

Henry V and Principle V of the Six Principles of Adequate Procedures: Communication

Henry V is a truly inspiring play. Whether one sees it on the stage or on the big screen with the 1944 Olivier or 1989 Branagh version, one cannot help but draw inspiration about the story of the former Prince Hal, from Henry IV, who becomes a regal monarch and leads the English army to a defeat of the French at the Battle of Agincourt. One of the things that Henry V does extraordinarily well is communicate; about his goals and rousing his subjects to help achieve them. Today we use the prism of Henry V to look at Principle V of the Six Principles of Adequate Procedures; that being “Communication (including training)”.

I. Commentary

The Guidance for the Six Principles of an Adequate Procedures, anti-bribery program states in Principle V that “*The business seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the company through internal and external communication, including training, that is proportionate to the risks it faces.*” The Guidance recognizes that communication and training deters bribery by companies, their employees and those persons associated with it, by enhancing awareness and understanding anti-corruption policies and procedures and the company’s commitment to their proper application. It therefore follows that making information available on legal requirements and obligations and policies and procedures for implementation of the same assists in more effective monitoring, evaluation and review of bribery prevention procedures. Anti-bribery training should provide, to company employees and those persons and entities associated with the company, the knowledge and skills needed to implement and utilize the anti-bribery procedures and handle in a satisfactory manner any bribery related problems or issues that may arise.

II. Communication

The Guidance begins by recognizing that the content, language and tone of communications for internal consumption may vary from external use in response to the different relationship the audience has with the company. Further, the nature of communication will vary enormously between businesses in accordance with the different bribery risks faced, the size of the business and the scale and nature of its activities.

a. Internal Communications

It all starts with ‘tone from the top’ but communications within a business need to also focus on the implementation of the company’s anti-bribery policies and procedures. The Guidance lists several areas which it believes such communication should provide instruction upon. These include company policies on “decision making, financial control, hospitality and promotional expenditure, facilitation payments, training, charitable and political donations, penalties for breach of rules and the articulation of management roles at different levels.” Another critical aspect of internal communications is the establishment of an ethics helpline. Such a helpline

should be secure, confidential and accessible for both employees and those outside the company to elevate concerns about bribery on the part of associated persons, to provide suggestions for improvement of bribery prevention procedures and controls and for requesting advice. The Guidance calls such a tool a “Speak-Up Line” but whatever name it is given, it is clear that those both inside and outside a company need to be furnished with a secure, confidential and safe manner to report ethical concerns to an appropriate level of management.

b. External Communications

Just as risk assessment and due diligence on third parties form a critical component of an Adequate Procedures based anti-bribery corruption program, the Guidance also speaks to the need for external communication of bribery prevention policies through a statement or Code of Conduct, which should act as a deterrent to those intending to bribe on a business’s behalf. The Guidance relates that external communications can include information on bribery prevention procedures and controls, sanctions, results of internal surveys, rules governing recruitment, procurement and tendering. The Guidance also recognizes that businesses may consider it proportionate and appropriate to communicate its anti-bribery policies and commitment to a wider audience, such as other companies in their sector, trade association members and to organizations that would fall outside the scope of the range of its associated persons, or to the general public.

III. Training

Restating again that the number one key to an Adequate Procedures anti-bribery compliance program, a company should develop its training protocol based upon a risk assessment. The Guidance recognizes that all employees should receive some training which is likely to be effective in firmly establishing an anti-bribery culture whatever the level of risk. This general level of training can be centered on raising employee awareness about the threats posed by bribery in general and in the industry in which the company operates in particular, and the various ways it is being addressed.

There should be mandatory, general training for new employees or for agents (on a weighted risk basis) as part of the employee indoctrination process, but it should also be tailored to the specific risks associated with specific posts. The Guidance indicates that a company should tailor its training to the special needs of those involved in any procedures and higher risk functions such as purchasing, contracting, distribution, marketing, and those working in high risk countries. It is important to note that for training to be effective it should be continuous, regularly monitored and evaluated.

The Guidance also suggests that associated persons to undergo training. This will be particularly relevant for high risk associated persons. The better practice is to require such anti-bribery training as a part of compliance contractual terms and conditions and then provide such training to the highest risk third party representatives. But the Guidance does recognize that a company

may wish to encourage associated persons to adopt bribery prevention training. If this is done, the training should be evaluated and appropriate records of business partner training be submitted to the company on no less than an annual basis.

The Guidance also recognizes that there are various media which can be used to deliver training. It lists some of the different training formats which are available in addition to the traditional classroom or seminar formats, such as e-learning and other web-based tools. However, a company should not lose sight of a risk based approach, so that those employees or third parties deemed the highest risk need to receive the most intensive training. Finally, whatever the format of the anti-bribery training, it should seek to achieve its objective of ensuring that those participating in it develop a firm understanding of what the relevant policies and procedures mean in practice for them.

So how can you channel Henry V to help your compliance program? Perhaps you could begin by re-reading the play or some of its most inspiring scenes or even watching them on You Tube. You can start with the St. Crispin's Day Speech, ride once more into the breach, or even the Prologue to learn about communication.

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