



School of
Management and Law

How can you evaluate your company's Corporate Compliance Program?

With guidelines given by the U.S. Department of Justice



Building Competence. Crossing Borders.

Principles: Federal Prosecution of Business Organizations

Factors that prosecutors consider in conducting an investigation of a corporation, determining whether to bring charges, and negotiating plea or other agreements:

- the adequacy and effectiveness of the corporation's compliance program at the time of the offense, as well as at the time of a charging decision.
- the corporation's remedial efforts to implement an adequate and effective corporate compliance program or to improve an existing one.

The three “fundamental questions“ a prosecutor usually asks:

- I. Is the corporation's compliance program well designed?
- II. Is the program being applied earnestly and in good faith? (being implemented effectively)
- III. Does the corporation's compliance program work in practice

The three fundamental questions:

- I. Is the corporation's compliance program well designed?** Risk Assessment / Policies and Procedures / Training and Communications / Confidential Reporting Structure and Investigation Process / Third Party Management / M&A
- II. Is the compliance program being applied earnestly and in good faith?** Commitment by Senior and Middle Management / Autonomy and Resources / Incentives and Disciplinary Measures
- III. Does the corporation's compliance program work in practice?** Continuous Improvement, Periodic Testing, and Review / Investigation of Misconduct / Analysis and Remediation of any Underlying Misconduct

I. Is the corporation's compliance program well designed?

A. Risk Assessment

Is my compliance program appropriately designed for maximum effectiveness in preventing and detecting the particular types of misconduct most likely to occur in my particular corporation's line of business and complex regulatory environment?

B. Policies and Procedures

- Do my company policies give content and effect to ethical norms?
- Do they address and aim to reduce risks identified in the risk assessment process?
- Does my company have a code of conduct that shows the company's commitment to full compliance with relevant Federal laws (accessible and applicable to all employees)?

C. Training and Communications

Are periodic trainings and certifications included in our compliance program for all directors, officers, relevant employees, and, where appropriate, agents and business partners?

I. Is the corporation's compliance program well designed?

D. Confidential Reporting Structure and Investigation Process

- Is there an efficient and trusted mechanism for employees to anonymously or confidentially report a breach of the code of conduct, company policies, or suspected/ actual misconduct?
- Does the company create a workplace atmosphere without fear of retaliation, appropriate processes for the submission of complaints, and processes to protect whistleblowers?

E. Third Party Management

- Is risk-based due diligence applied to our third-party relationships?
- Do we have an understanding of the qualifications and associations of third-party partners, including the agents, consultants, and distributors?

F. Mergers and Acquisitions (M&A)

- Does the company perform comprehensive due diligence of any potential targets as part of the standard merger, acquisition, and integration process?

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II. Is the program being applied earnestly and in good faith?

A. Commitment by Senior and Middle Management

- It's important to create and foster a culture of ethics and compliance with the law. The effectiveness of a compliance program requires a high-level commitment by company leadership to implement a culture of compliance from the top.
- The company's top leaders – the board of directors and executives – set the tone for the rest of the company!

B. Autonomy and Resources

- Effective implementation requires those charged with a compliance program's day-to-day oversight to act with adequate authority and stature. Does your compliance team have:
 - (1) sufficient seniority within the organization
 - (2) sufficient resources/staff to effectively undertake the auditing, documentation and analysis
 - (3) sufficient autonomy from management?

II. Is the program being applied earnestly and in good faith?

C. Incentives and Disciplinary Measures

- To which extent does your company's communications convey to its employees that unethical conduct will not be tolerated and will bring swift consequences, regardless of the position or title of the employee who engages in the conduct?
- Do you provide the right incentives for compliance and disincentives for non-compliance?
- Have disciplinary actions and incentives been fairly and consistently applied across the organization?

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III. Does the compliance program work in practice?

A. Continuous Improvement, Periodic Testing, and Review

With actual implementation of controls areas of risk and potential adjustment will be revealed

- Some companies choose to survey employees to test the compliance culture and evaluate the strength of controls.
- Others conduct periodic audits to ensure that controls are functioning well.

B. Investigation of Misconduct

How does a company ensure that the investigations objectively work in practice?

- A company should have a well-functioning and appropriately funded mechanism for the timely and thorough investigations of any allegations or suspicions of misconduct by the company, its employees, or agents.
- An effective investigations structure should also have an established means of documenting the company's response, including any disciplinary or remediation measures taken.

III. Does the compliance program work in practice?

C. Analysis and Remediation of any Underlying Misconduct

Compliance officers evaluating the effectiveness of their company's compliance program are instructed to reflect back on:

- the extent and pervasiveness of the criminal misconduct
- the number and level of the corporate employees involved
- the seriousness, duration, and frequency of the misconduct
- any remedial actions taken by the corporation, including, for example, disciplinary action against past violators uncovered by the prior compliance program, and revisions to corporate compliance programs in light of lessons learned.

Thank you all for your attention!

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