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ANTI-CORRUPTION
CONFERENCE**

**MOBILISING PEOPLE:
CONNECTING AGENTS OF CHANGE**

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Short Session Report: Global Solutions

Session Title: Combatting Corruption in the Private Sector: Eliminating Impunity through Corporate Anti-Corruption Programs

Date & Time: Nov 8, 2012 1730 - 1930

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Main Issues Covered (500 words or more, narrative form)

Background

Governments are increasingly calling upon corporations to combat international crime. Legal and compliance departments are key ingredients in corporate anti-corruption programs. They are tasked with ensuring that bribe payers are exposed and held accountable, and to eliminate impunity in corruption by attacking corruption on the “supply” side of the equation. Corruption prevention, detection and investigation measures, are an integral part of corporate initiatives and compliance programmes.

Main Issues

Although corporations spend billions of dollars on compliance measures the key point to remember is that in spite of this investment perfection will not be attained and they will continue to encounter corruption of some kind over time. It is impossible to control all corruption the most realistic approach to take is one that is risk based.

Central measures that mitigate risks within an institution include:

- i. Hiring the right people through a robust process that will ensure that employees at all levels will not misuse the organization.
- ii. Having deep and close management involvement in building policies and procedures that will comply with legislation such as the FCPA and the UK Bribery Act.
- iii. Implementing these measures through the continuous training of personnel and refreshing training on compliance policies.
- iv. Having an enforcement system and effective tools of surveillance of emails.
- v. Conducting due diligence on prospective clients and suppliers and on existing

clients.

vi. Remaining proactive by creating your own risk based model and by reviewing and adjusting policies to ensure they are up to date.

vii. Create a system of sanctions and incentives for compliance

For example, international financial institutions such as the World Bank (WB) export compliance programmes to other companies and countries, even if these are not accustomed to the concept. The WB focuses on preventing corruption through enforcement actions that lead to sanctions. Here it is the application of administrative law and not criminal law that serves as the authority for actions. The primary sanction is the application of a debarment system which effectively takes a company out of commission and ensuring that governments do not extend contracts to a debarred company. The WB makes its adjudication decisions public. And, much like the FCPA enforcement regime, the debarment can be accompanied by a conditional release clause. The condition is most often one where the organization has to develop a suitable compliance program, and demonstrate its effectiveness.

Main Outcomes/Outputs

The audience engaged the panel in lively exchanges centring on fairness and equity in international financing of corruption prevention initiatives, why is it that some corporate compliance programs do not work, what are the ways one goes about assessing if a programme is effective, and what level of evidence of employee corruption is needed before an employee can be fired.



Recommendations, follow-up Actions (200 words narrative form)

1. Remain Proactive

- (a) Each organization must assess its own risks for regulatory failure based on its unique characteristics and ways of conducting business and build its compliance programme based of these risks. Company executives should not expect that risks will remain frozen in time and space. Money launderers, fraudsters and illegal profiteers are imaginative and intent on finding new ways of acting corruptly or getting around existing compliance and monitoring systems.
- (b) Because expansion, acquisitions, mergers, new product line and ways of doing business changes the risk configuration the risk model adopted must accommodate these dynamic factors.

2. Culture Counts

- (a) Not all countries and organizations are prepared to embrace the same robust or effective form of implementing a compliance programme or of submitting itself to identical sanctions.
- (b) A surveillance, monitoring or reporting system of “whistleblowers”, while acceptable in one country, a country that shares its border may, for reasons linked to local and civilian WWII experiences, may find denunciation and informing within a company totally unacceptable. This could be sufficient to sabotage the entire compliance effort.
- (c) Changing expressions and language may be all that is necessary to make a concept more acceptable.

Highlights (200 words please include interesting quotes)

“Virtue has no greater ally than the lack of opportunity.”

Employees and companies alike have personalities and both are vulnerable to circumstance and change and to undisciplined drive to make money. From the legal side, enforcement action and consequences are framed within a context of risk and not perfection. Organizations must take a risk based approach that continuously assesses and reassesses its exposure. These risks are of two kinds: (i) the risk that employees, suppliers, consultants and other related entities will act corruptly, and (ii) the risk of detection, enforcement action, and a loss of reputation. Chief Risk Officers and Chief Compliance Officers must embrace a new paradigm where their coordinated efforts can do both effectively: reduce corruption and keep company CEOs out of the court room.

“Believing that corporations will act with integrity simply by having employees learn codes of conduct is about as likely as thinking that reading the sports pages every day will make you an athlete.”

A corporate compliance program cannot exist only on paper, and regulators will not accept such token efforts as evidence of a compliance programme let alone its effectiveness. On-going active engagement by board members, executives, employees and related supply chain entities in preventing fraud, money laundering and corruption is the first step in mitigating these risks.

Key Insights Recommended to be included in the IACC Declaration

Corporate compliance programmes cannot exist only on paper, and regulators will not accept token efforts as evidence of an effective compliance programme. On-going active engagement by board members, executives, employees and related supply chain entities in preventing fraud, money laundering and corruption is the first step in mitigating the risks of corruption in the private sector.

Rapporteur’s name and date submitted

 Michel Girodo Nov 9th, 2012 _____