



*Blakes*

## Putting the ABC in ESG

The Role of Anti-Bribery  
Compliance Programs in  
Enhancing ESG Commitments

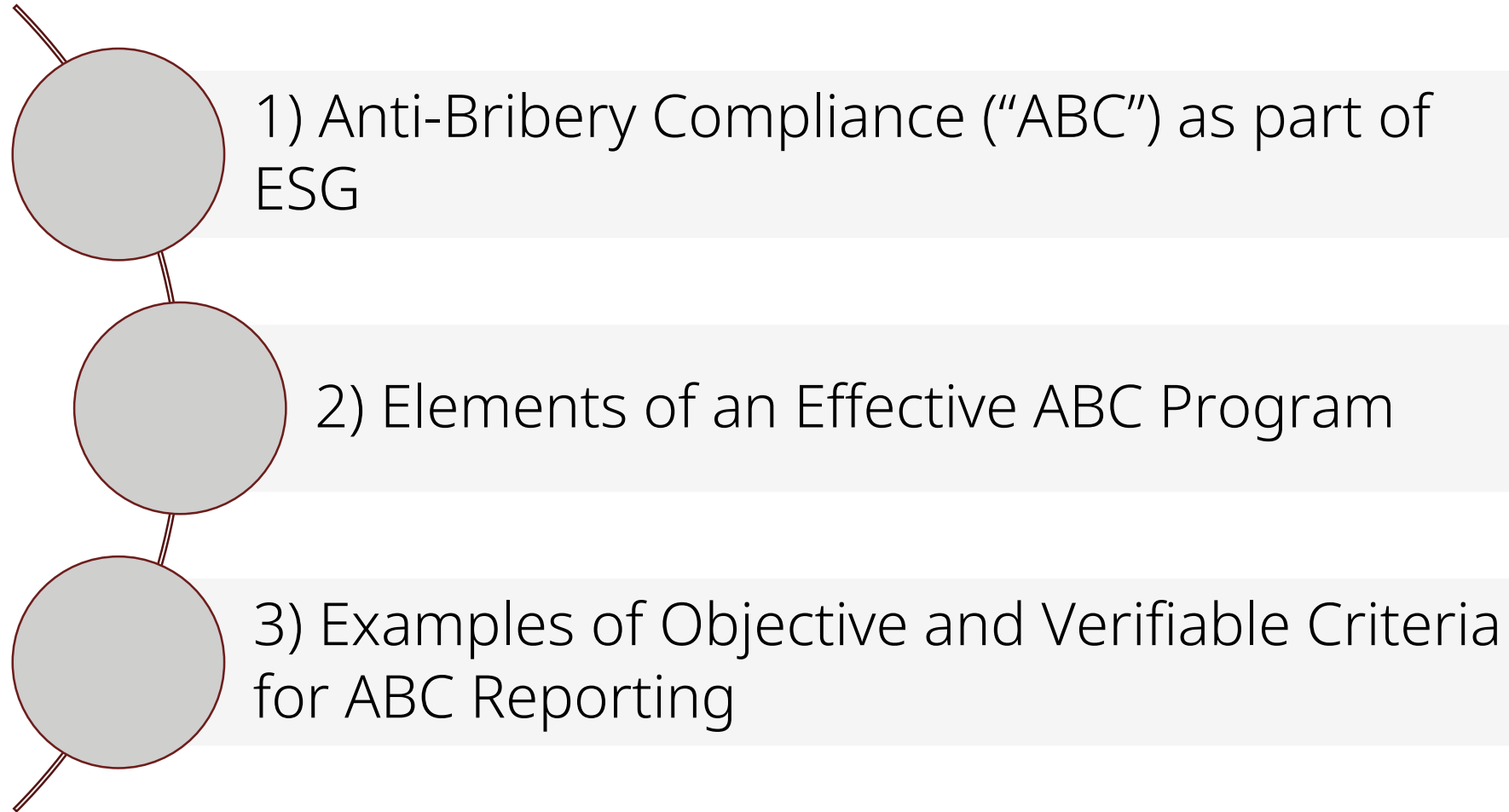
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# Overview



# Importance of ESG

- ESG stands for *Environmental, Social* and *Governance*: three pillars that represent an organization's non-financial risks and opportunities in its day-to-day operations
- ESG programs have become a key factor that investors consider in their decision-making processes
- 82% of corporate survey respondents use ESG information because "it is financially material to investment performance"
- The United Nations Principles for Responsible Investment state that assessing ESG issues are part of an institutional investors' fiduciary duty



# The Importance of ABC to ESG

- The intersection of ESG and ABC has become an important factor that investors consider in their decision-making processes
- In a recent RBC Global Asset Management survey of institutional investors, among 18 ESG concerns identified, respondents selected anti-corruption as the top-ranked issue of concern when investing
- Similarly, according to a Kroll survey of over 200 compliance and risk professionals, ESG considerations were included in approximately 50% of ABC compliance programs in North America last year

