



CENTER FOR INTERNATIONAL PRIVATE ENTERPRISE

Integrated Compliance: New EU and Global Standards

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Presenters

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Introduction to CIPE

- CIPE is an NGO founded in 1983, affiliated with the U.S. Chamber of Commerce
- Headquarters in Washington, DC
- Over 60 active projects globally



- **Thought leader on anti-corruption issues worldwide:**
 - **CORPORATE GOVERNANCE:** a prerequisite for effective compliance
 - **ANTI-CORRUPTION:** building better business environments
 - **LOCAL PARTNERS:** through field offices and local partners, CIPE's anti-corruption strategy is grounded in the local environment

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Ongoing Anti-Corruption Projects

Launched with CIPE Support

Countries:

- Mozambique
- Kenya
- Nigeria
- Mauritius
- Sudan
- Angola
- Ethiopia
- Thailand
- Indonesia
- Colombia
- Cambodia
- Pakistan
- Kazakhstan
- Turkey
- Ukraine
- Russia
- Moldova
- Mexico
- Brazil
- Argentina

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CIPE Approach to Compliance

- Compliance is in **the best interest of business**; it is not just an enforcement issue.
- Company leaders can be **part of a solution** to any emerging problem (e.g., corruption, money laundering, environmental pollution).
- There is **no best model** to be imported wholesale. Solutions need to be tailored to the local and organizational environment.

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Today's Participants

Let's get to know each other

- Compliance officers?
- Legal counsels?
- Multi-national representatives?
- Local companies trading internationally?

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Today's Presentation

- Understand how regulation globally affects firms looking to join value chains.
- Discuss how a harmonized or integrated approach allows firms to address numerous regulatory requirements.
- Learn about CIPE's work piloting integrated compliance programs in Asia.

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Increasingly Complex Regulatory Framework

- Aspects of Corporate Social Responsibility are shifting from **voluntary** to **mandatory**.
- It is no longer just business risks, but about compliance with regulations on **anti-corruption, money laundering/terrorist financing, environment, and human rights**.
- Today we focus on managing **anti-corruption, forced labor, and environmental risks**.

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Anti-Corruption Risks

- Companies are increasingly held criminally and/or civilly liable for corrupt practices, including debarment from public tenders.
- In 2017, United States enforcement actions resulted in **\$822 million** in corporate U.S. criminal fines, penalties, and forfeiture. Total enforcement action amounts payable to U.S. and foreign authorities equalled \$2.5 billion.
- To date, **21 countries** and all international financial institutions engage private sector through mandatory and voluntary anti-corruption compliance programs.
 - In **France and Colombia**, compliance programs are **mandatory**.
 - In **Chile, Italy, and Mexico** the existence and quality of an anti-corruption compliance program is a **leniency factor**.

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Forced Labor Risks

- Human rights violations, especially **human trafficking/forced labor**, is area where companies increasingly must take action.
- In Europe and U.S., companies can incur **criminal & civil liability** for engaging in/aiding and abetting labor exploitation (EU Anti-Trafficking Directive 2011/36/EU, 18 U.S.C. § 1589 of the U.S. Code).
- In 2012, a court in Belgium found a company liable for abetting trafficking in persons. The court held that **even though the company did not have any direct legal relationship with the victims, the abuses committed by a labor contractor would not have occurred without the company ‘deliberately ignoring malpractices’** (Tribunal de Première Instance de Gand, 19ème chambre, Case No 2012/3925 (BE X)).

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Forced Labor Risks (cont.)

- In 2016, UK adopted **Transparency in Supply Chain Clause of the Modern Slavery Act**. It requires specified businesses to produce a statement setting out the steps taken to ensure there is no modern slavery in a business and its supply chains.
- In 2017, **Netherlands** and **France** followed with the Dutch **Child Labour Due Diligence Law** and the French **Corporate Duty of Vigilance Law**.
- In the **U.S.**, similar rules such as the **Trafficking Victims Protection Reauthorization Act (TVPRA)** and the **California Transparency in Supply Chains Act** relevant to companies with government contracts and/or operating in (global) supply chains.
- **The EU** is considering imposition of compliance requirements in apparel supply chains in order to address rights and conditions of work in this sector.

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Environmental Risks

- A third group of highly complex compliance requirements are **environmental hazards**.
- The 2006 **EU Regulation Concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH)** (No. 1907/2006) places responsibility on manufacturers and importers to gather information on the properties of their chemical substances, ensure passage of information up and down the supply chain, and provide safety information on the substances to relevant authorities.
- The 2010 **EU Timber Regulation** (No. 995/2010) requires traders who place timber products on the EU market to exercise 'due diligence,' on the origin of a product. A similar piece of legislation exists in the **U.S.** (the **Lacey Act**).

