




## BARRICK GOLD CORPORATION

# GUIDELINES FOR CONDUCTING ANTI-CORRUPTION DUE DILIGENCE IN CONNECTION WITH THE ACQUISITION AND DISPOSITION OF ASSETS AND THE FORMATION OF JOINT VENTURES

	Version	Date
Document	0	August 19, 2015

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# 1 PURPOSE

Numerous corruption-related investigations and prosecutions have occurred in connection with acquisitions and joint ventures, particularly in countries where the risks of corruption are considered high. Corruption risks also can occur in the context of asset dispositions. This Guideline is designed to assist Barrick legal personnel in conducting anti-corruption due diligence in connection with asset acquisitions, joint ventures, and asset dispositions.

## 2 DEFINITIONS

### ***2.1 Government Official***

As set forth in Barrick's Anti-Corruption Policy, a Government Official is any appointed, elected, or honorary official or any employee of a government, a government-owned or government-controlled enterprise, a public international organization (such as the United Nations or the World Bank), or an individual acting in an official capacity for such government, entity, or organization.

The definition encompasses officials in all levels of government (local, state/province, federal) and all branches of government (executive, legislative, and judicial). The definition often also includes political parties and party officials and candidates for political office. A person does not cease to be a government official by purporting to act in a private capacity or by the fact that he or she serves without compensation.

It broadly includes, without limitation: (i) politicians and their staff; (ii) judges; (iii) employees of government agencies (such as tax, immigration, mines, environment, or customs employees) and legislative bodies; (iv) employees of government-owned universities; (v) members of the police or military; (vi) public hospital or university employees; (vii) United Nations or World Bank employees; (viii) employees of private companies that are largely owned by the state, or which the state effectively controls; (ix) ambassadors and embassy personnel; or (x) private persons who may be performing a function for the government.

### ***2.2 Immediate relatives of Government Officials***

As set forth in Barrick's Anti-Corruption Procedure, immediate relatives of a government official include spouse/partner, parent or in-law, child or son/daughter in-law, stepson or stepdaughter, aunt or uncle, niece or nephew, sibling or sister/brother in-law.

### **3 GUIDANCE FOR ACQUISITIONS**

1. Successor liability, in which a company that purchases another company, presents a critical area for anti-corruption compliance. Numerous investigations of companies have resulted from their purchasing companies who have engaged in improper activities. As a result, due diligence, including background checks, requests for information, and requests for documents, are important in this area.
2. Throughout the process of assessing a potential acquisition, two of the most important factors are (a) the cooperation of the counterparty in international regulatory due diligence, including whether they are objecting to the due diligence process or objecting to questions about ownership or corruption history, and (b) whether they signal a lack of familiarity or interest in anti-corruption compliance. A lack of cooperation and lack of familiarity with anti-corruption compliance suggests either they have something to hide, and/or that they are not committed to following applicable legal requirements.
3. Other red flags to consider throughout the process will be whether the counterparty:
  - a. makes significant use of third party agents in government dealings;
  - b. has significant contracts with a foreign government or state owned entity (or derives substantial revenues from them);
  - c. claims a high amount or frequency of discounts, rebates or refunds in the foreign country;
  - d. has a history of investigations for fraud, corruption, or bribery associated with it;
  - e. has had audits that have identified excessive government travel, entertainment, support, or weak books and records processes or internal controls (or if those issues are otherwise apparent);
  - f. has poor or no anti-corruption training; or
  - g. has a weak corporate compliance program or culture, including managers who seem uncommitted to anti-corruption compliance.
4. Throughout the assessment process, it is important to maintain a clear record of due diligence to form a clear record if the counterparty misrepresents its anti-corruption compliance program or record, or if regulatory authorities later question Barrick's compliance efforts and good faith (which in turn can influence a charging decision).

#### **3.1 Preliminary Due Diligence & Questionnaire**

1. The first step in conducting anti-corruption due diligence in the context of an asset acquisition is to request that the counterparty complete a questionnaire detailing basic information about the company, its employees and owners, any connections

with government officials, its financial stability, and its basic qualifications. A template questionnaire is attached here as Appendix A.

2. In most instances, it also will be appropriate to conduct a review of public information to identify whether the third party has any history of corruption, or other relevant allegations of impropriety, the third party's reputation for fraud, corruption or bribery, the third party's actual owners (including whether owners are government affiliated or have a poor reputation for integrity), and other facts that may raise red flags. Although the nature of the due diligence will depend on the third party and the circumstances, it may be appropriate to have it performed by external counsel, typical steps often include:
  - a. Google search, including reports of NGOs and civil society;
  - b. A review of news articles;
  - c. A watch list and prohibited party search;
  - d. A review of public filings and disclosures;
  - e. Tracestandard, World Check<sup>1</sup> database search and/or full World Check report or other similar assessment;
  - f. Criminal background/ credit/ litigation checks, to the extent not covered by other searches;
  - g. Reference checks; and
  - h. Embassy checks, including an International Company Profile Report [http://www.export.gov/salesandmarketing/eg\\_main\\_018198.asp](http://www.export.gov/salesandmarketing/eg_main_018198.asp)).

### **3.2 Document and Detailed Information Requests**

1. The results of the steps in 3.1 should be reviewed. If there are major red flags that emerge, which immediately threaten the viability of the acquisition, they should be discussed with an external counsel approved by the Office of the General Counsel and addressed before going forward further. Depending on the nature of the red flag, they may be addressed through investigative activity, document requests, conversations with the counterparty, or through other approaches.
2. Assuming there are no such major red flags, a request for documents and detailed information should be provided to the counterparty. A sample request is attached as Appendix B, and likely should be formulated with advice from an external counsel approved by the Office of the General Counsel. The request likely will seek information that implicates other international regulatory risks, as indicated in Appendix B.

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<sup>1</sup> World Check is an online databases which compile information (media, regulatory, etc.) regarding individuals and corporate/government entities and assess whether such person or individual or entity poses low, medium, or high risk. Tracestandard is a third party due diligence review that includes a questionnaire, a request for registration documents from the third party, an online database assessment, and other elements. You can learn more about Tracestandard and World Check by contacting Corporate Counsel.