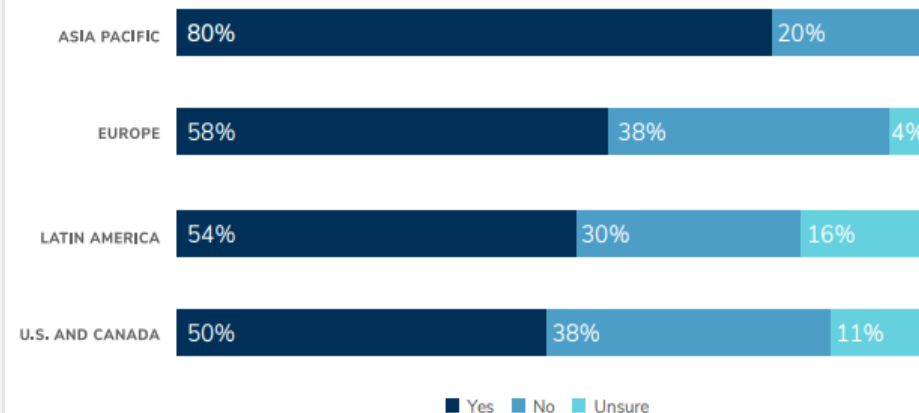


## Top ESG concerns

Among the 18 ESG concerns survey respondents were asked about, anti-corruption (a governance issue) ranked highest in 2020, followed by climate change and shareholder rights/ voting. Anti-corruption moved up to the top spot from second highest in 2019



## ESG Inclusion in ABC Programs



# The Importance of ABC to ESG

- Organizations have followed suit in recognizing the relationship between bribery and corruption risks and ESG commitments
- Anti-bribery and corruption risks, training, or policies are included in some companies' sustainability reporting
- This is in addition to disclosure by companies conducting ABC related investigations



| GRI INDICATOR  | DISCLOSURE TITLE   | REFERENCE   | SASB         | TCFD | IPECA/API/IOGP          |
|--|--|---|--------------|------|-------------------------|
| GRI 201, 204 AND 205: ECONOMIC PERFORMANCE, PROCUREMENT PRACTICES, ANTI-CORRUPTION |  |   |              |      |                         |
| 205-2  | Communication and training about anti-corruption policies and procedures | Governance: Ethical Business Practices<br>Social: Supply Chain Monitoring<br>Code of Ethics for Senior Financial Officers<br>Code of Business Conduct | EM-EP-510a.2 |      | GOV-3<br>SHS-7<br>SOC-8 |



| SASB code                    | GRI code | Description  | Response, link or additional information  |
|------------------------------|----------|--|---|
| Anticorruption               |          |  |   |
|                              | 205-1    | Operations assessed for risks related to corruption  | <a href="#">Suncor's Standards of Business Conduct AIF (p. 72-73)</a>   |
| EM-EP-510a.2<br>EM-MM-510a.1 | 205-2    | Description of the management system for prevention of corruption and bribery throughout the value chain | ROS - Risk management<br><a href="#">Suncor's Standards of Business Conduct</a><br><a href="#">Suncor's Supplier Code of Conduct</a><br><a href="#">Suncor's Prevention of Improper Payments policy guidance &amp; standard</a> |

## Brookfield

We have a zero-tolerance approach to bribery, including facilitation payments. We mandate that all Brookfield employees complete annual anti-bribery and corruption (ABC) training and certify their compliance with our ABC Program. In addition, ABC is integrated into our investment underwriting, decision making and execution processes in accordance with our ABC Policy.

100%

of our portfolio companies have a Code of Conduct and ABC policy

## GLENCORE

3,104

in 124 sessions

Audience: employees and contractors especially exposed to bribery and corruption risks due to the nature of their role.

Sessions tailored to employees in various functions using scenarios relevant to their roles.

# The Importance of ABC to ESG

## ESG and Sustainability Reporting Standards



GRI 11 – Oil and Gas Sector  
(Anti-corruption Section)



Oil & Gas – Exploration &  
Production (Business Ethics &  
Transparency Section)



# The Importance of ABC to ESG

- Although primarily a governance issue, ABC is part of all three pillars of ESG

|               |  |
|---------------|--|
| Environmental | <ul style="list-style-type: none"><li>• Corruption can negatively affect regulation and accountability with respect to the natural environment</li><li>• Proper implementation of ABC programs ensure that employees and agents understand how to appropriately achieve compliance with relevant environmental regulatory authorities</li></ul>  |
| Social        | <ul style="list-style-type: none"><li>• Community development initiatives used to pursue social objectives can create risk of improper influence if not properly implemented</li><li>• Charitable donations and sponsorships can also be an area of corruption risk</li></ul>  |
| Governance    | <ul style="list-style-type: none"><li>• An effective ABC program can mitigate against risks to an organization's reputation and maintain shareholder value</li><li>• Bribery and corruption charges brought against organizations or individuals can negatively affect stock performance and result in litigation</li><li>• A risk based and effective ABC compliance program is part of good corporate governance</li></ul> |

