

Tone deaf at the top: encouraging top-down compliance in Asia Pacific companies

Not infrequently, our introduction of the concept of “Tone from the Top” commitment to compliance has been met with open-mouthed astonishment and, in some cases, suspicion or even rejection by Asia Pacific managers and C-Suite executives.

Management commitment to compliance is not as readily accepted in Asia Pacific, as it is elsewhere. The board of directors at one company asked whether it could be exempted from the anti-corruption policy. Owners and CEOs have expressed reluctance to have their names attached to it. And worse, in some companies, senior management has engaged the compliance directors in an endless cycle of “tweaks” that delays final approval and roll-out of a policy, thereby allowing questionable practices to continue.

This skeptical reaction partly comes from the harsh reality that – at least in some Asia Pacific markets – bribery and corruption are so pervasive as to be believed not only inevitable but also critical to winning business. Moreover, extraterritorial enforceability of foreign anti-corruption laws (i.e., the U.S. FCPA and UK Bribery Act) is very unfamiliar here. Therefore, Asia Pacific management sometimes does not become genuinely engaged or fully appreciate the potentially dire consequences that could follow by their lack of engagement.

Fortunately, these responses are trending out. The recent examples of senior executives being held liable for their companies’ ill-considered decisions to offer bribes in developing markets are helpful to defuse skepticism and gain traction. As

Asian Pacific companies seek to enter Western markets and stock exchanges or seek Western investors and business partners, they are hearing repeatedly that their senior management support and commitment to anti-bribery must be “strong, explicit, and visible.” It is not enough to have a quote on the front page of the anti-corruption policy although that is clearly a baseline from which to start.

With this background, the following are seven practical tips we suggest to demonstrate management commitment.

1. “Tone from the Top” statement

It is important that the message from senior management be authentic and culturally sensitive. Do not use a statement cribbed from the Internet or a stock statement from your lawyers — if it does not sound like something your founder and CEO would say, it will not resonate with your employees.

Nor should this statement be set in stone or be confined to the anti-corruption policy documents (including employee handbooks). It must be updated to address their concerns and reside in your employees’ daily consciousness. We recommend that it be distributed widely during the Autumn Festival, Chinese New Year, and other traditional gift-giving holidays.

2. Tailored

Often investigation of a single corruption case reveals more pervasive and systematic problems rooted in the lack of

commitment from the management. The establishment of an effective compliance program would therefore require a very worthwhile internal review of the overall compliance status to identify potential loopholes to allow tailoring of the program to the circumstances.

Such a tailored overhaul of the system would more effectively fix the existing problem and prevent future offence, which the law enforcement authorities would likely credit to the management (even if an isolated corruption issue is uncovered afterwards).

3. Resourcing

When management statements are issued without sufficient and proportionate financial support, they often ring hollow and are ineffective. When management denies reasonable compliance budget requests

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because they view them as costs rather than investments, it frequently comes back to haunt their company if it runs into a corruption issue. It is important for employees to see a regular beat of compliance-related efforts, rather than lip service.

4. Empowerment of compliance personnel

Choose and empower someone to lead the compliance effort who is knowledgeable about the issues and effective in communicating the compliance program. Then, give that person and their compliance staff a voice that reaches to the top and to every rung in the organisation. But choose carefully because designating someone without the respect of senior management or even worse, not empowering that person with knowledge, sends a terrible message about management's lack of commitment, which will be difficult to overcome.

For example, in some jurisdictions with a high corruption score, designating a person who potentially may have been involved in questionable payments as the compliance official can lead to failure of the program. On the other hand, if that person is truly committed to compliance and is empowered, no one else would be better at identifying the risks and eliminating them as that person has invaluable first-hand, real-time knowledge.

5. Inclusion of compliance in business decisions

Having management ask, "What would the compliance department do?" early in the process of considering business opportunities is invaluable in demonstrating compliance commitment. Inviting compliance personnel into the decision-making process and business discussions

records the management's real understanding of the importance of compliance and the actual action taken to show its commitment to "zero tolerance." On the flip side, marginalising compliance issues to the legal department (which is somewhat common in Asia Pacific) and getting sign-off after the fact will be noted in evaluating the tone at the top.

6. Metrics

Management should insist on and give visibility to the compliance plan, measuring and rewarding demonstrated improvement and enhancements. As is the mantra of many great companies, if something is not measured, it does not get done. Additionally, where there is no accountability, results do not matter.

So we recommend adding an audit item for compliance that provides a score with other key management metrics. If an adjustment needs to be made in setting regional goals due to the prevalence of bribery in that market, do it publicly—in other words, do not set goals that require bribery. Instead, in appropriate jurisdictions, allow for delay to encourage, rather than penalise, efforts to avoid bribery. For example, operating in Malaysia is a different situation than operating in Hong Kong and that reality should be taken into account.

7. Recognition, rewards, and discipline

When an employee credibly explains a missed deadline, a lost sale, or a decision not to engage a third-party based on her refusal to pay a bribe or assume the risk of bribery, that employee's decision should be rewarded ... monetarily and in proportion to how the employee would have been rewarded if the deadline was accomplished or the sale was made. Many anti-corruption compliance programs are including

provisions that provide recognition when it can be demonstrated that a missed opportunity was the result of proactive anti-corruption effort.

Conversely, when an employee violates the company's anti-corruption policy or applicable laws, fails to meet anti-corruption goals or metrics, or never gets around to training, visible discipline may be in order to set an example and underscore the seriousness with which management takes these obligations.

When there is an allegation of wrongdoing and an investigation ensues, to the extent allowed by local law, the results should be made public. Even if no overt message is sent, employees notice if a manager departs rather than is promoted, when it is largely known that their previous success was a result of bribery.

Conclusion

In Asia Pacific, it is not sufficient for management to simply "hum a few compliance bars." Hard decisions must be made but your compliance commitment can be measured in, for example, the number and reasons that opportunities were foregone because of bribery; by those third party agents and distributors that were rejected because of due diligence fails; the reports of bribery allegations and the result of investigations that were undertaken; employees who were recognised for doing the right thing; and those who were disciplined for bad decisions. These metrics will demonstrate that the right tone is at the top and that management is truly committed to compliance.

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