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4 SIMPLE RULES
TO MAINTAIN CORPORATE COMPLIANCE

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What Is Corporate Compliance?

Corporate compliance is a **system** to ensure that the organization—a publicly traded or privately held corporation, a partnership, a sole proprietorship, a non-profit, a college or university—complies with all **laws, rules, and regulations that apply to it.**

A Word About Applicability

Not every regulation out there applies. If you are an industrial manufacturing company, and not in the food safety space, you probably don't care too much about the regulations that the U.S. Food and Drug Administration (FDA) may put out. If you are a small mom-and-pop operation, you probably are not very interested in the stock market regulations the U.S. Securities and Exchange Commission (SEC) promulgates.

First, businesses need to determine what laws and regulations are applicable to their organization, based upon their type of operations, processes, suppliers and customers. **Systems can then be designed** to ensure compliance with applicable rules.

Laws, rules, and regulations may be federal, state, or local, and there may be additional industry standards or voluntary standards that apply to how you make your products or conduct your business. A good corporate compliance system relies on those who know the company's processes and products best, and looks at what existing and new standards may apply.

The compliance system needs to be designed with a dual purpose:

- To ensure that people know what is required to be in compliance
- To provide a reporting mechanism and feedback loop if something is not

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It is quite common to have online (computer-based) reporting today, but a compliance phone line, typically routed to a third party, employees, customers, or suppliers to raise concerns. It's essential that these concerns be logged, and then referred or investigated. Using data analytics—simple or algorithm-based—to understand the matters people raise is an important early-warning system about corporate conduct concerns.

At the end of the day, all systems rely on people—they run them, they interact with them, they complain about them. It is therefore essential that the reasons for having these systems in place are clearly communicated; that training on how to use them (and when they shouldn't be used in place of human communication) is provided; and training on the substantive obligations of the company and its employees is done, and often.

These systems cannot be "one and done" (you can't just put them in place and never look at them again). Obviously, as regulations, products, and lines of business change, the system will need to be updated to take those factors into account. The effectiveness of the system—how easy (or difficult) it is to use; whether people are actually comfortable using it; and whether the compliance organization and senior management are getting the information they need to ensure that the company is taking its obligations seriously—needs to be evaluated periodically and changes may need to be made to enhance it.

Why Comply?

When someone asks why it's important to maintain corporate compliance, it may sound trite to say "Because it's the right thing to do," but that is ultimately the case. We will talk a lot throughout the overall course about compliance being part of a company's "license to operate," and how corporate compliance can be a competitive advantage, but first and foremost, you need to operate in compliance to be able to continue as a viable business. The regulators use both the **carrot**—rewarding companies that are in compliance and potentially awarding them direct business—and the **stick**—punishing those that are not in compliance and blocking them or eliminating them from their supplier base. One of the weapons the U.S. government uses in its Foreign Corrupt Practices Act (FCPA) investigations is the threat of being barred from supplying the government with goods or services, directly or indirectly (because a first tier, or prime, contractor to the government usually has to vouch for the compliance status of its supply chain), so that's a powerful tool.

Publicly traded companies, or companies that publicly sell debt and are therefore subject to the SEC's reporting standards, must disclose the existence of "material" compliance investigations, and any arrangements or settlements they reach to resolve those issues. The securities rules are complex, and such disclosures are intensely reviewed and litigated. There is an entire class of plaintiff's lawyers that has sprung up to allege that a company's disclosures of its risks, operations, and litigation were inadequate, and to seek compensation on behalf of all its shareholders. And you're not out of the woods if you are a small or non-profit entity—you may well have federal and state tax filing and disclosure requirements, like the Form 990, where you are also supposed to disclose substantial compliance matters.

Finally, your company's reputation often depends on your being in compliance, and seen as a good corporate citizen. Former Alcoa CEO, and later U.S. Treasury Secretary Paul O'Neill, impressed on the organization that the real test was "how would you feel, and how would the world react, if your conduct was detailed in a front-page story in the New York Times," or another prominent publication. The extensive use of social media—Twitter, LinkedIn, Facebook, Instagram, and even TikTok—means that a reputational attack can be made nearly spontaneously, with next to no cost and can take on a life of its own.

The absence of serious substantive governmental regulation of media or social media— essentially, we are relying on them to moderate and police themselves—has led us to the "real news/fake news," bots, and unfettered viral flow of information that we see today, sometimes with little or no regard for the facts. Having a media and social strategy to react to these things is essential, but it's no less important to be seeding the ground with your own story consistently ahead of any blow-ups.



FOUR SIMPLE RULES

You won't find these in any textbook or article (yet!), but I've distilled the rules of corporate compliance into four rules:

1 Don't bribe.

The U.S. government's enforcement of the Foreign Corrupt Practices Act (FCPA) continues to grow, and the trend over the past decade is increased cooperation with its international counterparts like the UK Serious Fraud Office, and the European Union national regulators. While the FCPA technically only covers bribes of "foreign officials," revisions in the past decade to the UK Bribery Act extend that to **any** commercial bribery, and almost every country has its own version of anti-bribery legislation. Claiming that it's being selectively enforced against you as a foreign company is usually a losing argument.

2 Don't ignore sanctions.

The U.S. and other countries impose sanctions for foreign policy, military, and economic reasons, and you ignore them at your peril. One of the shorthand rules is:If you cannot do it/sell it yourself, you cannot do so through a subsidiary or a third party. Most cases brought forward are not for the unwitting violation of sanctions, like unknowingly selling to North Korea or Iran, but for transactions where the perpetrator knew full well that the transaction was problematic and sought to come up with a clever scheme to avoid regulatory application or scrutiny.

3 Don't lie.

In any public filing or public statement, it's important to tell the truth in as much detail as you can. As noted earlier, a cottage industry has arisen parsing press releases and SEC filings to look for inaccuracies or misstatements that can serve as the basis for direct claims of fraud, or shareholder derivative actions that allege inadequate oversight of the company by its board of directors. As Nixon's 1970s Watergate and so many corporate and political scandals in the ensuing years have shown, the coverup may be worse than the crime.

4 Don't hide money.

Your public statements and filings, including your tax returns, can trip you up. Famously, notorious gangster Al Capone did not go to jail for the multiple killings he is alleged to have ordered or performed, but for income tax evasion. In addition to its prohibition on bribery, one of the core features of the FCPA is its bookkeeping and records provisions. To avoid liability under these provisions, you would ironically have to account for your bribe as a bribe, and list it as a non-tax-deductible business expense. How many times do you think that happens?

There are substantive areas—antitrust compliance, data privacy, health care compliance, and others—where these simple rules don't neatly fit, but the 80/20 rule applies: If you can ensure that these four principles are followed, 80% of your compliance risk will be addressed.

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