

ANTI-CORRUPTION CORPORATE COMPLIANCE

Preventing and Detecting Improper Business Transactions in the Face of Increased Global Enforcement



December 11 – 12, 2008
St. Andrew's Club and Conference
Centre 150 King Street West, Toronto

Ensure that your organization is globally compliant with anti-corruption and anti-bribery regulation by learning from leading experts who will address these and other hot button topics:

- Launching and implementing comprehensive risk assessment and management programs which address cultural and linguistic sensitivities in new and emerging markets
- Selecting, contractually engaging and relationship managing foreign third party agents and business partners
- Dissecting the components of an illegal payment
- Developing cutting edge due diligence best practices to identify and eliminate non-compliance trouble spots
- Effectively responding to investigations and enforcement actions
- Negotiating protection from anti-corruption liability in M&A transactions
- Knowing what is appropriate and not prohibited when making gifts and covering entertainment expenses

and much more...

PRE-CONFERENCE WORKSHOPS | Wednesday December 10, 2008

WORKSHOP A: Successfully Troubleshooting for Fraud, Disguised Bribery and Other Corruption Stains to Preempt an External Investigation

WORKSHOP B: Training Employees and Business Partners in Anti-Corruption Compliance

PROGRAM CO-CHAIRS

Milos Barutciski
Partner, Bennett Jones LLP

Patrick J. Garver
*Executive VP and General Counsel
Barrick Gold Corporation*

KEYNOTE SPEAKER

Huguette Labelle
Chair, Transparency International

LUNCHEON SPEAKERS

The Honourable Donald J. Johnston
P.C., O.C., Q.C.
*Founding Partner, Heenan Blaikie LLP
Former Secretary-General of the OECD*

Alexandra Wrage
*President
TRACE International, Inc.
(Annapolis, Maryland)*

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This program has been accredited by the Law Society of Upper Canada towards the professional development requirement for certification.

Corporate and Commercial Law – 12.5 hours

Criminal Law – 2.5 hours

The pre-conference workshops have also been approved by the Law Society of Upper Canada towards the professional development requirement for certification.

Corporate and Commercial Law – 6 hours

Dear Colleague,

Enforcement of anti-corruption legislation is on the rise world-wide. The U.S. Department of Justice (*DOJ*) and Securities and Exchange Commission (*SEC*) are moving aggressively against foreign corporations under the *Foreign Corrupt Practices Act (FCPA)* and not limiting their prosecutions to US companies. Their initiative is leading the way on increased anti-corruption enforcement in Europe, Latin America and Asia. Closer to home, the RCMP established an International Anti-Corruption Team in 2007 dedicated to enforcement of the *Corruption of Foreign Public Officials Act (CFPOA)*.

As Canadian businesses expand their presence in emerging markets and participation in global supply chains, they rely more and more closely on foreign agents and representatives, business partners and joint ventures. Their exposure and due diligence obligations to make sure that their business relationships are compliant with the *CFPOA* and similar laws in over 50 countries increase correspondingly.

Currently, there are over 50 *FCPA* enforcement actions pending against both US and foreign companies. Canadian companies are clearly at risk. Any Canadian company listed on a US stock exchange is subject to *FCPA* investigation and prosecution. Cross-border *FCPA* enforcement can expose a Canadian corporation to delisting from securities exchanges, huge criminal and civil penalties and its officers and directors to fines and imprisonment.

An M&A transaction may quickly derail if a due diligence audit reveals that the target company is at risk for anti-corruption non-compliance. Anti-corruption governance and risk management are essential to maintain the company's attractiveness to potential buyers.

Is your organization taking the right compliance measures to ensure that it is not exposed to the recent growth in anti-corruption enforcement worldwide? Has it conducted adequate corruption risks assessments in the countries where it carries on business? Are its agents, representatives and local business partners equally current on anti-corruption compliance? What steps has it taken to make sure that their conduct does not implicate your company?

To get the answers to these and other critically important questions, please join us, your colleagues and expert faculty who will provide you with valuable insights into how to manage risk, establish compliance programs, train staff, and respond to investigations and enforcement actions in the global arena of anti-corruption compliance.

We look forward to your attendance and participation in Toronto!

