Managing fraud, bribery and corruption risks in the mining and metals industry
As the search for raw materials widens, so can the gaps in corporate process

Moving into new markets not only poses key business challenges – it places stress on standards. Rapid-growth markets offer a range of opportunities for mining and metals companies. If companies are to realize these opportunities, it is critical that they conduct themselves responsibly and follow leading principles of governance.

This publication provides an overview of the current anti-bribery and anti-corruption (ABAC) trends in this industry, and sets out some key steps that companies can take to mitigate risk.
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Introduction

Mining executives need no reminding that they operate in a world where not everybody plays by the same rules. And the rules are not enforced with the same degree of effectiveness in all locations. In the past decade, many companies have increased their presence in some of the most lightly regulated regions of the world, from Southeast Asia to the most remote parts of South America and Africa.

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

First, the sector is becoming increasingly multinational — and this has several cultural and governance consequences. Multinational stature and easy access to social media across the globe make the publicity of allegations of impropriety a global event with unprecedented speed, regardless of whether or not the allegations are unfounded. Second, the levels of global anti-corruption legislative and multilateral cooperation in enforcement continue to rise. The number and increasing scope of overseas ABAC laws, as well as the severity of consequences of non-compliance, are having a greater influence not only on the natural resources sectors, but on most corporations conducting business outside of their home markets.

Over the past decade, the US Government has continued to expand its push to enforce actions related to Foreign Corrupt Practices Act (FCPA) violations. Between 2002 and 2006, the US Department of Justice (DOJ) brought only nine enforcement actions against corporations under the FCPA. In the eight years through 2014, however, the US Government brought 100 more enforcement actions against corporations under the FCPA. In fact, extractive industries account for the highest number of enforcement actions for any given industry.

Global legislative action has also been on the rise. In May 2011, 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 significant penalties. In December 2013, India passed the Jan Lokpal Bill, which provides for an independent ombudsman to prosecute government officials charged with corruption. And Brazil enacted the Clean Companies Act in January 2014, legislation that is arguably one of the world’s most robust statutes prohibiting bribery and corruption by domestic and foreign companies doing business in Brazil.

As a result of this increased enforcement and legislative activity around the world, there is also an increase in cooperation among global enforcement agencies. No longer is the US Government the primary enforcer acting alone. Indeed, settlements announced in the first part of 2014 show the US Government cooperating with authorities and investigators in Germany, the UK, Switzerland, Australia and Guernsey.

The increase in enforcement action is stark in the extractive industries. In its annual Global Enforcement Report, the anti-bribery association TRACE International reported 61 enforcement cases around the world involving the extractive industries between 1977 and 2010. By 2011, there was a slight increase to 68 cases. By 2013, there were 127 cases, representing more than an 80% increase in two years. In fact, extractive industries account for the highest number of enforcement actions for any given industry.
it outlaws. Unlike the US FCPA, the UK Bribery Act 2010 does not tolerate “facilitating” or “grease” payments to government officials. Nor does it deal solely with government officials – it also outlaws commercial bribery, i.e., business-to-business bribery transactions.

The UK law stipulates that directors who are 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 that operate in the UK, as well as UK citizens working for foreign companies.

EY’s most recent surveys of the business risks facing mining and metals companies consistently place fraud and corruption as one of the top risks on the scale.³

The very frontier countries most targeted by mining and metals companies typically are perceived to have high levels of corruption. Guinea is perceived to be one of the most corrupt countries, ranking at 145 of 175 countries surveyed in the most recent Transparency International Corruption Perceptions Index, while the Democratic Republic of Congo and Chad are perceived to be even riskier, as they are both ranked 154 out of 175.⁴

The corporate response to the corruption risks relating to mergers and acquisitions in emerging markets is of great concern to the mining and metals sector. EY’s 13th Global Fraud Survey (2014) found that as many as 57% of companies said they either ignored or infrequently performed checks of companies before they acquired them.⁵

