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The continuing evolution of corporate social responsibility

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Vancouver - Corporate social responsibility (CSR) continues to be a largely voluntary, loosely defined initiative, but pressures from a number of sources continue to make it harder to ignore.

Financing requirements, public pressure, shareholder initiatives, international conventions and simply the need for internal social risk management are all increasing the need to address issues related to CSR.

At a recent seminar in Vancouver on CSR and risk mitigation, hosted by the Canada-Southern Africa Chamber of Business, several speakers emphasised the growing requirement of a proper CSR approach to securing financing.

"The genesis of this [requirement] is the mitigation of risk," said Kevin O'Callaghan, a partner at Fasken Martineau LLP, adding that banks want to ensure there is a "social license to operate."

O'Callaghan explained that while international laws and treaties dealing with CSR largely contain non-enforceable objectives, financial institutions are actually enforcing them. Public and private lenders are measuring how well companies comply with guidelines such as the International Finance Corporation's 'Performance Standards on Social and Environmental Sustainability,' which O'Callaghan said is the current standard.

"The real risk is that companies are not going to be able to raise money," said Janne Duncan, a partner at Macleod Dixon LLP, of the need to address CSR issues.

Duncan talked about corruption and bribery as key social risks. She said that Canada's Foreign Corrupt Practices Act currently requires a real and substantial link to Canada for it to take effect, but that is changing.

She pointed to the Dodd-Frank Act as an example of what to expect in the future. The Act, passed in the United States last year, gives broad powers to enforce American anti-corruption legislation on companies with only a tenuous hold in its jurisdiction. Dodd-Frank also requires more disclosure in general, such as filing all payments to foreign governments, broken down by country and project.

"This is coming to Canada," said Duncan.

On July 1 the UK Bribery Act comes into effect, which will also considerably expand extra-territorial reach. Duncan explained that the legislation creates a strict liability offense for not preventing bribes, and applies not only to companies, but also anyone who provides services or associated with the company.

"People are serious about enforcing this," said Duncan.

While anti-corruption laws are developing the sharpest teeth, O'Callaghan also pointed to increasing peer and public pressure as a powerful motivator for companies to adapt strong CSR policies.

"Corporate reputation plays a large role in creating mandatory guidelines," said O'Callaghan.

He explained that while non-binding, principles like free prior informed consent when dealing with indigenous peoples are becoming at least more expected. Many conventions, like the United Nations' Global Compact, the International Council on Mining and Metals' Sustainable Development Framework, and the Equator Principles are establishing more stringent reporting requirements, though not enforcement.

Pressure is starting to mount from shareholders as well, with a recent report by Ernst and Young showing that roughly half of shareholder initiatives in 2011 will centre on social and environmental issues. The report, not limited to the mining industry, also showed that while overall support for such initiatives is still a fairly low 18.4%, the number of social/environmental initiatives passing the 30%-support threshold has gone from 2.6% in 2005 to 27% in 2010.

The Ernst and Young report noted that "shareholder proposals currently pending reflect a growing belief on the part of institutional investors that a company's social and environmental policies correlate strongly with its risk management - and ultimately its financial performance."

And while social risk management is growing in profile there is still a lack of consensus on how to approach it, as was evident at the recent Vancouver seminar.

On one side, Martin Jones, chairman of **Banro**'s (BAA-T) charitable wing The Banro Foundation, spoke of the many schools, clinics and water systems it had built near its project in the Democratic Republic of the Congo. On the other end, Michael Auerbach, of consultancy Control Risks, stood up and boldly declared that he did not like CSR, and didn't think corporations should be involved with it.

Auerbach's argued that initiatives like those of Banro, while commendable on their own, do little to address actual risks. Auerbach said companies should "get out of CSR and into risk management." He pointed to the Ruggie Framework, soon to be adopted by the UN Human Rights Council, as a key document that contains clear, practical strategies and principles for business to meet more effective human rights obligations.

The varying perspectives at the seminar reflected different interpretations of CSR as much as anything, and underlie the continued lack of clarity surrounding it. But between financial institutions, international organizations and the public, pressure is mounting on companies to address CSR issues one way or another.