3. As to information relevant to anti-corruption, some information in the document request will not vary between requests, including
  - a. documents and information on Code of Conduct,
  - b. anti-corruption policies and procedures,
  - c. anti-corruption and ethics trainings, investigations,
  - d. third party intermediaries,
  - e. employees with government affiliations,
  - f. charitable contributions and political donations,
  - g. government supported travel and entertainment,
  - h. audits and compliance reviews,
  - i. and other items found in Appendix B.
4. Some information will be tailored to the counterparty. That will include specific details about the locations at issue in the transaction, or where the counterparty has operations. It also may incorporate specific questions that stem from the information collected in the preliminary due diligence in Section 3.1; in particular, if that preliminary due diligence identifies any red flags or concerns, questions should be formulated to seek clarification of those issues. It often will be appropriate to have external counsel review and provide feedback on the document request.
5. All documents received should be reviewed. It may be appropriate to provide further document requests, based on the materials received.

### ***3.3 Document Request Conversation***

In most instances, it also will be appropriate to conduct an interview, in person or by telephone, with the counterparty. The purpose of the interview is to clarify any outstanding questions from the preliminary due diligence and documents received, and confirm key pieces of information, including familiarity with anti-corruption requirements, the existence of policies and procedures, the provision of training, and other core aspects of an anti-corruption program. It may be appropriate to include external counsel in those conversations, and it is possible that this conversation will lead to a request for further documents or other information.

### ***3.4 Additional Diligence Steps***

Depending on the facts, including the counterparty, the nature of the transaction, the amount of the transaction, and the country involved, it may be appropriate to conduct additional activities. Those activities may, depending on the circumstances, be substantial. These can include:

- a. site visits;
- b. a review of local public records;

- c. a review of all government relationships (including contracts and touchpoints);
- d. a review of relevant third party contracts,
- e. a review of due diligence files for third parties;
- f. the retention of investigative or business intelligence personnel to determine the counterparty's credentials and legal compliance;
- g. a review of the counterparty's books and records (in whole or sampled); or
- h. interviews with key personnel or third parties.

In particular, it is important to understand the nature of any connections to and past interactions with the government, ensure there no off-book accounts or "slush funds," and to gain comfort that any key licenses, permits, rights, or concessions were obtained through lawful means.

### **3.5 Post-Transaction**

1. Depending on the nature of the transaction, it also may be appropriate to include a pre-closing covenant. It is always appropriate to include anti-corruption provisions in the closing documents, including
  - a. robust representations and warranties,
  - b. audit rights,
  - c. an agreement to make periodic certifications, and limitations on hiring agents or intermediaries,
  - d. termination rights, and
  - e. where relevant post-transaction monitoring.

Sample contract language is found in Appendix C.

2. It also may be appropriate to design a post-closing integration or anti-corruption plan, which may include
  - a. instituting immediate anti-corruption policies and procedures,
  - b. training,
  - c. monitoring anti-corruption processes,
  - d. periodic audits or
  - e. testing of the program and processes (including books and records), and other anti-corruption controls.

Typically, reference to a reasonable post-transaction monitoring process should be included in the closing documents.

## 4 GUIDANCE FOR JOINT VENTURES

1. The process for assessing the risks associated with joint ventures is similar to an acquisition. Normally, it will be important to conduct preliminary due diligence, including a questionnaire, as set out in Section 3.1. It also will often be appropriate to obtain relevant documents, consistent with Section 3.2, and to engage in a conversation to clarify the information obtained, consistent with Section 3.3. External counsel should participate in those activities in situations where inherent risks or red flags are present. Further steps, such as those in Section 3.4, very well could be required, depending on the facts.
2. If Barrick is a passive minority owner that is not able to exercise operational control, regulatory authorities expect that it will undertake reasonable good faith efforts to ensure that the majority owner and operator adheres to anti-corruption laws, including relevant books and records requirements.<sup>2</sup> That will include
  - a. seeking to ensure that the venture has appropriate policies and procedures,
  - b. training of key personnel,
  - c. oversight of subagents and representatives, and
  - d. other relevant elements of an anti-corruption program.
3. If Barrick is a majority owner, is able to exercise operational control, or consolidates the earnings of the venture, it is likely that regulatory authorities will consider the actions of the joint venture to be attributable to Barrick itself.<sup>3</sup> In that instance, Barrick will be expected to maintain an appropriate anti-corruption program, and may face prosecution for a failure to do so.
4. In either instance, a carefully crafted joint venture agreement that includes relevant anti-corruption elements, plus an agreed upon plan for post-agreement monitoring, will be appropriate. In higher risk countries, it typically will be appropriate to engage outside counsel to assist in that effort.

## 5 GUIDANCE FOR DISPOSITIONS

1. There also are certain risks associated with the disposition of assets, though the risks are less than acquisitions and joint ventures. The primary risks are that the counterparty is owned in whole or part by government officials (or immediate relatives), or that the counterparty makes an improper payment in connection with obtaining approvals for the transaction.
2. Typically, it will be appropriate to provide the counterparty with a version of the Questionnaire contained in Appendix A, focusing on the company's ownership and relationships with government officials. It also may be appropriate to perform basic

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<sup>2</sup> See SEC/DOJ FCPA Resource Guide, at 43 (<http://www.justice.gov/criminal/fraud/fcpa/guide.pdf>).

<sup>3</sup> See SEC/DOJ FCPA Resource Guide, at 43 (<http://www.justice.gov/criminal/fraud/fcpa/guide.pdf>).



due diligence, including public records searches, identified in Section 3.2(2). Depending on any information uncovered, an interview may be appropriate. Anti-corruption representations and warranties in the closing contract almost always will be appropriate, as will gaining an understanding of the nature of government approvals that may be required in connection with the disposition, and how those are being addressed by the counterparty.

**APPENDIX A: EXTERNAL BARRICK QUESTIONNAIRE**

**International Regulatory Due Diligence Questionnaire**

[Terms used but not defined herein have the meanings assigned thereto in the [INSERT RELEVANT TRANSACTION DOCUMENT], dated as [■], between [Barrick Gold Corporation] and [COMPANY]].

