The Five Essential Elements of Effective Corporate Compliance: A Practical Guide to an Effective Compliance Program as Seen Through the Eyes of a Compliance Officer, the DoJ and the SEC

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Agenda

– Introductions
– The Five Essential Element of Effective Corporate Compliance
– What is the Government Looking for in a Compliance Program?
– The Five Elements in Practice: A Practical Guide to Meeting Governmental Expectations and Best Practices
– Questions

The Five Essential Elements of Corporate Compliance
Five Essential Elements of Corporate Compliance

1. Standards and Procedures to prevent and detect criminal conduct.
2. Leadership understanding and oversight of the compliance program.
3. Training and ongoing education and training.
4. Risk assessment to identify and mitigate risks.
5. Monitoring, auditing, and response to prevent and detect criminal conduct.

Sources of Corporate Compliance Guidance

- USG’s 7 Elements of an Effective Compliance Program
- OECD’s 11 Good Practices by the OECD on Internal Controls, Ethics, and Compliance
- UK’s 6 Principles for Effective Compliance Programs
- USDOJ’s 13 Good Practices for the OECD on Internal Controls
- SEC’s 10 Principles for Effective Compliance Programs

"Hallmarks of Effective Compliance Programs" from the joint DOJ/SEC 2012 FCPA Guidance

- Leadership
- Risk Assessment
- Standards and Controls
- Training and Communication
- Monitoring, Auditing, and Response
Current Enforcement Environment

Global Enforcement Trends

- Increased international cooperation in the prosecution of corruption
  - Complex multi-jurisdictional investigations
  - U.K. Bribery law (limited enforcement to date)
  - Emerging market laws and prosecutions
  - Enforcement efforts in other countries: Brazil, Canada, and Australia
- Increased emphasis on individual prosecutions
- Strong interest in willful blindness and third parties
- Sector-wide targeting: financial services; pharmaceuticals and medical devices; freight forwarding; oil & gas services; and retail
- Dramatically increased penalties, including criminal fines and disgorgement of illicit profits measured in hundreds of millions of dollars
- Greater pressures and incentives to voluntarily disclose misconduct to regulators

U.S. Enforcement Risks Increasing in Certain Legal Areas

- Areas with significant enforcement risk include an ever-increasing number of issues:
  - Data Protection/Privacy/Information Governance
  - Antitrust
  - Trade Compliance (Import/Export Controls, Sanctions, Customs)
  - Corruption/Bribery/Fraud (including FCPA)
  - Immigration/Global Mobility
  - Intellectual Property
  - Environmental
  - Labor & Employment (including Compensation and Incentives)
  - Sales/Marketing/Advertising
  - Supply Chain/3rd Party Relationships
  - Health & Safety
  - Governmental Contracting
## Top 20 FCPA Settlements (2005 – present)

<table>
<thead>
<tr>
<th>Company</th>
<th>Fine</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Siemens</td>
<td>$800</td>
<td>2008</td>
</tr>
<tr>
<td>KBR/Halliburton</td>
<td>$579</td>
<td>2011</td>
</tr>
<tr>
<td>BAE</td>
<td>$400</td>
<td>2009</td>
</tr>
<tr>
<td>Total S.A.</td>
<td>$398</td>
<td></td>
</tr>
<tr>
<td>Alcoa</td>
<td>$384</td>
<td>2010</td>
</tr>
<tr>
<td>ENI S.p.A.</td>
<td>$365</td>
<td>2012</td>
</tr>
<tr>
<td>Technip</td>
<td>$338</td>
<td>2014</td>
</tr>
<tr>
<td>JGC Corporation</td>
<td>$219</td>
<td>2013</td>
</tr>
<tr>
<td>Daimler</td>
<td>$185</td>
<td></td>
</tr>
<tr>
<td>Weatherford</td>
<td>$152</td>
<td></td>
</tr>
<tr>
<td>Alcatel-Lucent</td>
<td>$137</td>
<td></td>
</tr>
<tr>
<td>Howmet-Philco</td>
<td>$108</td>
<td></td>
</tr>
<tr>
<td>Dte/ Magyar Tél</td>
<td>$95</td>
<td>2012</td>
</tr>
<tr>
<td>Marubeni Corporation</td>
<td>$88</td>
<td></td>
</tr>
<tr>
<td>Panalpina</td>
<td>$83</td>
<td></td>
</tr>
<tr>
<td>Johnson &amp; Johnson</td>
<td>$70</td>
<td></td>
</tr>
<tr>
<td>Piller / Wyeth</td>
<td>$60</td>
<td></td>
</tr>
<tr>
<td>ABB</td>
<td>$56</td>
<td></td>
</tr>
<tr>
<td>Pride International</td>
<td>$54</td>
<td></td>
</tr>
</tbody>
</table>

