Today's anti-bribery and corruption challenges in financial services

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Highlights

– Keeping up with books and records
– Who is accountable for ABC risk?
– Managing and monitoring third parties – where are we now?
– Lack of ABC consideration in M&A activity
– The rise of ownership structure risk
– The importance, yet underuse of Data analytics and MI
– Operational challenges – lack of internal resources and subject matter expertise

As societies across the globe demand for more transparent and ethical ways of working, corruption continues to be a major focus for regulators. Whether you're a medium sized private hedge fund, a tier 1 investment bank or a small European Union bank, the impact of bribery and corruption on poverty, inequality and social injustice is having a direct effect on reputation and profitability. Companies are therefore becoming increasingly motivated to take a stand against corruption because, let's face it, in today's unpredictable and globalised socio-economic environment, companies now more than ever cannot afford a stain on their reputation or the financial losses that result from hefty fines and penalties.

But why then do we continue to see bribery and corruption related fines in 2018? The reality is that financial institutions are operating in a complex and fast-changing global environment; one minute we are dealing with Brexit, the next with new GDPR rules, and then we are on to deciphering where we stand on cryptocurrency. Companies are constantly trying to adapt to changing laws, multifaceted regulations and converging markets, all whilst trying to avoid enforcement actions, reduce costs, restructure businesses, deliver higher profits by venturing into uncharted waters and maintain public trust; no wonder managing the risks of bribery and corruption has never been more challenging.

So what are the ongoing and new challenges in the world of Anti-Bribery and Corruption ("ABC") in Financial Services and how can organisations overcome these challenges?

5 Key Challenges

Challenge 1: Keeping up with Books and Records

– There is a lack of attention to the documentation (i.e. books and records) of internal procedures, controls, risk assessments, communications and training. This nearly always results in a logistical nightmare when the FCA, SEC or other regulatory bodies come knocking, or when ABC programmes are subject to internal audits. Accurate books and records is a key requirement under the UK Bribery Act's adequate procedures requirement. Books and records should not only be of high quality (i.e. detailed, thorough, and cover legacy processes as much as possible) they should be easily and readily accessible even when the employees who are responsible for gatekeeping these records are no longer with the company.

Challenge 2: The struggle with Data Analytics and Management Information ("MI")

– MI continues to be labour intensive and it is still not clear to many what ABC MI should capture. Most companies' ABC MI is limited to capturing the volume of Gifts and Entertainment (G&E) per month – but what is this really telling us? From these stats, how do we know whether policies, controls and processes are risk based, effective and being complied with? ABC MI is a challenge because ABC risk sits in so many different areas of the business. For example, HR may be best placed for MI on hiring risk, Procurement for Suppliers risk and various front office desks for Introducer risk etc. It can therefore be a logistical and operational challenge to consolidate, define and unify ABC MI into something which is meaningful and useful.

– To add to this there is often a growing expectation for ABC MI to be aligned with other Financial Crime Compliance ("FCC") MI (i.e. Sanctions, Fraud, AML MI). However sometimes this can compromise the quality and effectiveness of ABC MI as the risk landscape across the various FCC disciples differ. A balance needs to be struck between risk segregation where appropriate and ensuring ABC is not treated as a SILO function.

Challenge 3: Commitment to Ongoing Monitoring of Third Party Risk

– Most third party due diligence reviews are performed once, and once only. In practice, many organisations are still not conducting effective on-going monitoring of third parties. This means post-on boarding issues are often missed. But why is this happening?

i. Some companies are still working on the definition of "associated parties" – does this include, lawyers, brokers, introducers, agents or even employees?

ii. For companies that have already defined the term associated parties, the next stage is unravelling and bringing to surface all their third party relationships across their multi-layered business. Questions such as: "who on-boarded the third party," "who uses/benefits from this third party relationship," "who pays the third party" are often basic, but difficult to answer questions, particular for companies who have inherited third party relationships from M&A activity and joint venture ("JV") relationships.

iii. And then we have the issue of legacy relationships – "how did we even get the third party relationship," "is anyone still using the relationship," "who manages this relationship", "is there a complete list of all third parties we use across the different desks". Ultimately, there are still fundamental questions and remediation efforts to think about before companies can even begin to think about ongoing monitoring.

iv. Many companies are still yet to assign risk profiles to their third party relationships. Without risk designations, ongoing monitoring of controls such as training, surveillance, due diligence cannot be developed and implemented using a risk based approach.

v. Management and ownership of third party relationships is becoming even more of a challenge in the face of one-firm strategies, hence putting monitoring on the backburner.

vi. Performing due diligence on the beneficial ownership structure of associated parties and piercing of the corporate veil to identify and monitor the root of bribery and corruption is difficult because company structures are becoming increasingly complicated, thanks to the growing use of shell and holding companies; and increased occurrence of mergers and acquisitions in today's hyper-connected global economy.

vii. And finally, the underlying issue in some cases is that there is a lack of knowledge as to what risk third parties pose, let alone what needs to be monitored.

