HOW TO IMPROVE YOUR ANTI-CORRUPTION COMPLIANCE PROGRAMME — PART 1

BY HOWARD SKLAR

Compliance is seen as a cost centre by business and it is extremely difficult to demonstrate return on investment on anti-corruption compliance. But the costs of non-compliance with international anti-corruption legislation such as the US FCPA or the UK Bribery Act are simply too high to risk.

This list gives my top ten practical tips to improve an anticorruption compliance programme. Many of the tips are very difficult to implement and can take a long time, but in my opinion, these are the things that, if done correctly, will give you the best return on your compliance investment.

These tips are given in order of importance—if you have limited resources, start with tip one and implement that fully before moving to the next one. Because of the complexity of some of the tips, they will be presented in two parts—tips one to three are presented here and points four to ten will follow in the second part of this paper.

Before we start on the list itself, there are two important points to consider:

- Just start – Regulators expect companies to take their responsibilities under anti-corruption laws extremely seriously so the worst thing an organisation can do is to just do nothing. Merely demonstrating that you've made the effort to identify high risk areas and taken some action to address them puts you far ahead of many other companies that have fallen into the trap of *'admiring the problem'* of implementing a workable compliance programme and never get started at solving it. Some refer to the challenge as similar to trying to change your tires while driving at 60 miles per hour, but it is important to just pick some aspect to concentrate on and then start. And remember, the journey to improved compliance function is not a sprint—*it's a marathon.*
- Appoint a project manager – when you start to revamp your compliance programme, do not put it in the hands of a lawyer—be sure to involve a project manager. Project managers are used throughout business wherever there's a major project and it's important to treat compliance as an operational function. Project managers bring important skills and experience–they're good at maintaining regularity, defining stakeholders and establishing success factors. They're essential for your compliance project to be a success.

TIP 1 – UNDERSTAND WHO OWNS ANTI-CORRUPTION COMPLIANCE

This is a mental state that is absolutely necessary to establishing an effective anti-corruption compliance programme and gives you a solid base on which to build. This is equally true for the broader statement 'Understand who owns compliance' in the broader sense. The answer is simple business is the owner of compliance. Until business sees itself as the true owner of compliance it will be extremely difficult to succeed. Business should treat and see compliance as an integral part of the success of the overall business—it should be seen as just another function like marketing or sales. So the responsibility for compliance actually has to come from business. If something should go wrong in the business, the CEO's first call shouldn't be to the Chief Compliance Officer, it should be to the head of the business unit where the issue arose, asking *'Why are YOU not on top of your compliance programme?'*

In the same way that the top leadership of a company takes ultimate responsibility for falling sales, business must take ownership of the compliance programme—what it is doing, what it is about, what its goals are and whether or not it is meeting its objectives. If any member of the management team cannot talk intelligently about the compliance programme, if their response to the question is *'Go and ask the Compliance Officer'*, that's not a good sign.

So at the same time that the sales leader has to be responsible for achieving the targeted sales metrics, they have to be equally responsible for achieving the targeted compliance metrics within the sales function. Six key words that can dramatically change the culture of a business over time, representing a question that is the most important a business can ask—*"What does Compliance think about that?"*

If you can get your CEO to ask this question every time someone comes to him with a new idea, a new market, a new product or a new business line, you're on track to getting business to take responsibility for compliance away from the compliance department.

Once the CEO starts asking this question, the leadership team will ask it of those that bring new ideas to them and it will filter down organically through the organisation because it becomes a business requirement. So when the marketing manager starts to think about sponsoring a golf day, she already

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knows that her manager will ask her that question and she looks at how to address it before the question is asked. This means the concept of compliance is engaged early and often, and the requirement to comply is rightly seen as a business requirement, rather than the compliance department being seen as a hindrance to doing business.

TIP 2 – METRICS MATTER

It's a business truism that what gets measured gets done. Business already uses metrics across the organisation—in sales, marketing, finance, in every function. So it's important that compliance talks about compliance in the language that business understands. If the compliance department is not measuring compliance levels year on year and reporting these back to the company regularly they will be ignored, they will not get business's buy in. They will not be able to keep business's attention and not get them to take ownership of compliance.

There needs to be anti-corruption related metrics and these have to have a real effect on the business. The quickest way to drive that is to make sure that these metrics are linked to compensation—when a salesperson cannot get their full bonus because they haven't met their compliance metrics for that period things start to change. Good compliance metrics have the same characteristics as good business metrics:

- Metrics must be **hard** – i.e. concrete and measurable.