## Top 20 Non-US Cases (millions)

<table>
<thead>
<tr>
<th>Company</th>
<th>Fine</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thales SA</td>
<td>$913</td>
<td>France</td>
</tr>
<tr>
<td>Siemens</td>
<td>$689</td>
<td>Germany</td>
</tr>
<tr>
<td>Stantec</td>
<td>$598.7</td>
<td>Canada</td>
</tr>
<tr>
<td>Ferrostaal</td>
<td>$193</td>
<td>Germany</td>
</tr>
<tr>
<td>Man Group</td>
<td>$102.2</td>
<td>UK</td>
</tr>
<tr>
<td>BAE</td>
<td>$94.9</td>
<td>UK</td>
</tr>
<tr>
<td>Siemens</td>
<td>$49.5</td>
<td>Nigeria</td>
</tr>
<tr>
<td>Hitachi</td>
<td>$24.8</td>
<td>Switzerland</td>
</tr>
<tr>
<td>Fair Trade Commission / Pharma cases</td>
<td>$10</td>
<td>South Korea</td>
</tr>
<tr>
<td>Macmillan</td>
<td>$16.1</td>
<td>UK</td>
</tr>
<tr>
<td>Ingospec Ltd</td>
<td>$12.7</td>
<td>UK</td>
</tr>
<tr>
<td>NW Kellogg</td>
<td>$11.1</td>
<td>UK</td>
</tr>
<tr>
<td>West</td>
<td>$11</td>
<td>UK</td>
</tr>
<tr>
<td>Melia &amp; Johnson</td>
<td>$10.5</td>
<td>UK</td>
</tr>
<tr>
<td>Griffiths Energy International</td>
<td>$10.35</td>
<td>Canada</td>
</tr>
<tr>
<td>Ino Resources Ltd</td>
<td>$9.9</td>
<td>Canada</td>
</tr>
<tr>
<td>Fair Trade Commission / Pharma cases</td>
<td>$9.9</td>
<td>South Korea</td>
</tr>
<tr>
<td>Abbott Grubb</td>
<td>$9.7</td>
<td>UK</td>
</tr>
<tr>
<td>AON Ltd</td>
<td>$8.8</td>
<td>UK</td>
</tr>
<tr>
<td>Conoco Oil-For-Food Actions (7 cases)</td>
<td>$8.1</td>
<td>Denmark</td>
</tr>
</tbody>
</table>

## Recent Fines in US Sanctions/Export Controls

<table>
<thead>
<tr>
<th>Company</th>
<th>Industry</th>
<th>Fine</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>BNP Paribas</td>
<td>Financial Services</td>
<td>$8.9 Billion</td>
<td>2014</td>
</tr>
<tr>
<td>HSBC Bank</td>
<td>Financial Services</td>
<td>$1.256 Billion</td>
<td>2012</td>
</tr>
<tr>
<td>Standard Chartered Bank</td>
<td>Financial Services</td>
<td>$887 Million</td>
<td>2012</td>
</tr>
<tr>
<td>ING Bank N.V.</td>
<td>Financial Services</td>
<td>$619 Million</td>
<td>2012</td>
</tr>
<tr>
<td>Credit Suisse AG</td>
<td>Financial Services</td>
<td>$538 Million</td>
<td>2009</td>
</tr>
<tr>
<td>Royal Bank of Scotland</td>
<td>Financial Services</td>
<td>$500 Million</td>
<td>2014</td>
</tr>
<tr>
<td>BAE Systems PLC</td>
<td>Defense Services</td>
<td>$400 Million</td>
<td>2010</td>
</tr>
<tr>
<td>Barclays Bank PLC</td>
<td>Financial Services</td>
<td>$298 Million</td>
<td>2010</td>
</tr>
<tr>
<td>Mitsubishi UFJ</td>
<td>Financial Services</td>
<td>$293 Million</td>
<td>2013</td>
</tr>
<tr>
<td>Lloyd TSB Bank, plc</td>
<td>Financial Services</td>
<td>$217 Million</td>
<td>2010</td>
</tr>
<tr>
<td>Weatherford International</td>
<td>IS Services</td>
<td>$221 Million</td>
<td>2013</td>
</tr>
<tr>
<td>Fokker Services BV</td>
<td>Aircraft Services</td>
<td>$53 Million</td>
<td>2014</td>
</tr>
</tbody>
</table>
The Case for Compliance
What is the Government Looking For – The “Three Basic Questions” About a Company’s Compliance Program

