



# Recruiting the Private Sector in the Fight Against Business Wrongdoing

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# WHY HAVE A COMPLIANCE & ETHICS PROGRAM?

## **Legal & business reasons:**

- **Enforcement & penalties**
- **Civil liability**
- **Market expectations – investors, customers, employees, suppliers**
- **Prevent waste, fraud & abuse**
- **Reputation**
- **It's the right thing to do**

# WHAT IS A COMPLIANCE & ETHICS PROGRAM?

- **Management commitment to do the right thing**
- **Management steps to make it happen**

## **FNE - Essential requirements of a Compliance Program**

- (i) a real commitment to comply;**
- (ii) identification of current and potential risks;**
- (iii) internal mechanisms and procedures;**  
**and,**
- (iv) the participation of Managers and/or Directors**

# COMPLIANCE & ETHICS - HISTORY

- **First, by risk area (antitrust, environment, safety, bribery, etc.)**
- **Then, a separate field of compliance & ethics**
- **First, only a couple countries**
- **Then, increasingly widespread**
- **First, governments relied only on fear**
- **Then, use of carrot & stick**
- **2010 – OECD's first global standard:  
The Good Practice Guidance**

# COMPLIANCE & ETHICS PROFESSION

- **Dedicated to preventing & detecting misconduct in companies & other organizations**
- **Society of Corporate Compliance & Ethics**
  - **Professional membership organization**
  - **Global outreach to represent compliance & ethics professionals & promote effective programs**
  - **Provides resources for compliance & ethics programs**
  - **Professional Certification program – CCEP**
  - **[www.corporatecompliance.org](http://www.corporatecompliance.org)**

## **STARTING PRINCIPLES**

- **Diligence in preventing and detecting misconduct**
- **A culture that encourages compliance & ethics**

## **COMPLIANCE OR ETHICS?**

- **Not either but both**
- **Don't let words get in the way**
- **Just because it is legal does not mean it is ethical, but . . .**
- **Just because it is “ethical” does not mean it is legal, either**
- **“Compliance and ethics” – the field of management efforts to prevent organizational misconduct; corporate self-policing**



# ELEMENTS FOR C&E PROGRAMS

## Risk assessment

1. Standards & procedures

2. Governing authority oversight,  
management role & program

responsibility/**chief ethics & compliance  
officer (“CECO”)**

3. Screening & proper delegation

# **ELEMENTS FOR C&E PROGRAMS**

**4. Training & communications**

**5. Auditing/monitoring, reporting systems & evaluating the program**

**6. Discipline & incentives**

**7. Appropriate response & preventing recurrence**

**Third parties**

# RISK ASSESSMENT

- **Need to determine your risks**
- **All legal, ethics & reputation risks**
- **Prioritize based on likelihood & impact**
- **Needs to be ongoing**

# **RISKS? WHAT RISKS?**

**Some examples:**

- **Competition law**
- **Corruption**
- **Securities fraud**
- **Discrimination/harassment**
- **Environmental**
- **Political/lobbying**
- **Conflicts/gifts**
- **Consumer protection**
- **Privacy**
- **Employment practices**

# STANDARDS & PROCEDURES

- **Standards – a code of ethics & other standards**
  - **Exactly what does a code of ethics do?**
  - **Need practical guides for employees**
  - **User test these with employees first**
    - **Employees will improve it for you**
  - **What to avoid: “read, laughed and filed” codes**

## **STANDARDS & PROCEDURES**

- **Procedures – internal control systems**
  
- **Do you have checks on the misuse of power anywhere in the company?**

# COMPLIANCE INFRASTRUCTURE

- **High-level executive or group to run the program**
  - **The chief ethics & compliance officer (CECO)**
  - **Needs authority & resources**
  - **Independence & professionalism**
  - **Fired only by the board**
  - **Needs to be in the important meetings**

## **FNE - COMPLIANCE INFRASTRUCTURE**

**Depending on circumstances, CECO**

**“must have full autonomy and independence within the company (for example, that person reports directly to the Board of Directors and can be removed only under specifically defined conditions).”**



# COMPLIANCE INFRASTRUCTURE

- ***Management* must ensure the program works**
  - **They can't just delegate this to the CECO**

# COMPLIANCE INFRASTRUCTURE

- **“Tone at the top” is *not* “talk at the top”**
  - **The boss uses the code**
  - **The boss takes the training first**
  - **The boss praises those who speak out**
  - **The boss takes the compliance & ethics person to lunch**
  - **The boss asks the rest of the managers what they did to promote the program**

## COMPLIANCE INFRASTRUCTURE

- **The board must know what is going on & oversee the program**
  - **Mandatory reports by the CECO**
  - **No filters**
  - **Input from all business units**