Given the resources sector’s reliance on their foreign operations, there is a real risk of corruption “contagion.” Although there is an increased focus on laws and regulations globally around bribery and corruption, there still appear to be gaps in management of the risk and enforcement of anti-corruption policies within companies. Our survey also revealed that respondents increasingly were willing to make cash payments to win or retain business, and a greater proportion – including CFOs – expressed an increased willingness to misstate financial performance. Globally, 36% of respondents were prepared to make cash payments or offer some form of unethical gift or entertainment if it helped their business during a financially difficult time. Twice as many of the respondents (6%) were willing to misstate financial performance compared to the survey in 2012 (3%).

Bribery and corruption risk, like any other risk, can be mitigated and managed to tolerable levels. The existence of risk is rarely a sufficient reason to stay away from foreign operations.

EY has collected a wealth of experience and distilled it into practical risk management steps. The steps include implementing a corruption risk-assessment program, embedding anti-corruption policies in business processes, and using risk-based controls and financial safeguards.⁶

In addition to undertaking in-house anti-corruption measures to manage risk, supply chain and acquisition risks can be mitigated through exercising your “right to audit” clauses contained in contracts.

Mining and metals companies often are 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 government official, carry an elevated risk because the official might have an undisclosed interest. It is no surprise that, just to be able to do business, mining and metals companies have felt forced to make accommodations that “compensate” interested third parties.

Facilitation payments are relatively more common where bureaucratic procedures delay routine processes. In remote locations, facilitating payments can be misconstrued as normal business processes, and remaining compliant with legislative requirements is a challenge.

A senior manager of an Australian copper and cobalt mining company, which has been involved in African projects for 30 years, told the Australian Financial Review that recent legislative changes (such as the UK Bribery Act 2010), which forbid any form of facilitating payments, revealed “a naivety and a lack of understanding for the operating environment in Africa.”⁷

There are five key areas where EY is helping companies not just implement the right procedures, but also establish the right tone at the top:

- Effective contract management
- Performing thorough third-party due diligence
- Insightful corruption risk assessment techniques
- Use of ABAC data analytics
- Tailored control procedures in high-risk geographies

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“Facilitation payments are relatively more common where bureaucratic procedures delay routine processes.”

Defining facilitation payments

“Facilitation payments are unofficial payments made to public officials in order to secure or expedite the performance of a routine or necessary action. ... The payer of the facilitation payment usually already has a legal or other entitlement to the relevant action.”⁸
Managing fraud, bribery and corruption risks in the mining and metals industry

Effective contract management

Mining and metals companies typically enter into large procurement and capital expenditure projects in remote and multiple locations. A lack of proper contract management can result in weakened controls and oversight of potential contract abuses, such as fraudulent or corrupt activities.

Companies also need the right systems in place to help validate payments made to suppliers and monitor the development of key performance indicators at the individual contractor or project level. Most companies have sound procurement practices. These include more competitive procurement requirements for larger contracts and an appropriate balance between tightly controlled, centralized procurement and more flexible, local procurement.

The inclusion of anti-corruption clauses in agreement templates with business partners, consultants and vendors is becoming more common. Many of these contracts will include requirements for compliance with ABAC laws, rights to terminate and rights to audit. These clauses can be effective in preventing problems and invaluable in strengthening a company’s ability to defend itself should an issue arise.

Perhaps the key factor in all relationships is the right to audit. This 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 complied with correctly. However, it has been observed across the industry that the “right to audit” clauses have not been enacted or utilized with any consistency.

EY recommends developing key performance indicators at the individual contractor or project level, which can be most effective when distributed to mine site management. Visually, this can be demonstrated in a “dashboard” layout – the signals at management’s fingertips that 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 organizations, the most critical line of defense. Dashboards should include specific metrics to manage their accountability and enable the early identification of red flags.

