



**Asia-Pacific
Economic Cooperation**


2020/ACT/WKSP/013

Tackling Concealment of Beneficial Ownership: Vulnerabilities of Specialists and Professional Intermediaries

Submitted by: Peru



**Capacity Building Workshop on Exposing the
Unseen Hands: Tackling Concealment of
Beneficial Ownership
19 October 2020**



Tackling Concealment of **Beneficial Ownership**: Vulnerabilities of Specialists and Professional Intermediaries

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Corporate International | Mining |
Life Sciences | FCPA and Anti-
corruption

Agenda

i. Legal Counsel Vulnerabilities

- Knowledge base
- Global footprint

ii. Industry Specific Vulnerabilities

- Life Sciences
- Mining

iii. Risk Mitigation

- Best Practices
- Legal Protections
- Screenings
- Effective Corporate Compliance Program

Legal Counsel Vulnerabilities:

- Knowledge base
- Connections with other specialists
- International footprint
- Used for money laundering

Risk Mitigation:

- Verification and screening of clients
- **Red Flags**
- Minimize risks to clients in high risk industries.



What are **Red Flags** and what do they mean?

- ❑ Any information, conduct or activity that draws attention because it is unusual or suspicious, and constitutes a valid indicia of possible corruption, money laundering or other crime occurrence.
- ❑ Red flags are spotted during anti-corruption screenings of service providers, clients, intermediaries or other third parties, when an unusual or suspicious situation is detected that requires further analysis as it may otherwise expose the company to an act of corruption.

If any Service Provider or Intermediary:

- Has been subject to an investigation related to corruption or bribery, accused or criminally prosecuted for violations to anti-corruption or anti-bribery laws, or suspended or debarred from doing business in a certain country;
- Has not implemented a Code of Conduct, Ethics or Anti-Corruption Policy;
- Does not provide all the information requested during an anti-corruption screening;
- Receives transfers from tax havens;
- Is debarred from contracting with the government in a certain country;
- Acknowledges to have paid commissions to third parties in order to secure government contracts;
- Has indicated that it may favor the business as a result of having acquaintances, friends or family members in the government;
- Appears in an anti-corruption database;
- Is reluctant to sign the FCPA Certification;
- Is reluctant to respond to a question in the FCPA Questionnaire.

Red Flags

The Service Provider, Intermediary or any of their shareholders, legal representatives, directors, managers or main employees:

- Is a government official;
- Has negative records in anti-corruption databases or risk reporting agencies;
- Has been convicted or investigated, or is currently the subject of a preliminary investigation or criminal process.

Red Flags



Life Sciences Industry Vulnerabilities:

- End-user customers are public entities
- Intermediaries
- Service Providers
- Distributors/Agents
- Health Care Professionals
- Public Procurement processes

COVID-19 challenges:

- increased counterfeit and substandard medical products;
- Urgent processes: new vendors; remote work
- Public officials taking advantage; influence peddling in hospitals and state entities; public tenders: relaxed requirements, misappropriation of funds and artificial price increases.

INTERMEDIARIES

SERVICE PROVIDERS

Who are they?

Who are Service Providers?

- Custom Brokers
- Regulatory Consultants
- Processing Agents
- Health Care Providers

- Anyone who **is not a Manufacturer's Distributor** but is directly or indirectly involved in assisting Distributor in the importing, commercialization, registration, sale or performance of other services pertaining to **the manufacturer's products**.

Who are Intermediaries?

Individual or entities who act as a link between the Manufacturer/Distributor and the End-User:

- Consortiums
- Joint Ventures
- Joint Associations
- Turnkey projects
- Integrators



Mining Industry Vulnerabilities:

- Government involvement: Licenses, permits, authorizations
- Suppliers
- Service Providers
- Public Officials and Government Instrumentalities

COVID-19 challenges:

- Increased regulations;
- Urgent processes: new vendors, donations, remote work
- Public officials taking advantage; influence peddling.



Who is a Public Official?



Not just a government employee. **Broad** definition:

- Officials or employees of public-private partnerships
- Officials or employees of companies owned/controlled by a government
- Officials or employees of international public organizations
- Political party officials or candidates
- People with close ties to a government, who maintain some authority in that government's decision-making
- Any person or intermediary: if there is a justified probability that the payment will reach a public official
- Any “instrumentality” of a government



APEC 2020
MALAYSIA

Construction supervisor?



ORIHUELA
ABOGADOS | ATTORNEYS AT LAW



Teachers?

Health Care Providers?

**Consultant preparing
the technical dossier
for a government
project?**

RISK MITIGATION



Best Practices in Risk Mitigation

- ❖ Conduct Risk Assessment
- ❖ Adequate policies, procedures and controls with respect to risks identified: Intermediaries; Service Providers; Public Tenders; interactions with Public Officials.
- ❖ Adequate Legal Protections
- ❖ Adequate Screenings of all third parties
- ❖ Existence of an “adequate” corporate compliance program tailored to each company

Legal Protections:

1. Adequate contracts with all third parties;
2. Specific contractual obligations: include third parties; right to audit; investigations or sanctions related to corruption, fraud, AML to trigger immediate termination;
3. Anti-corruption certification.
4. Screenings/Background Verification: must be ongoing.

