# The Top 10 Reasons Compliance Programs Fail

By CREATe Compliance

An effective compliance program manages an organization's policies and procedures in a way that protects the organization and supports an ethical organizational culture. The challenge is turning those policies into practices that drive employee behavior.

**These are the top 10 reasons compliance programs fall short.**

## 1. FAILURE TO ASSESS AND UNDERSTAND RISK

When entering new markets or embarking on a new business model, businesses can get caught up in the momentum of achieving future goals and not take the time to assess and understand new risks. Others rely solely on intuition and experience in identifying threats to the business. Performing a thorough risk assessment or due diligence on agents working in international markets is essential to proper third-party risk management. Companies miss significant risk exposure by not undertaking a process to evaluate actual corruption risks posed by their market entry strategy and business model. A risk assessment creates awareness around business risks that can then be managed or avoided through strengthened internal controls.

## 2. LACK OF LEADERSHIP

"Tone at the top" – that is, an organization's general ethical climate as established by its top management and supervisory authority – is a concept often held up as sine qua non of a successful compliance program. However, as shareholders and employees of companies that seemingly "talked the talk" but actually only paid lip service to ethics and compliance have discovered, that phrase rings hollow unless backed by action. True leadership is embodied by those who "walk the talk" as well. A successful compliance program requires leadership to underscore loudly and often that compliance is a key to good business. In a practical sense, a culture of compliance must be informed and supported by business processes that are continually improved.

In addition to tone at the top, "tone in the middle" is a key indicator of successful anti-corruption program implementation, and a detrimental weakness in programs that have failed. It is at the level of middle management that most compliance violations occur – where the rubber meets the road. If mid-level managers are not taking accountability for compliance and sending the right messages – or giving mixed messages – the risk for program failure is high.

In most companies, employees rely on their direct manager, rather than senior executives, to set the example for behaviors ranging from meeting attendance to management skills to integrity. When employees encounter management that is either insincere, or hypocritical in their support of compliance programs, the company and the program are undermined.

## 3. INSUFFICIENT RESOURCES

Without adequate human and financial resources, compliance programs often fail. Take for example the single person compliance department with no additional resources, or the additional compliance tasks added on to a legal counsel's already too-full plate, or the 'tagging-on' of anti-corruption to other programs where it gets lost in the shuffle. Often, these methods of tacking on compliance responsibilities to other roles indicate a lack of commitment to anti-corruption compliance.

Matching resources – both human and financial – to the corruption risk the company actually faces shows commitment to integrity in business and is key to the effectiveness of the anti-corruption program.

## 4. INSUFFICIENT PROFILE OF THE COMPLIANCE FUNCTION

Elevation of the compliance function and those who lead it are essential to the success of the program and the effectiveness of its risk prevention. How many companies have a Chief Compliance Officer (CCO)? How many companies have anti-corruption compliance as an additional task for the legal department? Does the anti-corruption team report directly to the board, legal department or the chief executive?

In Deloitte's 2015 Compliance Trends Survey, 59 percent of respondents reported that they have CCOs – an increase from 50 percent in 2014 and 37 percent in 2013. Approximately half said that they have five or fewer employees dedicated, and about 40 percent reported that their total budget is $1 million or less. Organizations with $5 billion or more in annual revenue have much larger budgets and staff: 34 percent report budgets of $1 million to $10 million, while 54 percent of smaller organizations have budgets of $1 million or less.

The compliance function, whether an individual or hundreds of people around the world, needs to have a "seat at the table" at the most senior levels of the business if compliance is going to be consistently prioritized in a company. Many international compliance standards also call for the CCO to formally report to the Board, or other oversight organization, to protect the independence of the function. In fact, in a 2007 report, the Ethics Resource Center identified reporting line as the "single biggest influence on [a Chief Ethics and Compliance Officer's] credibility within the organization" and recommended direct reporting to the CEO or the Board, or with "direct, unfiltered access to the Board."

Inclusion in meetings, visible support from the C-suite, and prioritization of training by senior managers also contribute to the success of the compliance position. In other words, the compliance function must be recognized as an integral part of the business in order to be successful.

## 5. LACK OF CLEAR PROCEDURES TO MAKE POLICIES ACCESSIBLE

In some businesses, policies written in overly complex jargon or legalese, or those that are simply assumed to be understood by overseas offices that may be operating in a number of languages, create both lack of understanding and adherence.

