

In-House Counsel

Codes of conduct: Training and international trade compliance

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(August 3, 2021, 8:36 AM EDT) -- As we discussed in our first article, a corporate Code of Conduct (code) is an important method for companies to mitigate legal and reputational risk by promoting ethical and responsible conduct of their employees. Internal training is an important tool for creating awareness of these ethical and compliance obligations. Training sessions can help remind employees of their obligations, but also enhance their decision-making skills by applying the principles in the code to real-life situations that they may encounter in their everyday work.

These kinds of training session and awareness initiatives can take many shapes or forms. In-person training can be supplemented by online quizzes, annual certifications and e-mail communications that deal with relevant ethical issues that may affect the company.

As mentioned, regular messaging on ethical conduct that originates from executives and other high-ranking officers is crucial in creating awareness and strengthening an organization's ethics and compliance culture.

Blowing the whistle on workplace wrongdoing

It bears noting that whistleblower programs have become an important tool in a company's governance to uncover, monitor and address wrongdoings and to avoid an employee from reporting reprehensible acts through other channels. These programs also create a process whereby employees can come forward in good faith with any concerns without the threat of retaliation. This sends a message not only to employees, but also to external stakeholders, that the company takes ethical conduct and compliance issues seriously. In terms of implementation, most companies set up a whistleblowing hotline or website where employees can report their concerns.

International trade compliance

An array of potential risk factors should be addressed in codes of conduct when companies engage in cross-border trade. These risk factors can relate to economic sanctions, export controls, corruption of foreign public officials, customs violations, as well as supply chain risk.

When exploring new foreign markets, companies need to take into consideration that 21 countries are currently subject to economic and financial sanctions by the government of Canada. These countries include major trading nations, such as China and Russia.

Furthermore, companies will need to assess whether their goods or technology is subject to the vast amount of items that are subject to export controls. A valid export permit will be required for common goods and technology, including certain electronics and software products, aerospace and military goods and technology, just to name a few.

It is also crucial to have policies in place to determine rules around dealings with foreign government officials to remain in compliance with the *Corruption of Foreign Public Officials Act*. Violations can

result in heavy fines for companies, as well as imprisonment for employees who breach anti-corruption laws.

Human rights issues in the global supply chain are currently front and centre. Companies need to have a closer look at their supply chain to ensure that they are not facilitating human rights violations, such as those affecting Uyghurs and other ethnic minorities from the Xinjiang Uyghur Autonomous Region in China.

Among a number of measures, the government of Canada issued a business advisory regarding Xinjiang. Companies are also required to sign an Integrity Declaration if sourcing from the Xinjiang region to remain eligible for trade advocacy and export credit support.

Regulatory measures to address supply chain risk are becoming increasingly relevant — a bill titled the “Modern Slavery Act” is currently working its way through Parliament and may impose additional requirements on companies if passed into law.

Policies, guidelines and procedures that set ground rules for officers, directors and employees can help mitigate the risk of potential violations, thereby saving the company significant costs and protecting its reputation.

Implementing, improving existing code

Codes lay the foundation of a company’s core mission and values. On top of this foundation, companies will need to consider building a governance framework of policies and procedures that are more specific to risks they encounter. When operating internationally or engaging in international trade, policies and procedures related to export controls, sanctions, customs and other trade related issues are essential to navigate the regulatory minefield that is international trade.

This is the second of a two-part series. Read part one: Codes of conduct: Guiding principles for corporate governance.

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