It is also crucial to write the contracts with as little ambiguity as possible. There is value in clearly defining terms, e.g., measurements, milestones and adjustment calculations. Companies should also be establishing key milestone dates for projects, as well as making it a requirement that all contractors maintain appropriate records that reflect the business relationship – including provisions that they understand and will comply with all ABAC policies and procedures.
Third-party due diligence

One of the more troubling findings from EY’s 12th Global Fraud Survey (2012), was the lack of safeguards among global companies to protect themselves from the risk of corruption through the actions of certain third parties. This comes despite A Resource Guide to the U.S. Foreign Corrupt Practices Act clearly stating the need for due diligence and monitoring of all external relationships. The UK Bribery Act 2010 also demands the same kind of rigor and goes to even greater lengths to create liability – both personal and corporate – of those with ineffective vendor controls.

Almost 60% of respondents to our 2012 survey used approved supplier databases, but less than 50% asserted the right to audit in these relationships. Only 3 in 10 used software or technology checks, or both, to assess and monitor third parties.

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. Third-party services range from advice about government relations to the routine supply of canteen facilities, transport, security, utilities and commodities such as oil. 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. Before scrutinizing the selection of business partners, it is important to estimate the nature, scope and value of intended relationships and transactions.

Many global corporations have vendor master files and third-party databases spanning hundreds of thousands of organizations. Collecting initial data about potential partners will involve vetting government-owned or -controlled entities and possible high-risk business relationships, as well as checking histories for unethical conduct.

We recommend defining high-, moderate- and low-risk categories of third parties and applying diligence appropriate to the risk ranking

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<thead>
<tr>
<th>Low risk: Level I - quick scan + detailed online research</th>
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<tr>
<td>Low risk is about looking for published convictions, sanctions and penalties, as well as identifying high-risk individuals, such as politically exposed persons. It may entail trawling global diligence talent hubs as well as local jurisdictions.</td>
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<th>Moderate risk: Level II - Level I + local public records archive search</th>
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<tr>
<td>Moderate risk demands more detailed research. This includes the use of sophisticated public records databases, 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.</td>
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<th>High risk: Level III - Level II + field research</th>
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<tr>
<td>High risk covers the first two levels but adds an assessment of third-party controls and financial records, on-site inspections and thorough investigations into references. It can also involve detailed interviews with associates in political, business and social contexts.</td>
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Community policies within mine sites

One area for the mining and metals sector to watch is compliance with community policies for not-for-profit organizations. If a company helps a school in an area in which it is operating, is that a form of corrupt payment or a legitimate social contribution? If the company makes these payments without adequate controls in place or fails to perform due diligence on the requesting party, it can result in unintentional corrupt payments to government officials or entities with ties to the not-for-profit organization.

Some of the key procedures and policies that should be in place to help control the flow of funds include:

- Ongoing monitoring and auditing of the use of the funds
- Staggering payments rather than in a lump sum
- A formal agreement with the local organization that specifies the use of the funds, contains an anti-corruption clause and contains a right to terminate if evidence is found that suggests the anti-corruption clause has been broken
- Due diligence on the requesting entity to confirm that none of the recipient’s officers or directors is affiliated with the foreign government at issue
- Transferring the funds only to the intended beneficiary’s bank account
Maintaining an integrated due diligence compliance program

Once the nature and “risk grade” of the relationship with each third party have been properly documented and case files set up, the next step is to implement an effective vendor due diligence compliance program. We believe there are four key components to a program to manage these risks: consistency, management oversight, objectivity and reasonableness.

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<th>Consistency</th>
<th>Management oversight</th>
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<td>An automated process that can be deployed in any situation, anywhere in the world</td>
<td>A high degree of attention placed on the initial setup steps and the follow through</td>
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<th>Objectivity</th>
<th>Reasonableness</th>
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<tr>
<td>A layer between the person requesting due diligence and the act of checking itself</td>
<td>A risk-based overview of the entire process – companies need to allocate resources according to the seriousness of an issue</td>
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Due diligence is never finished

Even when an effective program is established with these four components, it is important to recognize that due diligence is ongoing. New vendors need to be onboarded and business partners need to be reviewed regularly, either by screening through automated processes or through trusted data sources.

