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A brave new world of corporate integrity

| by Dennis Muse, CEO of Global Compliance |

In the global marketplace, one often runs across the idea that borders are quickly becoming a thing of the past. This idea is supported by the growing power of multi-national companies, by the interconnectedness of markets powered by fast supply chains and even faster communications, and by a trend towards greater co-operation among governments, perhaps best illustrated by the formation of the European Union. Running contrary to the idea of disappearing borders, however, is the way in which different countries regulate their pieces of the global marketplace. As corporate scandals have plagued countries around the world, there has been a growing acceptance of the need for legislation designed to increase the financial transparency and accountability of publicly traded companies. Each country, however, tends to approach this issue a little differently, and even as the world seems to have taken a unified step forward in embracing a greater sense of corporate integrity, CEOs attempting to conduct business abroad may feel like they are constantly taking a step backward as they are forced to navigate complex and sometimes contradictory laws and regulations. Thus, the present moment is definitely one of transition, confusion, and even worry. The future, however, promises a brighter picture, one where ethics programmes are driven by economics, not just scandals, and where outsourced solution providers remove from their clients the burden of implementing and maintaining complex international ethics programmes.

Good for business

As indicated above, the hard and obvious truth remains that the growing demand for corporate transparency and accountability around the world has been driven by scandal. This was true in 2001 when the news first broke that US energy corporation Enron had engaged in widespread accounting fraud and insider trading, and it was true in January of this

year when it was revealed that Japanese company Livedoor was being investigated for extensive securities fraud, news that instigated a stock sell-off and resulting temporary shut-down of the Tokyo Stock Exchange (TSE). When the Livedoor scandal broke, it was more than just a coincidence that Japan was already well on its way to enacting a financial reporting law known informally as J-SOX, based on the US Sarbanes-Oxley Act of 2002 (SOX). Other countries, including France, are also pushing forward with similar legislation.

The hard truth of scandal, unpleasant as it is, leads to a second, more comforting truth—corporate integrity is good for business. Greater transparency and accountability lead to greater efficiency and profitability. The old saying, 'Good guys finish last,' couldn't be more wrong. Organisations that commit themselves to a higher standard of ethics inevitably do better in the marketplace. How does this work? Ethics programmes, and in particular whistleblower schemes, reduce loss, mitigate risk, and encourage profitability at every level.

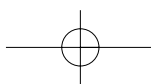
In countries where reporting on loss prevention and human resources issues is allowed, organisations reap huge benefits by preventing loss at a local level, office by office, store by store. By providing effective avenues for employees to report theft, fraud, and waste without fear of repercussion, corporations can realise real savings at a grass roots level. While petty theft, for example, may seem just that, when multiplied across tens or hundreds of cases over the course of a year, corporations begin to realise how important it is to take every measure to stop their assets from walking out the back door. An effective ethics programme translates into an effectively run organisation which in turn translates into profitability.

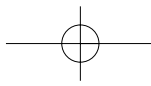
When employees observe violations of policy and poor business decisions being made by co-workers and managers, it is important that they have options for reporting this behaviour. The chain of

command may fail to respond to an employee's concerns, or the employee may believe his job will be threatened if he speaks with management. In such cases, only a confidential and independent reporting mechanism will prevent valuable concerns from falling through the cracks. Furthermore, in accordance with legislation, like SOX, requiring procedures for confidential and anonymous submission of concerns regarding accounting and auditing matters, more and more corporations are establishing hotlines and web reporting in order to capture allegations of financial malfeasance.

Detecting and preventing such behaviour not only saves an organisation the money it may be losing as a result of the malfeasance itself, even greater savings may be realised in terms of the organisation's reputation. As corporate scandals have demonstrated around the world, nothing weakens investor confidence like allegations of corporate fraud or insider trading. The ability for ethics programmes to protect an organisation's reputation from such damage is not mere conjecture; it is fact. In the Open Compliance & Ethics Group's (OCEG) 2005 Benchmarking Study sponsored by Aon, none of the participating companies who had maintained ethics programmes for 10 or more years reported suffering any 'highly visible' harm to their reputations in the five years leading up to the study.

Finally, successful business relationships also depend on everyone involved behaving in an honest and fair manner. With this understanding, the best practice is for corporations to encourage non-employees such as contractors, shareholders, and customers to utilise their resources and report concerns and allegations of wrongdoing. More and more organisations are making it a common practice to share their code of conduct with those parties with whom they do business. While such transparency was once considered undesirable by some, in today's world organisations of all types





Employees should have easy access to their code of conduct and the ability to report workplace concerns with considerable ease

place great importance on ensuring they share with their business partners a dedication to open, honest, fair, and legal business dealings. In the coming years, it is easy to predict an ever increasing global awareness that a culture of integrity will provide return on investment. As a result, dynamic, effective ethics programmes will become the rule rather than the exception.

