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The Six Essential Elements of an Effective Anticorruption Compliance Program

Compliance and Ethics



Perhaps the most vexing challenge for ethical multinational corporations is managing corruption risks associated with sales intermediaries. Sales intermediaries — third parties hired to promote, sell, and service products — are essential in hundreds of countries around the world where it would be uneconomical to establish a corporate presence and a direct sales force. Many of these sales intermediaries operate in developing countries where corruption is endemic. Moreover, once your sales intermediaries are out of sight, you have no control over how they hawk your wares.

As governments around the world enact and enforce ever stricter anticorruption laws, the need to effectively manage sales intermediary corruption risks has become more important than ever. Although it is impossible to eliminate such risks, you can reduce them by implementing the following six essential elements of an effective sales intermediary anticorruption compliance program (ACP).

1. Identification and evaluation

The first step in launching an effective sales intermediary ACP is to create an intermediary database tied to your company's accounting system. This is not a trivial exercise. If your accounting system does not have markers permitting you to accurately distinguish your sales intermediaries from end customers, you've got your work cut out for you. Sorting sales intermediaries from tens of thousands of end customers is a major chore.

When compiling such a database, be sure to include key pieces of information, such as the intermediary name, address, payer number(s), sales volume, contract status, due diligence status, and product lines, including whether they are active, inactive, or blocked and whether they sell to government entities. Design the database to continuously pull such data from your accounting system and other systems, so that it is evergreen and can be used to create dashboards to allow you to monitor key aspects of a sales intermediary's status over the long term.

Once you have a reasonably accurate list, work with your business colleagues to perform a rigorous go-to-market analysis to determine whether you have the right mix of direct and indirect sales, and whether it is possible to reduce the number of intermediaries — thus reducing your compliance risk — while at the same time optimizing business performance.

2. Selection and “first-party” due diligence

Establish standards for the selection of new sales intermediaries for the purposes of both ensuring they can effectively advance your business interests and share your commitment to comply with the law and applicable ethics standards. Such standards should mandate face-to-face meetings with your potential sales intermediaries and a detailed information gathering protocol to ensure you know who they are before you commence a business relationship.

Require those advocating a new sales intermediary to draft and deliver a formal presentation to an independent panel of business, finance, and legal personnel who are charged with scrutinizing such proposals to ensure new intermediaries have the capacity to advance your firm's business interests and are willing to do so in a manner that is consistent with your firm's ethical standards.

If done right, such first-party due diligence is the most effective way to reduce the corruption risks

associated with new sales intermediary.

3. Third-party due diligence

Once a potential sales intermediary candidate is selected, initiate third-party due diligence using one or more outside firms with the capacity to scour government databases and local media reports in native languages. At the least, such a third-party due diligence firm should have the capacity to perform either a basic open source due diligence or more detailed enhanced due diligence.

Prior to initiating such a diligence process, it is essential that you create or license a third-party due diligence database capable of effectively managing such data over the long term in a fully auditable system.

When shopping for a suitable third-party management system, look for one that has the following additional features:

- Integration with the firm(s) performing diligence;
- Multilingual capacity;
- User-friendliness;
- Ability to document the rationale for clearing red flags identified during the diligence process;
- Ability to deploy training materials to intermediaries;
- Global access rights to multiple individuals;
- Dashboards to help monitor diligence status;
- Periodic global database checks with red flag notifications; and,
- Capacity to integrate with your accounting system.

When setting up such a system, be sure to assign responsibility to competent individuals to administrate it to ensure it is use properly. Also, implement controls that block all sales to new intermediaries until the compliance or law department confirms that the proper level of diligence has been performed and that all red flags have been either cleared or sufficiently mitigated.

4. Contracting

- Comply with all applicable laws and industry ethics standards;
- Maintain accurate books and records with systems of internal controls sufficient to prevent off-the books accounts and accounting fraud;
- Submit to audits upon request;
- Do not employ government officials or the close family member of government officials; and,
- Provide prompt notification if the intermediary is investigated, indicted, or convicted by government authorities for committing a criminal offense.

In addition, create a system of records to store all intermediary agreements that is monitored by the law department. Establish controls that block all sales to new intermediaries until the law department affirmatively determines that the proper intermediary agreement has been executed and uploaded into the intermediary agreement database.

5. Monitoring

Establish sales intermediary monitoring protocols with the following key elements:

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- Direct oversight with periodic visits to intermediary offices and ride-alongs;
 - Periodic intermediary meetings where both business and compliance considerations are discussed;
 - Annual due diligence questionnaire updates;
 - Independent sales pricing oversight;
 - Automated periodic government database checks;
 - Risk-based audits of selected intermediaries; and,
 - Global intermediary anticorruption compliance program oversight.

6. Training

Develop and implement a live and online training program for employees sufficient to provide them an understanding of the intermediary anticorruption program and their role in it. Develop and implement a separate live and on-line compliance training program for your sales intermediaries. Implement a record-keeping system to document training completion.

There is no magic bullet that can eliminate your firm's sales intermediary corruption risks. But, taking the commercially reasonable steps outlined herein can both reduce such risks and provide you the ammunition you'll need to defend the company in the event prosecutors bring an enforcement action for an intermediary's corrupt business practices.

[Jim Nortz](#)



Founder & President

Axiom Compliance & Ethics Solutions, LLC