A third party that poses no serious concerns at the outset may present difficulties as time passes, e.g., with a change in shareholding. Periodic reapproval of business partners is highly recommended. But be sensitive – this process should be appropriate to the risk level of the entity in question.
Corruption assessments and putting controls in place

A thorough compliance risk assessment program is important, not just because it will identify potential threats and manage the risks of corruption, but because just about every major regulatory authority expects it. Most legal authorities offer guidelines setting out what is expected from a program. We know from *A Resource Guide to the U.S. Foreign Corrupt Practices Act* that established effective compliance procedures are considered in determining leniency for companies cooperating in investigations.\(^{10}\)

*A Resource Guide to the U.S. Foreign Corrupt Practices Act* also details the expectations of US prosecutors with respect to compliance programs. Beyond this, the UK Bribery Act 2010 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, including a corruption assessment program, clearly must be in place. The UK Bribery Act 2010 also expects assessments to be periodic, informed and fully documented.

The need to conduct risk assessments is not only found in guidance around anti-corruption statutes. The 2013 COSO framework also requires that all publicly traded companies that are subject to Sarbanes-Oxley Act Section 404 requirements will need to conduct a fraud risk assessment separate from the general risk assessment. Corruption and bribery comprise one of the three primary types of fraud that should be considered.\(^{11}\)

### Anti-corruption programs

Companies that offer full and transparent disclosure of their anti-corruption programs are not just underscoring their commitment to eradicate the problem, but also 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 policies and procedures. Doing this is not only critical to keeping out of trouble, but it is also an important part of minimizing the consequences when something goes wrong — it bolsters a defense and, in some instances, may provide a safe harbor for the company from prosecution.

During 2013, more than 60% of DOJ actions relating to FCPA violations were instituted against individuals, a nearly fourfold increase since 2004.\(^{12}\) Despite this trend, one-fifth of companies still do not have any ABAC policy or a code of conduct. UK prosecutions also reveal a number of trends, most significantly the targeting of individuals.

There are signs that mining and metals companies have noticed these trends and are responding positively. Several of the world’s largest 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 for these risks in their internal audit plans.

In its most recent survey on transparency in corporate reporting, Transparency International ranked 124 multinationals.\(^{13}\) Three extractive industries companies were ranked in the top four in overall corporate transparency. All scored very highly for the commitment and clarity of their ABAC programs. Encouragingly, the resources sector as a whole scored very well compared to other industry sectors in terms of its anti-corruption programs.
Managing fraud, bribery and corruption risks in the mining and metals industry

The first step in developing a program for a mining and metals company is to identify the inherent risks. Culture is important, as is the company’s relationship with government entities. The questions a business should ask include: how dependent is the operation on the government? How many third parties will have to be brought into the equation and to what degree? What is the country’s historical regulatory environment around mining operations – stringent, lax or difficult to determine?

In mining, there are large amounts of machinery and consumable stores held on-site to keep the operation moving. Without a robust control environment, assets of all types can be misappropriated – even fuel, electricity and water. It is also worth remembering that assets and equipment will have a higher resale value in remote markets and less developed regions. A key question to ask is: how robust is your control over assets from large to small?

Another potential problem is payroll fraud, as large numbers of local contractors and casual labor may be on the payroll. The geographical dispersion of staff limits the effectiveness of management oversight and increases the risk of time sheet fraud.

Limitations on management’s oversight also increase the possibility of “ghost” employees on the payroll performing “ghost projects,” such as road construction or building a security fence – projects that are invoiced but do not exist. We have often seen that accounting and payment processing are undertaken by the corporate office, which did not check whether the project was actually performed. The approvals and audit trail would all be in place – but checks would lack physical verification.