Unless otherwise noted below, the term "Company" as used herein means and includes [INSERT LEGAL NAME OF CORPORATE PARENT] and any direct or indirect subsidiaries and/or affiliates, wherever located[, including but not limited to [INSERT LEGAL NAME(S) OF RELEVANT LOCAL SUBSIDIARY OR SUBSIDIARIES, IF APPLICABLE]].

1. Name and Address of Company, its principal place of business:

COMPANY LEGAL NAME: \_\_\_\_\_  
STREET ADDRESS: \_\_\_\_\_  
CITY: \_\_\_\_\_ STATE/PROVINCE: \_\_\_\_\_  
COUNTRY: \_\_\_\_\_ POSTAL CODE: \_\_\_\_\_  
TELEPHONE: \_\_\_\_\_ FACSIMILE: \_\_\_\_\_  
WEBSITE ADDRESS: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_  
E-MAIL ADDRESS: \_\_\_\_\_

2. Name and Address of [LOCAL SUBSIDIARY], where the [proposed joint venture will be located] [assets to be purchased or sold are located].

COMPANY LEGAL NAME: \_\_\_\_\_  
STREET ADDRESS: \_\_\_\_\_  
CITY: \_\_\_\_\_ STATE/PROVINCE: \_\_\_\_\_  
COUNTRY: \_\_\_\_\_ POSTAL CODE: \_\_\_\_\_  
TELEPHONE: \_\_\_\_\_ FACSIMILE: \_\_\_\_\_  
WEBSITE ADDRESS: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_  
E-MAIL ADDRESS: \_\_\_\_\_

3. Bank Name and Address for payment by [■] to [■] of the [Proceeds] on the [Closing Date], including company account name and number:

BANK NAME: \_\_\_\_\_  
STREET ADDRESS: \_\_\_\_\_  
CITY: \_\_\_\_\_ STATE/PROVINCE: \_\_\_\_\_  
COUNTRY: \_\_\_\_\_ POSTAL CODE: \_\_\_\_\_  
TELEPHONE: \_\_\_\_\_ FACSIMILE: \_\_\_\_\_  
ACCOUNT NAME: \_\_\_\_\_

ACCOUNT NUMBER: \_\_\_\_\_

4. a) Has the Company ever tendered work for or participated in any joint venture, acquisition, divestiture or similar transaction with Barrick or any of its affiliates in the past?

YES                       NO

b) If YES, please provide relevant details, including the nature of the work, the location of the work or assets subject to the joint venture, acquisition, divestiture or similar transaction, the Barrick entity involved, and any other relevant facts.

5. Which of the following best describes the Company?

- Individual / Sole Proprietor Corporation
- Partnership
- Publicly Traded
- Private Corporation
- Limited Liability Partnership
- Other (describe):

6. Where and when was the Company incorporated and where is its registered address (if different from above)?

LOCATION: \_\_\_\_\_

DATE: \_\_\_\_\_

7. Which of the following best describes [LOCAL SUBSIDIARY]

- Individual / Sole Proprietor Corporation
- Partnership
- Publicly Traded
- Private Corporation
- Limited Liability Partnership
- Other (describe):

8. Where and when was [LOCAL SUBSIDIARY] incorporated and where is its registered address (if different from above)?

LOCATION: \_\_\_\_\_

DATE: \_\_\_\_\_

9. a) If the Company is not a publicly traded company, list *all* owners, partners and shareholders in the Company (percentage should total 100%) unless there are more than 15 shareholders. If there are more than 15 shareholders, then list any person, company or other entity who either (i) owns more than 2% of the shares in your company, (ii) is himself or herself a government official,<sup>4</sup> (iii) is an official of a political party, (iv) is currently

<sup>4</sup> "Foreign government" for purposes of this Questionnaire is construed to mean governments other than Canada or the U.S. "Government official" is broadly interpreted to include any person: (a) who is an officer, director or employee of a foreign government at a local, municipal, provincial, regional, national or federal level or public international organization (e.g. UN, World Bank), or any department, agency, branch or instrumentality thereof, including enterprises that are majority owned or controlled by a foreign government or public international organization (e.g., public hospitals and universities, utilities, or government controlled businesses); or (b) who acts in an official capacity for or on behalf of any foreign government or public international organization. Examples of individuals covered by (b) include, but are not

a candidate for public office or (v) has a close relative (by blood or marriage)<sup>5</sup> who is a government official, political party official or current candidate for public office. If any of the listed owners are other than individuals, please provide that ownership information on a separate page.

NAME	PERCENT

b) Provide the information given in response to question 9 a) for any person or entity that, directly or indirectly, controls 25% or more of the shares of [LOCAL SUBSIDIARY].

c) Is the Company or any employee thereof performing any services for any governmental authority (local, provincial, or national)?

YES       NO

If YES, please provide relevant details, including the nature of the work, any official position held by the Company or any employee thereof, the government entity on whose behalf such services are being performed, any pay received for those services, and any other relevant facts.

10. a) How long has the Company been in business and what were its approximate revenues in its last fiscal year?

b) Please list any prior names that the Company has used, and the reason for any changes.

11. a) Provide **one** commercial business contact who will be in a position to discuss the Company’s relationship, business ethics and reputation in the business community in [INSERT HOME JURISDICTION OF THE COMPANY] and **two** commercial business contacts who will be in a position to discuss [LOCAL SUBSIDIARY’S] relationship, business ethics and reputation in the business community in [LOCAL COUNTRY].

COMPANY 1:			
Contact:			
Job Title:		E-Mail Address:	
Address:			
City:		State/Province:	
Country:		Postal Code:	

limited to, individuals engaged by foreign governments (including private individuals appointed by such entities) to provide advice involving a governmental function (e.g., experts, consultants, members of advisory panels or boards, etc.).

<sup>5</sup> References in this Questionnaire to “family” or “close relative” include grandparents, parents, brothers and sisters, and children, as well as the spouses/partners of such persons.

