships and social networks. It may entail phone interviews and reference checks.	High risk is about the first two levels but will add in an assessment of third party controls and financial records, onsite inspections, thorough investigations into references, as well as detailed interviews with associates in political, business and social contexts. It may incorporate the review of corporate, civil and criminal documents.

## High risk transactions within mine sites

One area for the mining and metals sector to watch relates to compliance with community policies for not-for profit organisations. If a company helps out a school in the area in which they are operating, is that a facilitation payment or a legitimate social contribution? These kinds of payments need to be properly recorded and authorised and must be transparent to all parties. Where government-run community associations are concerned, payments need to be clearly agreed beforehand and understood as part of official policy. Facilitating payments can just as easily be effected unintentionally, through lack of controls.

Mining royalty fees paid out to community trust funds for the right to extract local resources will also require careful contract drafting to avoid a misinterpretation of payments from both the donor and the recipient's perspective. It is the mining company's responsibility to ensure the right people are being advantaged according to prior written undertakings. The right to appoint a mining executive as a trustee to the fund is one obvious solution to oversee fair and transparent disbursements of royalties.

# Maintaining an integrated due diligence compliance program

Once the nature and 'risk grade' of the relationship with each third party has been properly documented and case files set up, the next step is in creating an effective program. We believe there are four key components to an effective vendor due diligence program. These include consistency, management oversight, objectivity and reasonableness.

## **Consistency**

This is about instilling an automated process that can be deployed in any situation, anywhere in the world.

## **Management oversight**

This relates to the degree of attention placed on the initial set-up steps and the follow through.

## **Objectivity**

There needs to be a layer between the person requesting due diligence and the act of checking itself.

## **Reasonableness**

This relates back to the risk-based overview of the entire process. Companies need to allocate resources according to the seriousness of a case and the size of the vendor.

### **Due diligence is never finished**

It is ongoing! Business partners need to be reviewed either by screening through the automated processes available to the mining and metals company or through trusted data sources. A third party which provides no serious questions at the outset may present difficulties as the relationship unfolds. Periodic re-approval of business partners is highly recommended – but be sensitive. This should be appropriate to the risk level of the entity in question.

# Corruption assessments and putting controls in place

A thorough corruption risk assessment program is important, not just because it will identify potential threats and manage the risks of corruption contagion, but because just about every major regulatory authority expects it. Most legal authorities offer guidelines as to what is expected from a program. We know that in published US Department of Justice and SEC deferred prosecutions and non prosecution agreements that a good program will always help a company to argue for leniency.

UK Bribery Act Guidance also makes it clear that to prevent a Section 7 breach – where a company fails to prevent an act of bribery – adequate anti-corruption procedures must be clearly in place, which includes a corruption assessment program.

The UK Bribery Act also expects assessments to be periodic, informed and fully documented. Beyond this, the US Federal Sentencing Guidelines also provide an acceptable framework for US corporations to organise their compliance programs.

## Anti corruption programs

Companies which offer full and transparent disclosure of their anti-corruption programs are not just underscoring their commitment to eradicate the problem but their willingness to engage in ethical conduct through all parts of their business.

A robust program is about diligently assessing the risks and putting in the necessary policy and procedures. Not only doing this will be critical to keeping out of trouble, it is also an important part of minimising the consequences when something goes wrong, and offers a defence against regulatory prosecution. It pays to put in the programs and to be seen to be putting them in as well.

Recent UK prosecutions reveal a number of trends, most significantly the targeting of individuals. During 2011, six directors in the UK received prison sentences of between six and 21 months. The number of actions against individuals has more than doubled from 2008.<sup>8</sup> Actions against corporates have also increased. We also note an increase in civil recovery orders, which enables the Serious Fraud Office to claw back recoverable property regardless of a prosecution.