After identifying inherent risks, the company should match the intended program to the perceived risks – specifically, what policies and controls does the company intend to put in place to mitigate potential problem areas? As natural resources in more established markets become scarce and companies look to access new reserves, there is increasing pressure for mining and metals companies to explore, operate and develop in countries where there is a perceived higher level of corruption. Differing standards of business practices, political regimes, regulations, and a lack of established internal control and limited corporate oversight make these markets and business ventures inherently risky operations and highly susceptible to bribery and corruption.

The third stage is to produce a plan to match the risk – and one that receives top-level support. One recommendation is for the audit committee to sanction mine site budgets to make certain that the right messages get to the company’s top-level executives.

The plan should include policies that map to the regulations, obligations and the particular business processes that the mining venture will be operating under. It is also important to allocate controls to the right people in each of the problematic areas and make certain that resources are sufficient to enable compliance on the ground.

Most risk assessments generally involve information collection and analysis. More effective assessments go to the next level and include transaction testing. In the mining and metals sphere, this next level is highly recommended. Transaction testing needs to be both communicable and controllable at the corporate level, as so many mines are located in far-off, high-risk locations. Some managers have a rule of thumb – the farther away the site, the greater the need for strong transaction and communication lines.

It is also important to have board and management acceptance of the compliance strategy before embarking on any risk assessment – and make certain that they are well-informed of policies and procedures. This is important when it comes to communicating to them the resources that may be required to complete the task.

Mining operations frequently are established in remote jurisdictions that require large volumes of cash to pay for goods and services, including the wages of local staff. The nature of cash makes it an easily misappropriated asset, which is often exacerbated by a lack of defined or adequate systems to record and monitor cash movements.

There are often large warehouses on-site that contain consumable supplies, such as clothing or tools (hammers, wrenches, etc.). These can be a prime target for theft by employees if the controls are weak. The theft of near-cash assets such as diesel fuel is also particularly common. Many sites have fuel pumps on-site to refill trucks, which take in excess of 1,000 liters. Employees will often use the pumps to fill their own cars, knowing that the 50 liters their personal car takes normally will go unnoticed.
ABAC data analytics

The volume and dispersed origins of transactions make it prohibitively expensive and difficult to achieve a meaningful level of transaction testing without incorporating automated data analytics procedures. Automation allows managers to see potential problems when they occur and before they escalate into a crisis.

Generally, traditional auditing has not been designed to detect problems related to bribery and corruption. It is often difficult for the audit teams to detect payments relating to bribery and corruption as most instances are below the materiality threshold. This means the items are not reviewed as part of the detailed audit testing. During a routine audit, the audit team does not focus on bribery and corruption, and it is only really examined by exception.

One of the most exciting developments has been the evolution in forensic data analytics technology, which works on “risk-based” rules. It monitors potentially suspicious transactions, as well as word choices in emails, payment descriptions or journal narratives, to discover anomalies in vast quantities of structured and unstructured data.

Forensic data analytic procedures can 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 procedure tests identify potentially problematic schemes and scenarios.

EY has developed ABAC data analytics that allow those tasked with compliance programs or attest functions to integrate new tools that assist them in monitoring activity and capturing data more quickly and accurately. It can look for payments above a certain sum or payments made to offshore banks – or not – at unexpected times. It can be used as a tool to make certain that 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 other criteria, it will place red flags on 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. ABAC analytics also look at unstructured data – key words that can be found on phone texts, emails and recorded journal entries. This capability has proved to be useful in areas where conflict diamonds have been smuggled to illicit channels. It can also assign a fraud behavioral score to the words used by the suspected individual in the recorded text fields of emails and journal narratives.

ABAC analytics will not only identify unusual transactions, but it will also help build pictures of problem areas that may be recurring and systemic to a business or any of its internal and 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 (EITI)

The EITI was set up in 2002 as a way of promoting full disclosure of payments made by resources companies to governments, as well as revenues received by those governments. Countries and companies signed up with the EITI aim to create revenue transparency at the local level and make certain that these figures are offered to a wide audience in a publicly accessible, comprehensive and comprehensible manner.

