COMPLIANCE

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Increased scrutiny from regulators and enforcement agencies has prompted boards to take a more active interest in their organisations' compliance programmes. It should be expected that board members will ask questions about the compliance information presented. A board presentation that doesn't raise questions isn't necessarily an indication of all being well. Instead, it could be a signal that more education of the board members is needed to increase compliance awareness.

To increase the likelihood of a constructive and meaningful dialogue about the compliance programme, directors should know what they are looking for and why they are looking for it. Organisations should have a clear vision on the role and importance of having a comprehensive compliance programme. Understanding the organisation's compliance programme needs to be second nature for boards, in the same way that understanding the finances has become second nature.

Developing a culture of compliance within an organisation is an important part of running any business. Many boards lag behind in taking an active part in building a culture of compliance. It is easy for leaders to become overwhelmed by the risk exposure of their businesses.

Organisational culture is set from the top and cascades down, and directors must make compliance a standard at board level. Training is essential to ensure the development of a culture of compliance from the top to the bottom of the organisation.

The need for boards to build a culture of compliance is increasingly critical. Having unresolved compliance issues, yet to be discovered by a regulator, for example, is an uncomfortable situation for any organisation and its board to find themselves in. However, even more so is a violation uncovered by a regulator that the organisation is then forced to deal with. Compliance issues can also become serious when an organisation is involved in a merger or acquisition. In these circumstances any compliance issues will be red flags that can effectively stop a deal from closing.

Developing a culture that supports compliance is a meaningful way to avoid compliance issues. The ever-increasing volume and complexity of regulation globally will not go away, so developing a culture of compliance and risk management is imperative for any organisation. Due to this increasing complexity, organisations are having to move away from using a box-ticking approach to making the whole organisation embrace compliance and risk as a natural ongoing part of doing business every day.

Developing this compliance culture rests with leadership. The board must both set the standards for a culture of compliance, and then communicate them to the rest of the organisation. Managers develop and influence culture through their own behaviours and expectations of the staff they manage. There have to be consequences when poor behaviour is exhibited, not just with regards to compliance but in general and across the business. At the same time, it is also possible to reinforce a compliance culture through ensuring that remuneration provides the right incentives to support behaviours that reinforce a compliance culture. Other ways to reinforce a compliance culture can be using positive ethical communications that consistently set moral standards and help employees make the right decisions and display the right behaviours.

It is a part of the director's fiduciary duties in most countries to ensure that executive management has a compliance programme in place, exercising oversight of this programme and staying informed as to the programme's content and operation. A compliance failure can lead to serious consequences for the organisation reputationally, operationally, and

financially; therefore, monitoring compliance is a critical part of risk oversight and should be treated as such.

The board's role in oversight of an organisation's compliance programme is important to the success of the organisation. This starts with expertise on the board. Does the board have a compliance expert on the board? If not, the board should have access to an independent subject matter expert to support the board in discharging their duties in this area. The role of the compliance officer should include reporting to the board on a regular basis and as appropriate. The compliance officer should have open and unrestricted access to the board without fear of repercussions.

A board should not only ensure a compliance programme is in place but also actively oversee that function. It is a key function that gives the board members the necessary assurances that they need to discharge their duties. Compliance oversight is not something the board can engage outside advisers to support them with. Outside advisers can support the board in monitoring compliance risks, ensuring all relevant areas of compliance is being monitored, and assessing whether existing compliance procedures and processes are appropriate and how they might be improved. Should a serious compliance breach occur, the board should consider engaging an independent organisation or individual to investigate all issues involved with the breach.

An effective compliance programme requires involvement and commitment from senior management, an effective communications system, and an ongoing monitoring system. This is to ensure an organisation-wide adaptation of the compliance programme.

Questions the board should ask about compliance

- Does the board set the tone from the top on the importance of compliance?
- Does the organisation have a clearly stated and formal vision for compliance?
- Has the board approved the strategy for the compliance function to meet its objectives?
- Are there mechanisms in place to measure the performance of the compliance function?

- Does the organisation have a dedicated compliance officer?
- Is the compliance function resourced appropriately?
- How is the compliance programme structured and who created it?
- What is the state of the compliance programme and how is it evolving?
- What do our compliance reporting processes look like?
- Is the board knowledgeable about the content and operation of the compliance programme?
- Do the directors exercise reasonable oversight of implementation and effectiveness of the compliance programme?
- Does the board hold private sessions with the compliance functions on a regular basis?
- Is the compliance programme covering all appropriate areas of compliance?
- Does the organisation's culture support compliant behaviours?
- What does the organisation do to ensure employees are trained in compliance?
- What does the organisation do to ensure the board members are trained in compliance?
- How often should the board receive compliance updates and assurances?
- What process is in place to keep the board informed on compliance issues?
- What process is in place to address potential compliance issues?
- What is the process for employees to be able to raise compliance issues?
- Do we have a whistle-blowing procedure in place for anonymous complaints/reporting of compliance issues?
- Who manages whistle-blowing? (executives/audit committee members/board members?)
- How are compliance risks managed and assessed?
- How often is the compliance programme reviewed and updated to ensure it covers all legal and regulatory changes?