1. Is the program well-designed?
2. Is it being applied in good faith?
3. Does it work?

Case Study: Morgan Stanley

- Provides powerful evidence of the benefits of investing in an effective compliance program.
- A former Morgan Stanley Managing Director pled guilty to one count of conspiring to circumvent the system of internal controls that the bank maintained to prevent violations of the FCPA.
- Morgan Stanley’s pre-existing compliance program was specifically highlighted in press releases and public comments as the biggest reason for the Government’s decision not to prosecute the bank, enter into a deferred prosecution agreement or pursue a substantial fine. This marked the first public FCPA declination based upon the sufficiency of a company’s compliance program.
- April 25, 2012, U.S. Department of Justice Press Release:
  "[C]onsidering... Morgan Stanley constructed and maintained a system of internal controls, which provided reasonable assurances that its employees were not bribing government officials, the [DOJ] declined to bring any enforcement action against Morgan Stanley related to Peterson's conduct."

Case Study: Morgan Stanley (cont’d)

- The decision not to prosecute was based on clear evidence of Morgan Stanley’s compliance program containing:
  - The existence of an effective compliance program;
  - Rigorous internal controls;
  - Regular compliance training and communications;
  - Internal policies addressing the corruption risks associated with the giving of gifts, business entertainment, travel, lodging, meals, charitable contributions and employment, that were updated regularly to reflect regulatory developments and specific risks;
  - Compliance program monitoring and auditing; and
  - Extensive pre-retention due diligence on business partners and stringent controls on payments to business partners.
Case Study: Ralph Lauren Corporation

- Involved Ralph Lauren’s subsidiary in Argentina which bribed customs officials to assist in the passage of goods through customs. The General Manager for the Argentina subsidiary also provided gifts to three different government officials valued at between $400 and $14,000 to improperly secure the importation of products into Argentina.

- DOJ jurisdiction cited in Non-Prosecution Agreement (NPA) as based on Ralph Lauren (“RLC”) hiring the employee as General Manager of Argentinean subsidiary (NPA later calls that person an employee of the subsidiary itself)
  - General Manager was an “employee and agent of the issuer,” per NPA
  - RLC discovered the problem “after it put in place an enhanced compliance program and began training its employees.”

- Company entered into a NPA and agreed to pay $1.5 million, including disgorgement of $734,000 in illicit profits and interest
  - RLC also undertook extensive FCPA training for employees worldwide, enhanced the company’s existing FCPA policy, implemented an improved gift policy, and other compliance, control, and anti-corruption policies and procedures, strengthened its due diligence protocol for third-party agents, terminated culpable employees and a third-party agent, instituted a whistleblower hotline, and hired a designated corporate compliance attorney.

Case Study: Ralph Lauren Corporation (cont’d)

- SEC’s decision to resolve the case with the NPA was supported by the following factors:
  1. RLC discovered the misconduct during the rollout of its new enhanced FCPA policy in 2010 (misconduct reported to management by an employee upon review of the new compliance policy.)
  2. RLC, upon being notified of the concerns by employees, responded immediately to end the misconduct by terminating the customs broker, ceasing retail operations in Argentina.
  3. RLC promptly reported preliminary findings of the internal investigation to the SEC.
  4. The SEC credited RLC for its compliance program, which included (i) enhanced third-party due diligence procedures, (ii) a global risk assessment process, and (iii) significant improvement to its internal controls.
  5. RLC’s comprehensive compliance program was developed and implemented before the problem was discovered.
  6. The SEC also acknowledged extensive cooperation of the company during the investigation.