Telephone:		Facsimile:	
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<b>COMPANY 2:</b>			
Contact:			
Job Title:		E-Mail Address:	
Address:			
City:		State/Province:	
Country:		Postal Code:	
Telephone:		Facsimile:	

<b>COMPANY 3:</b>			
Contact:			
Job Title:		E-Mail Address:	
Address:			
City:		State/Province:	
Country:		Postal Code:	
Telephone:		Facsimile:	

12. Is any employee, manager, owner, director, shareholder, or partner of the Company currently or formerly (i) a government official, (ii) an official of a political party, or (iii) a candidate for public office?

YES                       NO

b) If YES, describe the government entity (country, agency, branch, committee, etc.) with which they are or were affiliated, their title and dates of service and, in the case of political party officials and candidates for public office, the party of which they are an official or the public office they are seeking. Please also describe whether the government or political entity who they are affiliated with has been or will be involved in any matters (whether regulatory, commercial or otherwise) relating to the proposed agreement with Barrick or your company.

13. List all senior managers and directors of the Company and **[LOCAL SUBSIDIARY]**: **[FOR JOINT VENTURE TRANSACTIONS] [In addition, list the initial nominees of the Company to the board of directors of [JV ENTITY] (attach additional pages if necessary)]**:

NAME	TITLE

14. List all owners, directors, managers, employees or agents of the Company and **[LOCAL SUBSIDIARY]** (by name and title) who have engaged in matters while negotiating the proposed transaction with Barrick, or will be engaged in matters while participating in the proposed transaction with Barrick, that involve interfacing with government officials (attach additional pages if necessary):

NAME	TITLE

15. a) Have any of the individuals listed in your response to question 14 been a government official, an official of a political party, or a candidate for public office within the past 5 years?

YES                       NO

b) If YES, identify the individual and describe the government entity (agency, branch, committee, etc.) with which they are/were affiliated, their title and dates of service and, in the case of political party officials and candidates for public office, the party of which they are/were an official or the public office they currently are/were seeking. Please also describe whether the government or political entity who they are affiliated with has been or will be involved in any matters (whether regulatory, commercial or otherwise) relating to Barrick.

NAME	ENTITY	TITLE	DATES

16. a) Do any of the individuals listed in your response to question 14 have a close family relationship, by blood, marriage or partnership, with a government official, political party official or candidate for public office?

YES                       NO

b) If YES, identify the individual and describe the government entity (agency, branch, committee, etc.) with which the family member is affiliated or, in the case of political party officials and candidates for public office, the political party of which they are an official or the public office they currently are seeking as well as their title and relationship to the listed. Please also describe whether the government or political entity who they are affiliated with has been or will be involved in any matters (whether regulatory, commercial or otherwise) relating to Barrick.

NAME	ENTITY	TITLE	RELATIONSHIP

17. a) Do any of the individuals listed in your response to question 14 have a business relationship (including joint ownership of a company) with a government official who would be in a position to influence government decisions that are made regarding the proposed agreement with Barrick or your company, or otherwise provide a commercial advantage to your company or Barrick?

YES                       NO

b) If YES, identify the individual and the government official by name, describe the relevant government entity (agency, branch, committee, etc.), the government official's title and the nature of the relationship with the individual (joint owners, etc.) Please also describe whether the government or political entity who they are/were affiliated with has been or will be involved in any matters (whether regulatory, commercial or otherwise) relating to the proposed agreement with Barrick or your company.

NAME	ENTITY	TITLE	RELATIONSHIP

18. a) Would any government official, relative of a government official, political party official or current candidate for public office receive any funds or other advantages in connection with the proposed agreement with Barrick or your company?

YES                       NO

b) If YES, identify the government official by name, describe the relevant government entity (agency, branch, committee, etc.), give the government official's title, describe the funds or advantages that would be provided to the government official and provide the same information for political party officials and current candidates for public office.

NAME	ENTITY	TITLE	AMOUNT

19. a) Has the Company, or any of its employees, officers, or directors, or any of the individuals listed in response to questions 9, 12, 13, or 14 been involved during the past 10 years in any legal proceedings involving allegations of fraud, bribery or corruption?

YES                       NO

b) If YES, please provide details (e.g., date of claim(s), type and amount of claims, result of the investigation or proceeding) on a separate page.

20. a) Has the Company, or any of its employees, officers, or directors (whether or not listed in response to questions 9, 12, 13 or 14), been accused of committing a human rights violation<sup>6</sup>, or been involved in any criminal proceeding or criminal investigation of any kind in the past 10 years?

YES                       NO

b) If YES, please provide details (e.g., date of claim(s), type and amount of claims, result of the investigation or proceeding) on a separate page.

21. a) Does the Company utilize workers who are under 18, workers who are indentured for any reason, or workers who have been engaged through coercion or fraud?

YES                       NO

b) If YES, please provide details on a separate page.

22. a) Does the Company utilize armed security to provide security services?

YES                       NO

b) If YES, please provide details (e.g., nature of the security service, required training and licensing, etc.) on a separate page.

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<sup>6</sup> For purposes of this Questionnaire, a "human rights violation" would include:

- Violations of labour rights, including the use of forced labor, trafficked labour, prison labour, or underage labour;
- Discrimination, based on nationality, sex, race, religion, ethnicity, or other characteristics, in any of its activities;
- Physical abuses, including assault, sexual assault or rape, kidnapping, killings, attacking protestors, or cruel, inhuman and degrading treatment;
- Property rights involving forced evictions, or improperly denying individuals the right to own or enjoy property; or
- Violations in the legal system, such as prison abuses, arbitrary arrest, or the denial of a fair trial.

23. a) Does the Company plan to use any other companies (subcontractors), including subsidiaries, affiliates, partnerships or joint ventures of the Company, or individuals other than its own employees to perform its obligations under the proposed transaction with Barrick?

YES                       NO

b) If YES, identify the name and address of the subcontractor or individual, describe the relationship to the Company and the activities it will perform as a subcontractor.

NAME/ADDRESS	RELATIONSHIP	ACTIVITIES

24. Please provide a copy of the Company's code of ethics or business conduct, and describe any anti-corruption, human rights, or other legal compliance training provided to Company employees.

