



30 Important Considerations for Effective FCPA Compliance

Effective design, good-faith implementation

As enforcement of the Foreign Corrupt Practices Act (FCPA) has gone through the roof in recent years, so too have the financial and reputational impact of FCPA transgressions. Instituting a robust and effective FCPA compliance program is more important than ever to a company's bottom line and good name.

Whether you're a public or private company, having an ethical organization that actively works to prevent and detect corruption and bribery is likely top of mind given the enforcement environment. But limiting a majority of your focus to due diligence around third parties or mergers & acquisition could be costly. Your overall FCPA compliance program requires just as much attention.

Though the Foreign Corrupt Practices Act isn't new, FCPA compliance isn't a set it and forget it endeavor. Diligent companies understand that FCPA compliance requires constant monitoring—both of the company's own employees and all third party affiliations. While the number of FCPA related cases has declined over the past four years, the amount of the penalties has increased, causing a significant and crippling impact at the companies that have fallen out of step with regulatory expectations when misconduct comes to light. Companies that make a good faith effort and implement an effective FCPA compliance program are more likely to receive lenency from the DOJ and SEC if an FCPA violation does occur.

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Diligent implementation, ongoing monitoring, periodic review and continuous improvement of your FCPA compliance program is the best way to demonstrate a good faith effort to comply. From general requirements, to risk assessments, to proper training, here are 30 important considerations for effective FCPA compliance.

30 CONSIDERATIONS FOR EFFECTIVE FCPA COMPLIANCE PROGRAMS

GENERAL EXPECTATIONS

- 1 The right tone is set at the top. Does your upper management, executive team and board of directors fully embody, embrace and promote your anti-corruption policies?
- 2 A member of senior management is assigned to oversee FCPA compliance.
- 3 The designated overseer has direct access to the board, the authority to conduct investigations and the resources and autonomy to perform oversight duties.
- 4 The company regularly monitors, audits and updates its program to ensure ongoing compliance.
- 5 Your compliance program, including plans, implementation and effectiveness is well-documented and regularly audited by an independent party.

RISK DRIVEN

- 6 Your FCPA policies should be heavily based on the results of your compliance risk assessment. Is your risk profile well-documented and driving your compliance program initiatives?
- 7 Focus on the highest priority risks—ones with the most severe consequences, that are more likely to occur and/or have the potential to accelerate quickly if not addressed. Not all risks are equal and you can be penalized for missing a major issue because you put undue stress on less risky areas.
- 8 When analyzing risk, take into account your company's size, industry, specific regulations, where you do business, who you do business with, previous history with bribery issues, your level of involvement with governments and other key factors that could contribute to potential corruption.
- 9 Risk assessments should be conducted at least every other year, especially when a change in the risk profile—brought on by a new regulation, new business partner or company expansion—takes place.

ACCOUNTING PROVISIONS

- 10 Do you have auditable, transparent accounting procedures in place to ensure accurate book and record keeping? Proper record keeping is a fundamental, yet critical, aspect of FCPA compliance.
- 11 Institute internal controls and perform regular audits of your books and records that would reasonably detect misconduct.

- 12 All receipts and supporting records and documents are kept in a compliant manner and can be quickly and easily supplied to auditors or regulators if requested.

POLICIES & TRAINING

- 13 You should have explicit written policies regarding bribery, corruption and FCPA. Regulatory requirements and company expectations should be clearly outlined in these policies.
- 14 Policies are available and easily understandable for all employees. This includes providing policies in employees' native languages.
- 15 Do you provide regular training on your policies?
- 16 How often do you train specifically on FCPA standards? According to one survey, the majority of companies conduct training at least once a year.
- 17 During training, include examples of real-life scenarios to help your employees understand acceptable and unacceptable actions in context. Q&A and FAQs are also great tools for murky areas.
- 18 Be meticulous about recording policy attestation, training completion and comprehension tests.

REPORTING & RESPONSE

- 19 Institute a hotline for employees to ask questions or report suspected wrongdoing. Use employee culture surveys to make sure they're comfortable reporting issues without fear of retaliation and have faith that reports will be addressed appropriately.
- 20 Have a clear process and procedures in place to follow up with reported issues.
- 21 Clearly outline and educate employees on disciplinary procedures for FCPA violations.
- 22 Ensure violations are fairly and consistently responded to for all levels of employee across all locations.
- 23 Tie violations to specific policies and training to pinpoint potential weak spots in your compliance program.
- 24 Update your policies, training and communications in reaction to issues to prevent future violations.

THIRD PARTIES

- 25 Evaluate a third party's reputation and other relationships, particularly with foreign officials.
- 26 Are your FCPA policies included in third party contracts? Ensure third parties know and attest to your FCPA policies.
- 27 Do your third party partners have their own FCPA, anti-bribery or anti-corruption policies in place? Do they meet your standards?
- 28 In-house FCPA training should extend to third parties and the same disciplinary actions should be expected in the event of a violation.
- 29 Evaluate the internal controls and record-keeping practices of any third-party partners, subsidiaries or joint ventures. FCPA laws extend to these parties—as does your liability in some cases if they step out of bounds.
- 30 Following a merger or acquisition, the acquiring company assumes all legal and business risks. Are you performing detailed due diligence to ensure FCPA compliance prior to inking the deal?



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