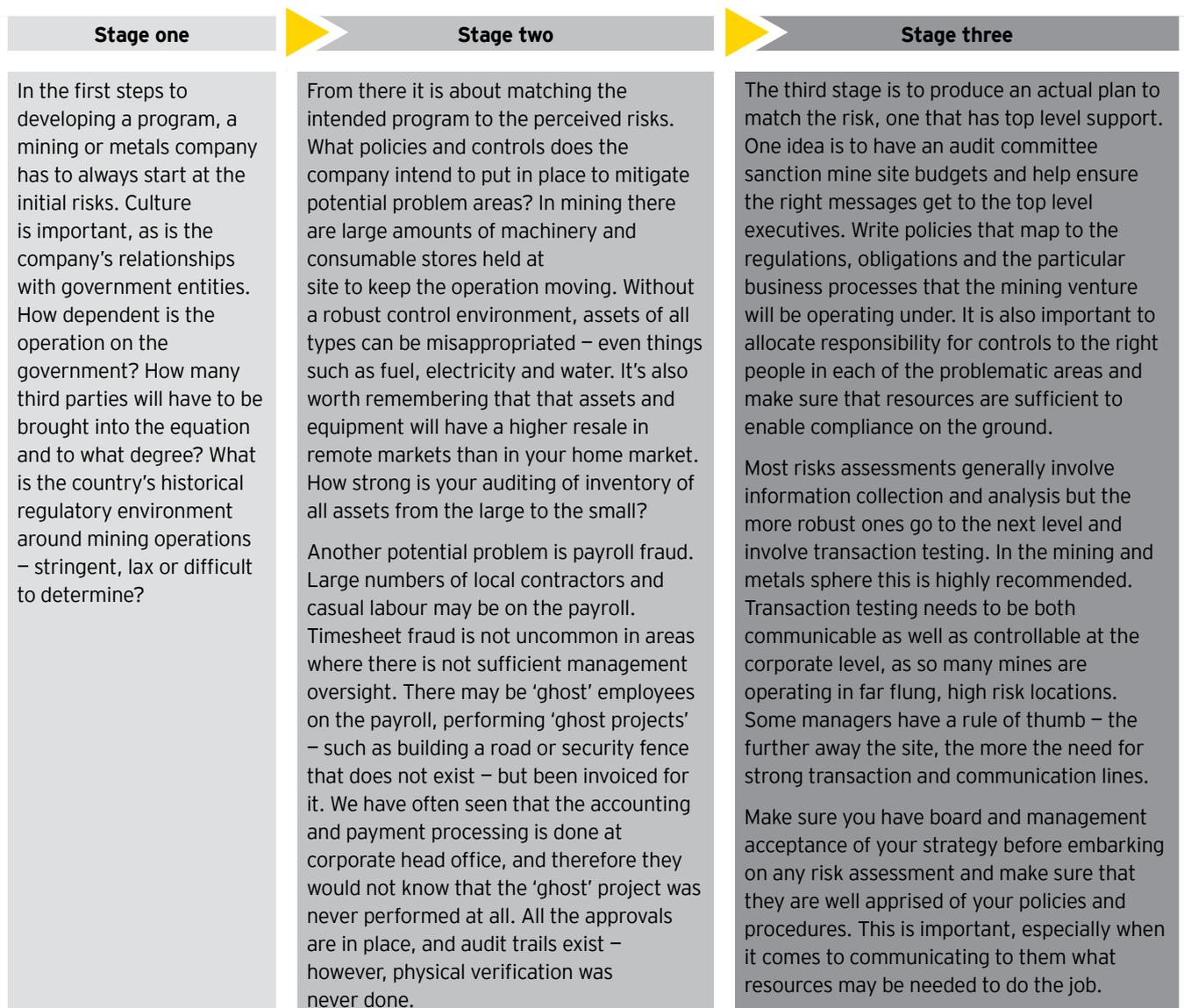
There are signs that mining and metals companies have taken this on board and are responding positively. Several of the world's biggest miners have gone out of their way to manage their exposure to corruption by either setting up dedicated compliance teams, re-equipping existing compliance functions or allocating time and space to these risks in their internal audit plans.

In its most recent survey on transparency in corporate reporting, Transparency International ranked Statoil, Rio Tinto and BHP Billiton as the top three in overall corporate transparency of 105 multinationals sampled. This was also reflected in the commitment and clarity of their ABAC programs, with all scoring extremely highly. Encouragingly, the resources sector as a whole topped all other industry sectors in terms of the transparency of its anti-corruption programs.<sup>9</sup>

<sup>8</sup> UK Bribery Digest, Edition 1, Ernst & Young, January 2012

<sup>9</sup> Transparency in Corporate Reporting: Assessing The World's Largest Companies, TI, 2012, p15

# Transaction testing needs to be both communicable as well as controllable at the corporate level



It is very easy to misappropriate mining assets to fund unauthorised developments in a remote location, for instance constructing an onsite golf course. Ernst & Young were asked to investigate how funds were inappropriately accounted for in the books and records of the company to disguise the true nature of the expense. This had a direct impact on the financial reporting of the company and its third party vendors who aided this development.