25. Please describe what physical facilities will be provided by the Company in connection with the proposed transaction. Who will provide the necessary capital for their upkeep?

26. a) Does the Company maintain relevant insurance related to the business activities associated with the transaction being proposed?

YES                       NO

b) If YES, identify the type of insurance, its scope, and whether it covers the Company's employees and third parties.

27. a) Has the Company ever declared bankruptcy, failed to meet obligations to pay creditors, or failed to complete a contract because of its financial constraints?

YES                       NO

b) If YES, please provide the details on a separate page.

28. a) Has the Company ever had a contract cancelled because of conduct that failed to comply with human rights standards, or based on alleged misconduct of any sort?

YES                       NO

b) If YES, please provide the details on a separate page.

29. Do any of the employees, directors, or officers, of the Company have close relatives at Barrick, or business relationships with Barrick employees? If yes, please identify the relevant employees, directors or officers, the close relatives at Barrick, and/or the nature of the relevant business relationships?

**The person whose signature appears below is authorized to certify on behalf of the Company and any direct or indirect subsidiaries and/or affiliates, wherever located, including but not limited to [LOCAL SUBSIDIARY], that the foregoing is true and correct. The undersigned acknowledges that some of the information furnished above includes personal data, whose collection and disclosure may be subject to local data protection or privacy laws. The undersigned acknowledges and consents that the personal data may be transmitted to Barrick or its advisors in Canada and the United States of America, as well as to its affiliates, some of which may be established in countries other than the country or countries in which the undersigned has been established and/or is doing business, and that Barrick may review and maintain any personal data furnished above for**



**legitimate business purposes. The undersigned hereby affirms that his or her disclosure of personal data to Barrick complies fully with any and all applicable data protection or privacy laws.**

The information provided above is, to the best of my knowledge and belief, accurate, current and complete and does not contain any untrue statements of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading. I agree to notify Barrick promptly of any material changes to the information provided herein, for the duration of our engagement.

\_\_\_\_\_  
(Signature)  
(Date)

\_\_\_\_\_

\_\_\_\_\_  
(Printed or Typed Name)  
(Title)

\_\_\_\_\_

## **APPENDIX B: SAMPLE REQUEST FOR DOCUMENTS**

### **International Regulatory Due Diligence Initial Document Request to [COMPANY] for [PROPOSED TRANSACTION]**

#### **1. Definitions and Scope**

- The term “the Company” as used herein means and includes the parent company and any direct or indirect subsidiaries and/or affiliates, wherever located, including but not limited to **[INSERT LEGAL NAME(S) OF LOCAL SUBSIDIARY OR SUBSIDIARIES, IF APPLICABLE.]**

***[NTD: Any local subsidiary that will be executing transaction documents should be included here.]***

Terms used but not defined herein have the meanings assigned thereto in the **[INSERT RELEVANT TRANSACTION DOCUMENT]**, dated as **[■]**, between **[Barrick Gold Corporation]** and **[COMPANY COUNTERPARTY]**.

- Unless otherwise indicated, requests cover the time period from **[January 1, 2009]** to the present, inclusive. Use of the term “Relevant Period” is intended to reference this time period, but is implied where not expressly stated.

***[NTD: We have included a customary “Relevant Period” of five years, but the look-back period should be adjusted as required for each transaction.]***

- The term “government official” means and includes any officer, director, employee or agent of any government agency, department, branch or instrumentality at a local, municipal, provincial, regional, national or federal level, or a public international organization, or anyone acting in an official capacity for such a body, any official of a political party or candidate for political office.
- The term “third party” means and includes any vendor, contractor, consultant, agent, representative, broker (including customs broker), finder, professional advisor, joint venture partner or similar person, whether or not operating under a written contract.
- The term “close relative” means an immediate family member (spouse, partner, or grandparent, parent, child, sibling, or any of their spouses or partners).
- The term “Priority Jurisdictions” means and includes **[LIST JURISDICTIONS WHERE THE COMPANY’S MATERIAL PROPERTIES ARE LOCATED.]**

***[NTD: This list should include the jurisdictions in which the Company’s material properties and other relevant operations are located and should not necessarily be limited to jurisdictions relevant to the proposed transaction.]***

#### **2. International Regulatory Compliance Policies and Procedures**

Please provide the following documentation regarding the Company's international regulatory compliance programs:

- Any policies and procedures in force (including any guidance documents) during the Relevant Period, at the Company's corporate and regional levels and in the Priority Jurisdictions, relating to compliance with: (1) the U.S. Foreign Corrupt Practices Act ("FCPA") and other applicable anti-bribery or anti-corruption laws, including but not limited to the UK Bribery Act 2010, Canadian Corruption of Foreign Public Officials Act ("CFPOA") and Division 70 of the Australian Criminal Code ("Applicable Anti-Corruption Laws"); (2) U.S. and other applicable export controls and economic sanctions laws ("export controls/sanctions"); (3) U.S. anti-boycott laws and regulations ("anti-boycott"); (4) U.S. and other applicable anti-money laundering laws ("AML"); (5) policies and procedures addressing the relocation and/or compensation of persons displaced from land developed for the Company's projects ("relocation policies"); (6) any applicable laws restricting the export of gold, copper or other metals or ores from the country of extraction or processing; (7) the use of force in connection with Company security needs, including the UN Voluntary Principles on Security or Human Rights, International Code of Conduct for Private Security Service Providers, relevant local laws, the UN Code of Conduct for Law Enforcement Officials, and/or UN Basic Principles on the Use of Force and Firearms by Law Enforcement (this sub-section (7) referred to as "Security and Human Rights Policies"); and (8) any other Corporate Social Responsibility- or other human rights-related policies and procedures, including relocation policies ("Other Human Rights").
- Any compliance policies regarding employee whistleblowing and/or retaliation for employee whistleblowing.
- Corporate (headquarters, regional, country, provincial or local) compliance functions, structures and responsibilities, including identification of any compliance committees (with the date of formation, membership, and any written charter); and any compliance officers (including date of appointment, location, reporting lines, scope of responsibilities, and any job description).
- A description of any in-person or online training efforts conducted by the Company regarding anti-bribery, anti-corruption, export controls/sanctions, anti-boycott, AML, relocation, Security and Human Rights or Other Human Rights policies compliance, and examples of training materials used in such areas at the corporate or regional, provincial or local level or in Priority Jurisdictions.
- A list of all government officials known by the Company as having any legal or beneficial interest, direct or indirect, in any Company subsidiary or affiliate in a Priority Jurisdiction.
- A list of all known state-owned or controlled enterprises having a legal or beneficial interest, direct or indirect, in any Company subsidiary or affiliate in a Priority Jurisdiction.
- A list of all Company personnel known by the Company as being affiliated with any government or government agency or official, including anyone who was a

government official during the past two years, is a close relative of any a government official or discussed their employment at the Company with a government official before they were hired by the Company.