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EUTR & Lacey Convergence

- Under both EUTR and Lacey, operators are **prohibited** from placing illegally harvested timber on the market.
- Under both EUTR and Lacey, operators are required to conduct **due diligence** within their supply chain.
- EU traders are not required but **recommended** not to trade with illegally harvested timber and conduct supply chain due diligence, which is opposite to the **requirement** for U.S. traders.
- **Legal liability** for violation of EUTR and Lacey in both jurisdictions.
- Violation of the EUTR **automatically** implies a violation of Lacey.

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Environmental Risks (cont.)

- The 2017 **French Corporate Duty of Vigilance Law** envisages establishment of company mechanisms to prevent any type of environmental impacts throughout the chain of production, including for subsidiaries and companies under control. These include risk assessments, internal risk communication channels, third party due diligence, and periodic monitoring and evaluation.
- **EU Directive on assessment of the effects of certain public and private projects on the environment (EIA)** (No. 2011/92/EU) mandates environmental impact assessment to grant permits for company projects,.
- The EU Directive is similar to the **Indian Environmental Protection Act**.

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Forthcoming Requirements

- As of 2021, EU companies and companies exporting into the EU will have to comply with the **EU Conflict Minerals Regulation** (No. 2017/821).
- This new regulation requires global and EU smelters and refiners of 3TG to source responsibly and help break the link between conflict and illegal exploitation of minerals.
- The companies will be obliged to set up due diligence measures, incl.: communicating their policies to suppliers and the public, conducting audits by an independent third-party, actively managing their supply chains, and using only compliant smelters and refiners.

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Cross-Border Compliance

- **Labor rights:** EU trade agreements with countries including Norway, Lichtenstein, Iceland, Turkey, Egypt, Israel, Jordan, Morocco, Tunisia, Algeria, Chile, and Mexico all contain a reference to human rights and labor issues.
- A similar provision is in the GSP agreements. The EU used this clause to sanction Burma and Belarus for the use of forced labor in manufacturing products and to downgrade Sri Lanka's privileges for human rights violations.
- **Environment:** Canada, the EU, New Zealand, the U.S., and Chile are considered to have the most comprehensive environmental provisions in recent RTAs, requesting compatibility with local regulation and in some cases compatibility between the agreement and multilateral or regional environmental agreements.
- In 2017, U.S. authorities blocked a Peruvian timber imports due to illegal logging activities of one of an export company pursuant to the Environmental Chapter and Forest Annex of the Peru Trade Promotion Agreement.

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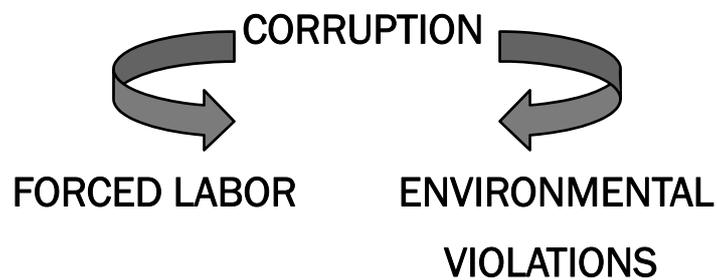
Complex and Burdensome Landscape...

- **Different types of obligations:** operational compliance in the area of environment v. risk-based due diligence for human rights and anti-corruption.
- **Diverse country- and issue-specific approaches:** specific v. general, mandatory v. voluntary, lack of a harmonized approach.
- **Siloed compliance structures** to address anti-corruption, forced labor, and environmental risks.

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...But Risks Converge



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- Indonesia Borneo deforestation



- Rana Plaza disaster



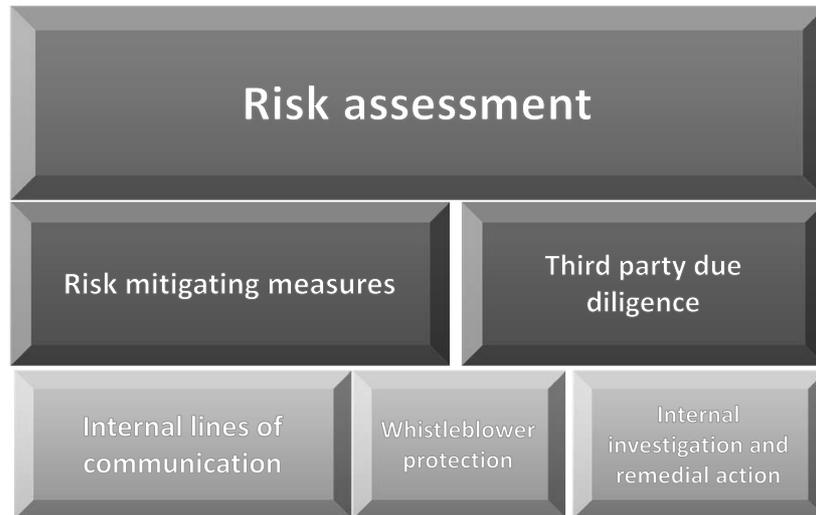
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- **Integrated compliance 1:** Bringing company governance, risk, and compliance functions (**GRC**) under one umbrella mechanism aimed at ensuring efficiency, consistency, and effectiveness of efforts.
- **Integrated compliance 2:** A **company-wide framework** that allows firms to address due diligence requirements in different areas.
- **Integrated compliance 3: Connected compliance,** where the compliance function is intertwined with other business functions allowing informed decisions to be made across teams, geographies, and areas of responsibility.

