



ForensicFocus

The anatomy of an anti-bribery and corruption risk assessment

Part 1 – Laying the groundwork



Today's reality

- The concept of an anti-bribery and corruption (ABC) risk assessment is recognized as an important component of any company's ABC program, as it is performed to "enable the organization to form a solid foundation for its anti-bribery management system."¹
- There continues to be a significant number of practical application questions, especially within industries that are not heavily regulated, including defining what exactly an ABC risk assessment is, understanding how it fits within the context of other overall compliance initiatives, and identifying leading practices to help a company begin the process.

Setting the stage

While there is publicly available guidance stressing the importance of conducting an ABC risk assessment and how it can protect companies, including guidance from U.S. regulatory bodies², the U.K. Ministry of Justice³, and international bodies like the Organisation for Economic Co-operation and Development (OECD)⁴, and ISO 37001⁵, companies continue to have a significant number of questions about how their business should be executing this specific type of risk assessment. Executives want to know what conducting an ABC risk assessment means when applied in a real-life scenario, and whether there are leading practices or guidelines to follow.

For example, some companies that only have a domestic presence may not realize that certain business partners in foreign locations could create bribery and corruption risk. By creating a common definition of ABC risks and how they can appear in all companies, including domestically domiciled ones with no foreign business units, companies can better understand their true exposure in this area.

¹ ISO 37001 – *Anti-Bribery management systems*, Section A.4, p. 29

² See, e.g., U.S. Department of Justice, Criminal Division, Fraud Section, Evaluation of Corporate Compliance Programs, February 2017 and *A Resource Guide to the U.S. Foreign Corrupt Practices Act, published in 2012 by the DOJ and SEC* (p. 58 describing a Risk Assessment as one of the "Hallmarks of Effective Compliance Programs")

³ See *The Bribery Act of 2010: Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing*, published by the UK Ministry of Justice. See pp. 25-26 describing "Risk Assessment" as one of the six principles to be put in place for effective anti-bribery programs.

⁴ See *the Anti-Corruption Ethics and Compliance Handbook for Business*, published by the OECD, along with UNODC and the World Bank, (the "OECD Handbook") 2013, pp. 10-14 discussing "Risk Assessments."

⁵ *ISO 37001 – Anti-bribery management systems*

1. Why is it important to clearly define the ABC risk assessment?

Clarifying the subject and scope of the ABC risk assessment at the outset allows the parties involved to understand the importance of this specific subject matter and what differentiates this risk assessment from other risk assessments the company is undertaking. Different stakeholders (e.g., Tax, IT, Internal Audit, Finance) often define “risk” differently, based on their specific roles within the company. As a result, such stakeholders often assume bribery and corruption risks are adequately covered by a company’s other risk assessment processes, such as an enterprise risk assessment, a general compliance risk assessment, a fraud risk assessment, or even an information technology security risk assessment.

While these other risk assessments may cover a portion of the bribery and corruption risks faced by the company, especially the related entity-level risks identified through a compliance risk assessment, they likely do not go to the process-level depth that may be required for an effective ABC risk assessment. Without a clear definition of the level of bribery and corruption risks to be identified, and the specific mandate to fully address these bribery and corruption risks separately, it is likely that there will be gaps in the risk assessment process, which could, in the worst-case scenario, expose the company to future enforcement action.

To be effective, an ABC risk assessment must be clearly defined and its objectives separated from other risk assessments a company may be executing. By clearly defining what the ABC risk assessment is, the company can ensure a common understanding of the core purpose for identifying these distinct bribery and corruption risks before beginning such a process. This will break down misconceptions that different individual stakeholders may have, based on their involvement in one of the many other risk assessment processes, and allow each team member to focus on the specific concerns relative to bribery and corruption risk.

It should be made clear from the outset that an ABC risk assessment is a thorough, structured, and separate approach to identify global government touchpoints by the company, whether

directly or indirectly, throughout any of the company’s business functions or departments. This risk assessment delves into the geographic regions, and possibly even into local processes, as part of the scope to identify such bribery and corruption risks.

2. Who should participate in the ABC risk assessment process?

An effective ABC risk assessment should include stakeholders from the corporate level, where key decisions can be made, but it cannot be limited to the executives. This is because the risks perceived by corporate employees often do not match the actual bribery and corruption risks identified by individuals that are more involved in the foreign locations. For example, corporate employees may not regard the licenses and permits required for a manufacturing location as a high risk, due to the relatively small dollar amount of such transactions. However, that same location may be paying significant off-the-book bribes in order to make sure they can maintain the permits and continue operations. Without the permit or license, manufacturing could be shut down, which could potentially be material to the company. In this example, this significant bribery and corruption risk would not have been identified if there was no local participation, or at least regional representation, in the ABC risk assessment process.

Participation from individuals in different areas of the business helps ensure adequate representation from all jurisdictions and locations to give the best chance that no bribery and corruption risk is left uncovered. This may require a little legwork up front, as it means identifying stakeholders who understand the company’s potential day-to-day interactions with the government and those who have knowledge of government-owned entities for each jurisdiction in which the company operates.