- A description of compliance reporting systems (hotlines, anonymous reporting mechanisms, etc.), escalation and/or investigation policies and procedures.
- Any additional associated anti-corruption-related policies, procedures, guidance, forms, or similar documents, including those governing: (1) retention of and approval process for third parties to represent the Company before, interface or otherwise act on the Company's behalf or benefit with, any government or government agency or official, including for services in connection with registration, licensing, permits or governmental approvals, (2) employment, (3) charitable or political contributions and sponsorships of events and travel, (4) gifts, hosting and entertainment, (5) facilitating payments, (6) government support; (7) relevant accounting practices or processes; (8) tendering, bidding or vendor qualification practices or processes; and (9) solicitation and extortion.
- All financial and accounting controls governing the use of cash, invoices, new vendor setup, and payments to governments or government officials.
- List of all registrations, licenses, permits and other government approvals held by the Company to do business in the Priority Jurisdictions.
- [Please confirm that all other policies currently available on the [**“Corporate Governance”** page] of the Company's website are the most recent versions of those policies.]

### 3. Operation-Specific Requests

***[NTD: This section should be used to request documents relating to specific anti-corruption matters or other “red flags” identified by Barrick through its review of the Company's public filings, internet and Worldcheck searches or other due diligence initiatives. For example:***

- ***if Barrick is aware of a governmental investigation into allegations of corruption at a specific property, we should request the relevant documents here, including documents relevant to any internal investigation by the Company; and***
- ***if Barrick has identified anti-corruption concerns relating to the granting of the applicable mining concession or other governmental approvals (including approvals for the proposed transaction itself), we should request documents, including correspondence and meeting minutes, relevant to meetings between the Company and its consultants/advisors/intermediaries and the relevant government officials here.***

### 4. Additional Compliance Requests

To the extent the requests are not covered by the specific items listed above, please provide:

#### **4.1 Pending Investigations, Litigation and Regulatory Proceedings**

- Please list all government investigations, inquiries, formal or informal, assessments, disputes, litigation or regulatory proceedings relating to any anti-corruption, export controls/sanctions, anti-boycott, AML, Security and Human Rights or Other Human Rights matters during the Relevant Period, including the name of the case or nature of the proceedings, the counsel retained to represent the Company, and the matter's status.<sup>7</sup>
- Please provide the documents relevant to the resolution or settlement of any such matters, including orders, injunctions, decrees, pleas, non-prosecution agreements, deferred prosecution agreements, and the like.
- Please list all internal or external investigations pending, or which occurred during the Relevant Period, in connection with any anti-corruption, export controls/sanctions, anti-boycott, or AML-related matter in the Priority Jurisdictions, including the nature of the proceedings, the counsel retained to represent the Company, and the matter's status.
- Please identify any complaint filed or threatened to be filed with any domestic or international body alleging acts that may violate, the Voluntary Principles on Security and Human Rights, the Alien Tort Claims Act or the "law of nations", including extrajudicial killing, torture, cruel, inhuman or degrading treatment, arbitrary detention or arrest, forced disappearance, genocide, crimes against humanity, forced labor, child labor, slavery, forced relocation or exile or displacement, human trafficking, war crimes, or systemic racial discrimination.

#### **4.2 Anti-Corruption**

##### **4.2.1 Third Party Payments**

- Please identify any known contracts with or commitments to any government official, or close relative of a government official, in any Priority Jurisdiction and provide copies of such contracts or commitments.

##### **4.2.2 Certain Transactions**

**[NTD: The monetary thresholds below should be adjusted to capture significant payments/contributions for the Company. For example, the thresholds below may be too low for an established mining company with a large market capitalization.]**

Please provide schedules of the following transactions in the Priority Jurisdictions, including a description of their purpose:

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<sup>7</sup> Export control/sanctions and anti-boycott matters include those before the U.S. Directorate of Defense Trade Controls, Department of Commerce Bureau of Industry and Security's Office of Export Enforcement, Office of Foreign Assets Control, the U.S. Bureau of Customs and Border Protection, the Office of Anti-boycott Compliance, the Internal Revenue Service, or those agencies' equivalents outside the United States.

- Payments and gifts in excess of US\$[1,000] to any government official.
- International travel, meals and lodging provided to any government official.
- Charitable contributions in excess of US\$[25,000] to any single charity.
- Political contributions in excess of US\$[25,000] to any individual or political party.
- A list of third parties who represented the Company before, or otherwise interfaced or acted on the Company's behalf or benefit with, any government or government agency or official, paid in excess of US\$[25,000]; a list of payments made by the Company to those third parties; and the due diligence files prepared by the Company with respect to those third parties.

#### **4.3 *Export Controls/Sanctions, Anti-Boycott and AML Policy Compliance***

##### **4.3.1 Anti-Boycott**

- Please provide documents relevant to any reports regarding any requests for compliance with foreign boycotts unsanctioned by Canada and/or the United States.

##### **4.3.2 AML**

- To the extent permitted by law, please provide any reports filed with any government agency with respect to AML compliance.

