

Anti-Corruption
Minimizing the Risk of Improper Payments in an Era of
Increased International Enforcement
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IV. Compliance Strategies that Bridge the Cultural Divide

“Ethics is like a sales and marketing job. We must concentrate on getting the message heard, understood, and internalized throughout the organization.”

The concept of ethical corporate behavior is the cornerstone of any anti-corruption compliance program. Many speakers commented on the fundamental problem of communicating an ethics message in a manner that will not elicit push-back from the employee or listener. Promoters of the compliance message risk being thought presumptuous: “Do not assume my ethics are inadequate;” or intrusive: “You are my employer, not my pastor;” or irrelevant: “I know how to do my job.” Refining the message so that the recipient can hear it and respond positively to it requires creativity and flexibility, as well as sensitivity to the cultural norms of the audience.

Over the course of the two day conference, speakers representing many different business areas in many areas of the world discussed the approaches that worked best in their realms. Their shared experiences revealed some common characteristics that successful compliance programs shared.

“Cosmethics equal doom”

Presenters and participants agreed that it is critical that a company’s ethics, compliance and transparency initiatives be much more than paper documents, relegated to an obscure department and given lip service. Because of the risks involved, operating a global business successfully today requires that analysis of ethics and transparency issues be a critical component of every business decision, in every department. Failure to integrate ethical considerations into every decision will lead eventually to failure of the enterprise.

“Regardless of the employee’s home country, don’t tell him handing cash in an envelope to a public official is wrong. Tell him it’s incompatible with the risk management strategies of the company and terminal to continued employment.”

Casting compliance as a risk management issue rather than a moral issue makes the discussion palatable to more people, and minimizes the likelihood that recipient of the message will reject it. For example, natives of a country where corruption is rampant may

not respond to an edict that says bribery is wrong—wrong or not, they understand that bribery is necessary. But if the employer:

- asserts an unwillingness to engage in the business risk of being caught at bribery; and
- demonstrates a willingness to help the employee find another way to accomplish his goal; and
- reassures the employee that he will suffer no adverse consequences if he fails to reach his goal because it cannot be achieved without engaging in corruption;

the company's goal of instilling respect for compliance and transparency is more likely to be achieved.

“We are in the business of making money ethically”

Speakers emphasized the need for a demonstrable commitment to compliance and ethics throughout the company, starting at the top. Speakers explained that a culture of compliance is a business issue and should not be segregated into legal, compliance or any other department. “Compliance must be embedded in every decision, in every department,” one speaker said.

How to demonstrate a commitment to compliance? The CEO and top management must emphasize compliance at every opportunity. The company must assure that each manager, from top to bottom, is well-versed in the company's corporate ethics and compliance policies. The company must implement monitoring procedures and inform employees that their compliance will be monitored. The corporate audit committee must have real power and influence. Adherence to compliance procedures must be a component of every employee's performance review. The company must devote substantial resources to training on compliance issues, and craft individualized training modules to respond to the needs of employees with specific skill sets, acknowledging and responding to the risk profile of the particular job, the particular industry and the particular country. And the company must provide its employees and agents every means of assistance in confronting compliance issues and dealing with them appropriately.

Practical Tip

‘Integrity Lines’ Support Ethics and Compliance Goals

Several speakers noted the necessity of helping employees make the right decision. One method that has worked for some of the speakers and participants is the Integrity Line, a dedicated phone and/or email address allowing employees and agents the opportunity to discuss ethical concerns confidentially. The companies operating the lines said that usually they were staffed by attorneys, but noted that “It's important that the person who answers the Integrity Line not speak or write like a lawyer.” The purpose of the Integrity line is to assist employees, not to gather evidence of malfeasance or mete out sanctions, so it is critical that the person or people providing counsel have a service attitude, not an enforcement attitude.

A visible commitment to compliance also requires demonstrable evidence that all employees, including—perhaps especially—managers, will be held accountable. Several speakers had suggestions about ways to prove accountability among upper management. Among them were requiring CEOs to make compliance reports to a Board of Directors, tying executive

salaries to compliance performance, requiring division managers to report on compliance initiatives and enforcement actions and evaluating managers on their department's compliance, as well as their numbers.

“I never said he stole the book”

One speaker used that sentence to illustrate the proposition that people perceive differently. The meaning of the sentence changes depending upon which syllable the speaker emphasizes. It can be almost impossible to predict how a message will be read, or heard, if the recipient of the message is a native speaker of another language or even if he or she was raised in a different place than the speaker. Innocent mis-perceptions in compliance and ethics training and enforcement can have catastrophic results.

To minimize problems of perception, speakers emphasized the need to form a multi-cultural team to provide training to employees, agents and others. In some countries, it may be necessary to hire local counsel to help inform local employees and agents about local laws and regulations as well as the company's compliance and ethics policies and to implement and enforce the policies.

“Always be ready to walk away”

Speakers and participants were in consensus that employees need to see that the company will not sacrifice ethics for sales, and that employees will not suffer if compliance with company ethics policies causes them to “miss their numbers.” Several speakers emphasized the difficulty of convincing the sales staff that a deal—even a huge deal—is not worth the risk if it must be obtained through corruption. Although acknowledging that this tension will always exist, and that as long as there are people willing to accept bribes there will be people willing to pay them, the participants offered strategies to ease the tension between compliance and sales.

First, it must be clear to all employees, but especially employees and agents involved in sales, marketing and business development, that the buck stops at the compliance office. In a dispute between compliance managers and sales managers, the compliance staff's point of view should prevail.

Second, companies should make a point of rewarding individuals who lose a sale or opportunity due to refusal to engage in corrupt practices. When employees see that their colleagues are promoted or rewarded even if they did not open a market—or because they did not close a tainted sale—the message strikes home.

Third, employees or agents who do not adhere to the company's standards of conduct, or its ethics, transparency or compliance policies, must be relieved of their duties. The person's colleagues must be able to see that non-compliant behaviors will have an immediate adverse impact on the actor. A company must allow its personnel to see that before engaging in corruption they should “balance the risk of non-compliance against the risk of non-liquidity,” as one speaker put it.

Finally, companies must be prepared to lose a deal, close a line of business or even cease operations in a particular industry or geographic area if the corruption climate so dictates.