Managing bribery and corruption risks in the mining and metals industry

Forensic & Integrity Services
As the search for raw materials widens, so do 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 do not need 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 remotest 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. Second, the levels of global legislative and enforcement alignment are rising. Both the number and severity of overseas anti-bribery/anti-corruption (ABAC) laws – and the increasing scope of their reach – are having a greater influence not only on the resources sector, but on corporations conducting business outside their home markets.

Over the past five years, the US Government has renewed its push to enforce actions related to FCPA violations. In July 2010, it introduced the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which contain a whistleblowing provision, allowing people to be rewarded for reporting information on security violations to the U.S Securities and Exchange Commission (SEC). According to prosecutors, the Dodd-Frank Act has markedly raised both the quantity and quality of whistleblower claims.¹

More recently, the 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 foreign governments.

In 2004 the US pursued only five cases under its Foreign Corrupt Practices Act (FCPA). By 2012, 26 cases were being prosecuted. It is not just companies that are being held liable: in the same period, FCPA actions against individuals rose over three-fold. Enforcement action has seen a stark increase in the extractive industries recently. In their annual Global Enforcement Report, the association TRACE reported 61 enforcement cases involving the extractive industries between 1977 and 2010. By 2011, there was a slight increase to 68 cases. However, by 2012 there were 113 cases, over a 65% increase. The extractive industries also account for the highest number of enforcement actions for any given industry.²

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. Brazil and India are now drafting laws to either establish or broaden bribery offenses. Countries such as Australia, Canada, South Korea and Costa Rica have also embarked on their first significant anti-bribery enforcement actions.

¹Growing Beyond: a place for integrity, EY’s 12th Global Fraud Survey (2012), p15.
Of all the new anti-corruption laws, The UK Bribery Act 2010 is now considered to have gone furthest beyond previously established norms. In force since July 2011, it is unquestionably the most wide-ranging statute in terms of the types of offenses it outlaws. Unlike the US FCPA, the UK Bribery Act does not tolerate “facilitating” or “grease” payments to government officials. Nor does it deal solely with government officials: it also outlaws commercial bribery – that is, 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 in foreign companies.

EY’s latest survey of the business risks facing mining and metals companies places fraud and corruption as one of the top 10 on the scale of risks.3

The sector’s share of merger and acquisition investment in 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 are typically perceived to have high levels of corruption. Guinea ranks at 150 of 174 countries surveyed on the most recent Transparency International Corruption Perceptions Index, while the Democratic Republic of Congo comes in even lower at 160.4

The corporate response to checks on mergers and acquisitions is of great concern to the mining and metals sector. EY’s 12th Global Fraud Survey (2012) found that as many as 32% of companies said they either ignored or infrequently performed checks on companies before they acquired them.5 Given the resources sector’s reliance on M&A activity in 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 appears to be gaps in its management and enforcement. Our Global Fraud Survey revealed that respondents were increasingly 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, 15% of respondents were prepared to make cash payments, versus 9% in our last survey, and 5% of respondents stated they might misstate financial performance, versus 3% in our last survey in 2010.

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 risk-based controls and financial safeguards.6

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

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2Transparency International Corruption Perceptions Index 2012.
312th Global Fraud Survey, Growing Beyond: a place for integrity, Regional insights, EY (2012).
4Dangerous world: practical steps for global companies to evaluate and address corruption risk.
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 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 deals that “compensate” interested third parties.

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

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), which forbid any form of facilitating payments, revealed “a naivety and a lack of understanding for the operating environment in Africa.”

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 EY is helping companies not just to implement the right procedures, but also to establish the right tone at the top:

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

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

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7 Source: www.business-anti-corruption.com/about-corruption/vocabulary/
8 Source: Bribery Act 2010: Joint Prosecution Guidance of the Director of the Serious Fraud Office and the Director of Public Prosecutions
Mining and metals companies typically enter into large procurement and capital expenditure projects in multiple locations. 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 on compliance with ABAC laws, rights to terminate and rights to audit. These clauses can be effective in preventing problems, and invaluable in strengthening the 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 correctly complied with. However, it has been observed that across the industry the “right to audit” clauses have not being enacted or enforced 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, 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 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 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 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 the fact that US Federal 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 rigor, and goes to even greater lengths to create liability – both personal and corporate – on those with ineffective vendor controls.