## **APPENDIX C: SAMPLE CONTRACT LANGUAGE [NTD: INCORPORATE ADDITIONAL PROVISIONS?]**

### **ANTI-CORRUPTION DUE DILIGENCE FOR CORPORATE TRANSACTIONS MODEL CONTRACT LANGUAGE**

#### **Representation and Warranty (Compliance with Anti-Corruption Laws):**

[COMPANY] hereby represents and warrants to [Barrick Gold Corporation] as follows and acknowledges that Barrick is relying on such representations and warranties in [DESCRIBE PURPOSE OF AGREEMENT]:

None of [COMPANY] or its Affiliates, nor, to the knowledge of [COMPANY], any director, officer, agent, employee or other person acting on behalf of [COMPANY] or its Affiliates has, in the course of its actions for, or on behalf of, [COMPANY] or its Affiliates (i) used, or authorized the use of, any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made, or authorized the making of, any direct or indirect unlawful payments to any Canadian [INSERT ADDITIONAL JURISDICTIONS AS APPLICABLE] or other foreign Government Official<sup>8</sup> or employee from corporate funds; (iii) violated or is in violation of any provision of the Canadian Corruption of Foreign Public Officials Act, the United States Foreign Corrupt Practices Act or any similar act under any Laws<sup>9</sup> that [COMPANY] is subject to; or (iv) made, or authorized the making of, any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

#### **Anti-Corruption Due Diligence Covenant (Pre-Closing):**

[COMPANY] will, subject to Barrick's verification through pre-closing due diligence and audit, implement and maintain appropriate policies and procedures applicable to [COMPANY] and its Affiliates' operations, and its and their directors, officers, employees, agents, consultants and contractors, designed to ensure compliance with the Canadian Corruption of Foreign Public Officials Act, the United States Foreign Corrupt Practices Act and/or any similar act under any Laws to which [COMPANY] is subject.

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<sup>8</sup> "Government Official" means any government, political party, or international organization official, candidate, or person acting on behalf of any of the foregoing or the immediate family members of such Government Officials.

<sup>9</sup> "Laws" means international, national, provincial, state, municipal and local laws (including common law), treaties, statutes, ordinances, judgements, decrees, injunctions, writs, certificates and orders, by-laws, rules, regulations, ordinances, or other requirements of any Governmental Authority having the force of law.

"Governmental Authority" means any (a) federal, provincial, state, municipal, local or other government (whether domestic or foreign), (b) governmental or quasi-governmental authority of any nature, including any governmental ministry, agency, branch, department, commission, commissioner, board, tribunal, bureau or instrumentality (whether domestic or foreign), or (c) body exercising or entitled to exercise any administrative, executive, judicial, legislative, regulatory or taxing authority or power of any nature, including any court, arbitrator or arbitration tribunal;

## **Anti-Corruption Compliance and Due-Diligence Covenant for Joint Venture:**

### **Anti-Corruption Policies and Procedures**

For so long as this Agreement remain in effect, [PARENT COMPANY] shall implement and maintain appropriate policies and procedures applicable to [PARENT COMPANY], [LOCAL SUBSIDIARY] and their respective affiliates' operations, and their respective directors, officers, employees, agents, consultants and contractors, designed to ensure compliance with the Canadian Corruption of Foreign Public Officials Act, the United States Foreign Corrupt Practices Act and/or any similar act under any applicable Laws that [PARENT COMPANY] or its affiliates are subject to. [PARENT COMPANY] and [LOCAL SUBSIDIARY] shall permit [Barrick Gold Corporation] and [JOINT VENTURE ENTITY] to undertake reasonable due diligence and audit processes in respect of [PARENT COMPANY], [LOCAL SUBSIDIARY] and their affiliates, and shall provide [Barrick Gold Corporation] and [JOINT VENTURE ENTITY] with access to all documents, information and personnel of [PARENT COMPANY], [LOCAL SUBSIDIARY] and their affiliates reasonably requested from time to time, in order to verify ongoing performance and compliance with the foregoing.



## **APPENDIX E: SAMPLE ANTI-CORRUPTION CONTRACTUAL PROVISION**

When entering into a contract with a government entity or with a supplier of goods and services that may interact with a government entity on Barrick's behalf, you should include an anti-corruption provision in the contract to protect Barrick from potential liability from the government entity or supplier engaging in corrupt practices. The language that should be included in this provision depends on the party involved.

### **1. Contracts with Government Entities**

If you are entering into a contract with a government entity, the contract should have an anti-corruption provision that includes the following:

- the parties agree to comply with applicable anti-corruption language, including the FCPA, CFPOA and the laws of the local jurisdiction of the government entity;
- the parties agree that no government official shall receive a personal benefit from the agreement;
- the parties agree that no representative of the Company is authorized to make or direct payments that violate anti-corruption laws; and
- the details of the agreement, including payments to the government entity shall be transparent to third parties.

Below is a suggested sample provision that includes these elements. You should consult an in-house counsel in negotiating an agreement with a government entity to ensure a sufficient anti-corruption provision is included in the agreement.

#### **Section • *Anti-Corruption***

*The Government and the Company agree to comply with all applicable anti-corruption laws, including the United States Foreign Corrupt Practices Act and Canada's Corruption of Foreign Public Officials Act and applicable local laws ("Anti-Corruption Laws"). The parties further agree that no Government Official is receiving or shall receive any financial or other benefit in their individual or personal capacity, directly or indirectly, through this Agreement or any of the arrangements contemplated herein. The parties further agree that the Company, its employees, directors, officers, and any other representatives have not been and are not authorized to make or promise any payment, either directly or indirectly, of money or other assets, to Government Officials, or the immediate family members of a Government Official, in order to secure any improper advantage for the Company or influence the decision of a Government Official.*

## **Section • Transparency**

*The Government and the Company acknowledge that this Agreement is not intended to remain confidential, and the Government and the Company may disclose to third parties this Agreement, in whole or in part, as well as any payments made or in-kind benefits provided to the Government in connection with this Agreement.*

### **2. Contracts with Enhanced High Risk Third Parties**

If you are entering into a contract with an enhanced high risk third party, the contract should have an anti-corruption provision that includes the following:

- the parties agree to comply with applicable anti-corruption language, including the FCPA, CFPOA and the laws of the local jurisdiction of the government entity;
- warranty that the supplier and its subcontractors will not make or offer payments to government officials that violate anti-corruption laws or are otherwise for the purpose of influencing the decisions of government officials;
- warranty that the supplier is not a government official nor are its directors, officers, key employees or more than 5% of its shareholders;
- breach of the provision entitles immediate termination upon notice;
- if the provision is breached, Barrick can withhold, suspend or recover payments;
- Barrick may request the supplier to undergo training;
- Barrick may audit the company's records to ensure compliance; and
- Barrick may request certification of compliance with the anti-corruption provision.