Milos Barutciski
Partner
Bennett Jones LLP

Patrick J. Garver
Executive Vice President and
General Counsel
Barrick Gold Corporation

WORKSHOP A | 9:00 A.M. to NOON

Successfully Troubleshooting for Fraud, Disguised Bribery and Other Corruption Stains to Preempt an External Investigation

Roddy Allan, *Managing Director, Litigation & Investigations, Navigant Consulting Inc.*

Lincoln Caylor, *Partner, Bennett Jones LLP.*

Roddy Allan has over 19 years experience leading complex investigations in both the public and private sectors. He brings his extensive forensic accounting skills to advising a diverse and international clientele on all phases of preparing for an investigation including case strategy, financial analysis and providing expert testimony.

Lincoln Caylor conducts internal fraud and other investigations for clients in a range of industries; from financial services to securities to health care. He has managed all aspects of investigative and enforcement actions, including working with internal and external auditors, interviewing witnesses, reports to victims and asset recovery.

- Commonly encountered scams and best practices to identify them
- Early intervention: removing the weeds before they spoil the garden
- Encouraging early disclosure: who reports what and should whistleblowing be encouraged
- Mapping out a strategy to combat fraud and other sources of corruption
- Assembling the “hit squad” and bringing in external professionals
- How to conduct an effective internal investigation discretely and without jeopardizing corporate operations
- Conducting interviews with employees, business partners and foreign agents
- Punishing the wrongdoers criminally and the interaction with non-punitive civil recourses
- Managing reputational risk
- Best uses of technology in fraud and anti-corruption prevention and detection

12:00 | 1:00 LIGHT LUNCH WILL BE SERVED FOR DELEGATES ATTENDING BOTH WORKSHOPS

WORKSHOP B | 1:00 P.M. to 4:00 P.M.

Training Employees and Business Partners in Anti-Corruption Compliance

Alexandra Wrage, *President, TRACE International, Inc. (Annapolis, Maryland)*

Susan Ringler, *Senior Counsel for International Compliance, ITT Corporation (Vienna, Virginia)*

Training employees and business partners is a critical part of any robust anti-bribery program. Ensure that your investment in training is appropriately tailored to your business model and risk profile. TRACE conducts in-house training and anti-bribery workshops around the world. This workshop will share anti-bribery training “best practices” and will address common pitfalls.

- The importance of a comprehensive and well-funded training program
- Securing and maintaining management “buy-in”
- Tailoring the message to the audience
- Addressing common cultural challenges to international training programs
- Rolling-out the program company-wide
- In-person versus on-line training: convenience, cost and effectiveness
- Evaluating impact

8:00 | 8:45

Registration and Continental Breakfast

8:45 | 8:50

Welcoming Remarks from Insight

8:50 | 9:00

Co-Chairs' Opening Remarks

Milos Barutciski

Partner
Bennett Jones LLP

Patrick J. Garver

Executive Vice President and General Counsel
Barrick Gold Corporation

9:00 | 9:20

KEYNOTE ADDRESS

Confronting the Challenges of Balancing
Global Economic Development and
Anti-Corruption Regulation

Huguette Labelle

Chair
Transparency International

9:20 | 10:30

A Status Report and Forecast on
Anti-Corruption Regulation in Canadian
and International Business

Milos Barutciski

Partner
Bennett Jones LLP

Lucinda A. Low

Partner
Stephens & Johnson LLP (Washington, DC)

- Review of anti-corruption laws and regulations applicable to Canadian companies
- Examination of relevant provisions in the *Criminal Code*, *Corruption of Foreign Public Officials Act (CFPOA)*, international treaty regimes and corporate codes of conduct
- Extra-territorial application of the *US Foreign Corrupt Practices Act (FCPA)*
- Achieving multiple jurisdiction compliance for Canadian companies

10:30 | 10:45

Networking Coffee Break

10:45 | 12:00

Anatomy of a Corrupt Payment and the
Facilitation Exception

Superintendent Stephen R. Foster

International Anti-Corruption Unit
RCMP (Canada)

Brian Heller

Partner
Heller Rubel LLP

Philip Urofsky

Partner
Shearman & Sterling LLP (Washington, DC)

- Essential elements of an illegal payment to a public official under *CFPOA* and *FCPA*
- Analysis of specific corruption offenses applicable to Canadian companies
- Case studies of what went wrong, why and resulting sanctions
- Understanding the limits of facilitation or “grease” payments: making them without crossing the line
- The importance of “value” and “amount” in dissecting the elements of payment
- The significance of payments to individuals in non-arm’s length relationships to public officials

12:00 | 1:30

Networking Luncheon

LUNCHEON ADDRESS

Taking the OECD Convention to the Next Level:
Is the Global Partnership to Combat International
Corruption Working?

