

DESIGNING A GLOBAL ANTI-BRIBERY PROGRAM

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Regulatory Framework for Global Programs

- Multiple laws – not just FCPA, UK Bribery Act
- Broadly comparable – OECD Convention baseline
- But with notable differences
 - Facilitation payments (but also)
 - Scope and definitions
 - Jurisdiction and corporate liability
 - Sanctions and enforcement
 - Good practice incentives

Program Drivers & Guidelines

- Enforcement still a primary driver
- But also more emphasis on encouraging good practice
 - Recognition that most compliance 'voluntary'
 - Different approaches (mitigation/defense)
 - Some caveats (standards/experience/perceptions/equities)
- And more design guidance
 - DOJ/SEC 'FCPA Guide'
 - MOJ 'Adequate Procedures' Guidance
 - OECD 'Good Practice Guidance'
 - Other (PACI, TI, ICC and more)

Core Elements for Design

- Good news/bad news
 - Guidance helpful but with challenge of multiple standards
- Basics broadly comparable
 - Building the right culture
 - Establishing a clear policy and operational guidelines
 - Providing effective training and education
 - A confidential advice and reporting channel
 - Prompt and appropriate response action
 - Managing third-party risks
 - Oversight and continuous improvement

Some General Observations

- A common baseline
- But also significant local differences
 - E.g., exceptions, data privacy, board access, affiliates
- Especially in practical details/expectations
- Continually evolving benchmarks
- With growing program sophistication matched by governmental expectations

Some Parameters for Program Design

- Design to greatest *enforcement* risk
- Key to *systems and controls* (not just principles or rules)
- Build in *localization* (with *centralized* principles/oversight)
- Plan on *continual improvement* (periodic benchmarking and assessment)

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