The Five Elements in Practice: A Practical Guide to Meeting Governmental Expectations and Best Practices
Leadership Discussion

Risk Assessment Discussion

Risk Assessment Report Deliverables
**Recommendations for Key Program Opportunities**

### Key Program Opportunities

#### 1. Strategic Acquisition Plans
- **Opportunities**: Company A pursues a strategy of growth through acquisition of family owned businesses which are unlikely to have sufficient compliance programs and/or implemented anti-corruption practices.
- **Recommendations**:
  - Strengthen acquisition risk assessment.
  - Conduct interviews to understand the due diligence performed.
  - Develop protocols for compliance program integration.

#### 2. Third-Party Management
- **Opportunities**: Company A does not have sufficient awareness of the risk profile of its active third parties hampering the ability to conduct effective monitoring from a risk management perspective.
- **Recommendations**:
  - Conduct an inventory of third-party programs and/or implemented anti-corruption practices.
  - Conduct a targeted review of third parties in higher risk categories.
  - Document an 18-month compliance audit plan.

#### 3. Trade-Related Risk
- **Opportunities**: Company A is developing its third-party vendor management capabilities; third-party diligence should be based on risk and regularly updated.
- **Recommendations**:
  - Review and assess third-party vendor management capabilities.
  - Develop protocols for compliance program integration.

#### 4. Anti-Corruption Controls
- **Opportunities**: There is a need for more proactive, formal and/or planned compliance activities, particularly in the sales function and lower roles.
- **Recommendations**:
  - Encourage the Risk Committee to consider a broad range of issues, including future business initiatives.
  - Develop protocols for monitoring and assessing implementation of mitigation plans.
  - Continue to enhance the coordination, integration and working relationship between Risk, Internal Audit and Compliance functions to ensure a strategic and comprehensive approach to risk management.

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**Recommendations: Risk Assessment**

### Risk Assessment - Compliance Program Best Practices for this Element:

- **Opportunities**: Interview results indicate there is room for increased focus on “tone at the middle” e.g., compliance and ethical leadership at the middle management levels.
- **Recommendations**:
  - Encourage the Risk Committee to consider a broad range of issues, including future business initiatives.
  - Continue to enhance the coordination, integration and working relationship between Risk, Internal Audit and Compliance functions to ensure a strategic and comprehensive approach to risk management.

### Conduct Regular Risk Assessments

- **Opportunities**: There are a number of non-financial events that can impact risk to the business.
- **Recommendations**:
  - Conduct risk assessments in the following areas:
    - Antitrust/Competition
    - Trade compliance and export controls
    - Data Protection
    - Third Parties
  - Develop protocols for compliance program integration.

### Establish a Protocol for Periodic Risk Assessments

- **Opportunities**: There is a need for more proactive, formal and/or planned compliance activities, particularly in the sales function and lower roles.
- **Recommendations**:
  - Develop a program for annual and/or on-going risk assessments in key areas, including:
    - Compliance (e.g., FCPA, Antitrust/Competition, Privacy, Third Parties)
    - Region/Country
    - Transactional
    - Strategic Business Initiatives
  - Develop protocols for monitoring and assessing implementation of mitigation plans.
  - Document an 18-month compliance audit plan.
Managing 3rd Party Risk

Ubiquitous Cross-Border Flows

- Information
- Technology
- Raw Materials
- Components
- Products
- Services
- People
- Money
- Personal Data

Key Legal Areas

- Anti-Bribery
- Employment
- Customs / Trade
- Environment
- Privacy / Security
- Competition / Antitrust
5 Essential Steps to Help Assess and Address 3rd Party Risk

- Vetting & Selecting
- Structuring & Documenting
- Education & Training
- Monitoring & Evaluating
- Reacting & Remediying

Third-Party Due Diligence Program Overview

About Third-Party Due Diligence Programs

- Enforcement authorities across the globe expect companies to carefully review the corruption risk posed by third parties that sell products for, or act on behalf of, the company.
- Implementing a third-party due diligence program, along with other measures, will help protect the organization from responsibility for any corrupt actions by its vendors, suppliers, and other third parties.
- A third-party due diligence process should include the following:
  - Policies and materials necessary for onboarding new third-parties (and potentially alerting existing third-parties to the organization’s compliance expectations)
  - An active management program that enables the organization to maintain oversight of third-parties as appropriate.
- The scope and threshold levels for the Due Diligence program should be determined by the organization’s Legal or Compliance team in accordance with the company’s assessment of risk and desired level of risk mitigation.
Third-Party Due Diligence Program - Sample Materials

