

## DOJ issues updated guidance on corporate compliance programs

On June 1st, the DOJ updated its April 2019 guidance with respect to efficacy in corporate compliance programs. Below is a summary of Key Themes, Focus Areas for the DOJ and for corporate compliance personnel, and Inquiries to test effectiveness of a corporate compliance program.

### Key Themes in Revisions



Increased **sensitivity** by prosecutors to a company's **particular circumstances**



Increased consideration for **temporal evaluation of a company's compliance program (why has it evolved?)**



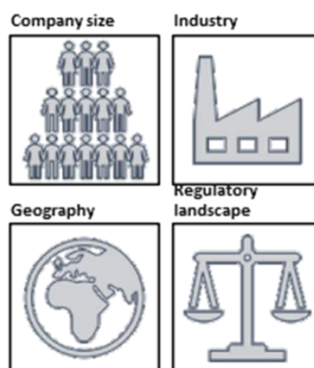
Allocating **adequate resources** to a company's compliance organization



Increased emphasis on **using data for monitoring controls and tracking overall effectiveness of the compliance program**

- o Importantly, the DOJ is looking at a company's use of data across all operations and how it is considered in a company's risk assessment
- o Consideration for any "impediments" to obtaining data including foreign mandates such as GDPR

### Focus Areas per DOJ for Evaluating Effective, Scaled Compliance Programs



*Other known or assessed internal and external factors*

### Focus Areas for Companies to Prioritize Compliance Program Assessment

Key changes are in sections discussing **Risk Assessments; Policies and Procedures; Training; Reporting and Investigations; Third-party Management; and Mergers and Acquisitions**

## Inquiries



For **Risk Assessments**, the DOJ asks: "Does a company have a process for tracking and incorporating into its periodic risk assessment lessons learned either from a company's own prior issues or from those of other companies operating in the same industry and/or geographical region?"

- In addition, the DOJ inquires as to how a company has implemented continuous improvement: "**Does a company review and adapt its compliance program based upon lessons learned** from its own misconduct and/or that of other companies facing similar risks?"
  - This is critical also as the DOJ questions whether a compliance program was developed based on a particular point in time (i.e. a "snapshot") without the **ability to truly scale to changing operations and risks**



For **Policies and Procedures**, how does a company make the documents accessible to employees? How can they provide feedback? How is implementation measured?



For **Training**, how does a company allow for follow up questions and feedback? And, how does a company measure the impact of training (surveys? Internal Audit/RAAS?)

- Importantly, online training should be interactive and keep employees engaged, as well as test their knowledge of learnings



For **Reporting/Hotline**, how does a company test effectiveness – not just for the initial report, but the entire workflow from start to finish? How are reports assigned? Who follows up? What is the turnaround time?

- Does a company track status of remediation – action plans and testing effectiveness of controls to mitigate identified risks?



For **Third Party Management (often, the highest risk for most companies that operate globally)**, the DOJ inquires as to whether a company engages in risk management of third parties throughout the lifespan of the relationship, or primarily during the onboarding process?

- How is this tracked (from onboarding and throughout the life of the engagement) and implemented?
- How does the Compliance Department coordinate with Procurement and Accounting to ensure appropriate DD evaluation of all relevant third parties?
- Note: this does not change the DOJ's approach to having due diligence commensurate with identified compliance risks/operational risk profile



For **Mergers & Acquisitions**, what is a company's approach to integrating compliance consistently across the organization?

- What is a company's documented approach to integration of compliance processes and procedures?

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