

Although compliance with anticorruption laws may be a straightforward legal issue in the West, in many developing and emerging countries, cultural norms and values exert a powerful countervailing force. Ignoring these norms can make local managers business pariahs. Sharie Brown, another member of the workshop faculty and a partner with the law firm DLA Piper LLP, points out that local compliance officers in countries with high levels

of corruption can face extreme financial, career and safety risks. If they probe issues too deeply, they and their families may find themselves unemployed with smeared reputations — or worse.

The workshops FTI Consulting developed help cross this cultural divide. We don't focus on the corruption in a given country; instead, we stress the value that business partners in emerging and developing countries can offer if they are savvy about international standards of compliance — they can be more attractive to global companies than their peers. And from our experience, we can also show global companies ways to develop compliance programs that bridge the cultural gap.

To mitigate compliance risk, companies need to develop policies and educate partners and employees in a way that recognizes the cultural realities.

A DEEP DIVIDE

Common cultural norms can fly in the face of Western business standards — including the expectation that decisions be made primarily in the interests of shareholders.

In China and much of Asia, for example, relationships and reciprocal obligations in social networks (i.e., *guanxi*) can trump obligations to Western legal and business requirements. Given the history of family-owned businesses, it is not uncommon for family members or friends of a CEO to sit on boards or audit committees. In Russia and other former communist economies, the ubiquity of shortages and bottlenecks made bribes and other private payments practically essential. These practices were so commonplace that they became ingrained social norms. Nigeria is perhaps the poster child: The role of tribal ties and the resulting favoritism and nepotism are so predominant that there is an adage that if one doesn't become rich as a public servant, he is a failure.

Many companies are investing in more rigorous compliance programs. Yet when working with partners or employees in high-risk jurisdictions, they often give short shrift to cultural barriers that, if not managed effectively, can impede cooperation and destroy trust.

Companies need to develop policies and educate partners and employees in a way that recognizes the cultural realities. The cultural value of saving

face, for example, can make even the discussion of compliance extremely awkward: A standard due diligence request, such as verifying the lack of any criminal convictions, may be taken as grossly offensive. The creation of a culturally aware compliance program provides a platform for intercultural trust that can boost transparency and lead to more open discussions of compliance concerns or requests.

CROSSING THE DIVIDE

The first step in crossing the divide: Make compliance requirements realistic. Russell Ryan, a member of the workshop faculty and a partner with the law firm King & Spalding LLP, points out that Western companies often fear the worst and then plan for

it. They may seek as many concessions as possible to show an investigating authority that the company took every preventive measure. In doing so, however, they can strain the relationship by overcompensating.

In working with a potential distribution partner, for example, Western companies may insist on full audit rights, including access to customer lists and transactions on behalf of all companies that work with the partner. The distributor, of course, will often resist, arguing that its customer lists are proprietary — as they are considered everywhere else in the world — and that its dealings with other companies are confidential. Limited audit rights may be both more realistic and, if exercised judiciously,



more effective. Another problem, Brown points out, is that Western companies are prone to placing impractical demands on local compliance officers — insisting, for example, that third-party contracts require investigations of vendor and company conduct. Such investigations can put compliance officers at personal risk.

Nonetheless, compliance officers can move the compliance effort forward. For example, they can create training programs and protocols for vendor agreements and payments. They can also disseminate ethics policies. In short, they can improve compliance and ethics in the local company. Once

that company culture becomes acclimated to new standards, the officer can then phase in more punitive components.

Compliance policies must also be flexible. A one-size-fits-all approach won't work in all jurisdictions. A prohibition against gifts, for example, may work in the United

States and Europe, but not in China, where a moderately priced gift such as a \$250 smartphone may be *de rigueur* and not considered a bribe. Policies need to be clear yet fluid enough to accommodate different cultural norms.

DON'T MANDATE — EDUCATE

Perhaps the most important step

in crossing the divide is to engage partners and employees in an educational dialogue that builds trust and transparency. It's one thing to declare what someone can't do; it's another to explain why. If a policy prohibits payments to government officials, for example, articulating the negative consequences to the company in cases of violation can help build buy-in. It is also important to define parameters. In the case of payments, what specifically constitutes one? Is the gift of a \$250 smartphone considered a payment? If so, what is the cost limit for an acceptable gift?

A thorough educational effort can also provide a powerful defense in an investigation. Documenting training dates, materials used and the names of participants can tell a story of compliance that is arguably more powerful than simply having a contract with numerous requirements that employees and partners are likely to resist.

Working with partners requires more effort than working with employees. Management has more influence over its employees and can readily look over their shoulders and impose penalties. In the case of partners, however, there is less control, and hence more risk. A major compliance breach and breakdown of trust can destroy a relationship. In some markets there may not be another viable choice.

A pillar of building trust with partners is educating them about how the company monitors compliance.

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It is important to underscore that compliance programs are common in many industries. Such an explanation sets a productive tone by making it clear that monitoring is not the result of suspicions about the partner or the singling out of a country. It is simply a routine process. Exercising audit rights is a good example. We suggest that companies not wait until there is a concern before exercising them. Regular examinations, which don't have to be full-scale audits, underscore that compliance is an ongoing process. Such examinations also help companies spot, early on, any potential wrongdoing and anchor ongoing discussions about the local application of corporate policy. Spotting compliance issues quickly also helps bolster an industry's reputation by averting compliance breaches and government investigations.

A candid discussion of compliance

expectations should also be part of partner negotiation. A partner agreement could include audit rights, periodic certification of adherence to local and international law, and company policies and procedures. Partners could also be asked to complete the same training programs as employees.

CREATING A VIRTUOUS CIRCLE

Educating partners and employees as part of a compliance program creates a virtuous circle. Locals become savvier in dealing with Western partners through their ability to address compliance issues. This knowledge gives them a competitive advantage over other locals in doing business with the West. That competitive advantage then becomes a counterweight to cultural pressures and helps diminish their importance. ■

The views expressed in this article are those of the author and not necessarily those of FTI Consulting, Inc., or its other professionals.