Challenge 4: Understanding and assigning ownership and accountability of ABC risk

– Before managing ABC risk and challenges, companies need to understand who owns and is accountable for bribery and corruption risk. Companies often fail to recognize that bribery and corruption can be an internal and external threat. Bribery and corruption is not just a transaction risk, regardless of a company's size, bribery and corruption can exist in every corner of a company, including HR, Accounts, Procurement, Legal, Social Responsibility Committees, Marketing, Research etc. ABC is therefore the responsibility of all employees across the company, not just the company's MLRO or ABC function. More companies need to; (i) acknowledge that the ownership and accountability of ABC controls and risk ultimately sits with the First Line of Defence ("FLoD") and; (ii) recognise that the Second Line of Defence ("SLoD") are the gatekeepers of ABC policies and systems. Understanding and defining the distinct roles of FLoD and SLoD is the first step in being able to effectively manage ABC risk and challenges.

Challenge 5: Managing Mergers and Acquisition ("M&A") Risk

– Despite regulatory guidance, there is not enough due diligence being conducted on M&A targets or third parties of those targets, therefore risking successor liability where the acquirer becomes liable for the previous actions of the acquired entity. In our experience, there is often insufficient follow-up or monitoring post-acquisition due to resourcing issues and lack of subject matter expertise to conduct, define, scope and implement ABC due diligence on the acquired entity pre and post-acquisition.

Staying Ahead of Bribery and Corruption Challenges

So what steps can you do to address and overcome these challenges?

1. Start thinking about Technology

- Effective compliance involves automated, fail-proof controls and monitoring to ensure compliance with policies and quick identification of potential non-compliance. Technology is critical in achieving this. The demand for technology across Financial Crime Compliance is in fact becoming a board-level commitment across Financial institutions in order to save time, money and resources.
- Automated controls is particularly high on the wish list for Banks with mature ABC programs and policies; next steps for such banks is to identify how they can fine tune, fail proof and make more effective their existing controls to demonstrate that they continue to take a risk based approach to address ABC and how better to achieve this than via the help of technology.
- As part of UK Bribery Act's adequate procedures requirement, all companies need to have ongoing monitoring, training, surveillance and risk assessment, and this is where technology can help. Automated e-comms surveillance or an end-to-end procurement tool with in-built ABC due diligence may be the answer. What about automated on-going monitoring of high risk clients? Finally, what about a third party risk management tool with monitoring capabilities?
- It is time to improve efficiencies and use technology to remediate gaps across all your work streams, whether that's MI, training or even risk assessments.

2. Be proactive and horizon scan

Many businesses have tended to wait for a high profile investigation or fine before assessing their own polices and controls for gaps and limitations. Yet the stakes are too high to be reactive. The further ahead you plan, the greater oversight you will have, with an increased chance of gaining a competitive edge.

3. Join up the dots in compliance

Consider the interconnectedness of ABC, other FCC risk areas such as AML, Sanctions, Tax evasion and Fraud as well as other regulations to see where you can leverage existing controls to creatively address the above ABC challenges. Do you have a coherent approach across multiple compliance functions, to ensure controls are working fully in tandem?

4. Culture – the new starting point

Your controls are only as good as your culture. Building a culture of working ethically and with integrity is the first step towards addressing the above mentioned challenges. This is where "tone from the top" becomes ever more important. Board of directors and senior management can help relay the message that everyone is accountable for ABC risk and that risk mitigation is a company-wide task.

5. Are you adequately resourced?

In practice, proactively addressing challenges and being solutions driven can often only take place once BAU work is under control. Have you got the sufficient resources and expertise to identify and take action to address your challenges and remediate?

6. Learn from others

Monitor global and industry specific media to learn about current investigations, including any actions against business partners or competitors, to determine what your own ABC risk and challenges might be.

How KPMG can help

KPMG has extensive anti-bribery and corruption risk expertise across the financial services sector. We work closely with financial institutions and regulators, bringing unique insights on how to mitigate the risk of financial crime. We are already taking proactive steps in the Technology space with an Artificial Intelligence ('AI') due diligence tool for third parties and customers, and using surveillance to identify money laundering and other unethical practices. To find out more, please contact **Annabel Reoch** and **Nazifa Hussain**.

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