EXPERT TALK

TAILORING ANTI-CORRUPTION COMPLIANCE: VIETNAM

By John Frangos, Tilleke & Gibbins

Effective anti-corruption compliance programs are tailored for local jurisdictions. While bribery methods share common characteristics, different countries usually have their own business or cultural norms which impact corruption risks. In one country, for example, it may be common for bribes to be disguised as charitable contributions; while in another, political contributions are the favored method to make illicit payments.

Most companies doing business across borders have codes of conduct or other forms of corruption prevention. But when a company is operating in a high-risk environment, just having a code of conduct or a rule prohibiting bribery is not enough. Great-looking compliance programs can falter when set against real-world situations. In short, although many companies promote an organizational culture of ethics and compliance, that culture must be translated to fit the intricacies of local business cultures. This article will review key principles on customizing compliance programs for local jurisdictions, using Vietnam as an example.

THE RISKS

Vietnam's rapidly developing economy offers foreign investors significant business opportunities. For investors to truly benefit from this dynamic emerging market, they should also be aware of the compliance risks. While Vietnam has taken measures to combat corruption, the practice persists. Transparency International, an anti-corruption NGO, has given Vietnam a 2015 score of 31 out of 100, with 100 being the least corrupt. Vietnam is ranked 112 out of 168 countries in the survey. For comparison, Cambodia has a 2015 score of 21 out of 100, and a rank of 150 out 168 countries; Laos's score is 25 out of 100, and is ranked 139 out of 168. Thailand's score is 38 out of 100, and with a rank of 76 out of 168.[1]

Vietnam's centralized bureaucratic structure gives its government oversight over nearly all economic activity. Foreign and domestic investors must work with officials of varying seniority on a regular basis. Licensing authorities, tax officials and police are a part of normal business life. Indeed, the level of investor-to-state interaction is far higher than what most Western companies are used to in their home jurisdictions. Organizations need to be aware that public officials can be perfectly placed to ensure this illicit trade succeeds by exchanging public power for bribes or by turning a blind eye.

Agents, consultants and other third-party intermediaries thrive in this environment. Foreign investors often find the bureaucracy opaque and challenging. Many officials also do not speak English. As a result, investors may have no choice but to engage local intermediaries to liaise with state officials.

The use of such intermediaries greatly elevates the risk of a corruption-related compliance failure as they may not know or follow the company's compliance policies. In addition, it's harder to have transparency around and monitor their actions.

Furthermore, state-owned enterprises (SOEs) still play a dominant role in Vietnam's economy. While SOEs' influence is gradually declining, foreign investors should expect to do business with government-invested companies regularly. Joint venture enterprises, business cooperation contracts, public-private partnerships and general procurement all involve working with the state. Under the U.S. Foreign Corruption Practices Act and other international anti-corruption laws, employees of state-owned companies are generally considered government officials. The government's strong presence in business presents many opportunities for bribery, increasing the risks.

ENSURE THE CORRECT TONE

So what can foreign investors do to protect themselves in this rewarding but high-risk environment? First and foremost, local management must sincerely believe in doing business ethically. While this concept may sound cliché, it holds true. An honest regional managing director is far less likely to tolerate bribery or any bending of ethics rules. This will set the correct tone for the rest of the employees in the local entity. An ethical regional managing director is also less likely to require staff to do "whatever is necessary" to get business. Having a laissez-faire attitude to compliance from management will significantly increase the prospects of a compliance failure, given Vietnam's corruption risks.

LOCALIZED RISK ASSESSMENT

An initial step to tailor the anti-corruption compliance program is to conduct a localized risk assessment for Vietnam. The assessment should identify the applicable risks to the company. The risks will largely depend on the company's industry, customer base and business operations. For example, life sciences companies doing business with state-owned hospitals will face different risks than accountancies. Common risks to assess in Vietnam include the number of required licenses and approvals to obtain; the extent to which the investor will engage with SOEs; and whether and how often the investor will engage third-party agents, consultants or distributors.

