

Anti-Corruption Law Program

Integrity and Anti-Corruption for Small and Medium Enterprises – Getting it Right

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Collaborative partnership with the Centre for Business Law, Transparency International Canada, and the International Centre for Criminal Law Reform

Effective ABC Compliance for SMEs - First Steps

1. Ensure strong CEO support
2. Build ABC into your Code of Ethics policy
3. Training on Code of Ethics
4. Whistleblower hotline & investigation process
5. Due diligence (KYC) for highest risk counterparties

Effective ABC Compliance for SMEs – Next Steps

1. G&E /donation policy, registry & approvals
2. New hire, counterparty & annual training program
3. 3rd party due-diligence program
4. Incentives and consistent disciplinary process
5. ABC risk assessment

Outline

1. The Consulting Engineering Industry
2. FIDIC – The International Perspective
3. FIDIC Contracts
4. FIDIC's Anti-Corruption Initiatives
5. FIDIC Approach to Integrity Management
6. FIDIC Model Representative Agreement
7. FIMS Pilot Program
8. Typical Objections to IM Systems
9. Where to from here?

1- The Consulting Engineering Industry

- Speaking from experience as a senior employee of a Canada based CE – firm – a “Medium” enterprise
- CE firms in Canada - an important part of services sector
- ACEC Canada - over 50,000 employees, over 400 member firms.
- ACEC – a business association – no regulatory role
- Firm sizes - small “boutique” firms (5 -20 employees - local market) to very large firms - domestic, international markets

2- FIDIC – the International Perspective

- FIDIC - founded in Europe in 1913
- “The global representative body for national associations of consulting engineers”
- Represents 40,000 firms with 1 million employees
- 102 countries, from Albania to Zimbabwe
- CE industry has grown dramatically in developing countries. Barriers to entry low for smaller firms.

3 - FIDIC Contracts

- Since 1957, standard FIDIC model contracts important for international infrastructure projects
- Current FIDIC contracts include:
 - Red Book – Construction – Design by Owner
 - Yellow Book – Plant and Design Build
 - Silver Book – EPC/Turnkey Contracts
 - White Book – Client/Consultant Model Services Agreement
 - Sub-Consultancy Agreement
- FIDIC Contracts use a common format, with standard GC's and options to customize using Particular Conditions

4- FIDIC's Anti-Corruption Initiatives

- Relationship with World Bank, other IFIs important to FIDIC and member firms
- 1996 – World Bank anti-corruption program initiated. In response, FIDIC issued its first anti – corruption policy statement
- FIDIC's Business Integrity Management System (BIMS) outlined 1997-98, presented to World Bank in 1999
- BIMS Guidelines presented at FIDIC 2001, followed by Training Manual, other documents
- Now known as FIMS to make it unique to FIDIC
- Integrity Management Committee (IMC) – develops IM tools, promotes IM among member firms

5- FIDIC Approach to Integrity Management

- Follow the project cycle – concept to completion
- Focus on the positive, prevent the negative
- Positive – fulfill the obligations of the “trusted advisor”
- Negative – anti-bribery safeguards - corrupt employees, third parties.
- FIMS I - Policies and Principles (2011)
- FIMS II – FIMS Procedures (2015)
- FIMS III – FIMS and ISO 37001 (2019)
- Model Representative Agreement (2013)

6- FIDIC Model Representative Agreement

- Actions by “third parties” often greatest integrity risk
- Use of Representatives (agents) by CE firms in foreign countries is common
- In the past, Representatives often engaged with very limited agreements – both parties named, target clients, basis for remuneration. Little else.
- Remuneration often a % of fees – commissions. Open to abuse
- Court cases have shown that third party actions will create liability for the firm that pays commissions

FIDIC Model Representative Agreement

- Model Representative Agreement (2013) gives a consulting firm a useful form of agreement to protect its commercial interests (regular reports, no conflict of interest, clear scope, invoicing details)
- Also prohibits bribery, provides for anti-corruption training
- Allows the consultant to cancel if bribery evidence appears
- Available to all FIDIC member firms at low cost

7 - FIMS Pilot Program

- Pilot Program initiated at 2010 FIDIC Conference by IMC
- Parallel effort to FIMS Development
- Identify/overcome challenges of building a FIMS
- Six firms – South Africa (2), Netherlands, Iran (2), Nigeria, Uzbekistan
- Process lasted two years; informed FIMS II (2015)

FIMS Pilot Program - Design

Objective - create an Integrity Management System that is...

