

OPEN AIR BLOG

Case Study #7: Communication and Training

I find it somewhat interesting that the case study calls it “Communication and Training” while the Principle (#5) calls it “Communication (including training)”. OK, I don’t find it particularly interesting, but it must mean something.

I find them to be two distinct issues. Training is training. Communication, however, should include the type of internal marketing effort that is so crucial to successfully implementing a compliance program. You could write a PhD thesis on internal marketing. In fact, I’m surprised there aren’t more books about it. Hmm...

So let’s jump right in. There’s no way this is going to be as long as the last one, so you can get a much smaller cup of coffee for this one.

Case study #7 gives us a small UK manufacturer who has engaged a local agent/advisor to help win contracts in Bribe-istan (as the Guidance puts it, “in a foreign country where the risk of bribery is assessed as high.”)

One of the guiding principles of the Guidance is that smaller companies don’t need to do as much as larger companies. I’m curious whether the author of this case study, when positing a small company, took that into account, and these are the absolute minimum that can be done if a company is to be found to have adequate procedures.

The optional list includes the following:

- Making employees of the UK company engaged in bidding for business fully aware of the company's anti-bribery statement, code of conduct and, where appropriate, that details of its anti-bribery policy are included in its tender
- Including suitable contractual terms in its agreement with the local agent/advisor including a) requiring the local agent not to pay bribes, b) giving the UK company audit rights, c) requiring the local agent to report to the UK company any bribe requests, and d) in the event of "suspicion," of bribery, a termination right.
- Making employees of the UK company fully aware of policies and procedures applying to hospitality and facilitation payments, and making its employees aware of financial controls, sanctions, and reporting channels
- supplementing the above with special training for UK company employees involved with activities in Bribe-istan.

There's a lot here, and not much of it is good.

Here's where "communication" and "training" should be separate: there's a little too much going on here. I don't like multi-tasking, you end up doing all tasks badly. You have a high-risk agent in a high-risk country. Of the four points above, fully none of them deal with communicating with the agent, or training the agent's employees, or ensuring that the agent trains its own employees. One of them, the contract-rights point, deals with it a little, but it's so bad, and so unrealistic, that I find it hard to even discuss it. But I will.

Let's take each point as it comes, shall we?

Point #1: You have to make your employees aware of your anti-bribery policies. Said another way, water is wet. Thanks.

Point #2: Let me come back to this one.

Point #3: Making employees aware of rules around hospitality, facilitation, financial controls, disciplinary consequences, and reporting channels. I would have thought that this would be covered by point #1. But just in case you missed it the first time: water is wet. Yes, you need to make your employees aware.

Finally, point #4: supplement where appropriate with additional training to those employees who are involved with Bribe-istan. Do I need to say it again? OK, I will: water is wet.

Let's talk about training. You need to have tiered and targeted training. The first piece to that is identifying who needs more training. Top tier are employees who sell to foreign governments. Finance people, marketing people are next tier. Third tier is all managers not included already. Finally, everyone else. In a small company, fourth tier get nothing, third tier get normal communications (some of which should include anti-corruption messages), second tier gets familiarization, first tier is where you spend your time. That's for a small company. Larger companies should follow a stricter training regimen. Fourth tier get nothing special, third tier gets familiarization anti-corruption-specific training. Second tier gets specialized training to their function (e.g. Anti-corruption for Finance people), that should be specifically developed for that function. First tier should get regular, specifically designed, live training. Yes, live.

Let me digress for a second about training methods. Live is good. Everything else sucks. Yes, everything. Okay, maybe not the Cisco Telepresence stuff (full disclosure: Cisco is a client of my employer, Recommend. But I fell in love with Telepresence way back when I worked for Amex, so there's no real conflict). Telepresence is very hi-def video conferencing. Fifty inch flat screen TVs. Very cool. It's almost like being there. No audio lag like on other video teleconferencing systems. None. It's awesome. So that's probably 90% of being there. Live works.

Conference calls don't work. Certainly e-learning doesn't work. By "doesn't work" I mean that it doesn't stand a snowball's chance in hell of actually changing behaviour. That doesn't mean you don't have conference calls, or web-based training. You certainly need it, because you won't be able to do live training for everyone. But there's just no substitute for live training.

So if you're a large company, you need to give your highest risk employees live training.

You also need what I call "informal messaging." This is keeping anti-corruption in front of your employee audience. You need more frequent informal messages for high-risk employees. These can be mentions in the CEO video or discussions in town halls about corruption issues, or other similar opportunities. As one of my old bosses used to call it, "teachable moments."

Now let's move over to point #2, contract provisions. The reason I really don't like it very much is that it's advice to small companies. But other than the first point, requiring the local agent not to bribe, they're all not feasible for smaller companies. A small company won't have the capacity to audit, neither in terms of resources, nor in terms of finances. And a small company won't have leverage on its third party agent to force it to adopt these audit rights. Plus, in my experience, if there's an issue, the odds of your third party agent in Bribe-istan letting you conduct a real audit are nill. So you're in a situation where you're asking for something that you can't actually act on (and if you have the audit right and don't exercise it, you are really in a pickle.)

Let's go in order, though. I have yet to meet someone who would pay a bribe, but not sign something saying they won't. A contract provision requiring a local agent not to pay bribes...hmmm...do you want to make him pinky swear? Same with making your agent swear to report bribe requests. If he lies, you can give him double-secret probation.

Let's say a word about termination rights. First, if you have them and don't use them when an issue happens, you look bad. Plus, having negotiated more of these things than I can count, they're notoriously hard to get into contracts. And the people who negotiate these things have to know that it's a deal-breaker, because otherwise, they'll have termination rights in some contracts but not others. And you know how that looks to a regulator when the agent with whom you have an issue is one of the ones without.

And why are contract rights in a list of communication and training points? I don't think there was enough guidance here for smaller companies in their interaction with risky third parties. What do you think?