



By Colum Bancroft,
Managing Director,
Greater China

Complying with global anti-corruption legislation: dealing with a violation

When it comes to global anti-corruption legislation such as the Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act, prevention is always better than cure, and smart companies throughout Asia recognise the very real risk of prosecution they face under these laws if they engage in corrupt practices. These companies are already examining their internal compliance processes and protocols and implementing comprehensive anti-corruption frameworks that will help protect them against potential violations.

However it may already be too late for some, and with global regulators and watchdogs increasingly turning their attention to the region, it is essential that Asian organisations understand the steps they should take if they suspect foul play – whether it be from their employees, senior management, agents, distributors, joint venture partners, business partners or vendors.

A formal response to allegations of corruption

When allegations of corruption are made, the company must react quickly and effectively, putting a formal response plan into action following the report. Any response plan should include several steps that should be considered when assessing the situation and determining the right course of action.

The first step is to convene a small committee consisting of appropriate key leadership personnel, general counsel and the chief compliance officer to discuss the credibility of the claim and decide whether to take it further. This committee should consider who made the allegation, whether the whistleblower has an ulterior motive such as professional jealousy or promotion, and/or whether they will benefit personally from the claim.

It is also important that the committee ensures the whistleblower is aware the claim is being taken seriously and the situation is being looked into, because in certain circumstances he or she can report the incident to the regulators under the Dodd-Frank Wall Street Reform and Consumer Protection Act if they feel nothing is being done.

News of the situation should be limited to a very small

circle at this stage, and the committee must act quickly in order to prevent the situation escalating or risk losing critical evidence: usually within 48 hours. During this time, they must document not only the discussions they have but also the processes they follow and the rationale behind the outcome, with a view to being able to provide evidence to the regulators at a later stage if necessary.

Should the situation warrant further investigation, it is essential that every necessary precaution be taken to preserve any evidence of wrong doing that may exist. In order to do this, they should consider immediately suspending the individual or parties accused, should they be employees or persons who represent the company, restricting access to networks and files, and removing their access to the premises.

However, while it may be necessary to *suspend* the accused individual, it is not advisable to *terminate* employment at this stage because, should the allegations be found to lack substance, the company may leave itself open to an expensive lawsuit. Also, if the allegations are found to be true and should the violation become subject to a regulatory probe, the regulators will have

limited access to interview these individuals as part of an investigation if their employment has already been terminated.

Once the evidence has been preserved, the next step in a formal response plan is to conduct an internal investigation to ascertain whether the allegations are true and the need to self-report.

In the next issue of ASIAN-MENA COUNSEL, Kroll will cover the process of an internal investigation. To learn more about Kroll's recommendations to detect, investigate and prevent corruption in your organisation visit:

<http://www.krolladvisory.com/anti-corruption-asia/>

... while it may be necessary to *suspend* the accused individual, it is not advisable to *terminate* employment at this stage because, should the allegations be found to lack substance, the company may leave itself open to an expensive lawsuit

E: cbancroft@kroll.com
T: (852) 2884 7788

www.krolladvisory.com