- Scalable to the firm's size and services
- Not “one size fits all”
- Adaptable; different firms have different needs
- Effective in markets with variable corruption risk
- Based on integrity as the foundation

FIMS Pilot Program - Results

Firms experienced different levels of success

Some firms completely changed their client base

- Effectively “fired” clients representing integrity risks

Some FIMS did not survive leadership changes

One company adopted a Non-negotiable Integrity System

- ✓ All company members must accept and follow the IMS

- ✓ Consultant and subconsultants must abide by Code of Conduct

8 - Typical Objections to IM Systems

- We serve a local market – no integrity risks here
- We are a small firm – we can't afford more overhead costs
- Our employees will think we don't trust them
- Our clients will not like it – makes us look like we don't trust our employees
- If we have a problem, we will deal with it when it happens – not before (bad things never happen to me...)
- “When in Rome....”

9 - Where to from here?

- Large CE firms typically have strong legally-based compliance systems - experience has been an unkind teacher
- Many small and medium firms do not perceive high risks and see little reward in a proactive approach to integrity management. Insurance against a “remote risk”
- At least in Canada, little enforcement of A-C laws means few examples to create a “fear factor”
- Carrot or stick - can we aspire to “do the right thing”, or is a “fear factor” needed?

EXPORT DEVELOPMENT CANADA

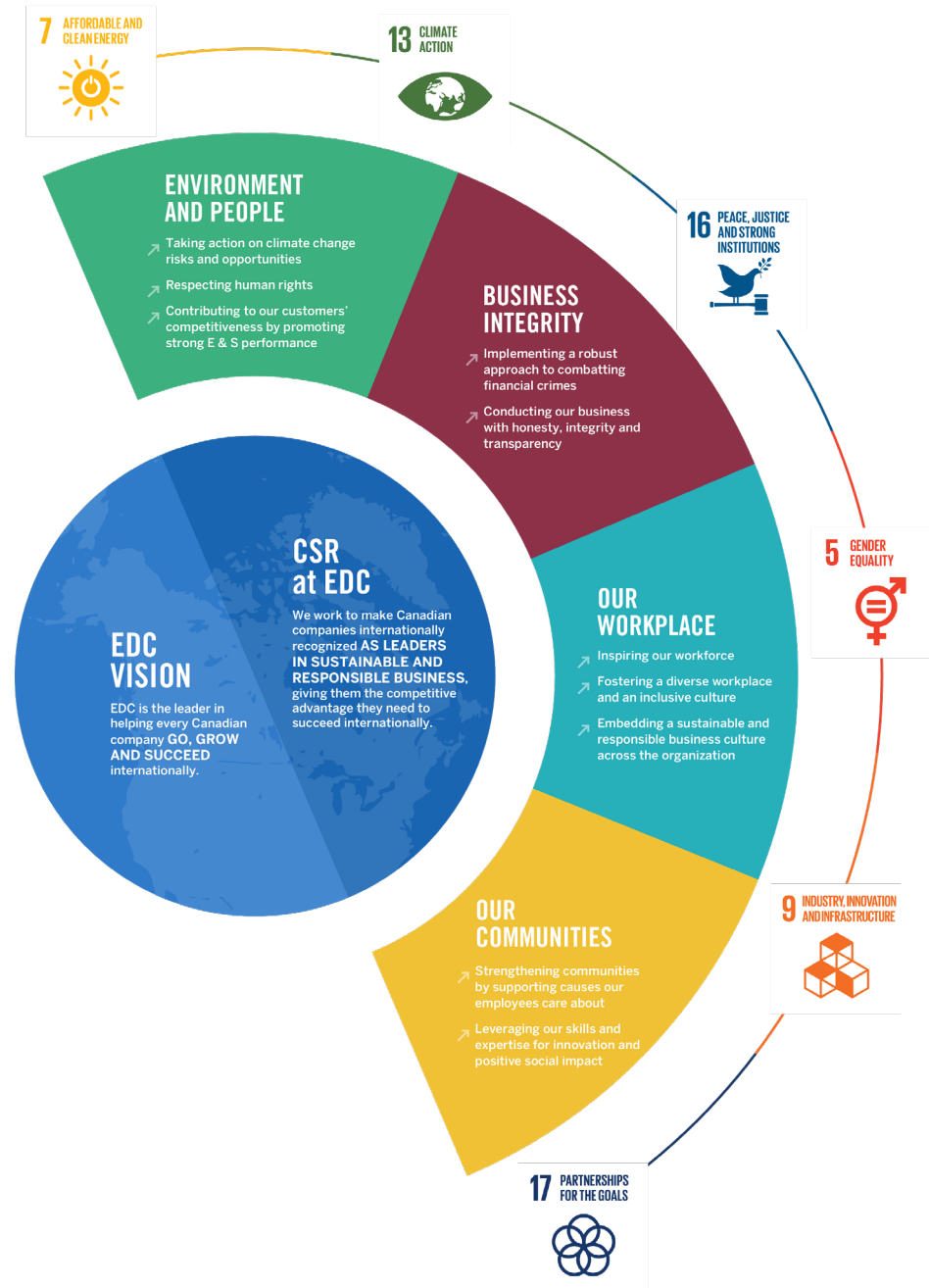
Canada

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SUSTAINABLE AND RESPONSIBLE PRACTICES OF GOING GLOBAL

We work to make Canadian companies internationally recognized as leaders in sustainable and responsible business. We give them the competitive advantage they need to succeed beyond our borders.

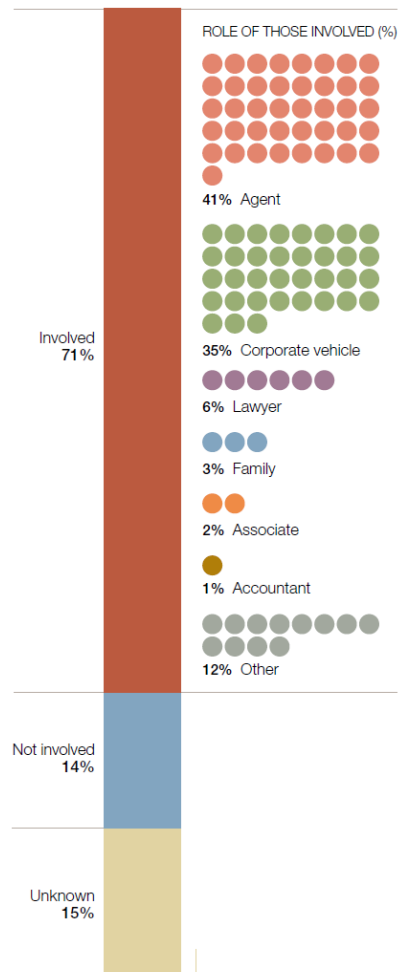


THIRD PARTY RISK

**A THIRD PARTY
IS ANY
ASSOCIATE WITH
WHICH A
COMPANY
CARRIES OUT ITS
ACTIVITIES**

- Vendors/suppliers
- Distributors/resellers
- Joint venture partners/consortium partners
- Advisors and consultants (tax, legal, financial, business)
- Service providers (logistics, supply chain management, storage, maintenance, processing)
- Contractors/subcontractors
- Lobbyists
- Marketing and sales agents
- Customs or visa agents
- Other Intermediaries