# Anti-bribery and corruption data analytics

So far we have mentioned the importance of automation which allows potential problems to be seen at the time of occurring or to help managers head off problems before they escalate into crises. The volume and far-flung origin of transactions makes it prohibitively expensive and difficult to achieve a meaningful level of transaction testing without data analytic procedures. Traditional auditing generally has not been designed to detect problems related to bribery and corruption. It uses a 'rules-based' mindset that expects individuals to sift through the minutiae manually, and to test the process or system from end to end. It is easy for issues in the data to be either missed or misinterpreted.

One of the most exciting developments has been the evolution in forensic data analytics technology which works on 'risk-based' rules – monitoring suspicious electronic transactions, as well as word choices in emails or journal narratives therefore discovering anomalies among thousands of pieces of information.

Together with this is the development of document management systems which are also becoming critical to support complex legal cases stemming from a misdeed.

Forensic data analytic procedures test all transactions in the population, providing more complete and frequent coverage. This allows managers the luxury of being able to deal with identified supplier issues mid-stream, before the contractual relationship has run its course. Common data analytic procedures include basic anomaly flagging such as duplicate payments and outliers. More sophisticated procedures tests apply logic rules to identify potentially problematic schemes and scenarios.

Ernst & Young has developed Ant-Bribery and Corruption Analytics (ABC Analytics) which allows those tasked with compliance programs or attest functions to integrate new tools that incorporate model-based, statistical and text-mining analysis coupled with visual analytics that allow the data to define itself. It can be asked to look for payments above a certain sum or payments made to offshore banks and at unexpected times. It can be used as a tool to help ensure payments are not made before purchase orders are booked. It can look for one-off payments that may appear to have no relevant business purpose, excessive travel and entertainment expenses among individuals or even on certain sites.

Based on these and a multitude of other criteria, it will offer up red flags, unusual transactions derived from the accounting and other data which may denote improper conduct and possible action.

Mines tend to run on a cash economy where forensic data analytics cannot always be systematically gleaned. ABC Analytics can also look at unstructured data – key words that can be found on phone texts, emails, and recorded journal entries. This has proved to be useful in areas where conflict diamonds have been smuggled to illicit channels. It can also assign a fraud behavioural score to the words used by the suspected individual in the recorded text fields of emails and journal narratives.

ABC Analytics will not only throw up unusual transactions, it will help to build pictures of problem areas that may be recurring and which may be systemic to a business and any of its internal and/or external relationships. It also fits in nicely with the risk-based philosophy behind anti-corruption compliance. It allows managers to go directly to the 'anomalies', which will then be made subject to further scrutiny and compliance tests.

## Extractive Industries Transparency Initiative

The Extractive Industries Transparency Initiative (EITI) was set up in 2002 as way of promoting full disclosure of resources companies' payments to governments and revenues received by those governments. Countries and companies signed up to the EITI aim to create revenue transparency at the local level, but also to ensure that these figures are offered to a wide audience in a publicly accessible, comprehensive and comprehensible manner.

Australia has just signed up to do a pilot the EITI among its resources companies, after years of public debate and interest group pressure to regulate financial transparency in the resource industries. In the US this year, resource companies will for the first time make public the tax and royalties payments made to the governments of the countries in which they operate.

The EITI has been generally well received, but there have been questions about its effectiveness and methodology. Some big miners have reacted to the way in which the reporting is mandated, claiming that it is impractical to disclose payments made to governments on a project-by-project basis. They claim that the public airing of monies paid from each site would be misleading and that reporting of payments made to different levels of government would be more practical.

The EITI now has 14 compliant and 22 candidate countries, the majority of which are developing states.



# forensic data

# Leading practices in high risk geographies

## Cost of operating in high-risk countries

Mining has a strong social context, particularly in remote areas where more is expected from the company than tax revenues in exchange for resource extraction. Communities want to be part of the wealth generated. Helping local communities by building infrastructure and providing employment as part of the social licence to operate can be a complex area. These spending decisions often involved interactions with the very political leaders and government officials who also make decisions on issues such as licences, permits and contracts. Many mining companies have experienced challenges in managing the associated risk.