Following years of public debate and interest group pressure to regulate financial transparency in the resource industries, Australia has signed up to pilot the EITI among its resources companies. 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 generally has been well-received, but there have been questions about its effectiveness and methodology. Some large mining companies 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, adding that reporting payments made to different levels of government would be more practical.

The EITI now has 26 compliant and 16 candidate countries, the majority of which are developing states.
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 just tax revenues in exchange for resource extraction. Helping local communities by building infrastructure and providing employment as part of the social license to operate can be a complex area. These spending decisions often involve interactions with the very political leaders and government officials who make decisions on issues such as licenses, permits and contracts. Many mining companies have experienced challenges in managing the associated risks, especially where local, regional and central government officials have differing interests.

Government infrastructure programs present corruption risks – 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 because it has not yet been tested in a court of law and there is little authoritative, practical guidance. Again, operational transparency is key. Companies must show that the social operation is efficient, cleanly run and by no means a reward mechanism for officials who would be tempted to take extraneous payments as part of a deal. These are all essential elements of 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 large mining companies are implementing new processes and hiring people to vet and monitor third parties, there are bound to be repercussions. Compliance costs money and time. Potential partners will need to be asked to supply ever-increasing amounts of information and fill in more compliance forms. Without clear policies, a payment relating to government approvals may expose companies to corruption risk.

Smaller and medium-sized entities have also established a presence in numerous remote areas, and all of them will have to deal with the same legislation. Companies can use inexpensive means that can effectively reinforce the compliance culture and procedures of the company in remote locations, such as having expats meet with senior legal representatives prior to deploying.

Companies will always have to make cost versus benefit decisions in this area. There are potential problems when a mining company effectively checks boxes for the sake of saving money rather than making serious compliance investments.

Whistle-blowing mechanisms

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

In our experience, there is a general reluctance to use whistle-blower channels in many cultures and a general misunderstanding of how to use them. There may be fears concerning personal safety when using the whistle-blower system or social, cultural and hierarchical barriers related to giving information. How will the person reveal the information? What will be the reaction of coworkers to a bounty payment? The secret to an effective process is building local trust that allows people to feel free to come forward without retribution.

When there has been an instance of corrupt activity, in almost all cases someone else in the company will have information about the incident. It is worth investigating alternative and safe whistle-blower channels to encourage a whistle-blower to bring relevant information forward. In many cases where corruption is taking place, colleagues of the perpetrator often are aware of what is going on, yet in the absence of an effective whistle-blowing solution, the only options open to them are to do nothing or report it to law enforcement, a regulator or the media.

While a number of high-profile cases have demonstrated that regulators will impose substantial financial penalties for weak or nonexistent controls, the consequences of the reputational damage following such an incident can be even more severe.

A survey conducted by the Association of Certified Fraud Examiners found that, worldwide, 43.3% of occupational fraud was detected as the result of whistle-blowing, yet despite this, some organizations view whistle blowing as a threat.

The value of an effective whistle-blowing solution as a key control cannot be overstated; however, to be effective, it must be:

- Well-implemented – a check-the-box approach to whistle-blowing simply will not work.
- Well-maintained – the message needs to be current in terms of promotional material and training.
- Well-supported – “tone from the top” is vital in this area. Those with information to give must have encouragement and reassurance from the highest level – encouragement to pass on issues of concern and reassurance that the information will be treated seriously and in confidence.
Exceptions to policies

Most mining and metals companies know that global ABAC policies can 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. A developed world corporate policy may prohibit facilitating payments, but what happens when emergency makes it virtually impossible to follow that policy?

In-country management can go too far in adapting to local culture, compromising controls in the process and exposing the company to home-country enforcement or reputation risk.

Company policies, procedures and training should always include the appropriate escalations and consultations that employees can follow when exceptions arise due to emergencies.

