

Cuneyt Akay:

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Cuneyt Akay:

Welcome to the GT ABC Podcast. I'm your host Cuneyt Akay. Here, the GT stands for Greenberg Traurig and the ABC stands for Anti-bribery and Corruption. In this episode, we're going to turn our attention to compliance issues that should be taken into account as companies start to reopen their offices and bring their workforce back together again. The pandemic has caused and continues to cause extraordinary disruptions, including, but not limited to business upheaval. And during the pandemic companies certainly adapted and settled into new ways of working and doing business. Now that companies are starting to transition back to having people in offices, at least in certain places and to some degree, this will certainly bring new disruptions and new evolutions into how companies and businesses operate.

Cuneyt Akay:

Therefore, we suggest this is a good time to do three things. First, assess your company's current risk profile and anticipate what that risk profile may be in the coming 6 to 12 months. Second, determine what resources are available and what resources may be needed for the compliance program. And third, evaluate whether your compliance program addresses current and future risks adequately. The context for the discussion in this episode is the DOJ's evaluation of corporate compliance program guidance. This guidance provides a useful framework for companies to use when evaluating their compliance programs.

Cuneyt Akay:

Now, the DOJ doesn't use any rigid formula to assess effectiveness of a compliance program. Instead, the guidance ask three primary questions. First, is the company's compliance program well-designed? Second, is the program adequately resourced and empowered to function effectively? And third, does the compliance program actually work? And we're going to use the evaluation of corporate compliance program guidance as the framework for the discussion. So I'd like to introduce our guest Michael Marinelli. Michael's a shareholder in the GT Austin office. He has helped clients build and assess compliance programs for over 30 years, particularly with a focus on anti-corruption, export controls and sanctions issues.

Cuneyt Akay:

Michael, welcome to this episode of the GT ABC Podcast.

Michael Marinelli:

Thanks you, Cuneyt. It's good to be on.

Cuneyt Akay:

Let me start by asking, as companies start getting back to some form of working in offices, what should they be looking at in terms of their compliance programs?

Michael Marinelli:

I think the first thing to tackle is whether the program is properly designed. Design is by and large a function of risk and resources. If a company's risk profile or available resources have changed, the program may not be well-designed for the current environment. Let me start with several risk factors to consider. One is the impact of working remotely, hybrid work models and uneven returns to office across the enterprise. The second thing I would be looking at is fraud. Incidents of fraud have spiked during the pandemic. That includes both internal and external fraud. So I would put that near the top of my list in understanding whether my risk profile has changed.

Michael Marinelli:

Another issue is whether the company's government touchpoints have changed. As one example, companies participating in COVID related programs have taken on new obligations and new relationships with the government. And in one way this ties back to the fraud issue, as US and other governments are aggressively pursuing fraud in connection with COVID related programs. Another thing that we've seen in a lot of companies is pretty significant management and other personnel changes, and that can affect the risk profile. And in particular, the likelihood of whether a certain risk event or adverse event will take place. And that has to do with time and role and familiarity with the program as it relates to the role.

Michael Marinelli:

In a similar vein, I would be looking at service provider changes in turnover. Specifically, whether there are new third parties interacting with the government on the company's behalf. It's also useful to take into account supply chain disruptions, which have been significant around the world. A final consideration is understanding which changes are permanent and which are temporary. And that requires the compliance team to understand the company's strategy and plans going forward. Once you have a handle on the risk profile and any changes to it, it's time to turn to the question of what compliance resources are or will be available?

Michael Marinelli:

Budget and compliance head count are always at the top of the list when it comes to resources, but those are not the only resources I don't think to be considered. It's important to understand what resources are available and functions that partner with compliance. In particular, I would be looking at audit, legal and finance. Those functions are always interrelated with compliance. Another question that should be asked with respect to resources is whether there are system and automation solutions that can be deployed. And here seen two somewhat conflicting trends, sometimes within the same company. On the one hand companies have put resources into automating business and compliance processes to address working remotely. At the same time, companies have canceled or delayed longer-term investments, including technology. So it's important to sort out what you have in terms of automation or system support and what will be coming online and when. Once you understand your resources and your risks, the design analysis is actually fairly straightforward. Are new and emerging risks being addressed?

Michael Marinelli:

A second question is whether the resources are adequate and whether they're allocated to the highest risk functions, geographies and operations? But Cuneyt, evolving risk and resource profiles are not the only impact of the pandemic. It's also impacted compliance program performance, in some cases significantly. How should companies assess the state of their programs?

Cuneyt Akay:

That's a really good question. And there's a few key questions that I can think of when evaluating the program that companies really should be thinking about. First is certainly what is the state of the program currently? And what problems may have developed during the last year plus during the pandemic with the program? And then taking a look at what caused or what is causing those compliance programs? And the first step here really is to figure out what problems may currently exist regarding the compliance program. And there are a couple of steps that I think companies can take that will help them assess and evaluate the current effectiveness of their program. And one thing is there's certainly a fair amount of internal information that company compliance program officers or compliance professionals can look at to really glean some information about the current state of the compliance program.