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A Model for Integrated Compliance



Rehabilitation through Compliance: Telia

- **Violation:** Telia obtained telecommunication licenses in Uzbekistan by paying billions to the daughter of the Uzbek president through a Gibraltar-based company (Takilant).
- **Compliance shortcomings at the time:** “The compliance duties had been scattered among different departments at Telia, with many of them landing in the legal department, which either could not or did not handle a lot of the issues that ended up being a problem for the firm.”
- M. Ahlberg, Former Telia Compliance Chief
- **Process:** The compliance restructuring began before the company was formally approached by investigative authorities to assess its compliance practices.

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Telia: Lessons Learned

- The **environment** in which a company does business has an impact on operations, and operations have an **impact** on a **wider community**.
- Third party due diligence and management, internal investigations/audits, and sanctioning are **difficult** tasks, but they are **crucial** for ensuring the integrity of operations.
- The company needs to be able to **reasonably know** at any given time if it is or has been engaged in wrongdoing. **Documented procedures and practices** help shape this understanding.
- Even the best employees can make wrong judgments calls **under specific circumstances**.
- Development of a compliance program is an **ongoing process**.
- A well shaped anti-corruption compliance program can be the **cornerstone** of compliance in other areas.

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Human Rights Impact Assessments (HRIA)

HRIA is a process for systematically identifying, predicting, and responding to the potential human rights impacts of a business operation, capital project, government policy, or trade agreement. HRIA **key elements** are:

- i. Assess actual and potential impacts
- ii. Integrate and act upon the findings
- iii. Track performance
- iv. Communicate how actual and potential impacts is being addressed

Why companies conduct HRIAs to:

- i. Know in advance of any adverse impacts and be able to address them;
- ii. Document the impacts that have been identified and the actions taken to address these; and
- iii. Build partnerships between businesses and other stakeholders to address human rights impacts.

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CIPE's Indonesia Pilot Project



- Indonesia well positioned for Integrated Compliance
- CIPE, World Resources Institute, Solidarity Center partner in the palm oil industry
- Powerful gov't Anti-Corruption Agency joins effort

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CIPE's Integrated Compliance in Peru



- Chosen for a fast-growing timber industry sensitive to access to export markets
- Recently empowered anti-corruption agency
- Strong tradition of environmental and labor NGOs playing a watchdog role
- Launch summer of 2018

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Does This Sound Familiar?

- A company operates in Asia through the supply chain.
- The company learns about a news story outlining appalling working conditions in a factory run by a supplier.
- Descriptions of working conditions include very long hours, cramped and insufficient accommodation in a supplier-owned compound, workers being overcharged for accommodation and food, and prevented from leaving the facility. There are also allegations of child labor.
- The supplier was checked by a local subsidiary and ranked high for quality of work and efficiency.
- The supplier country is known for poor access to reliable business data and pervasive corruption.

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Cobalt International Energy

In 2007, Cobalt International Energy began making efforts to secure oil exploration rights in Angola. The process was concluded in 2010, with Cobalt gaining the exploration rights. The same year Cobalt commissioned Navigant Consulting to investigate its local partner in the Angola venture, Nazaki Oil & Gas. The investigation found that the partner was owned by the country top officials, including the the head of the state-controlled energy group Sonangol which granted Cobalt drilling rights. This allegation was later confirmed by the officials in question.

Part of the Cobalt board, including Goldman Sachs and the private equity firm Riverstone, doubted Navigant's findings. The law firm commissioned to support the Angola joint venture told the board that Navigant's findings were contradicted by another firm hired to do due diligence and that the company was not in any violation of U.S. anti-corruption laws. Cobalt went on to work with Nazaki Oil & Gas.

In 2011, the SEC opened an investigation into Cobalt Angola venture, followed by two separate DOJ investigations under the FCPA. Both SEC and DOJ closed their investigations in 2015 and 2017, respectively. However, Cobalt is still facing a class lawsuit from shareholders claiming losses due to the drop in share values. They cite being kept in the dark about Navigant findings.

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Conclusions

- A responsible company is expected not only to understand the **risks it is exposed to** but also **risks that the company exposes others to**, the (negative) impact its business may have on society, environment, and human rights.
- Ensuring anti-corruption, forced labor, and environmental compliance is no longer a matter of keeping the regulators and investigators happy. It is becoming a matter of **peer recognition and ensuring future business opportunities**, as investors, shareholders, and consumers are increasingly disassociating themselves from poor practices.

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Let's Stay in Touch!

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CIPE Corporate Compliance Trends blog:
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