One particular example relates to the reconstruction of a road following severe monsoons. Time did not allow the manager on the ground to complete a thorough, complicated procurement process. He needed to pay the local people to build a road. The usual policy may have demanded a lengthy tender and vetting process, the collection of several quotes and a ban on cash payments. In this case, the on-site manager felt compelled to go outside policy guidelines to speed things up.

It is important to recognize these problems and allow managers to act without fear of reprimand if they do the right thing. The guidance given to on-site managers is critical to make certain that they are familiar with the circumstances that warrant actions outside of the agreed practice. Prior to the event, proper consultation and documentation requirements are required. And flexibility should not be used as an excuse for non-compliance.
10 hallmarks of an effective anti-corruption compliance program


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<th>Commitment from senior management</th>
<th>Often referred to as “tone at the top,” senior management and board directors alike are responsible for conveying a strong message that corruption will not be tolerated.</th>
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<tbody>
<tr>
<td>1</td>
<td>Code of conduct and compliance policies and procedures</td>
<td>A code of conduct provides ethical guidelines for those conducting business on the company’s behalf. A company may also have specific anti-corruption policies and procedures that address its most significant risks and outline proper internal controls and monitoring procedures.</td>
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<td>2</td>
<td>Oversight, autonomy and resources</td>
<td>Responsibility for the compliance program should be assigned to an appropriate senior individual or group to provide the authority and autonomy to oversee the program and report to the company’s governing body.</td>
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<td>3</td>
<td>Risk assessment</td>
<td>A company’s compliance program should be designed around and commensurate with its unique risk profile, taking into account factors such as its size, structure, industry, geography, interactions with foreign governments and involvement of business partners. A thorough risk assessment adds efficiency and credibility to anti-corruption compliance efforts.</td>
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<td>4</td>
<td>Training and continuing advice</td>
<td>A company should take steps to make certain that all employees are aware of the company’s anti-corruption policies and procedures, which often is accomplished through periodic training. Certain key roles, such as management, sales, finance and business development personnel, may receive enhanced training.</td>
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<td>5</td>
<td>Incentives and disciplinary actions</td>
<td>To avoid the appearance of a “paper program,” the corporate compliance program must be enforced unequivocally throughout the organization with clear disciplinary procedures for violators applied consistently and in a timely manner. Also, positive incentives, both financial and other merit-based rewards, may reinforce a culture of compliance.</td>
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<td>6</td>
<td>Third-party due diligence and payments</td>
<td>A risk-based due diligence approach identifies and devotes attention to third parties posing the greatest corruption risk. The guidance highlights three areas to govern dealings with third parties, from precontract due diligence efforts to payment terms and ongoing monitoring of third-party relationships.</td>
</tr>
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<td>7</td>
<td>Confidential reporting and internal investigation</td>
<td>Employees and third parties should be encouraged to share tips or suspected violations in a secure and confidential manner. Significant issues ultimately should be investigated by qualified individuals.</td>
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<tr>
<td>8</td>
<td>Continuous improvement: periodic testing and review</td>
<td>Companies may perform periodic testing or anti-corruption audits to monitor compliance with the various elements and controls of the program and to uncover the existence of potential violations and red flags signaling new corruption risks.</td>
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<tr>
<td>9</td>
<td>Pre-acquisition due diligence and post-acquisition integration</td>
<td>An acquirer is responsible for conducting thorough due diligence of a potential target company, which extends to evaluating potential corrupt activity by the target.</td>
</tr>
<tr>
<td>1.</td>
<td>How closely do your ABAC policies and procedures align with the governing laws, and do they clearly deal with facilitating payments?</td>
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<td>2.</td>
<td>Does your company have a well-designed and formalized ABAC program and a well-publicized standing response protocol to be able to investigate fraud and corruption?</td>
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<tr>
<td>3.</td>
<td>Are all employees and third parties, including agents, business partners and associates, properly apprised of your ABAC policies and trained where necessary to adhere with them, including annual certification of their contents?</td>
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<td>4.</td>
<td>Do you undertake ongoing fraud and bribery risk assessments as well as use forensic data analytics as a monitoring tool?</td>
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<td>5.</td>
<td>Do you conduct adequate due diligence reviews and vet new business partners, including suppliers, distributors and agents?</td>
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<tr>
<td>6.</td>
<td>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 third-party vendors and agents?</td>
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<tr>
<td>7.</td>
<td>Have you made sure that all your third-party contracts for work are well-designed; easy to understand; and properly negotiated, documented and closed out?</td>
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<td>8.</td>
<td>Do these contracts include the right to audit at any time during the contract and allow you to suspend or annul contracts should breaches of the contract relating to bribery occur?</td>
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<td>9.</td>
<td>Do you have well-understood methods and channels through which a whistle-blower can act?</td>
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<td>10.</td>
<td>Where there is a danger that spending to help local communities could be construed as corrupt, are programs fully transparent with robust controls to mitigate the risk of resource misallocation?</td>
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</tbody>
</table>
How EY can help