If building schools and hospitals can be construed as corruption – one has to ask if the mining company won the right to mine because it offered these kinds of ‘add-ons’. This is a high risk area for mining companies because it has not yet been tested in a court of law and there is little authoritative practical guidance. Again, transparency of the operation is key and the ability to show that the social operation is efficient, cleanly run and is by no means a reward mechanism for officials, who would be tempted to take extraneous payments as part of the deal. These are all essential elements to good practice.

We also know that in remote areas, the cost of compliance can be onerous. The appropriate response to the increased risk is to build a better compliance program, but is this always realistic? While big mining companies are putting in new processes and people to vet and monitor third parties, there is bound to be a knock on effect. Compliance costs money and time – potential partners will need to be asked to supply ever more information and fill in more compliance forms. Without the use of facilitating payments, for example, government approvals may take years, with the resulting opportunity cost having the potential to trap capital, especially in the case of smaller companies.

The question then becomes, who bears the cost of this enhanced compliance? It is not just big mining companies which are spread across the world. Smaller and medium sized mining companies also proliferate in remote areas – all of them will have to deal with the same legislation. Companies will always have to make cost versus benefit decisions in this area. There are potential problems when a mining company effectively ticks boxes for the sake of saving money rather than making serious compliance investments.

## Whistleblowing mechanisms

Whistleblowing is another area that is likely to present cultural issues as not every community has a common acceptance of the concept, let alone clear lines of command or a hotline to report suspected fraud or corruption.

Ernst & Young’s experience is that there is a general reluctance to use whistleblower channels in many cultures and a general misunderstanding of how to use them. There may be fears of personal safety in using the whistleblower system or social, cultural and hierarchical barriers related to giving information. How will the person reveal the information? What will be the reaction of co-workers to a bounty payment? The secret to an effective process is in building local trust that allows people to feel free to come forward without ramifications.

It is worth investigating alternative and safe channels to encourage a whistleblower to bring relevant information forward so that they are always protected as well as helping to ensure that the chain of command is clear. Individual views on whistleblowers vary, but the existence of some whistleblower channel is increasingly generally accepted as an important governance mechanism.

# It is well known for in-country management to go too far to adapt to local culture

## **Flexibility of policies**

Most mining and metal companies will know that as often as not, global ABAC policies come into conflict with local needs. While we believe that a company's culture needs to be embedded from the top down, operating under one global policy can be difficult where situations demand local expediency. While a developed world corporate policy will deny facilitating payments, what happens when necessity makes it virtually impossible to follow that policy, for example when the life of an employee is in danger?

It is well known for in-country management to go too far to adapt to local culture, compromising controls in the process and exposing the company to home country enforcement or reputation risk.

One known example related to the need for a new road after the original was washed away in monsoon rains. Time did not allow the manager on the ground to go through a thorough a complicated procurement process – he needed to pay the local people to build a road. The usual policy may have demanded a thorough tender and vetting process, the need for several quotes and a veto to pay cash. In this particular case the onsite manager felt compelled to go outside policy to speed things up.

Recognising these problems and looking for solutions which allow managers to act without fear of reprimand if they do the right thing is important. The guidance given to onsite managers is critical to ensure they are familiar with the circumstances that warrant practices outside the global standards. Proper consultation and documentation requirements prior to the event are required. Any flexibility should not be used as an excuse for non-compliance.

A photograph of two men in white shirts walking on a modern staircase. The background is blurred, suggesting motion. The text 'eight steps' is overlaid in the bottom left corner.

# eight steps

# Eight steps to an effective anti-corruption compliance program

Ernst & Young has devised eight proactive steps to help mitigate this problem occurring – and proliferating. We have also formulated them in line with the requirements of Section 9 of the UK Bribery Act.

**1**

## Conduct a risk assessment program

What risks are posed by the nature of the company's operations, the degree of business with governmental entities, its use of agents and other intermediaries, the countries it works in and the regulatory environment it works under? Identify the policies and controls in place that mitigate the corruption risk and evaluate their strengths and weaknesses.

**2**

## Develop a corporate anti-corruption policy

This needs to be a clear and unambiguous statement of the company's position that both governmental and commercial bribery on any scale will not be tolerated. The policy will provide operational guidance on such things as bribing government officials, commercial bribery, misreporting and concealment in accounting records, facilitating payments, charitable and community gift giving and policies covering travel/entertainment/gifts for government officials.

**3**

## Implement anti-corruption policies and controls

We know that 90% of reported FCPA cases have involved outside agents and business consultants. Putting in contracting provisions and warranties which include compliance with legislation and company policy are important controls, as well as bringing in some form of certification to ensure there has been compliance. Make sure special payments and approvals are recorded. Do you undertake vendor anti-corruption audits? How do you process and deal with employee travel, gifts and entertainment? Develop guidance that ensures charitable giving ends up in the right hands and gifts are bona fide.

