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PERSPECTIVE

Tips for startups to get ahead of corruption risk

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The startup environment tends to be fast-paced and innovative, focused on achieving high growth and quick success. It's no surprise that compliance tends not to be a high priority for many startups. Yet the features of startups that are critical to success can also create an environment fraught with corruption risk because risk tolerance tends to be high and growth tends to outpace controls.

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Getting ahead of corruption risk early can help a company achieve long-term success and prepare the company for that potential eventual IPO or acquisition. Remember that, even pre-IPO, the Foreign Corrupt Practices Act applies to all U.S. companies (and, under a number of circumstances, can apply to non-U.S. companies). And there are likely other anti-corruption laws that also apply to your company, as many countries have adopted anti-corruption laws.

But no need to fear. The key is to think about corruption risk early and develop an anti-corruption compliance program that is rightsized for your company. To that end, there are five key steps any startup should take to get ahead of corruption risk.

1. Understand Your Company's Risk Profile

Do you truly understand the corruption risks your company faces? When we work with startups, we are frequently told at the outset that the company has no corruption risk. Perhaps because there are still very few employees, all are U.S.-based, or there are no products yet being sold, companies often assume that corruption is not a risk they face. Upon digging further, we learn about the sales representatives the company recently engaged in Southeast Asia, the consultants that are helping to assess market-entry opportunities in Brazil and Russia, and the contractors working in India. Companies often have corruption risks that they do not recognize or appreciate. Without identifying these risk areas, it is impossible to appropriately mitigate them.

Conducting a corruption risk assessment is, therefore, considered by enforcement agencies in the U.S. and abroad to be a fundamental aspect of any compliance program. This does not have to be a major undertaking, and the scope and approach will vary by company. But taking steps to assess risk is the first, and probably most important, step in making sure your company is getting ahead of corruption risk as it grows.

2. Now That You Understand Your Risk Profile, It's Time to Reassess

In a startup environment, there tends to be no such thing as a steady state. As the business is growing, moving into new markets, launching new business models, seeking new regulatory approvals, hiring more employees, and engaging more business partners, the risk profile is ever evolving. The key is to understand that assessing your corruption risk is not a one-time event. As changes in the business occur, it is important to be thinking about how those changes could impact your company's risk profile, and whether there are risk-mitigation actions that should be taken to address those changes.

3. Proactively Develop and Implement Compliance Program Basics

Regardless of size or existing risk profile, it is never too early to put in place a basic compliance infrastructure, which should, at a minimum, include three key elements:

First, the company should adopt an anti-corruption policy, or at least incorporate basic anti-corruption guidelines in its code of conduct or employee handbook. These guidelines should address key risk areas, including government interactions, gifts and hospitality, and the use of third-party business partners.

Second, you should provide anti-corruption training to key audiences, including employees that are in a gatekeeping role (i.e., finance, legal, HR), and those in roles that tend to present greater corruption risk (i.e., business development, sales, marketing, managers in higher-risk regions). Training these employees will better enable them to spot potential risks as they arise and escalate them appropriately so that they can be addressed.

Third, anti-corruption representations should be included in your third-party contracts to inform business partners of your expectations regarding compliance, and to protect your company. If you have third parties working on your company's behalf in high risk jurisdictions, you should also develop an approach to conducting risk-based due diligence on those third parties to make sure you are working with reputable partners.

4. Anticipate the Expectations of Your Investors and Business Partners

It has become increasingly common for investors and business partners to require companies not only to represent, but also to demonstrate, that they have compliance programs in place. Proactively assessing risks and implementing a basic compliance program will position your company to be prepared for such requests so that unaddressed corruption risk does not become an impediment to securing funding or entering into important transactions.

5. Remember, It's Not Only the Foreign Corrupt Practices Act

Finally, while companies tend to focus on FCPA risk (and for good reason, considering the enforcement environment), it is important to remember that there are many other corruption-related laws, including state laws, as well as anti-corruption laws in other jurisdictions around the globe. Some laws have prohibitions that are broader than the FCPA, including prohibitions against commercial bribery and prohibitions against not only offering or paying bribes, but also soliciting or accepting bribes. When evaluating corruption risk, and designing a compliance program, it is important to be mindful of applicable laws beyond the FCPA.

Conclusion

While the idea of implementing a compliance program can be daunting for a startup, proactively taking these five steps can help protect the company, with minimal business disruption, and prepare it for future success.

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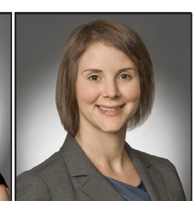
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