For particularly high risk suppliers, Barrick may request certification of compliance with each invoice submitted. Below is a suggested sample provision that includes these elements. You should consult an in-house counsel in negotiating an agreement with a high risk supplier to ensure a sufficient anti-corruption provision is included in the agreement.

## **Section • Anti-Corruption**

*(a) The Parties recognize that [the Company] desires to comply with all applicable anti-corruption laws, including the United States Foreign Corrupt Practices Act and Canada's Corruption of Foreign Public Officials Act and applicable local laws ("Anti-Corruption Laws"). Consistent with this, [Supplier/Consultant] hereby warranty that, in connection with the provision of services under this Agreement, it, its employees, directors, officers, and any other representatives of [Supplier/Consultant] shall not offer, make or promise any payment, either directly or indirectly, of anything of value, to any government, political party or international organization official, candidate or person acting*

on behalf of any of the foregoing (hereinafter collectively referred to as “Government Officials”), or the immediate family members of such Government Officials (hereinafter collectively referred to as a “Payment”), in order to secure any improper advantage for [Supplier/Consultant] or [the Company] or any other such Payment prohibited under Anti-Corruption Laws (a “Prohibited Payment”). In addition, regardless of legality, [Supplier/Consultant] shall make no Payment to a Government Official, either directly or indirectly, if such Payment is for the purpose of influencing decisions or actions with respect to the subject matter of this Agreement or [the Company]’s business activities. [Supplier/Consultant] further warrants that none of its directors, officers, shareholders holding more than 5% of its shares, or senior managers responsible for the provision of services under this Agreement are Government Officials or immediate family members of such Government Officials. [Supplier/Consultant] acknowledges that no employee of [the Company] shall have authority to give any direction to [Supplier/Consultant] or its agents, either written or oral, to make or promise any Payment prohibited by the foregoing. The foregoing warranty shall be continuing in effect throughout the term of this Agreement and [Supplier/Consultant] shall immediately notify [the Company] should any aspect of such warranties cease to be complete and accurate.

(b) [Supplier/Consultant]’s failure to abide by this provision shall be deemed a material breach of this Agreement entitling [the Company] to terminate the Agreement immediately upon written notice. Without prejudice to any other remedies that may be available to [the Company] under applicable law, [the Company] shall have the right to withhold or recover funds reasonably believed to be used for a Prohibited Payment from [Supplier/Consultant]. [The Company] shall also be entitled to suspend payments to [Supplier/Consultant] based on credible evidence that [Supplier/Consultant] has breached the warranty set forth in the above paragraph, and to offset or withhold payments to the extent [the Company] determines, in its reasonable discretion, that the making of such payments could subject [the Company] to liability of penalty under applicable law. [The Company] shall have the right to request that [Supplier/Consultant]’s employees and the employees of its agents or sub-contractors performing services under this Agreement receive training (by [Supplier/Consultant], [the Company] or a third party and at [the Company]’s cost) in Anti-Corruption Laws applicable to the activities being performed by [Supplier/Consultant] under this Agreement. [The Company] shall have the right upon reasonable written notice to audit [Supplier/Consultant]’s books and records with respect to the provision of services to [the Company] for the limited purpose of confirming that [Supplier/Consultant] is in compliance with this provision. [Supplier/Consultant] will provide, and will require that its personnel, agents and subcontractors provide, such periodic certificates of compliance with the above paragraph, upon request by [the Company] and will provide such information as [the Company] may reasonably request in order to verify such compliance.

### 3. Contracts with Suppliers in other jurisdictions

If you are entering into a contract with a High Risk Third Party, the contract should include an anti-corruption provision which addresses the following:

- the parties agree to comply with applicable anti-corruption language, including the FCPA, CFPOA and the laws of the local jurisdiction of the government entity;
- warranty that the supplier and its subcontractors will not make or offer payments to government officials that violate anti-corruption laws or are otherwise for the purpose of influencing the decisions of government officials;
- warranty that the supplier is not a government official nor are its directors, officers, key employees or more than 5% of its shareholders;
- Barrick may audit the company's records to ensure compliance; and
- Barrick may request certification of compliance with the anti-corruption provision.

Below is a suggested sample provision that includes these elements. You should consult an in-house counsel in negotiating an agreement with a supplier to ensure a sufficient anti-corruption provision is included in the agreement.

**Section • Anti-Corruption**

*The Parties recognize that [the Company] desires to comply with all applicable anti-corruption laws, including the United States Foreign Corrupt Practices Act and Canada's Corruption of Foreign Public Officials Act and applicable local laws ("Anti-Corruption Laws"). Consistent with this, [Supplier/Consultant] hereby warranty that, in connection with the provision of services under this Agreement, it, its employees, directors, officers, and any other representatives of [Supplier/Consultant] shall not offer, make or promise any payment, either directly or indirectly, of anything of value, to any government, political party or international organization official, candidate or person acting on behalf of any of the foregoing (hereinafter collectively referred to as "Government Officials"), or the immediate family members of such Government Officials (hereinafter collectively referred to as a "Payment"), in order to secure any improper advantage for [Supplier/Consultant] or [the Company] or any other such Payment prohibited under Anti-Corruption Laws (a "Prohibited Payment"). [The Company] shall have the right upon reasonable written notice to audit [Supplier/Consultant]'s books and records with respect to the provision of services to [the Company] for the limited purpose of confirming that [Supplier/Consultant] is in compliance with this provision. [Supplier/Consultant] will provide, and will require that its personnel, agents and subcontractors provide, such periodic certificates of compliance with the above paragraph, upon request by [the Company] and will provide such information as [the Company] may reasonably request in order to verify such compliance.*