ROLE OF THIRD PARTIES IN FOREIGN BRIBERY CASES

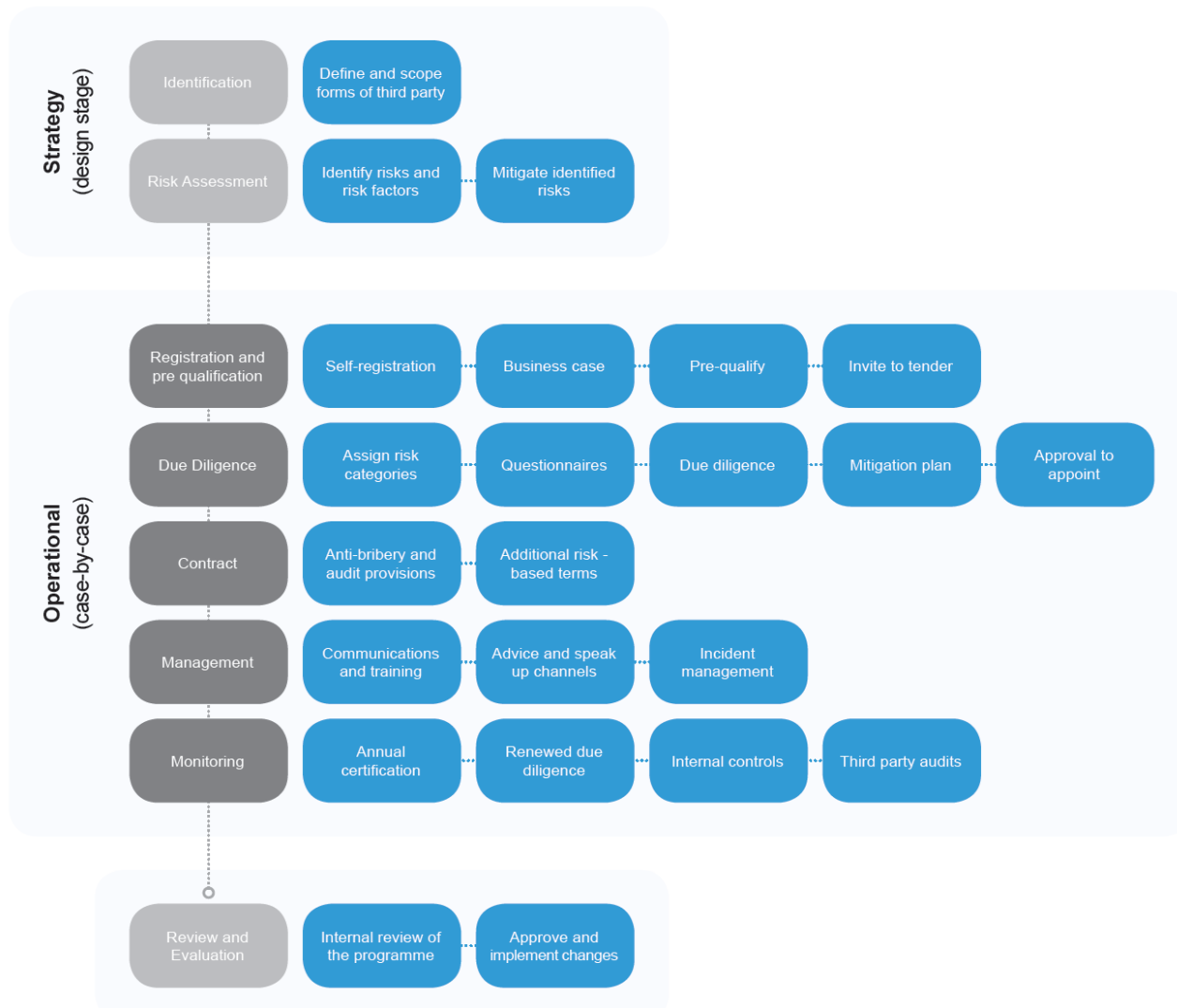


Source: OECD analysis of foreign bribery cases concluded between 15/02/1999 and 01/06/2014. Based on the 304 cases in which intermediaries were used.

- Bribery through sales agents, intermediaries, distributors or brokers resulted in **ONE in TWO** enforcement actions around the world
- In the United States, **90 per cent** of reported FCPA cases involved third party intermediaries

MANAGING THIRD PARTY RISK

- **Take a risk-based approach**
 - Interaction with government officials
- **Identify red flags**
 - Google
- **Set expectations**
 - Anti-bribery corruption certificate
- **Establish controls**
 - Invoices and payment methods



Source: Transparency International: Managing Third Party Risk . Only as strong as your weakest link

BUSINESS ADVANTAGE

INTEGRITY IN BUSINESS IS ESSENTIAL TO SUCCESS

- Costs of corruption are substantial
- Reputation is the most valuable asset
- Competitive advantage in global supply chains

EDC's Anti-Corruption Resource Centre

<https://www.edc.ca/en/campaign/anti-corruption.html>

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TAKE ON **THE WORLD**



CONTENTS

- CORRUPTION: INTRODUCTION
- PREVALENT FORMS OF CORRUPTION
- CAUSES OF CORRUPTION
- EFFECTS OF CORRUPTION
- PROPOSED ANTI-CORRUPTION MEASURES IN GENERAL
- QUESTIONS AND ANSWERS

CORRUPTION: INTRODUCTION

- Corruption - major concern to our country and indeed Africa as it is a major threat to socio-economic aspirations.
- While Africa has a growing entrepreneurial middle class, faster growth and poverty reduction is hampered by corruption.



CORRUPTION: INTRODUCTION...(Cont.)

Impacts of Corruption

Worldwide

- IMF estimates that **\$1 Trillion** per year is lost to corruption.
- The WB estimates that corruption adds 10% worldwide to the cost of doing business.

In Africa

- The AU estimates that **\$140 Billion** is lost per year to corruption in Africa.
- To put this in perspective it would only cost **\$55 Billion** per year to ensure that every citizen had lights 24 hours per day.
- Afrobarometer reports that **1/3** of Africans paid a **bribe** in the past year.



CORRUPTION: INTRODUCTION...(Cont.)

2020 Top 15 most corrupt African countries (Source:- Transparency International)

Country	2020 Rank	2020 % Score	2019 % Score	2018 % Score
South Sudan	179	12	12	13
Somalia	179	12	9	10
Sudan	174	16	16	16
Equatorial Guinea	174	16	16	16
Democratic Republic of the Congo	170	18	18	20
Guinea-Bissau	165	19	18	16
Congo	165	19	19	19
Burundi	165	19	19	17
Eritrea	160	21	23	24
Comoros	160	21	23	24
Chad	160	21	20	19
Zimbabwe	157	24	24	22
Nigeria	149	25	26	27
Mozambique	149	25	26	23
Madagascar	149	25	24	25

CORRUPTION: INTRODUCTION...(Cont.)