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[1] See http://www.transparency.org/country/

CUSTOMIZED POLICIES AND PROCEDURES

After the risk assessment, the investor should prepare customized policies and procedures to address the relevant risks. As part of this, investors should examine their existing global policies and procedures and address any gaps with respect to the local risks. If such gaps exist, new local policies or procedures designed for Vietnam should be drafted. For example, if gift-giving during the Tet (Lunar New Year) holiday is identified as a major compliance risk, but the global policy does not deal with holiday gifts, a specific local policy should be crafted. Although the main guiding principles in the policies may be universal, the policies should be written in a way that addresses local nuances.

The documentation should be comprehensive enough to cover all the risks the compliance program is looking to mitigate. The policies should also address local legal requirements. The policies should also address local legal requirements, be available in Vietnamese and be easy to read and accessible by all employees.

TRAINING

Localized training is critical to the success of any anti-corruption compliance program. Local employees, business partners and other intermediaries should receive training on the investor's policies, procedures and compliance program. The training should be in Vietnamese whenever appropriate. It should also involve real-world hypotheticals that employees will face.

In addition to educating the employees on the policies and compliance program, training can help local employees "buy in" to the program. This is important for a number of reasons. First, employees may feel that a (foreign) head office is trying to impose "foreign values" on them. The perception may be that the foreign company does not understand how to do business in Vietnam, and that the compliance program restricts their "freedom" to win business. Similarly, employees may think that the standards they are being asked to comply with do not fit the "real-world" conditions they face. When this happens, employees will lose respect for the compliance program, leading to compliance failures. Effective training will address this issue.

Effective training should include role-playing involving real-world situations. If the training consists only of a lecture on the company's anti-corruption policies and the relevant law, it will not be as compelling. Instead, the policies and law should be shown through hypothetical "gray-area" situations that employees actually deal with. This will help employees understand the principles and give the compliance program more credibility. Moreover, the training should be tailored for different employees. For instance, salespeople should be given different training than accountants.

DUE DILIGENCE

At times it is necessary for a foreign investor in Vietnam to use an intermediary to liaise with the government or other parties. When working with local third parties, such as consultants, agents or partners, the investor should conduct an initial screening. During the screening period, the investor should assess the scope of the relationship between the company and the intermediary. For instance, the investor should identify whether the third party will perform services on behalf of the organization or whether it will be authorized to represent the organization.

The investor should also assess how they came into contact with the intermediary they are looking to work with. A bright red flag is raised whenever an official recommends or encourages the investor to use a particular intermediary. Once the details surrounding the relationship have been assessed, the investor should look into the intermediary's local reputation. Since the indicators for corruption are often not apparent in the business relationship itself, investors should have a strong understanding on the pricing of goods and services and applicable government fees. They should also conduct regular local audits to identify excessive or unusual payments made by the intermediary; e.g., payments to foreign bank accounts, payments to corporate entities in bank accounts held by individuals, etc.

WHISTLEBLOWERS

Essential to the success of any successful compliance program is implementing an effective reporting mechanism. The reporting mechanism will vary by company, but whatever the method used, employees should feel comfortable to report wrongdoing. This means assurances that the employee will not face retaliation. Employees in Vietnam (as elsewhere) may be very reluctant to report on their superiors. The company should instill a culture where reporting wrongdoing is actively encouraged.

Training can help to encourage employees to come forward when they suspect wrongdoing. The critical issue is to ensure that employees do not consider wrongful payments to be "business as usual". The company can help by actively investigating and dealing with any complaints. Failing to do so will just reinforce employees' view that wrongful payments are an accepted way to do business.

CONCLUSION

Any foreign investor seeking to enter Vietnam, or are already there, should be cognizant of the anti-corruption compliance risks. Those risks are magnified if the investor does not have a localized compliance program to fit the business and cultural environment in Vietnam. Broad anti-corruption compliance principles certainly apply in Vietnam, as they do elsewhere. But those broad principles may get lost in translation when they cross borders. Therefore, the first step to implementing an effective anti-corruption compliance program in Vietnam is to recognize this challenge and take the appropriate customization measures.

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