Even worse are policies without procedures. Companies must clearly document the way in which they expect policies to be followed, or risk the possibility that they will not be. Clear, simple procedures bridge the gap between policies and effective implementation.

Apart from ineffectual or "paper tiger policies" that have no procedures to back them up, procedures can be ineffective in other ways. Consider the well-written comprehensive set of procedures that just sits on a company drive or intranet waiting to be found, or procedures that lack in clarity and practicality. If employees do not understand the first few sentences or if the procedure conflicts with job responsibilities, it is unlikely employees will read them, much less embrace and implement them effectively.

## 6. COMPETING PRIORITIES AND INCENTIVES

In the average company, any number of issues may be "competing" with anti-corruption programs at any given time. When one compliance issue or initiative takes priority over all others, management inadvertently creates competition for compliance.

For example, when new, applicable regulations are published or when a company receives a large penalty for not complying with a regulation, then that compliance area will typically receive the focus going forward.

Profits and the bottom line can also be perceived as a competitor to anti-corruption compliance programs if management perceives anti-corruption compliance as merely a cost center, or as a constraint on doing business. Few companies take the time to calculate how much a $100,000 profit will actually cost if they ultimately must pay fines and penalties for an FCPA violation incurred as a result of that profit. In its Foreign Bribery Report, the Organisation for Economic Co-operation and Development (OECD) estimates "bribes equaled 10.9% of the transaction value and 34.5% of the profits."

## 7. INSUFFICIENT COMMUNICATION AND TRAINING

For company leadership and compliance teams, communication is a strategy-level agenda topic. In the past, C-suite management did not get involved in communicating the compliance message, but now nearly every CEO will talk about ethics and compliance in fora ranging from weekly business operations, to Board meetings, to investor relations communications and other public events.

Still, internally, managers and trainers face an uphill battle in communication across complex organizations on topics that some employees may feel uncomfortable talking about outside of gossip circles.

And the communication channels must go both ways. Companies should encourage employees to ask questions and report anomalies for discussion. Fostering a "speak up" culture goes hand-in-hand with training.

In terms of formal anti-corruption training, it too often comes in one-size-fits-all packages. Take the one-hour-once-a-year model, for example. For training to be relevant to departments with varying responsibilities or a dispersed workforce, it needs to be relevant to the business and cultural issues those employees will face.

## 8. INSUFFICIENT THIRD-PARTY MANAGEMENT

Using third-party consultants or agents to facilitate bribery payments, or turning a blind eye to the practices of suppliers – be it labor practices or other corrupt behaviors – are excuses on which companies can no longer rely.

Failing to commit to educating and monitoring third-party agents, suppliers and distributors to a standard commensurate with a company's understanding of their Code of Conduct can have serious consequences. Lack of third-party oversight is continually noted in SEC and Department of Justice cases.

## 9. INSUFFICIENT MONITORING

Another crucial element of an anti-corruption program, and one that far too few companies are doing effectively, is monitoring the performance of the program.

According to the Association of Certified Fraud Examiners' (ACFE) 2014 Report to the Nations, monitoring accounts is one of the top three methods of detecting corruption. Tips (from a hotline, for example) accounted for 42.2 percent of detections in 2014, while monitoring in the form of managerial review (16 percent) and internal audit (14.2 percent) followed. Yet, most companies are not doing it effectively.

Monitoring, or routinely checking adherence to and effectiveness of a compliance program, is a key step to continual improvement. As James R. Withrow mentioned in his article, Making Compliance Programs Work, after the excitement of an initial roll out, employees eventually go back to their usual habits. Monitoring places a check on policies, procedures, records and actions, and highlights when they are not being followed, or when they need to be updated. Routine monitoring aids compliance teams in continually improving their product. It also provides a significant deterrent effect. When employees (or third parties) know they will be monitored, they are more likely to comply.

## 10. INCONSISTENT ENFORCEMENT AND CORRECTIVE ACTIONS

Most people can think of an example where a code of conduct provision or ethics policy was not applied to a senior member of management in the same way it was to more junior employees. There are also stories of managers applying different consequences to the same or similar acts. In both scenarios, procedures are not sufficient to close the loop between code of conduct and behavior.

According to the ACFE's research, however, companies would do well to treat senior-level managers with more caution:

The higher the perpetrator's level of authority, the greater fraud losses tend to be. Owners/executives only accounted for 19 percent of all cases, but they caused a median loss of $500,000.21

Like monitoring, corrective actions and consistent enforcement are areas where companies are weak unless there is a commitment to developing a mature anti-corruption program.