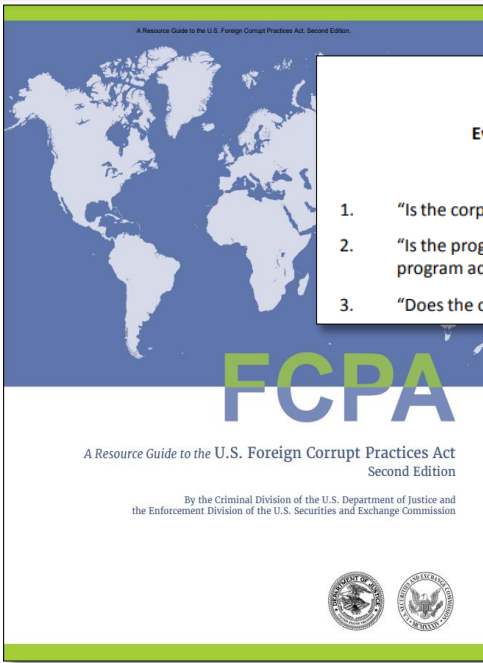
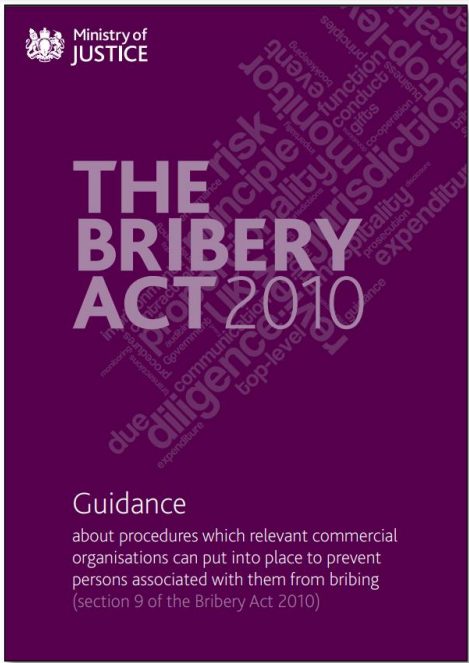
# Elements of an Effective ABC Program



## 3.1 Methodology

Our description and evaluation of the structure of the Integrity Program is guided by the Probation Order, recognized international best practices, and guidance documents published by the United States Department of Justice,<sup>15</sup> the United Kingdom Ministry of Justice,<sup>16</sup> and the World Bank<sup>17</sup> (collectively, the "**Guidance Documents**").

Each of the Guidance Documents delineates the components of an effective ABC Compliance Program differently, utilizing different terminology and categorization. In true Canadian fashion, we sought to find common ground by synthesizing these different descriptions into a "made in Canada" framework aimed at summarizing the main components of an effective ABC Compliance Program, which are as follows:



- U.S. Department of Justice  
Criminal Division  
Evaluation of Corporate Compliance Programs  
(Updated June 2020)
1. "Is the corporation's compliance program well designed?"
  2. "Is the program being applied earnestly and in good faith?" In other words, is the program adequately resourced and empowered to function effectively?
  3. "Does the corporation's compliance program work" in practice?



# Elements of an Effective ABC Program

Seniority,  
Expertise,  
Autonomy and  
Resources

- An effective ABC program is supported by senior management, and senior legal or compliance personnel who have the expertise, autonomy, and resources to perform their duties

Policies,  
Procedures, and  
Controls

- The foundation of an effective ABC program is its policies, procedures, and controls
- An effective ABC program should include a Code of Conduct or Anti-Corruption Policy that addresses ABC, a set of accounting controls, and other appropriate policies and procedures (e.g., gifts and hospitality, third party due diligence, etc.)

