BEST PRACTICES ON TRAINING EXECUTIVES ON ANTI-CORRUPTION LAWS

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Good strategists manage uncertainty by playing the probabilities, but too many executives use wishful thinking when it comes to anti-corruption compliance. Playing the probabilities means understanding the odds of success. Just 1 in 12 companies manages to Mitigate Reputational Risk Exposure resulting from non-compliance and therefore this result in a High Level of Reputational Risk Exposure.

Non-compliance seriously increases risk and liability; depreciates M&A and joint venture value; potentially damages the brand; undermines and reduces trust and confidence; increases the potential for prosecution; and threatens sustainability. Executives must be pro-active and continuously diligent in their efforts to mitigate individual and organizational risks.

Corporate board members devote significant time to financial oversight and strategy, while ignoring steps needed to protect and promote its most important intangible asset – its culture and reputation. Corporate boards are due for a rude awakening – compliance expectations and competing stakeholders are demanding increased more effective oversight. Directors need to learn how to carry out these important functions.

When training executives on anti-corruption laws we need to make them realize that Boards and senior executives need to do substantially more than a once-a-year “flyover” of their anti-corruption compliance programs if they expect the DOJ to conclude that their program meets the government’s definition of “effective.”

Boards need to be well-versed in all elements of the anti-corruption compliance program, regularly interact with compliance and legal personnel, and receive timely briefings on the program and the personnel responsible for its stewardship and operationalization. Directors and senior executives must understand that any compliance failures are something that they may have to answer to.

The existence of adequate policies and procedures does not provide a full defence against bribery charges but can be a useful tool for negotiating with authorities or avoiding proceedings against corporate entities. Further, because liability can also be founded on ‘wilful blindness’, the existence of anti-corruption policies and procedures can be helpful in rebutting any inference that a company or its executives ignored bribery.

There is still a place for tone at the top. The board and senior leadership must set the right tone in their communications across the company and outwardly. But tone needs to be paired with persistent actions on the part of the board and senior leadership signaling that ethics and compliance are a top priority and that the company is committed to doing business the right way and is prepared to back up its words with actions, including walking away from business and relationships that are not in alignment with the company’s organizational ethos. That is how tone at the top becomes conduct at the top.

When training Boards and senior executives on anti-corruption laws, we also need to make them realize that they cannot control the integrity of individuals, but they can certainly influence it. An organization’s culture influences the integrity of those employees that are either on the fence or would rationalize wrongdoing when the culture promotes willful blindness, permits ignorance of policies and controls, or encourages the avoidance of those controls through unreasonable business goals and rewarding success by any means.

Finally, Boards and senior executives need to be aware that no controls, compliance program, or business culture can eliminate or totally prevent people without integrity from doing wrong, but the absence of those factors greatly increases the capacity of wrongdoers to operate with impunity, while the strong presence of those factors greatly increases the likelihood of preventing and detecting wrongdoing, as well as providing a foundation to mitigate its impacts and consequences on the organization.