Insights: Perspectives

6 Key Takeaways "Investigating International Corporate Corruption" and "Current Compliance Challenges"

October 24, 2022

Written by

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6 KEY TAKEAWAYS

"Investigating International Corporate Corruption" and "Current Compliance Challenges"

At a recent Risk Advisory & Compliance Summit in Copenhagen, Denmark featuring "Investigating International Corporate Corruption" and "Current Compliance Challenges" panels hosted by Nardello & Co., Kilpatrick Townsend's Scott Marrah and Adria Perez covered the recent U.S. Department of Justice ("DOJ") remarks as well as enforcement trends and considerations.

Here are key takeaways from the two panels:

1 The DOJ continues to focus on individuals. The DOJ stresses that cooperation credit will be based on whether the company identifies and provides "important evidence more quickly" on culpable individuals.

2 The DOJ expects "real time" cooperation. Deputy Attorney General, Lisa Monaco, remarked last month: "If a cooperating company discovers hot documents or evidence, its first reaction should be to notify the prosecutors." She further explained that "undue or intentional delay" in producing documents and information may lead to the reduction or denial of cooperation credit. However, given these remarks, there is a tension for companies and counsel between being fast and being accurate. Companies need to consider how context matters, and it takes time to determine how a particular document or documents fit with the facts more broadly. A document that initially seemed important or "hot," could later be less relevant or helpful and, taken out of connect, possibly mislead or distract the government.

3 Voluntary disclosure and self-reporting to government authorities depends on various factors, including, but not limited to the severity of the conduct, whether there is a duty to disclose to any government authority and corporate values. There is not a formula that calculates the benefits of voluntary disclosure. DAG Monaco acknowledged that "predictability is critical" and that "every Department component that prosecutes corporate crime will have a program that incentivizes voluntary self-disclosure…and they must identify the concrete benefits that a self-disclosing company can expect."

4 DOJ continues to believe independent compliance monitors are needed in certain circumstances. DAG Monaco pointed out that the DOJ is working on new guidance on how to identify the need for a monitor and selecting one as well as how to oversee the monitor's work. Her comments suggest that the DOJ will be "monitoring the monitor," including verifying whether the monitor is "on task and on budget."

5 Successful monitorships occur when the company and monitor team are both focused on the same goal: Making the company better. Practical ways to reach a successful result at the end of the monitorship include: having a dedicated internal project management team dedicated to supporting the monitor team; establishing clear core values and a compliance culture with regular messaging; determining from the outset whether there are any privilege, employment law, data privacy or data protection obstacles that need to be reviewed, considered and resolved.

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Whistleblower programs are imperative, and consist of more than maintaining a hotline. In a recent takeaway piece, we referenced how the U.S. government seeks to create a speak-up culture (click *here*). Corporate whistleblowers need to have confidence in the company's whistleblower program, including the investigative and follow-up processes. Companies should also regularly test their system for operating effectiveness and analyze and trace any results to implement any proactive or remedial measures. For example, if a significant number of complaints relate to one business unit, the company should review what controls need to be implemented to mitigate any further risks.

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