Almost 60% of respondents to the survey used approved supplier databases, but less than 50% asserted the right to audit on 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 on 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 masters and third-party databases spanning hundreds of thousands of organizations. Collecting initial data on potential partners will involve serious vetting of government-owned or controlled entities and possible high-risk business relationships, as well as checking histories of convictions for criminal and civil violations.
We recommend defining high-moderate-and low-risk categories of third parties and ranking them.

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<th>Low risk</th>
<th>Moderate risk</th>
<th>High risk</th>
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<td>level I — open source background checks</td>
<td>level II — enhanced due diligence</td>
<td>level III — deep dive</td>
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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 through local media outlets for any adverse information.

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.

High risk covers the first two levels but adds in 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.

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 they are 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/entities with ties to the not-for-profit organization.

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

- Ongoing monitoring and auditing of the use of the funds
- Staggering of payments rather than in a lump sum
- A formal agreement with the local organization which 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 clauses have been broken
- Due diligence on the requesting entity to confirm that none of the recipient’s officers or directors are affiliated with the foreign government at issue
- Only transferring the funds to a valid bank account
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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 to create an effective vendor due diligence compliance program. We believe there are four key components to a program to manage these risks. These are consistency, management oversight, objectivity and reasonableness.

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<th>Consistency</th>
<th>Management oversight</th>
<th>Objectivity</th>
<th>Reasonableness</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 set-up steps and the follow through.</td>
<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. 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 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 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 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, including a corruption assessment program, must clearly be in place.

The UK Bribery Act also expects assessments to be periodic, informed and fully documented. Beyond this, the US Federal Sentencing Guidelines also detail the expectations of US prosecutors with respect to compliance programs.

**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, 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 harbour for the company from prosecution.

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 6 and 21 months. The number of actions against individuals has more than doubled since 2008. Actions against corporates have also increased, and we note a rise in the number of civil recovery orders, which enables the Serious Fraud Office to claw back recoverable property.

There are signs that mining and metals companies have taken this on board 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 to these risks in their internal audit plans.

In its most recent survey on transparency in corporate reporting, Transparency International ranked 105 multinationals. Rio Tinto and BHP Billiton were the top three in overall corporate transparency. All scored very highly for the commitment and clarity of their ABAC programs. Encouragingly, the resources sector as a whole topped all other industry sectors in terms of the transparency of its anti-corruption programs.

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Managing 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 address the initial 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 at 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. A key question to ask is: how strong is your auditing of 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 timesheet fraud. Limitations on management oversight also increase the possibility of “ghost” employees on the payroll performing “ghost projects,” such as road construction or the building of a security fence, which are invoiced for but do not exist. We have often seen that accounting and payment processing is undertaken by the corporate head office, which would not check whether the project was actually performed. The approvals and audit trail would all be in place – but checks would lack physical verification. Secondly, it 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 an 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 ensure 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 ensure 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 is highly recommended. Transaction testing needs to be both communicable and controllable at corporate level, as so many mines are located in far off, high-risk locations. Some managers have a rule of thumb – the further away the site, the greater 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 ensure 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.
Anti-bribery and anti-corruption data analytics

So far, we have discussed the importance of automation, which allows potential problems to be seen at the time of occurrence and helps managers to head off problems before they escalate into crises. The volume and dispersed origins of transactions make it prohibitively expensive and difficult to achieve a meaningful level of transaction testing without incorporating data analytics procedures. 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 there is not a focus on bribery and corruption by the audit team 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 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 procedures tests identify potentially problematic schemes and scenarios.