Cuneyt Akay:

Looking at audits and monitoring reports during the last year plus of the pandemic, if there've been some audits or if there's been monitoring, those reports may give some good insights for the compliance team to see and evaluate the current effectiveness of the program. Second, you may look at the results of internal investigations and also look at the associated remediation of those internal investigations. So if there's been anything that the company has investigated during the pandemic, that may be a good place for the compliance team to look at to see if there's any compliance remediation issues that have come up. Or if there're any insights during the internal investigations that may help evaluate where the current compliance program is.

Cuneyt Akay:

Similarly, hotline reports and hotline data may provide useful insights into where the compliance program may be and where there may be some challenges for a company within compliance. We're also seeing that companies are using more data analytics. And so you may be able to look at some of the data analytics compiled by various business units or by the finance function to see if there're some areas where there are compliance gaps. And lastly, you may use any transaction testing that has occurred internally to see if there're any gaps in the compliance program.

Cuneyt Akay:

In addition to looking at internal information, companies may look at external sources of information to find out and assess where the effectiveness of the compliance program may be currently. One good place is to look at customer complaints. Oftentimes, customer complaints can give you some good insights into areas of the business that may not be operating in the manner that they should be and there may be some compliance gaps there.

Cuneyt Akay:

You may also look at new litigation that's been filed against the company to see if there's been any breakdowns from a compliance perspective. And finally, you may want to look at enforcement actions. And when I say enforcement actions, I really mean enforcement actions, not only from an anti-corruption perspective, but from a compliance perspective overall to see if you can learn from enforcement actions involving companies in your industry or operating in the same regions where your company operates to be able to see if there are some compliance gaps that may have arisen in your own company as well.

Cuneyt Akay:

Then the next question is what caused or is causing the compliance issues? And we need to learn this to figure out exactly how to address the challenges. And there are certainly some common factors here. First, there may have been conscious business decisions and these decisions may have happened for a variety of reasons. Some good such as requirements that were impossible to meet during the crisis. For example, conducting onsite assessments or onsite TPI audits were virtually impossible during the pandemic. And some were impractical such as requiring signatures on forms. We know that there's been a growing trend towards electronic signatures and e-signatures on forms. And those are certainly good trends that are happening. But some reasons were not so good. Some folks just ignored compliance procedures because it's a crisis and the business just wanted to keep on focusing on the business and not on compliance.

Cuneyt Akay:

Second, there is management messaging. Managers in crisis mode often emphasize things like revenue and cost cutting over compliance efforts. Another common factor we've seen is inadequate resources. We certainly know that for good reason, many companies and businesses had reductions in head count and had limited resources as Michael you were just mentioning. And that also goes to one of your points earlier about personnel and structural changes as resources were certainly strained during the pandemic, there may have been some personnel and structural changes that led to some of the compliance issues.

Cuneyt Akay:

And finally, remote operations. We certainly know that there's lots of challenges with people not working together, not working in the same space. And some of the things that we've seen are, we've heard anecdotally about how business leaders, business units didn't communicate with compliance as much because they weren't just right down the hallway. Or it was more difficult because of some of the communication and documentation gaps that were occurring. So we've certainly seen some common factors that cause, or maybe causing the compliance issues. But regardless of what caused the compliance issues, it is certainly important to right the ship. So Michael, how should companies establish priorities and develop a remediation plan?

Michael Marinelli:

Well, the analysis should be aimed at figuring out where you are and what I think of as the damage spectrum. At one end would be the program that, hey, it's held together. There've been some bumps and potholes in the road. Maybe some of those are big, but overall program remained stable and functional. The other end of the spectrum, there are programs where there's been significant damage that has not yet been addressed to figure out where the company stands. I would suggest a few lines of inquiry. One is, are their performance issues isolated or widespread? And that can be over time across geographies, across departments, within departments. But obviously you want to start to address the pervasive issues first and then you can turn to things that are one-off or isolated.

Michael Marinelli:

Second question, and this relates to what you were just saying Cuneyt, are the issues truly related to the pandemic or was the pandemic simply an excuse to relax or eliminate requirements? The answer to that question will help companies determine the appropriate remediation steps to take. Third inquiry, are the issues serious or is it garden variety execution errors? And I would urge folks not to get bogged down trying to fix minor issues like the file's not complete or the form isn't signed, but focus instead on

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the serious issues. Fourth question is whether there are discernible trends? I would be most concerned with an issue where poor performance continues to rise or rose sharply and plateaued at a high level. I would be less concerned with issues where there was a spike followed by a trend back down to more normal error rates.

Michael Marinelli:

And then one final thought, ideally companies will integrate the risk resources and performance analysis so that they have a holistic view of whether the program is functioning as it is supposed to function.

Cuneyt Akay:

Well thank you, Michael. And thank you for joining us on this episode of the GT ABC Podcast. Three key takeaways as companies are starting to return to office and starting to bring their workforce together. First, companies should evaluate whether their risk profile has changed during the pandemic. Second, compliance teams should understand what resources are available and maybe more importantly, what resources will be available from a compliance perspective. And third, companies should evaluate whether the pandemic has degraded the effectiveness of their program. And if so, should develop a plan and prioritize ways to get their compliance program back on track. As always, thank you for tuning in to this episode of the GT ABC Podcast.