  Examples include:

  - The number of meetings the head of a business unit had with compliance during the year and the number of times these meetings were cancelled.
  - Whether the unit achieved X% of their compliance training target for the year.
  - The percentage of partners that have gone through the due diligence process.
  - The percentage of contracts that have the anti-corruption terms determined to be necessary.
  - The percentage of partners that have been through a risk-ranking process.
  - The percentage of partners ranked high risk that have a particular characteristic.
- Metrics must be **relevant** – the metrics measured must be developed with the business and talk to what the business needs to know to operate.
- Metrics must be **regular** – in the same way that sales reports and marketing reports are produced on a monthly or quarterly basis, there must be regular reporting back of the business's performance against the metrics agreed upon—compliance performance should never be a surprise at the end of the financial year.

'Tone at the top' is seen as an important aspect of proving a compliance culture, but *'tone at the top'* is not about what top management says about countering corruption, but what it does. Tying hard, relevant anti-corruption compliance metrics into compensation schemes gets the attention of employees, and more importantly, their buy-in. Metrics that are hard, relevant and regularly reported makes compliance much more likely to be taken seriously as it is being treated just like every other business function. This kind of approach shows more than *'tone at the top'*—it shows commitment at the top and that's what anti-corruption regulators are looking for in a good anti-corruption programme.

TIP 3 – YOUR RISK ASSESSMENT IS YOUR ROADMAP

A Risk Assessment is absolutely essential to prove the adequacy of your compliance programme to the anti-corruption regulators such as Serious Fraud Office (SFO), Department of Justice (DOJ) and Securities and Exchange Commission (SEC) should you ever be investigated.

When done properly a Risk Assessment can be an incredibly useful document that brings lasting benefits to the organisation and yet it is amazing how badly most companies do it.

When companies treat their Risk Assessment merely as a document, a snapshot of the risk landscape at that time, they are getting only a small fraction of the potential benefit. A good Risk Assessment involves a process of constant monitoring and input over a period of time – it's very much a living document and has some very clear benefits:

- Early buy-in – A good Risk Assessment engages business in compliance at a very early stage which means it becomes owned by business. It is a primary business function to understand risk and business generally understands risks very well indeed. For example, a business running call centres will have a very good understanding around the risk of electrical outage and how they can compensate, or the risk of an earthquake or other natural disaster.

  Where you can go to the executive and tie in a compliance Risk Assessment by making it relevant to business, you can get executive buy-in at a very early stage. If there are operations in an emerging market, business will be well aware of risk in local legislation, for example. Contextualise the risk by pointing out that alongside the risk of the local government shutting down the operation there is also anti-corruption risk—and give an indication of the compliance procedures you intend to put in place to mitigate that risk (which will be part of your Risk Assessment). Your Risk Assessment then can grow and develop with the business over time.

- Budget – The Risk Assessment also initiates the conversation around compliance resources because the mitigation plan will need money and people to execute. With buy-in into the Risk Assessment and compliance, business either approves the plan or says that it doesn't have budget to fund it, but either way there is a recognition of the resources required.
- Progress – The Risk Assessment can be used as a basis for measuring progress over the next years—with delivery against key milestones forming the basis for assessing the performance of the compliance function.
- Preparation – A good Risk Assessment helps to avoid 'fire drills'—unforeseen emergencies that demand compliance to drop everything and attend to them. By planning properly, many of these issues are circumvented.
- Benchmarks – It also gives compliance something to benchmark new developments against. So when there is a proposal to enter a new market, a new product line or a new partnership, compliance can gauge this against the current plan and decide where it fits in. This allows a quick assessment of the additional resources that may be required at a very early stage.
- Proof – The existence of a Risk Assessment provides important proof for regulators that there are adequate compliance procedures in place.
- Priority – Even more importantly, a Risk Assessment can provide evidence where there an issue comes to light that was identified but not addressed. It is important to remember that where a risk was revealed by not addressed, this doesn't automatically indicate that compliance procedures were inadequate. A robust Risk Assessment can show that while the issue was identified, it was gauged against the rest of the risks in the plan and judged at the time that other issues were more important to address in the light of limited time and money and further shows the progress in those other areas.

Regulatory enforcers have indicated that a Risk Assessment that is constantly revised, updated and benchmarked against is strongly considered to indicate an effective compliance programme.

Part 2 of this Expert Talk will continue with points 4 to 10 of how to improve your compliance programme.