EY has developed anti-bribery and anti-corruption data analytics which 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 be asked to 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 ensure 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.
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The Extractive Industries Transparency Initiative (EITI) was set up in 2002 as a way of promoting full disclosure of payments made by resources companies 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.

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 has generally 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, 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.

Based on these and other criteria, it will place red flags on unusual transactions derived from the accounting and other data that 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 looks 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, it will help to build pictures of problem areas that may be recurring, and that may be systemic to a business and 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.
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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. 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.

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, 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 is bound to be a knock-on effect. 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 the use of facilitating payments, government approvals may take years, with the resulting delays 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 large mining companies that operate across the world. 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 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. 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.

EY’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 concerning personal safety when 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 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 whistleblower channels to encourage a whistleblower to bring relevant information forward. In many cases where corruption is taking place, colleagues of the perpetrator are often 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 to report it to law enforcement, a regulator or the media.

Whilst a number of high profile cases have demonstrated that regulators will impose substantial financial penalties for weak or non-existent 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 organisations 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 ‘tick in 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 at the highest level. Encouragement to pass on issues of concern and reassurance that the information will be treated seriously and in confidence.

Flexibility of policies
Most mining and metal companies will 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 necessity 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.

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 ensure they are familiar with the circumstances that warrant actions outside 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.

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1. ACFE Report to the Nations on Occupational Fraud & Abuse – 2012 Global Fraud Study p14
Eight steps to an effective anti-corruption compliance program

EY has identified eight steps that lead to an effective anti-corruption compliance program. These steps also comply 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**
   
   There 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 and 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 that include compliance with legislation and company policy are important controls. It is also key to implement 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.
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<td><strong>5</strong></td>
<td><strong>Conduct anti-corruption compliance training</strong></td>
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<td>Training is imperative for global organizations operating in countries that have 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 that may relate directly to them as employees. Training should be appropriately targeted. It should be based on roles and responsibilities within the company and be periodically updated for new and transitioning employees.</td>
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<td><strong>6</strong></td>
<td><strong>Monitor the program</strong></td>
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<td>Organizations 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 of non-compliance?</td>
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<td><strong>7</strong></td>
<td><strong>Anti-corruption procedures in mergers and acquisitions</strong></td>
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<td>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&amp;A checks should not end before the acquisition – they need to be continued after the integration process.</td>
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<tr>
<td><strong>8</strong></td>
<td><strong>Re-assess risk and modify program</strong></td>
</tr>
<tr>
<td></td>
<td>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.</td>
</tr>
</tbody>
</table>
### Ten preparedness questions for metals and mining executives

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 third party vendors and agents?
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 relating to bribery occur?
4. 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?
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 and associates, properly apprised of your ABAC policies and trained where necessary to adhere with them, including annual certification of its contents?
7. Do you have well-understood methods and channels through which a whistleblower scheme can be undertaken, and that 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 that spending to help local communities could be construed as corrupt payment, are schemes fully transparent with robust controls to mitigate the risk of resource misallocation?
10. Do you have the ability to undertake ongoing fraud and bribery assessments as well as analyze possible instances using forensic data analytics?
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 Forensic & Integrity Services team is experienced in financial statement fraud bribery and corruption investigations, compliance program. 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 enquiries 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 expert reports and 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 over 2,000 professionals globally, our established methods can help you to resolve conflicts and realise value in the most challenging circumstances.

Corporate Compliance
Centered on the principle that corporate compliance should be fully integrated into the organization, we help businesses to design and implement compliance infrastructures, 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 that allows our clients to interrogate large data sets to unlock the intelligence embedded within your data, allowing businesses to understand their risks and vulnerabilities better. 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 enquiries based on large volume of documentation
- Civil proceedings
- Regulatory enquiries and investigations
- Notices to produce information
- M&A Due diligence
Contact information

The EY's Forensic & Integrity Services practice has a global reach. See below for a list of our country and territory leaders. For more information see www.ey.com/forensics.

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