Fraud and investigations
Fraud, bribery and corruption continue to be an unwelcome but persistent and very costly feature of business life. With increasing regulatory and public scrutiny of fraud and bribery in mining and metals, it is critical that risk management and good governance have a central place in your organization. You must safeguard the value and integrity of your business and provide comfort to your stakeholders that misconduct is not tolerated.

The right response
EY’s Fraud Investigation & Dispute Services team is experienced in financial statement fraud, bribery and corruption investigations and compliance programs. Our multidisciplinary professionals investigate situations where you suspect you have a problem, and we understand your need for sensitive and time-critical corporate investigations.

An agreed approach
Working with you or your outside counsel, we can help determine what happened, how much is at risk, who is involved and what opportunities exist for recovery.

Through a fraud risk assessment, we can help you identify your most significant risk areas so they can be better managed and mitigated. Specifically, we can help you:
- Investigate fraud and accounting irregularities, including money laundering, bribery, false reporting, financial misstatement and suspect vendor relationships
- Capture, process and analyze electronically stored information
- Assess your regulatory compliance strategies
- Respond to regulatory inquiries and investigations
- Probe suspect financial performance by a unit, subsidiary or joint venture
- Conduct a fraud or bribery and corruption risk assessment
- Perform forensic due diligence on proposed business partners
- Provide reports and expert testimony

Dispute services
Integrated services with energy industry experience
EY has a highly skilled and experienced team that has assisted mining and metals companies with a range of dispute-related matters to gather and evaluate evidence as we work with outside and corporate counsel to determine damages.

We assist in disputes related to:
- Contracts
- Transactions
- Valuation matters
- Antitrust
- Construction claims
- Arbitrations
- Intellectual property
- Insurance claims

With more than 3,000 professionals globally, our established methods can help you resolve conflicts and realize value in the most challenging circumstances.

Corporate compliance
Centered on the principle that corporate compliance should be integrated fully into the organization, we help businesses design and implement compliance infrastructures and processes and controls to prevent and detect non-compliance, as well as enhance business performance. We can assist you with:
- Policy setting
- Risk assessment
- Design effectiveness
- Operative effectiveness
- Reporting
- Third-party due diligence

Forensic technology and discovery services
We continually invest in leading technology and infrastructure, allowing our clients to interrogate large data sets to unlock the intelligence embedded within their data, and allowing businesses to better understand their risks and vulnerabilities. Forensic data analytics also provide insights into the business operations and identify improvement opportunities.

Working with you or your external counsel, we can manage the entire electronic discovery process by deploying our proven methodology in the identification, collection, preservation, processing, analysis and presentation of evidence. Examples where electronic services can be deployed include:
- Internal inquiries based on a large volume of documentation
- Civil proceedings
- Regulatory inquiries and investigations
- Notices to produce information
- Merger and acquisition due diligence
The EY Fraud Investigation & Dispute Services team has a global reach. For further help and information, please contact one of our professionals or local area representatives, or visit ey.com/fids.

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</table>
Notes


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About EY
EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

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