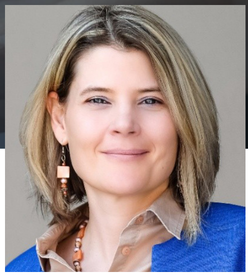
Global Charitable Giving: Key Takeaways For Boards

OCTOBER 2020

by Germari Pieterse and Jamen Tyler



Germari Pieterse
Managing Director, StoneTurn
gpieterse@stoneturn.com
+27 84 409 7105

Jamen Tyler
Managing Director, StoneTurn
jtyler@stoneturn.com
+1 303 747 4005

Between the mainstreaming of corporate social responsibility (CSR) and environmental, social and governance (ESG) issues and the current COVID-19 crisis, many companies have seen a renewed focus on their charitable giving and philanthropic efforts. These initiatives can benefit companies through increased goodwill and employee satisfaction, but can also pose numerous risks, particularly if they involve donations to charities or funding of projects abroad. Taking case studies from Africa, one of the main beneficiaries of corporate philanthropy, this article describes some of the key risks of which boards should be aware, as well as appropriate controls boards can implement as part of their oversight responsibilities.

Risks Related to Charitable Giving

Bribery and Corruption Risks

Charitable donations have repeatedly been used as vehicles for providing bribes to foreign officials in violation of anti-bribery laws like the U.S. Foreign Corrupt Practices Act (FCPA). Such "donations" may give rise to significant liability for the company that provides them. In one current South African case, a European company faces criminal charges for allegedly funneling bribes through "donations" to an education fund named for and controlled by a

StoneTurn

government official who then secured the company lucrative state contracts.

Fraud

Fraudsters worldwide use charity scams to cheat well-intentioned donors. This risk increases when donating to overseas charities and initiatives when donors have little visibility into the donees' activities. As one international organization discovered, requesting virtual verification may not be enough to insulate from these risks. In that case, the organization provided funding to construct a low-income housing development in South Africa. The developer sent pictures purportedly showing construction of an entire development of identical housing units. Unfortunately, after paying for the completed project, the donor discovered that the pictures showed just one building from different angles; only a fraction of the buildings were ever built.

Anti-Money Laundering and Terrorist Funding

Just as charitable donations can be used to funnel bribes to foreign officials, so too can they be used to fund and launder money for organized crime and terrorist organizations. These risks often rise in countries within or adjacent to conflict zones, or countries with inadequate law enforcement. For example, a 2019 Compliance Communication from South Africa's Financial Intelligence Centre describes non-profits in the country as vulnerable to exploitation for money laundering and financing terrorist activities throughout Africa.

Reputational Risks

Consumers and investors often react negatively to reports of companies that make misleading claims about their charitable activities. Providing money to disreputable, fraudulent, or wasteful charities, or directly funding projects that do not live up to company statements and reports, can generate significant ill-will and turn consumers and investors away. In one instance, a donor entity faced backlash and was forced to explain the lack of impact from a widely-publicized conservation infrastructure and resource development project it had funded, when the project effectively failed due to mismanagement by the donee. Even when projects succeed, silos between CSR, marketing and legal teams can result in internal miscommunication of projects or donations, which can lead to incorrect or misleading information being provided to the public.

Controls and Mitigation Measures

Despite the risks, corporate philanthropy and direct impact initiatives can have significant benefits, from improving company culture to attracting customers. In exercising their risk management and oversight duties, Boards should ensure that corporate giving initiatives include sufficient controls to mitigate the risks above and also ensure that risks do not outweigh the potential benefits.

Charitable Donations Policy and Review Process

Corporate charitable initiatives should be supported by a clear policy and process for reviewing, approving, monitoring and communicating charitable activities. Boards should also consider requiring periodic updates about the company's charitable activities to enable them to oversee and monitor program risks.

Policies may include guidance on appropriate donations or initiatives and require risk-based review and approval processes for donation and project requests. This review process should look for "red flags" that may warrant additional scrutiny and approval requirements. Red flags may include donations made at the request of a government official; donations to or projects with state-run charities or those with close ties to government officials; donations to or projects with unregistered or newly-formed organizations; and projects that the company cannot verify in-person.

Due Diligence

Boards should ensure that their company conducts sufficient due diligence on potential donee and third-party project partners, developers, or managers. The scope of the due diligence will depend on the donee or third party's risk profile and, at a minimum, should include confirmation of their existence and (if applicable) registration as a non-profit entity. Entities triggering red flags identified above should receive particularly close scrutiny.

Donation and Project Agreement Provisions

When making donations or supporting charitable projects, companies should enter into written agreements establishing how funds are to be spent, and how that spend and impact will be verified (including any requirements for third-party verification). When directly funding projects, agreements should also set clear goals, metrics and milestones that can be used to monitor compliance and confirm project impacts.

Monitoring and Verifying Donee Activities

Lack of visibility into donees' or partners' operations increases many of the risks described above. If possible, the donor organization should monitor projects directly. However, it may be necessary to hire a third party to verify spending and achievement of any goals, metrics and milestones set out in the applicable agreement. Third parties can also verify donation and project impacts, which can help avoid allegations of "greenwashing" or disconnect between a company's reported and actual philanthropic activities.

Conclusion

Charitable activities can provide a number of benefits to companies, from increased employee satisfaction to goodwill in the marketplace. At the same time, boards must be aware of the risks inherent in these activities and ensure the company's charitable program includes controls to mitigate those risks. Although the above outline of risks and controls provides a sound foundation, each company's charitable program is unique and should be reviewed periodically to ensure that risks are understood and effectively controlled.

This article was initially published in
Corporate Board Member in October 2020.

About the Authors

Germari Pieterse, a Managing Director with StoneTurn, brings over 15 years of experience advising organizations on the successful implementation of effective, strategic and compliant operational governance.

A former COO and CFO of South Africa-based organizations, Germari has deep expertise in all facets of financial and operational management, analysis, and governance. She has advised clients on the design of effective financial infrastructures, enhancement of governance and compliance programs, as well as streamlining and improving systems and processes. She has also conducted internal audits and assessments to identify and address gaps of design and operating effectiveness across business departments.

Jamen Tyler, a Managing Director at StoneTurn, focuses on corporate compliance and internal investigations, corporate structure and governance. She assists clients in proactive assessments and enhancements of compliance programs, internal investigations, third party due diligence, and similar ethics and compliance matters.

Jamen specializes in advising clients with proactive and reactive compliance matters. She helps entities in the public, private and non-profit sectors ensure that their compliance programs are comprehensive and effective, including through program reviews, enterprise risk assessments, program enhancement implementation, and third-party reviews.