# COMPLIANCE INFRASTRUCTURE

- **Compliance committees – one important tool**
- **Is someone(s) responsible for key risk areas?**
- **Compliance presence in every business unit with significant compliance risk**

# DELEGATING RESPONSIBILITY

- **Don't give responsibility to those you should have known were criminals**
- **Does the company's hiring and promotion system screen out those likely to break the law?**
- **Could you have a board member who had served time for armed bank robbery (this happened at Smith & Wesson) without your knowing about it?**

# COMMUNICATING EFFECTIVELY

- **Training and communication that reaches people**
- **Cover board members, officers, employees and those acting for company**
- **Be practical and effective**
- **Will your employees remember the training?**

# STEPS TO PREVENT & DETECT VIOLATIONS

- **Monitoring and auditing to detect violations**
  - **What's going on out there?**
  - **More than process reviews**
  - **Screening for misconduct**
  - **Can you find crimes with announced reviews?**
  - **Monitoring: looking & asking questions**
    - **Active management**
    - **“Management by walking around”**
    - **This is management's responsibility**

## **FNE – SCREENING TO DETECT MISCONDUCT**

- **Both monitoring and auditing can even incorporate techniques referred to as “*screening*”, which consist of the use of econometric tools that detect the existence of possible harmful practices that threaten competition. It is advisable, in principle, to hire specialized outside personnel for its implementation.**



# STEPS TO PREVENT & DETECT VIOLATIONS

- **Tools to evaluate effectiveness periodically**
  - **Surveys**
  - **Focus groups**
  - **Individual interviews**
  - **Testing**
  - **Self-assessments**
  - **Peer reviews**
  - **Exit interviews**
  - **Deep dives**

# STEPS TO PREVENT & DETECT VIOLATIONS

- **Employees & agents can seek advice/report violations**
  - “Including when they need urgent advice on difficult situations in foreign jurisdictions” – OECD
- **Publicize**
  - Do employees know it’s there?
  - Do they trust it?
- **Without fear of retaliation**
  - Will anyone believe “trust us, we won’t retaliate”?

## WHISTLEBLOWERS?

**Here is the total count of all the countries around the world where people like whistleblowers:**

**0**

# DISCIPLINE

- **Enforce consistently through appropriate disciplinary measures**
  - *tougher* on the leaders
- **Discipline for failure to take reasonable steps to prevent/detect misconduct**
  - “On your watch” responsibility

# INCENTIVES

- **Incentives to perform in accordance with ethics & compliance programs**
  - **What is the message of your reward system?**
  - **Incentives drive behavior**
  - **Visible rewarding of C&E leadership**
    - **E.g., recognition letters**
  - **Make it memorable & meaningful**

## **FNE - INCENTIVES**

- **For example, employees' incentives, salaries and other benefits, including business targets on which said benefits rely, must be compatible with the regulatory framework of competition law in general, and in particular with preventing the risks identified.**

# RESPONDING EFFECTIVELY

- Respond appropriately to violations
- Investigate promptly, thoroughly, professionally
- Fix the problem – and the cause of the problem
- How you respond can mean more than what you initially did wrong

# THIRD PARTIES/AGENTS

- **Responsibility for some acts of third parties**
  - **E.g., environmental, safety, customer data/privacy, corruption, acts of foreign agents, suppliers, trade associations**



# THIRD PARTIES/AGENTS

- **Addressing third party risk**
  - **Due diligence in retention**
  - **Training**
  - **Audits/monitoring**
  - **Contract provisions**
  - **Encourage their compliance & ethics programs**
    - **Make it a bidding factor/prerequisite**
    - **Provide assistance, workshops, access to your CECO**

# DOCUMENTATION

- **If you are doing these things, can you prove it?**
  - **“If it’s not in writing it didn’t happen”**
- **Does your compliance & ethics program tell a compelling story?**

# HOW GOVERNMENTS MAKE THIS HAPPEN

- **Actual enforcement of the law**
- **Set a practical & tough standard for programs**
  - **E.g., OECD Good Practice Guidance**
- **Make it clear that programs matter**
  - **Decisions to prosecute**
  - **Penalties**
  - **Damages**
  - **Benefits, e.g., taxes, procurement, financial assistance, public recognition, customs**
  - **Know the C&E field**

# RESOURCES

**Murphy, “A Compliance & Ethics Program on a Dollar a Day:  
How Small Companies Can Have Effective Programs”  
(SCCE; 2010)**

**<http://www.corporatecompliance.org/Resources/View/smld/940/ArticleID/749.aspx>**

**Society of Corporate Compliance and Ethics**

**[www.corporatecompliance.org](http://www.corporatecompliance.org)**

**OECD, Recommendation of the Council for Further  
Combating Bribery of Foreign Public Officials in  
International Business Transactions,**

**<http://www.oecd.org/dataoecd/11/40/44176910.pdf>**

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**QUESTIONS?**