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Report on the Applicability of Anti-Corruption Ethics and Compliance Programs in the Public Sector

Dear Ladies and Gentlemen,

Corrupt practices are detrimental to the private sector – large and small businesses, global and local ones. However, corruption represents also a major threat to the public sector as it undermines the public's confidence in the rule of law and has a disproportionate, destructive impact on the effectiveness and integrity of public sector decisions and processes.

Over the last few years SNC-Lavalin has experienced a severe compliance crisis which hit the reputation of the company, did receive enormous attention from the company's stakeholders and led to various legal proceedings. We had to painfully learn our lessons and have embarked in 2012 on a journey towards ethics and compliance excellence. We would like to take this opportunity to contribute our experiences to the public consultations which the Commission d'enquête is conducting. This high-level report does predominantly focus on possible solutions to guard against corruption – in the private and in the public sector.

Neither governments nor companies can fight corruption alone. The private and public sectors must work collectively in this effort. An increasing number of companies like ours are demonstrating leadership and responsibility by implementing effective anti-corruption ethics and compliance programs within their



organizations. However, companies may still face the risk of being bypassed by other competitors that do not adhere to the same anti-corruption standards. Companies may also face corruption-related solicitations and even extortions from the public sector (demand side). These kinds of risks are particularly present for small and medium-sized enterprises, but are also relevant for large companies in a globalized and highly competitive environment.

One way to address these risks is to engage in “collective action” activities. Collective action is a collaborative and sustained process of cooperation among stakeholders. Those initiatives can be formed either within the private sector alone or involve public-private partnerships e.g. collectively addressing single challenges, such as advocating for a level playing field in terms of effective anti-corruption standards in the area of public procurement.

Given the phenomenon the Commission d’enquête has to examine we do recommend that public sector organizations require from their contractors and suppliers to implement effective and auditable anti-corruption ethics and compliance programs. We also recommend that public sector organizations as such apply the same level of standards and requirements to their own organizations.

Although anti-corruption compliance standards are being derived from various sources (e.g. U.S. Sentencing Guidelines, UK Bribery Act, OECD Anti-Corruption Ethics and Compliance Handbook, World Bank Group Integrity and Compliance Guidelines, United Nations Convention against Corruption, etc.) it can be noted that those standards and requirements are converging and easy to access. They are not only applicable to the supply side (private sector) but to a large extent also to the demand side (public sector).

An effective compliance program must be tailored to the organization’s specific business and its associated risks, and must be constantly improved and adapted to potential changes. With the caveat that compliance needs and challenges vary for every individual organization and that there is no “one-size-fits-all” formula, the following standards and requirements have been identified to determine whether a compliance program is “effective”. They are not private sector specific but applicable to and of paramount importance for all organizations including those in the public sector:

Tone from the Top. For each organization it has to be the ultimate goal to develop and sustainably maintain a culture of integrity and compliance, adopted and adhered to by the highest-level executive respectively public official, effectively implemented and clearly and unambiguously communicated and reinforced to all employees.



Code of Conduct and Compliance Policies and Procedures. Effective codes of conduct are clear, concise, and accessible to all employees and to those acting and operating on the organization's behalf. They should be available in the local language(s) for all sections of the organization and third parties, and should also be reviewed periodically to remain current. With respect to their content, codes of conduct should outline responsibilities for compliance within the organization, detail proper internal controls, auditing practices, and documentation policies, and set forth disciplinary procedures. Finally, codes of conduct should encourage employees and even third parties to report ethics and compliance issues to the respective function within an organization (e.g. to supervisors, human resources, or the compliance function).

Oversight, Autonomy, and Resources. Public sector organizations should assign responsibility for overseeing and implementing their compliance programs to one or more specific senior officials. Such individuals must have appropriate authority within the organization, as well as adequate autonomy from the organization's top level leadership, and sufficient resources to ensure effective implementation.

Risk Assessment. It is recommended that organizations develop a comprehensive and risk-based compliance program. An effective risk assessment should direct the organization's attention and resources to the risk which pose the greatest potential harm to the organization.

Training and Continuing Advice. Even the clearest and most comprehensive written policies and procedures are meaningless if the organization does not communicate them effectively to its employees, and where appropriate, to its relevant stakeholders. Public organizations should provide periodic training for all relevant employees and consider to also address their contractors and suppliers. The training should be adapted to each audience. Additionally, where appropriate and feasible, public organizations should provide continued guidance and advice on compliance.

Issue Remediation. An organization's response to identified compliance issues is crucial to establishing the credibility of its compliance program. To be effective, a compliance program must be enforced, and should apply to all levels of a public organization. The organization should respond to identified compliance failures at both macro and micro levels. At the macro level, each incident should cause the organization to re-evaluate the effectiveness of its compliance program. At the micro level, the organization must take consistent and prompt disciplinary action against particular employees responsible for the misconduct.

Third-Party Due Diligence. The implementation of risk-based third-party due diligence, particularly with respect to contractors and suppliers is one of the key components of an effective compliance program. It is becoming increasingly



important for public sector organizations to assess and monitor the effectiveness and maturity of third parties' ethics and compliance standards. The objective of such effort is twofold: Firstly, public sector organizations should be aware of potential integrity issues associated with their contractors and suppliers and be able to mitigate respective risks. Secondly, by conducting appropriate and consistent third-party due diligence the public sector will effectively and visibly set its ethics and compliance standards and will become another driving force for private sector companies in their effort to develop a level playing field in terms of ethics and compliance.

Confidential Reporting and Internal Investigation. As in the private sector, public organizations should provide a mechanism for employees and others to report misconduct or violations of the organization's policies on a confidential basis and without fear of retaliation, such as anonymous hotlines (where permitted under local law) or ombudsmen. In addition, they should implement an efficient, reliable, and properly funded process for investigating alleged violations and documenting the organization's response, including any improvements or revisions to their internal controls or compliance programs.

Continuous Improvement. Public sector organizations should review and improve their compliance programs regularly in order to keep them current and effective, especially considering changes in their mandate, compliance weaknesses revealed through the organization's experience, and enforcement actions brought against third parties. Public and private sectors should consider to establish joint processes in order to continuously reinforce and further develop best practice ethics and compliance standards (e.g. joint working groups, peer reviews, etc.).

Again, we do appreciate the opportunity to contribute to the public consultations of the Commission d'enquête and are available at your convenience for further in-depth discussion of this important matter.

Sincerely yours,

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