Sample materials for a third-party due diligence program include:

- **Pre-Assessment form:** internal checklist indicating which third parties are eligible for due diligence
- **Third Party Engagement / Due Diligence policy:** informs target audience of company policy and the process
- **Due Diligence Questionnaire:** provided to third party, used to gather relevant business information
- **Review Procedures:** provides step-by-step instructions for identifying the level of diligence required for third party
- **Reporting Form:** used to compile and assess results of the due diligence
- **Approval Form:** documents internal decisions and sign-offs

The due diligence process can be conducted using internal resources or the process can be outsourced to an external vendor.

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Third-party Due Diligence Program - Process Map

1. Use Internal Pre-Assessment to determine if third party eligible for enhanced due diligence. Eligible Third Party provided with Due Diligence Questionnaire and Certification form.
2. Third Party submits Due Diligence Questionnaire to business team’s (Engagement Lead).
3. (Engagement Lead) completes Internal Reporting Form then submits materials to appropriate resource for due diligence and internal processing.
4. Designated resource reviews information to identify risk factors and/or red flags and ensures the appropriate level of diligence is conducted.
5. After diligence is completed, results are documented on internal forms and if necessary, approvals obtained. The final decision and other relevant documentation is sent to the (Engagement Lead).

Example of Due Diligence Review Process

<table>
<thead>
<tr>
<th>Risk level</th>
<th>Sample Factors</th>
<th>Required Approvals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>Third party operates in low risk country (e.g. Denmark)</td>
<td>None (but inform Regional President)</td>
</tr>
<tr>
<td>Medium</td>
<td>Third party operates in a higher risk country (e.g. Brazil)</td>
<td>BEC, Finance, and Regional President</td>
</tr>
<tr>
<td>High</td>
<td>Third party operates in a high risk country (e.g. Russia), Third party CEO is probably exposed (e.g., former Minister of Commerce), Third party is domiciled in one country (e.g., Greece) but banks in another (e.g. Switzerland), Third party is partly or wholly owned by a government agency</td>
<td>BEC, Finance, Regional President, and CEO</td>
</tr>
<tr>
<td>Agent</td>
<td>Third party will act as an agent</td>
<td>BEC, Finance, Regional President, and CEO</td>
</tr>
</tbody>
</table>
Sample Due Diligence Options

Review all third party information to identify risk factors and/or red flags and ensure the appropriate level of diligence is conducted:

- The internal review procedures should be calibrated to ensure third parties are consistently categorized based on the third party’s risk profile and/or red-flag behavior.
  - Typical result is categorization of third party as Low, Medium or High risk.
- Based on the risk category, the due diligence review may include:
  - Internet search and analysis
  - Review of local and international media
  - Review of public records (Lexis/Nexis or similar database)
  - Screening against International Watch List and Database
  - Litigation searches from databases and local searches (where available)
  - Conversation with provided references
  - Reputation testing from industry and local sources
  - Business Intelligence on the Subject Company
  - Discreet inquiries to acquire information
- Due diligence frequency and scope can be based on third party relationship (new, ongoing, high-risk) and/or the type of contract (one-year, multi-year, evergreen).

Wrap-Up Questions

Final Takeaway: What Is Effective Corporate Compliance?

<table>
<thead>
<tr>
<th>More than …</th>
<th>It is …</th>
</tr>
</thead>
<tbody>
<tr>
<td>A job title</td>
<td>An active program</td>
</tr>
<tr>
<td>A vague set of generally understood moral principles</td>
<td>A tangible set of policies, procedures and practices</td>
</tr>
<tr>
<td>A special interest of a few employees</td>
<td>A priority of senior managers/BOD</td>
</tr>
<tr>
<td>A burden on business activity</td>
<td>An essential element of the strategic direction of enterprise</td>
</tr>
<tr>
<td>A Code of Conduct</td>
<td>A risk-based compliance system</td>
</tr>
<tr>
<td>A one-time initiative</td>
<td>A dynamic process periodically reviewed and enhanced</td>
</tr>
</tbody>
</table>