Risk Mitigation in Public Procurement Process:

GOALS: Competition, Transparency and Integrity



- ❖ Careful review of tender requirements to ascertain clear rules and objective criteria for participation and decision making: determine if worth participating.
- ❖ Watch out for Red Flags: tight deadlines, preferential selection, specific technical, managerial or financial qualifications, sole sourcing, required partnerships, etc.
- ❖ Procurement activities need to be supported by effective contracting policies and practices, as well as diligent contract monitoring, supervision, and enforcement.

Adequate Screenings



- U.S. Department of Justice
- U.S. Securities and Exchange Commission
- World Bank Listing of Ineligible Firms & Individuals
- U.S. Office of Foreign Assets Control
- Panama Papers - ICJ
- Tax Authority in the Territory
- Main newspapers in the Territory utilizing key search terms:

"corruption", "crime", "bribe", "criminal", "money laundering", "fraud", "incentives", "donation", "discount", "compensation", "gratuity", "special payments", "gifts".



BACKGROUND, EXCLUSION, DEBARMENT and FCPA DUE DILIGENCE REPORT

To: Olympus Corporation in the Americas
From: Orihuela Abogados Attorneys at Law
Date: August 29, 2017
Re: BACKGROUND, EXCLUSION, DEBARMENT and FCPA DUE DILIGENCE

This report provides a summary of findings related to Sainc Ingenieros Constructores S.A. Sucursal del Perú incorporated in Peru, following internet-based searches of relevant exclusion and debarment lists/databases and World Bank/OFAC listings of ineligible firms and individuals; FCPA related investigation, self-disclosure, NPA/DPA; background information and bilingual key words searches as detailed below:

- 1) Department of Justice**
No findings.
<https://search.justice.gov/search?utf8=%E2%9C%93&affiliate=justice&query=Sainc+Ingenieros+Constructores>
- 2) Securities Exchange Commission**
No findings.
<https://search.justice.gov/search?utf8=%E2%9C%93&affiliate=justice-archive&query=Sainc+Ingenieros+Constructores>
- 3) Google Search**
No findings.
Searched for "Sainc Ingenieros Constructores" (owner of the Peruvian subsidiary), "Jafet Alirio Lozano Henao" (Manager), "Daniel De Angelo Vallejo" (Manager), "Francisco José De Angelo" (Director) and "Hernando de Angelo" (Director).
Specific searches in English included terms "corruption", "crime", "bribe", "penalties", "money laundering", "forces", "incentive", "donation", "discount", "compensation", "gratuity", "special payments", "FCPA", "SEC" and "DOJ".
Specific searches in Spanish included terms "corrupción", "crimen", "delito", "soborno", "penal", "coima", "fraude", "multas", "lavado de dinero", "incentivos", "donación", "honorario", "descuentos", "propinas", "regalos".
- 4) World Bank Listing of Ineligible Firms & Individuals**
No findings.
<https://search.usa.gov/search?utf8=%E2%9C%93&affiliate=secsearch&query=Sainc+Ingenieros+Constructores>
- 5) OFAC Office of Foreign Assets Control**
No findings.
<https://sanctionssearch.ofac.treas.gov/>

- 6) Panama Papers - The International Consortium of Investigative Journalists**
No findings.
http://web.worldbank.org/external/default/main?pagePK=64148989&piPK=64148984&theSitePK=84266&theSitePK=84266&contentMDK=64069844&querycontentMDK=64069700&sup_name=SAINC%20INGENIEROS%20CONSTRUCTORES&sup_country
- 7) Corporate and tax related inquiries in Peru; business registration with other government entities**
Based on Sainc Ingenieros Constructores tax identification number (RUC 20523534590)
Confirmation of: Business registration, type of business, status, condition, business purpose, address, activity start date, foreign trade activity, coercive debt, tax omissions, number of employees, and legal representatives.
No negative findings.
<http://e-consultaruc.sunat.gob.pe/cl-ti-itmrconsruc/jcrS00Alias>



