

Foreign Corrupt Practices Act Requires More Than a Policy

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by Christopher L. Doerksen and T. Augustine Lo

The recent settlement agreement between Kinross Gold Company and the Securities and Exchange Commission is a reminder to Canadian cross-listed companies that it is not enough to adopt a parent-company level anti-corruption policy designed to promote compliance with the Foreign Corrupt Practices Act (FCPA). Effective implementation and monitoring at the operating level is also needed.

In Kinross' case, the SEC charged, in effect, that Kinross had acquired two African mining operations from a third party, was aware of deficiencies in the mines' controls at the time of acquisition, failed to timely put in place appropriate controls, and then failed to maintain them once implemented. Specifically, SEC alleged that Kinross awarded a logistics contract to a company preferred by Mauritian officials, despite concerns that the awardee exhibited poor performance at high cost without going through Kinross' own bidding procedures, and engaged in contracts with politically connected consultants without conducting necessary, heightened due diligence. The SEC found these deficiencies constituted a violation of books and records and internal auditing controls provisions of federal securities law. In order to resolve these charges, and without admitting SEC's findings, Kinross agreed to pay the SEC a penalty of \$950,000, comply with a cease-and-desist order, and undertake to report on remedial measures.

For more details, see the April 2018 edition of our Anti-Corruption Digest, which is available at <https://www.dorsey.com/newsresources/publications/newsletters/2018/04/anti-corruption-digest-april-2018>.

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