Multi-Stakeholder Workshop on the United Nations Convention Against Corruption –

Private Sector Component
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Compliance Best Practices in the Balkans from the Multi-national and local perspectives

Session Objective: To introduce best practices and challenges faced through comparing compliance programmes and examples from multi-national companies working in the region.
The example before theory!

Let’s start with the business case from the Western Balkans
Year 2009th.

One business owner from B&H has about 15 companies in various industries in 3 countries.

Two of them are infrastructure companies.
Year 2009th.

City of Banja Luka opened a tender procedure for reconstruction of a local road.

World Bank co-financed the project with some portion of the total amount.
Two above mentioned infrastructure companies participated to the same tender.

At the end of the tender procedure, where the lowest price criterion was applied, one of the companies ended on the 2nd place and another on the 4th place.
Year 2009th.

1st ranked company got a contract.

Implementation of the contract was successful.

No problem was identified in the contract execution.
Integrity Compliance Office of the World Bank knocked on the door of the owner of two above mentioned companies.

Integrity investigators presented proofs that owner’s companies were included in prohibited practice: **COLLUSION**
Year 2012th.

**COLLUSION:**

Secret or illegal cooperation or conspiracy in order to deceive others.

Secret agreement. Price fixing.
Year 2012th.

Owner said:

But, I didn’t get a contract. I didn’t receive any money. I didn’t work on that road.
World Bank said:

According to the Integrity statement which you signed in procurement process, you accepted our rules and prohibited practice *collusion* happened at the moment when you tried to manipulate procurement process.
Year 2012th.

World Bank said:

In case you win the tender, additional sanctions could be imposed, such is requirement to pay back whole or part of received amount of money, regardless of fact that you finished the road in given scenario.
Year 2012th.

Owner said:

But our domestic law here in Bosnia and Herzegovina is not clear enough about collusion. Collusion practice is almost standard practice in our country. You can’t punish me without any legal court decision in my country.
Year 2012th.

World Bank said:

We are not responsible for the law enforcement in your country. We don’t need to wait criminal prosecution. You made a prohibited practice defined in letter of integrity that you accepted and signed. Our punishment is our business decision how to protect our money from risky partners.
Year 2012th.

World Bank said to the owner: You agree about the facts that you were bidding with two companies? Owner said: YES.

World Bank said to the owner: Do you understand that you violated our standards and do you confess it? Owner said: NO.
Year 2012th.

World Bank made a decision of imposing sanctions to owner personally and to all companies which are directly or indirectly controlled by the owner or by the any of his companies.
Year 2012th.
Sanctions:
- Debarment from any projects financed by the WB for 4 years (as a contractor or subcontractor);

- Under the mutual agreement between multilateral development banks, other banks imposed the same sanctions automatically: EBRD, African Bank, Inter American, Asian Dev. Bank, etc;
Year 2012th.

- Conditions for lifting the sanctions/debarment were:

a) Remedial measures;
b) Implementation of an effective Integrity Compliance Program according to the World Bank’s standards;
c) Owner has to attend an adequate education about international integrity and compliance business standards;
Year 2016th

- After 4 years under the sanctions regime, the owner lost a lot of business opportunities and decided to meet requirements for lifting up the sanctions;

- 1st step was to attend compliance & ethics training;
- 2nd step was to declare that he understand the standards;
- 3rd step was to implement effective Integrity Compliance Program;
More than 20 months of the ICP commencement and day-to-day implementation/monitored by the WB;

Finally, on 27th of June 2018, World Bank issued a positive decision about implementation of the EFFECTIVE ICP; Sanction regime has been released;
Year 2018th.

Final **NEGATIVE** consequences were:

- Debarment from any project financed by multilateral development banks for almost 6 years;
- Income losses were measured in millions;
- Big reputational damage for the company;
Final **POSITIVE** consequence was:

Owner improved all processes in all companies; WB is ready to promote company as a good example; Owner invite all business partners and competitors to improve compliance and ethics standards; NEW reputation of the companies is improving;
The biggest challenges for the owner were:

To understand that debarment has not come after court process – it is a business decision of World Bank; Business decision is based on calculation of risky indicators – it is not a level of proofs requested by courts in criminal cases; Red flags under all prohibited practices of WB coming from tradition of market economies which are totally different mindset than in post-socialistic countries;
The four prohibited practices of the World Bank are:

- Corruption;
- Fraud;
- Collusion;
- Coercion;

One additional:

Obstruction;
The four prohibited practices of the World Bank are presented through dozens of risky indicators and red flags for prohibited practices;

General red flags are applicable on all industries;

Specific red flags are applicable per specific industries;
The scope of action for implementation of ICP was:

- Integrity Compliance Program adopted;
- Ton from the top demonstrated;
- Compliance department established;
- Compliance policies and procedures adopted in all risky areas, such as: engagement of former and actual politically exposed persons and public officials, donations, sponsorships, gifts, entertainments, hospitalities, code of ethics and conduct for employees and third parties...
The scope of action for implementation of ICP was:

- Integrity Due Diligence on employees/third parties;
- Education and training of employees/third parties;
- Safeguard clauses in all contracts;
- Monitoring and audit of implementation of ICP;
- Whistle-blowing hotline, investigation and protection;
- Corrective and remedial measures;
- Periodical risk assessment;
- Collective actions;
Conclusions:

Integrity Compliance Standards are spreading around the world faster than ever; Companies from the Western Balkans are under big risk because of weak legal framework and no-tradition in market economy. Lack of understanding of these ‘western’ rules is equal problem on the market such as intentional acts to commit prohibited practices;
Conclusions:

More and more anti-corruption laws and regulations from the UN, EU, SAD and other countries and organizations raising corporate compliance and ethics standards every day;

It is a right time to systematically approach this challenge on the Western Balkans;
What we believe in?

Compliance business is a good business!

Compliance and Ethics as a competitive advantage on the market!
THANK YOU

If you have any idea how we can work together on compliance & ethics issues on the Western Balkans, please call me 24/7. (Don’t worry, I’m just a compliance & ethics fun :) 
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