Número de RUC: 20523534590 - SAINC INGENIEROS CONSTRUCTORES S.A. SUCURSAL DEL PERU
Tipo de Contribuyente: SUCURSALES DE G. DE EMP. EXTRANJ.
Nombre Comercial: -
Fecha de inscripción: 14/10/2009
Fecha de inicio de actividades: 14/10/2009
Estado de Contribuyente: ACTIVO
Condición de Contribuyente: HABIDO
Dirección del Domicilio Fiscal: CAL. GRIMALDO DEL SOLAR INRO. 62 INT. 804 URB. EURO LIMA LIMA MIRAFLORES
Sistema de Emisión de Comprobante: MANUAL/COMPUTARIZADO Actividad de Comercio Exterior: IMPORTADOR
Sistema de Contabilidad: MANUAL/COMPUTARIZADO
Actividad(es) Económica(s): 4100 Construcción de edificios
45308 Acondicionamiento de edificios
4329 Otras instalaciones para obras de construcción
Comprobantes de Pago / aut. de Impresión (F. 806 u. 816): Factura / Boleta de Venta / Nota de Crédito / Guía de Remisión Remitente
Sistema de Emisión Electrónica:
Emisor Electrónico desde:
Comprobantes Electrónicos:
Afiliado a PLE desde: 01/01/2014
Padrones: Ninguno



Corporate Compliance Program

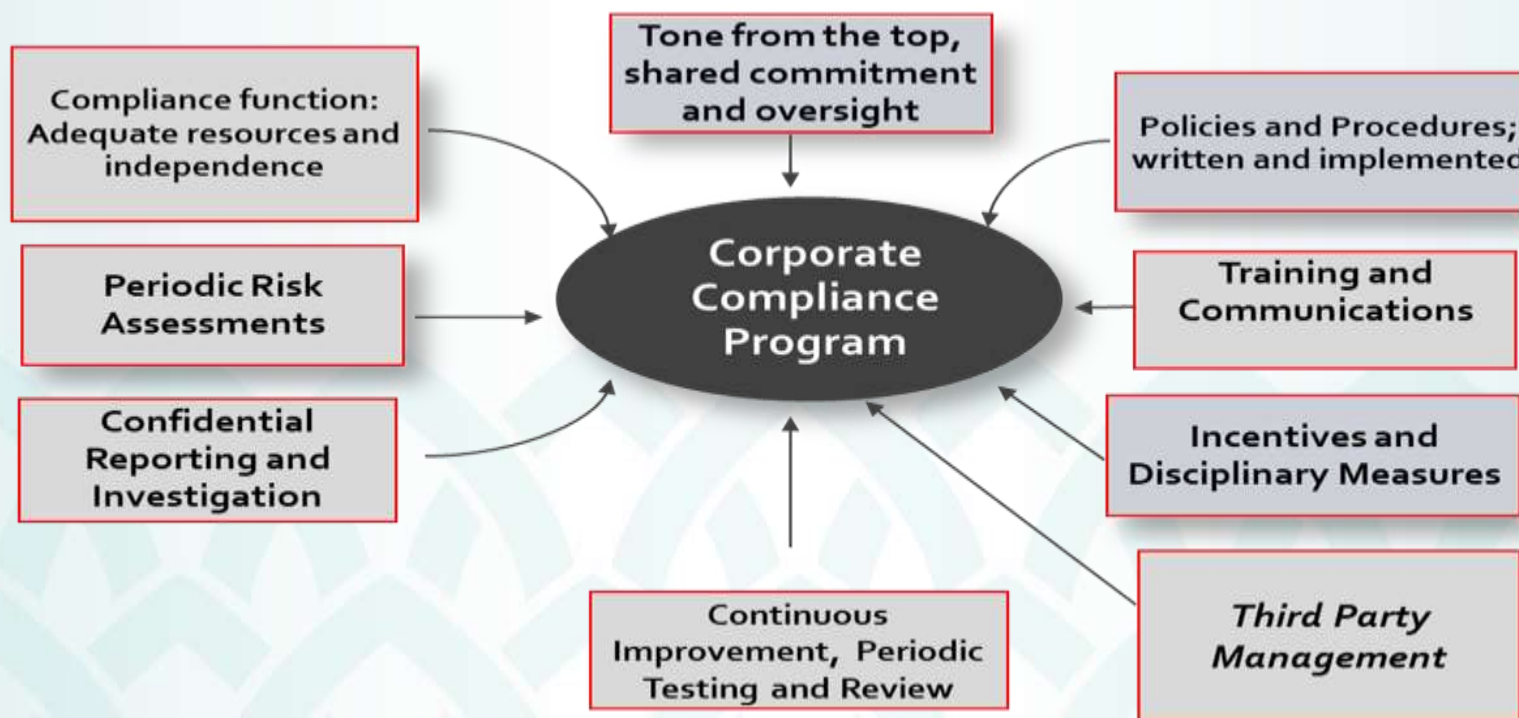
based on size and nature of each legal entity

Best Practices: key components of an effective compliance program per the Evaluation Guidance of Corporate Compliance Programs and U.S. Sentencing Guidelines.



UNITED STATES

*(USSG §8B2.1. Effective Compliance and Ethics Program, Nov. 2013
Evaluation Guidance of Corporate Compliance Programs; Fraud Section;
US Department of Justice, 2020):*



Effective Corporate Compliance Program

Orihuela Abogados

Corporate International | Mining | Pharmaceuticals |
FCPA and Anti-corruption | AML

www.orihuelalegal.com