# Elements of an Effective ABC Program

## Commitment to Compliance

- Senior leadership should:
  - Oversee the ABC program, and lead by example
  - Communicate about the program with stakeholders, incentivize ethical behaviour and compliance, and adopt a zero-tolerance policy towards corruption

## Risk Assessment and Review

- An effective ABC program should include a comprehensive risk assessment process, which evaluates the inherent corruption risks facing an organization, its controls, and its residual risks
- Factors to consider include: an organization size, industry, jurisdiction, regulatory environment, use of agents, interaction with government officials, and private bribery
- Risk assessments should be updated periodically

# Elements of an Effective ABC Program

## Training and Communication

- ABC training and certification ensures that the organizations policies are taught, learned, and understood by relevant personnel at all levels
- Training should be tailored to the size, sophistication, risk exposure, and subject matter expertise of the audience

## Pro-active 3rd Party Risk Management

- Third-party risk management is crucial to an effective ABC program
- Key elements include risk-based due diligence, contract terms, invoice review and payment controls, and ongoing monitoring
- Merged or acquired entities should be risk assessed and integrated into the organizations ABC program as soon as is reasonable

# Elements of an Effective ABC Program

## Confidential Reporting, Investigations, and Remediation

- An effective ABC program includes a safe environment for employees to communicate and report and incidents of suspicions of misconduct or non-compliance
- Independent investigations play a key role in detecting and addressing potential improper conduct, and remediating to prevent reoccurrence

## Continuous Review, Periodic Testing, and Improvement

- Periodic review helps identify opportunities to enhance the ABC program
- Records of periodic testing metrics provide valuable indicators regarding the maturity and effectiveness of the program
- The most effective compliance programs use external benchmarking to compare programs other organizations

# Indigenous Considerations

## Criminal Code of Canada

### Section 122 (Bribery of Official)

Section 122 prohibits officials who, in connection with the duties of their office, commit fraud or a breach of trust, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

Canadian courts have found that health directors (*R v Yellow Old Woman*, 2003 ABCA 342), chiefs (*R v Bannon*, 2011 ONSC 3000), and band managers (*R v Buchan*, 2014 BCSC 2591) of an Indigenous Nation in Canada can constitute an “official” for the purposes of section 122.

Section 122 has been held to apply not only to the public official, but also to private corporations or individuals who assist or encourage the official to breach the public trust. An organization’s potential exposure to a breach of trust offence arises from party, or indirect, liability rather than direct liability. It is an offence for anyone to aid, abet, assist, or encourage an accused’s commission of an offence.

### Section 426 (Secret Commissions)

Section 426 of the Criminal Code makes it an offence to corruptly give, or offer to give, to an agent a reward, advantage or benefit of any kind as consideration for the agent doing, or not doing, any act relating to the affairs or business of the agent’s principal. The offence applies equally to the payor and recipient of the reward, advantage or benefit.

Secrecy is a hallmark of the offence. There is only an offence if the reward, advantage or benefit is provided without the principal’s knowledge.

Liability for provision of secret commissions can be avoided entirely if the company ensures it does not provide benefits to Band Officials, or ensure that any benefit that is provided in a clear and transparent manner, such that it is not “secret”.



# The Need for Objective and Verifiable Criteria

- In 2012, Walmart shareholders filed a class action alleging its ABC related disclosure to be misleading. Walmart settled in 2019 for ~US\$160 million.
- In 2012, a class action was brought against a Canadian-based engineering firm for misrepresentations related to bribery and corruption. After approximately 6 years of litigation, the organization settled for ~CAD\$110 million.
- The use of objective and verifiable criteria can decrease the risks of potentially inaccurate disclosures
- Corporate reporting of ABC training metrics, hotline complaints, and other quantitative indicators provide insight into an organization's commitment to ABC compliance

# Examples of Objective and Verifiable Criteria

1. The number of employees who have successfully completed anti-bribery and corruption training
2. The number of ABC compliance personnel employed by the organization
3. The bribery and corruption-related controls implemented by the organization
4. The number of due diligence assessments performed on contractors, intermediaries, customs brokers, other third parties that act on behalf of the organization, and the number of third parties rejected because of due diligence
5. The number of internal and external anti-bribery and corruption risk assessments performed by or on behalf of the organization, the number of issues identified arising from those initial and follow-up assessments, and the percentage of the organization covered by risk assessments
6. The number of third parties who engage with government officials in connection with their business with the organization
7. The number of third parties trained/engaged on anti-corruption expectations
8. The number of compliance issues or infractions identified by the personnel of the organization, through direct complaints, whistleblower hotlines, or similar process, and the outcome of the investigations and disciplinary processes
9. The number of communication from senior-level and mid-level management related to anti-bribery and corruption compliance
10. The number of periodic reviews and testing of the organization's ABC programs and policies
11. The number of compliance presentations made to senior-level management
12. The number of active investigations, lawsuits, complaints, or allegations of violations related to anti-corruption laws and organization policies
13. The number of customers, suppliers, or third parties acting on behalf of the organization in high corruption risk jurisdictions
14. The number of engagements with joint venture operators regarding anti-corruption conduct

# Conclusion

An objective and measurable ABC compliance program can provide greater commercial certainty, bolstered corporate responsibility, and a stronger sense of organizational transparency



# Questions?