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Tips for an Effective Anticorruption Monitoring Program

From the Experts

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It is commonly understood that risk-based monitoring is an essential part of any anticorruption compliance program, as it allows companies to proactively identify, deter and remediate misconduct in real time. However, multinational companies understandably struggle with the practical realities of implementing such a monitoring protocol, often asking questions such as:

- Who should conduct the testing/monitoring? Compliance? Internal audit? An outside party?
- Should monitoring be conducted under attorney-client privilege?
- How much monitoring is enough?
- What type of monitoring is most effective?
- How do you address unique local risks while maintaining a global compliance platform?
- Should third parties or joint venture partners be monitored in the same way that employees are?

As set forth below, the key to developing an effective monitoring platform is establishing procedures



that are tailored to the business and take geographical differences into consideration. These procedures will determine what supporting documentation is ultimately available for testing of expenses, and whether audit rights exist to test compliance of third parties acting on the company's behalf.

Internal Monitoring

While bribery is not limited to the provision of tangible benefits, effective

monitoring requires companies to understand the flow of company resources to employees (whether through the use of petty cash or travel and entertainment [T&E] reimbursements). Ensuring proper use of company resources prevents both fraud and corruption.

Importantly, companies should not assume that any identified abuses are solely for the benefit of employees (*i.e.*, embezzlement). Fraudulent T&E submissions are often used to fund bribes or other improper benefits to third par-

ties, and regulators expect employers to identify and mitigate these irregularities or risk being deemed willfully blind. Effective expense monitoring requires:

- **Segregation of duties:** All expense documentation submitted for reimbursement should undergo a review process by an independent department—that is, a department that was not involved in approving or incurring the expense—before reimbursement is approved. The primary purpose of this review is to ensure that all of the below requirements are met, and the finance department often serves this function.
- **Documentation requirements:** Documentation requirements should be tailored by country, and consideration should be given to the available types of receipts or supporting documentation (e.g., China documentation may include a POS/credit card receipt, Xiaopiao/itemized receipt and Fapiao/official tax receipt). All available receipts and invoices, including proof of purchase or ticket stubs, should be submitted and reviewed for irregularities. Expense and gift logs also should provide a sufficient level of detail for reviewers to be able to identify any recurring or suspicious trends. Those responsible for reviewing the expenses should identify available resources to help spot problematic supporting documentation. For example, local tax authorities in China operate official websites and hotlines that reviewers can use to check invoice authenticity. Also, certain documentation may include unique identifiers that can leave telling signs

of falsification, such as serial numbers or codes.

- **Identifying suspicious trends:** Just as all supporting documentation must be analyzed together to determine whether a particular expense claim presents a concern, expenses across teams and geographies also should be considered. This type of analysis may reveal irregular patterns such as consecutive serial numbers for invoices from the same store dated weeks apart, which may suggest falsified or purchased supporting documentation. Local knowledge is critical to identifying suspicious trends, and questions to consider in assessing trends include:
 - Are numerous employees submitting documentation with formats that are inconsistent with others issued in the area?
 - Are employees submitting expenses or purchasing items that do not seem reasonable according to local living costs and custom?
 - Is certain documentation easier to forge, and is this easily forgeable documentation being submitted with a disproportionately high frequency?
 - Are vendors in the region more likely to list a certain type of product or use specific terms when they are not accurately listing purchased items?
- **Sampling a percentage of expenses for further in-depth review:** While in-depth expense report reviews can be expensive and time-consuming, they give companies

an opportunity to home in on schemes used by employees to conduct fraudulent activity. Thus, we recommend periodically selecting sample expenses for in-depth review, especially in areas where suspicious trends have been identified. An in-depth review could involve reviewers periodically purchasing items identified in the expense claims to determine whether the cost and supporting documentation appears consistent, or crosschecking gift logs and expenses with sales trends in a particular area to identify suspicious correlations (e.g., increase in expenses correlated with increase in sales or granting of important approval/decision).

- **Proactive reviews:** In addition to conducting local in-country testing, multinational companies might consider having a global audit or compliance team, or even an external auditor, conduct proactive risk assessments in higher-risk jurisdictions to ensure consistency of compliance controls across geographies and markets. In addition to a review of expense documentation, a proactive review may involve interviews with key in-country stakeholders at various levels in the business. Consideration also should be given to whether the review should be conducted under attorney-client privilege.

Monitoring of Third Parties

As evidenced by the fact that nearly all recent Foreign Corrupt Practices Act settlements involve conduct by third parties, third-par-

ty relationships—including joint venture partners, distributors, customs or immigration agents, travel agents or other service providers—pose the greatest corruption risk for multinational companies. These relationships pose an increased monitoring challenge due to the sheer volume of third parties and the company's inability to control their actions.

Before companies can effectively monitor third-party relationships, they must first identify all categories of third parties acting on their behalf. Some of these relationships are inherently more challenging. For example, a public relations consultant in Nigeria is going to present a very different risk profile than a supplier in Nebraska. While many of these distinctions may be obvious, companies may not have automated vendor codes or processes to allow for easy classification. This review may need to be done manually. While this could be a laborious task, given the volume of the third parties most companies use, it is an essential first step to allow for effective monitoring.

The foundation for third-party monitoring begins with the requirements set forth in the third-party agreement. Some considerations when drafting and implementing these agreements include:

- Companies should require third-party expense reporting. (The parameters of this reporting may vary by third-party type and location.)
- Companies should have risk-based audit rights over third parties and, when appropriate, sub-third parties. For example, many distributors around the world work with sub-

distributors, and we have seen a growing trend of requiring audit rights over sub-distributors. While the first step is to obtain audit rights, the second crucial step is to exercise those rights where appropriate.

- As part of any audit, employees of third parties should be surveyed to gather information about operational risks and to gauge the effectiveness of the third party's internal controls.
- Basic review of third-party expenses and gift logs may be conducted to identify suspicious trends or expenses.
- Companies should adequately document monitoring efforts and follow up on any identified concerns. This may involve creating an implementation checklist and assigning a specific person or team responsible for liaising with the third party to make sure improvements are made. Companies should also consider whether any identified third-party issues involve multiple third parties or exist internally. Third-party monitoring efforts may prove to be a useful tool for identifying internal control weaknesses within the company itself.

Staying in Touch

Even if a company has implemented a best-in-class monitoring program, it cannot rest on its success and instead must stay nimble in today's constantly changing environment. Existing policies and procedures should be revisited every few

years to incorporate the observations and experiences of reviewers on the ground, newly identified potential bribery schemes, new global legislation and the government's changing investigative targets. For example, if investigations or audits reveal that falsification methods are becoming increasingly sophisticated, the level of expense detail required for reimbursement also should be made more stringent.

Finally, internal controls are only truly effective if company culture supports compliance. Management should set the tone from the top, and ensure that their messages are unambiguous and won't be misconstrued as a result of culture clashes.

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