**4**

## Implement anti-corruption financial controls

Implement additional financial controls in high-risk countries and for high risk operations. These may include controls around banks accounts and petty cash, executive travel, meals and entertainment. Transactions with consultants, agents and high-risk intermediaries will also need enhanced controls.

Implement strict account posting requirements for high risk transactions, including sufficient supporting documentation and adequately delegated authority to promote increased transparency and accountability.

**5**

## Conduct anti-corruption compliance training

Training is imperative for global organisations in countries with a history of corruption. Local employees need to understand that your culture may differ greatly from their own. Training should also be prescriptive and pragmatic – it should explain the requirements of the FCPA and UK Bribery Act, but also give examples of 'red flags' or difficult situations which may resonate directly to them as employees. Training should be appropriately targeted based on roles and responsibilities within the company and be periodically updated for new and transitioning employees.

**6**

## Monitor the program

Organisations need to be able to test for compliance by identifying potential violations or 'red flags' – this is effectively an anti-corruption audit. In the best case scenario, ABC Analytics can be used as a tool for compliance monitoring. A form of anti-corruption certification should be designed for employees, which should be re-tested periodically. Are there tests for compliance with policies and are there concrete and well understood consequences for non-compliance?

**7**

## Anti-corruption procedures in mergers & acquisitions

Companies should conduct appropriate due diligence on potential acquisitions to avoid the risk of inheriting liability for legacy actions. Compliance with ABAC tenets should be high on the integration plan and look at all the corruption risks potentially posed by the new organization. M&A checks should not end before the acquisition – they need to be continued after the integration process.

**8**

## Re-assess risk and modify program

Corruption risk assessments should be conducted periodically to ensure that the anti-corruption program is evolving to meet new risks posed by the changing business and external environment.

# We conduct training sessions which educate an organisation's workforce in the detection and prevention of fraud and corruption

## Ten preparedness questions for mining and metals executives to ask

1. Have you conducted a corruption risk assessment program and will it be updated annually in response to the changes in your business as well as business connections?
2. Have you made sure that all your third party contracts for work are well designed, easy to understand and properly negotiated and closed out?
3. Do these contracts ensure the right to audit at any time during the contract and allow you to suspend or annul contracts should breaches of contract related to bribery be proven?
4. Does your company have a well designed and formalised ABAC program and a well-publicised standing response protocol to be able to investigate fraud and corruption?
5. Do you conduct adequate due diligence reviews and vetting on new business partners, including suppliers, distributors and agents?
6. Are all employees and third parties including agents, business partners associates properly apprised of your ABAC policies and trained where necessary to adhere with them, including yearly certification of its contents?
7. Do you have well understood methods and channels through which a whistleblower scheme can be undertaken which protects both the company and the whistleblower's rights?
8. How closely do your ABAC policies and procedures align with the FCPA and the UK Bribery Act and do they clearly state that facilitating payments of any kind are now considered illegal?
9. Where there is a danger of facilitations payments being misconstrued with the social contract to help local communities, are schemes fully transparent and run without fear of funds being misallocated.
10. Do you have the ability to undertake ongoing fraud and bribery assessments as well as analyse possible instances using forensic data analytics?

## How Ernst & Young can help

The global mining and metals Fraud Investigation & Dispute Services team is located in all of the major mining hubs.

We have a number of services to help with fraud prevention and detection:

### Anti-bribery and anti-corruption framework

We work with organisations to develop a strategy aimed at minimising the risk of fraud and corruption and increasing the detection capability within the company. These programs are developed and tailored according to the culture and areas of operation of the business.

### Fraud awareness training

We conduct training sessions which educate an organisation's workforce in the detection and prevention of fraud and corruption. It creates a powerful team approach to the prevention and detection of fraud and corruption.

### Site visits

Site visits are undertaken to review critical areas of fraud risk and conduct an in depth review of these areas, both on and off site, creating a strong deterrent for potential fraudsters. These strategies are focused on reinforcing the existing controls and increasing the likelihood of detection.

# Contacts

Our Fraud Investigation & Dispute Services team consists of professionals with a variety of skills and experience, which enables us to provide you with a responsive solution throughout Australia and New Zealand.

## Oceania

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