The Honourable Donald J. Johnston, P.C., O.C., Q.C.
Founding Partner, Heenan Blaikie LLP
Former Secretary-General of the Organization
for Economic Cooperation and Development
(*OECD Convention*)

1:30 | 2:30

Assessing Foreign Corrupt Practices Risk
Factors: Identifying the Trouble Spots

Tim Martin

Lawyer, Arbitrator and Mediator
CEO, *adr.governance.inc* (Calgary)

J. Michael Robinson Q.C.

Counsel
Fasken Martineau DuMoulin LLP

- Risk analysis by business sector, country, government officials and company personnel
- Who within the company is responsible for risk assessment and implementation?
- Risk measurement methodologies: what are the “red flags”?
- Developing and implementing a proper due diligence program
- Proactive versus reactive strategies
- Adapting responding strategies to trouble spots discovered during the course of an assessment
- What international public-private partnership project developers need to know about anti-corruption compliance
- Impact on insurance policies when the project is tainted with corruption
- The role of international financial institutions and national export credit agencies in policing anti-corruption and resulting sanctions

2:30 | 3:30

Mitigating Third Party Liability: Monitoring Agents, Representatives and Business Partners

Riyaz Dattu
Partner
Osler Hoskin & Harcourt LLP

Homer E. Moyer Jr.
Lawyer
Miller & Chevalier LLP (Washington, DC)

- Best practices in retaining foreign agents and representatives
- Contracting with joint venture partners and suppliers: deciding who to select
- Contract negotiation and drafting considerations
- Managing political sensitivities in working with a local agent designated as government “point person”
- Unraveling “taints and stains” discovered post engagement or partnership agreement

3:30 | 3:45

Networking Refreshment Break

3:45 | 4:30

When are Gifts to Foreign Officials Permitted? Managing Hospitality and Promotional Expenses

Steven Prisco (Invited Status)
Associate General Counsel
Aramark Canada Ltd.

Mary C. Spearing
Partner
Baker Botts LLP (Washington, DC)

- Booking business trips versus vacations for clients: walking the tightrope
- Slipping token gifts to clients and Christmas shopping issues
- Addressing local customs, practices and political sensitivities
- Determining what is acceptable in picking up the tab for meals and entertainment

4:30 | 5:15

Best Business Practices for Record-Keeping, Accounting, Disclosure and Reporting Foreign Payments

Stuart Deming
Lawyer and Principal
Deming PLLC (Washington, DC)

- Implementing workable document and records management, retention, and destruction policies
- What controls are required to track potential problems?
- Auditing the system
- Integrating *Sarbanes-Oxley* and other securities compliance reporting with anti-corruption reporting

5:15

Conference Adjourns for the Day

FRIDAY | DECEMBER 12, 2008

8:10 | 8:55

Continental Breakfast

8:55 | 9:00

Co-Chairs' Opening Remarks

Milos Barutciski
Partner
Bennett Jones LLP

Patrick J. Garver
Executive Vice President and General Counsel
Barrick Gold Corporation

9:00 | 10:30

PANEL DISCUSSION

An Overview of Foreign Anti-Corruption Regulation and its Extra-Territorial Reach: A Report Card for EU, China and Russia

Moderator:

Paul Lalonde

Partner

Heenan Blaikie LLP

Maryann Clifford

Ethics & Compliance Officer

Former Corporate Vice President, Law Department

Motorola, Inc. (Chicago)

Richard Dean

Partner

Baker & McKenzie LLP (Washington, DC)

Monty Raphael

Partner

Peters and Peters (London, U.K.)

In this panel discussion, experts on anti-corruption and anti-bribery regulatory schemes will compare and contrast the regimes in the UK, Russia and China. How does the UK system fit in with EU regulation? Can harmony be achieved, enabling a global organization to map out an integrated policy and combat corruption and bribery across multiple jurisdictions?