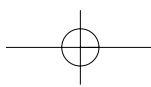
Interpreting the law

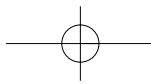
Working somewhat in opposition to the economic drivers popularising ethics programmes, varying and sometimes conflicting laws and regulations from country to country are making the job of

maintaining international ethics programmes exponentially more complex. This complexity was first highlighted in Europe by France's rulings concerning whistleblower mechanisms. France's issues with these mechanisms arose from the question of how the European Union's Data Protection Law should be interpreted. While it is a single law, each member nation of the EU has the latitude to interpret the law in its own way. France's data protection agency, the Commission nationale de l'informatique et des libertés (CNIL), has driven the interpretation of the law with regard to the use of whistleblowing mechanisms, such as ethics and compliance hotlines or websites. Two companies who do business in France-

McDonald's and Exide-sought to have their whistleblower programmes approved by the CNIL. The CNIL disallowed the programmes because of their concerns that all such whistleblower schemes are potentially unfair, lacking in transparency, and in violation of professional ethics.

These rulings created an obvious impasse for companies seeking to implement whistleblower mechanisms in France. The CNIL subsequently released preliminary and, after a period of discussion and review, final recommendations outlining the conditions under which such programmes would be allowed to operate in France. Recently, the CNIL published a web submission form through which companies may self-certify >>





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whistleblower schemes pertaining strictly to financial matters such as auditing, accounting, banking, anti-bribery and money laundering.

The CNIL's rulings are only the beginning. In Europe and around the world, each country that examines the issue of ethics programmes approaches it in its own way. To illustrate, the Director of Data Privacy for the EU recently asked the CNIL to make recommendations to the Article 29 Working Party regarding whistleblower mechanisms as they relate to data privacy. The Working Party took these recommendations under consideration and subsequently issued its own opinion that similarly allows for the implementation of whistleblower schemes pertaining to financial matters and consistent with EU data protection rules. The Working Party has not yet issued an opinion concerning whistleblower schemes designed to capture other matters such as human resources, safety, and environmental issues. The Working Party's opinion will subsequently be modified and adopted by the Plenary Session. At that point, however, each member nation will still retain the ability to modify the guidelines within its own borders, likely resulting in similar but varying laws and regulations from country to country. Like a shattered mirror, every country in the world will eventually reflect its own vision of what ethics programmes should look like—similar in nature but different in the details.

Partner in ethics

With scandals and economics driving the importance of ethics programmes at the same time conflicting guidelines make them increasingly more difficult to implement and maintain, many companies are beginning to see outsourced solutions providers as the best means to embrace a culture of integrity while adhering to all applicable laws. In addition to being the original and oldest provider of ethics hotline services in the industry, Global Compliance has taken a foremost leadership role in consulting with regulatory bodies like the CNIL and advising its clients on the best ways to

adapt to the ever-changing regulatory environment. We see our role as providing clients with guidance, experience, and a path forward to develop consistent, disciplined, and effective ethics programmes that align to regional cultures.

With respect to the CNIL's guidelines, we are consulting with our clients on the best ways to meet the guidelines and preparing the necessary information for clients to successfully complete the self-certification process. In a broader sense, we also work with clients to ensure that all employees, no matter their locale, have access to the same ethics tools enjoyed by employees at the organisation's primary location. Employees should have easy access to their code of conduct and the ability to report workplace concerns both telephonically and via the web, using their local languages. Organisations should ensure their codes of conduct and ethics programmes as a whole are communicated and comprehended at every location and at every level. In particular, it is vital that this message comes from the top and is not only voiced but demonstrated by executive levels.

To successfully communicate an organisation's code of conduct, organisations should take the following steps. First, upon implementing an ethics programme, an organisation should officially launch its code to ensure broad exposure to the employee population. At Global Compliance, our training and communications team can write, design, and produce a client's code of conduct, in either hard or electronic copy, as well as the collateral material used to promote the code. Next, organisations should teach employees about corporate values and expected behaviour. Again, our training and communications team can help by developing web or CD-based interactive training modules. Organisations may wish to make this training mandatory initially and then place the training vehicle on their website(s) for ongoing reference. Then, organisations should refresh code of conduct promotional materials periodically to ensure the message continues to resonate with the employee population. Finally, to ensure awareness and

comprehension of their codes and their ethics programmes as a whole, organisations should conduct employee surveys and evaluations. Based on the findings, organisations may choose to enhance their promotional campaigns. Global Compliance can also assist clients with this evaluation phase, using such tools as compliance validations, mystery shopping, and surveys conducted via interactive voice response (IVR).

Conclusion

To summarise, using the past and present as a guide, the future of ethics programmes around the world is not overly difficult to predict. While corporate scandals continue to drive the need for such programmes, ultimately it is the economic advantage these programmes provide that will sustain and grow them in the future. Even as these programmes become more and more widespread, various and sometimes conflicting laws and regulations will continue to make implementing and maintaining them across multiple countries an increasingly complex and resource-consuming task. As such, outsourced solution providers will become the first and best option for more and more organisations. These providers will be called on not only to supply whistleblower schemes but also to provide expert advice on international law and tools to ensure the exposure and comprehension of an organisation's code of conduct on every level and at every location. The brave new world of corporate integrity is certainly one of great complexity, but with the help of the right solution provider, it ultimately offers even greater opportunity.

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