2020 Top 15 Least corrupt African countries (Source:- Transparency International)

Country	2020 Rank	2020 % Score	2019 % Score	2018 % Score
Seychelles	27	66	66	66
Botswana	35	60	61	61
Cabo Verde	41	58	58	57
Rwanda	49	54	53	56
Mauritius	52	53	52	51
Namibia	57	51	52	53
Sao Tome and Principe	63	47	46	46
Senegal	67	45	45	45
South Africa	69	44	44	43
Ghana	75	43	41	41
Benin	83	41	41	40
Lesotho	83	41	40	41
Burkina Faso	86	40	40	41
Ethiopia	94	38	37	34
Tanzania	94	38	37	36
Kenya	124	31	28	27

CORRUPTION: INTRODUCTION...(Cont.)

Who are involved

- Government/county officials,
- Elected leaders, judiciary,
- Professionals including lawyers, Engineers, investigators, prosecutors etc,
- Private sector players/employees.
- The public



CORRUPTION: INTRODUCTION...(Cont.)

Public sector Institutions regarded as corrupt

-  POLICE
-  GOVERNMENT OFFICIALS
-  MEMBERS OF PARLIAMENT
-  BUSINESS EXECUTIVES
-  PRESIDENT / PRIME MINISTER'S OFFICE
-  JUDGES AND MAGISTRATES
-  LOCAL GOVERNMENT OFFICIALS
-  TRADITIONAL LEADERS
-  NGOs
-  RELIGIOUS LEADERS

PREVALENT FORMS OF CORRUPTION

Fraud

Bribery

Tax evasion

Embezzlement

Extortion

Abuse of office

Favoritism

**Procurement
irregularities**

CAUSES OF CORRUPTION

- **Political Patronage**
- **Bad governance**
- **Lack of political will**
- **Breakdown or erosion of societal values and norms**
- **Weak absence of management systems, procedures and practices**
- **Misuse of discretionary power vested in individuals or offices**
- **Weak civil society and general apathy**
- **Lack of professional integrity**
- **Lack of transparency and accountability**
- **Tribalism, favoritism, nepotism and cronyism**
- **Inefficient public sector**
- **Greed**
- **Non Enforcement of the law**

EFFECTS OF CORRUPTION

- **Poor Health Services**
- **Poor transport and communication networks**
- **Reduced investment and relocation of investors to other countries**
- **Delay, denial and sale of justice in courts**
- **Increased poverty**
- **Shoddy work and stalled projects**
- **Unemployment**
- **Loss of confidence in government**
- **Rise in crime rate and insecurity**
- **Negative international image**
- **Inflated consumer prices**
- **Minimized tax revenue as corruption fosters tax evasion**
- **The uncertainty of economic transactions**

PROPOSED ANTI-CORRUPTION MEASURES IN GENERAL

Effective measures that can assist curb corruption include: -

- Use technology to improve accountability and transparency,
- Invest in institutions and policies that ensure professionalism and independence of public institutions.
- Get incentives right: Align anti-corruption measures with market, behavioral, and social forces.
- Sanctions matter: Punishing corruption/Charge and convict.
- Adopt International Integrity Standards by Small and Medium Firms.



PROPOSED ANTI-CORRUPTION MEASURES IN GENERAL...(Cont.)

- **Act globally and locally:** Keep citizens engaged on corruption at local, national, international and global levels – in line with the scale and scope of corruption
- **Make use of the architecture that has been developed and the platforms that exist for engagement.**
- **Learn by doing:** Any good strategy must be continually monitored and evaluated to make sure it can be easily adapted as situations on the ground change.
- **Highlight the importance of private sector working in partnership with the public sector in reducing graft.**



PROPOSED ANTI-CORRUPTION MEASURES IN GENERAL...(Cont.)

Solutions to small and medium businesses

- Put into place anti-corruption and anti-bribery systems/procedures(Integrity Management Systems etc.) including whistle blowing.
- Avoid or limit cash payments.
- Seek professional advice about compliance with Anti - Bribery Legislation.
- Awareness and sensitization on Anti - Bribery Legislation & Liability to comply.
- Comply with requirements to hold licenses.
- Avoid receiving or giving gifts that might be seen to influence its operations.
- Compliance to training for top management.





Q&A

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