Recent case studies will be discussed to illustrate what can be accomplished and the challenges which lie ahead in addition to the panel addressing:

- Commonly encountered corruption problems encountered in difficult and emerging markets
- Best anti-corruption compliance practices in these jurisdictions
- Assessing the impact of local laws
- Structuring transactions with government owned-entities
- An overview of, and latest developments in EU and UK anti-corruption compliance
- The significance of the *BAE* affair
- An update on the *Siemens* affair

10:30 | 10:45

Networking Coffee Break

10:45 | 11:45

Conducting an Effective Anti-Corruption Due Diligence Review in M&A Transactions

Patrick J. Garver

Executive Vice President and General Counsel

Barrick Gold Corporation

Dale Turza

Partner

Cadwalader, Wickersham & Taft LLP (Washington, DC)

- Reviewing the M&A proposal with an eye for spotting actual and potential corruption “stains”
- Conducting due diligence to identify trouble spots
- Responding to target company suitors’ information requests
- When should the buyer walk away from the transaction?
- What should be the conditions, essential representations and warranties versus immaterial and “de minimis” irregularities to be overlooked in the pre-closing documents?
- Taking immediate post closing measures upon discovering contractual breaches
- Balancing the degree of rigor in public disclosure and internal investigation versus staying silent and gambling with “taking chances”
- Successes and failures: recent case studies of corruption and bribery issues in M&A transactions

11:45 | 12:45

Developing and Executing an Optimal Response and Defense Strategy to an FCPA Investigation

Roddy Allan

Managing Director, Litigation & Investigations

Navigant Consulting Inc.

Neil Campbell

Partner

McMillan LLP

- Retaining the best legal and investigative talent locally and cross-border
- Responding to searches and other formal investigative powers
- Juggling multiple prosecutions: responding to concurrent *DOJ* and *SEC* investigations and enforcement actions
- Managing cross-border response and defense strategies within the organization
- Cooperating with law enforcement versus asserting privilege
- The role of solicitor-client (attorney-client) privilege
- When do employees need separate counsel?
- Protecting employees’ privacy rights and whistleblowing issues
- Managing costs: when can the onus be shifted to third parties?

12:45 | 2:15

Networking Luncheon

LUNCHEON ADDRESS

The Company We Keep: Commercial Corruption in Context

Alexandra Wrage

President

TRACE International, Inc. (Annapolis, Maryland)

2:15 | 3:15

Creating and Implementing a State of the Art Anti-Corruption Compliance Program

Martin W. Mueller

Vice President and Chief Compliance Counsel

Nexen Inc. (Calgary)

Gregory H. Sayer

Vice President, Compliance, Corporate Oversight and Regulatory Affairs

Atomic Energy of Canada Limited

- Setting the stage: creating a corporate culture of ethical responsibility and communicating the message of corruption “zero tolerance” throughout the organization
- The value of a code of conduct: what it should contain and address
- What are the key constituent elements in building an effective anti-corruption compliance program?
- Best practices in internal controls and approval procedures
- Obtaining senior management “buy in”
- Designing and selling the program as essential to the organization’s profitability
- Case studies of corporate anti-compliance corruption programs: what works and what doesn’t

3:15 | 4:15

The Emergency and Crisis Response: Managing Reputational Risk When the Investigation Goes Public

John Keefe

Partner

Goodmans LLP

Hugh Mansfield

President

Mansfield Communications Inc.

- Responding to corruption allegations when they surface in the public domain: how much information should be disclosed?
- Avoiding regulatory and class action liability for selective disclosure or for disclosing too much or too little information
- Handling media enquiries
- Designating the company spokesperson and establishing channels of communication with senior management
- Developing and disseminating policies to minimize the threat of information leaks
- Effective measures to avoid panic and adverse consequences to carrying on business operations
- Managing key stakeholders: employees, auditors, regulators, analysts, bankers, customers, suppliers and shareholders

4:15

Co-Chairs’ Closing Remarks Conference Concludes

WHO SHOULD ATTEND

- Compliance Managers
- General/Corporate Counsel
- Corporate Directors
- Ethics and Integrity Commissioners and Consultants
- Reputational Risk Managers
- Regulators in Export Finance, Economic Development, Foreign Trade and International Affairs
- International Business Development Managers
- Global Risk Management Professionals
- International Trade, Procurement and Corporate Governance Lawyers
- Defense Lawyers
- Consultants and Auditors in International Global Corporate Compliance and Risk Management

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WORKSHOPS | December 10, 2008

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