However, if you go too far down in the organization for input into the ABC risk assessment, it can be difficult to obtain timely responses, and the information collected may be overwhelming and onerous to analyze. An effective ABC risk assessment is one that balances these competing issues, and it may take several iterations through the process to figure out the appropriate balance.

3. Who should lead the ABC risk assessment process?

The participants in an ABC risk assessment process can be fairly broad and can be located throughout the different geographies in which the company does business. Finding the right individual or team to coordinate the responses identifying bribery and corruption risks, including aggregating a large amount of data and viewpoints into meaningful results, can be difficult. Most organizations have an internal coordinator from Internal Audit, Legal, Compliance, or Finance, take the lead.

One consideration for the lead team member is that, if a truly robust ABC risk assessment process is undertaken, there is a high likelihood that legal issues will be identified. While these legal issues may not be major, many companies appoint an attorney, either internal or external, to lead the effort if there is suspicion that a concerning fact or situation may arise.

No matter who is chosen, the lead must have the organizational authority and standing to be able to break down barriers of access to potential silos of information. For example, different compliance areas, such as Health, Safety, and Environment (HSE), who do not normally have involvement in compliance initiatives may not understand their involvement in the ABC risk assessment process. Without sufficient standing, it may be difficult for leadership of the ABC risk assessment process to obtain sufficient responses to a survey on bribery and corruption risks.

It should also be stressed that the lead must be willing to coordinate with all of the business stakeholders and teams conducting other risk assessments for the company. This is necessary to understand the full risk assessment process for the entire organization and to avoid repeating questions in a way that could cause “compliance fatigue.” The individual should be able to help develop an overall coordinated effort to meet all of the different risk assessment objectives of the company, not just those for bribery and corruption.

Finally, the lead is only as good as his or her support structure. The ABC risk assessment lead should have the support of a strong project management office (PMO) function, as this can help with making sense of all of the disparate data collected.

4. How does an ABC risk assessment fit in with other risk initiatives?

In the face of a constantly evolving risk environment, a company is likely simultaneously undertaking multiple risk assessments with different areas of focus. Due to the potential synergies between an ABC risk assessment and these other risk assessments (e.g. the enterprise risk assessment or compliance risk assessment), it can be tempting to roll these processes up together and conduct them at the same time. It can be even more tempting to do this in an effort to save time and money.

There are several potential issues with pooling resources for different risk assessments. First, other risk assessment processes may have different stakeholders and participants, depending on their scope. To get to the right population of participants in the process and to avoid confusion or inefficiency, the different risk assessments should be kept separate. At a minimum, the risk assessments should be separate the first time a distinct risk assessment is conducted, as future iterations may allow for more integration.

Second, it is important to stress the significance of an ABC risk assessment. The nuances of bribery and corruption risks, especially with guidelines regarding interactions with state-owned enterprises and the controls required for third-party intermediaries, may require specific training and a thorough understanding of the concepts. It is easier to conduct such training with a separate dedicated ABC risk assessment process.

Finally, due to the potential legal risks that could be identified as a result of an ABC risk assessment, a company may wish to perform this risk assessment under the direction of Counsel in an attempt to maintain attorney-client privilege, if allowed by the governing law of a jurisdiction. In such situations, the ABC risk assessment should be clearly segregated from other risk assessments as a separate process.

5. Is there guidance on how to perform an ABC risk assessment?

There are multiple sources available that give at least a general outline of performing an ABC risk assessment. The most comprehensive of these sources include the OECD Guidance, which dedicates several pages to the execution of an ABC risk assessment in its Anti-Corruption Ethics and Compliance Handbook for Business and ISO 37001.⁶

However, there is not a “one-size-fits-all” approach to an ABC risk assessment, which may explain why so many companies are still asking about how this task should be performed. But, as noted by ISO 37001, “this bribery risk assessment exercise is not meant to be an extensive or overly complex exercise,” and “the results of the bribery risk assessment should reflect the actual bribery risks faced by the organization.”⁷

In the second article in this two-part series, we will dive deeper into the process, and provide practical examples of implementing an ABC risk assessment process.

A plan for moving forward

As with most other objectives undertaken by an organization, the key to a successful ABC risk assessment is allowing sufficient time at the beginning of the project for planning. This includes:

- Clearly defining the subject of the project and outlining the distinct goals
- Appropriately scoping the project based on that definition
- Identifying the right team (including Counsel if necessary)
- Developing a strategy that prepares for the inevitable issues that may arise.

A company should be able to take comfort in the fact that, if they have a structured, well-planned, and well-documented approach specific to the ABC risk assessment, they will have a strong case to put forward to a regulatory body if the company receives that dreaded knock on the door.

⁶ See the OECD Handbook at pp. 10-14 and ISO 37001.

⁷ See ISO 37001, Section A.4.4, p. 30.

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