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EXPERT FORUM

ETHICS & COMPLIANCE: TRAINING AND AWARENESS



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Debnath: Training and awareness are key features of an effective compliance programme. Why, in your opinion, are they so important?

Anthony: The key objective of a compliance programme is to promote adherence to laws and regulations. This cannot be achieved without all employees being aware of their roles and responsibilities, as well as the consequences of noncompliance. The most effective way to raise awareness within an organisation is regular, practical, tailored training to all employees. Increasing your employee's knowledge of the law and regulations affecting their specific job role helps to protect them as well as the organisation from a variety of detrimental impacts such as personal fines, financial sanctions and loss of job, to name but a few. As well as promoting adherence to laws and regulations, effective compliance training has several other benefits including, first, protecting the reputation of the individual as well as the organisation, second, improving performance, profits and efficiencies, third, providing a safer workplace, and fourth, saving money, as the cost of noncompliance can be extraordinarily high with legal fees, penalties and fines, lost productivity and damaged reputation. All too often, time and effort are spent on developing the content of a programme, only for it to fall over when sufficient investment is not made in the subsequent roll-out. Therefore, training employees should be

a fundamental part of a company's compliance programme and form part of its overall compliance culture.

Eastwood: A code of conduct and underlying policies without elaboration will have a limited impact. It is wholly unrealistic for a company to prescribe its expectations, standards and an employee's personal and professional obligations without providing further illumination. Consequently, training and communication is a key pillar to an effective compliance programme; without it, the programme will be missing a key element of its implementation. Companies will therefore be more exposed to employee and third-party misconduct. Further, they will be vulnerable to sanctions in some jurisdictions, such as France for instance, for not having an effective compliance programme, regardless of whether there is any underlying misconduct. In addition, in an increasing number of jurisdictions, most notably the UK and the US, companies will be vulnerable to criminal prosecution if misconduct does take place and they are not able to demonstrate that they have implemented an effective compliance programme. In practice, training is key to educating employees at all levels of the risks a company faces, how to mitigate those risks and how to escalate concerns. Training also helps to embed an awareness of the elements of a company's compliance programme, such as policies, procedures and so on, and promote a compliance

culture of 'doing the right thing'. In recognition of the above, regulatory guidance on both sides of the pond places an emphasis on training. For example, US Department of Justice (DOJ) guidance states that a hallmark of a well-designed compliance programme is appropriately tailored training and communications. And the UK Ministry of Justice guidance on the UK Bribery Act (UKBA) states that training is likely to be effective in firmly establishing an anti-bribery culture whatever the level of risk. The questionnaire issued by the French Anti-Corruption Agency (AFA) is similarly focused on details of a company's training programme.

Debnath: In what cases might it be necessary to consider providing training and awareness to individuals outside the company, such as sales partners and suppliers and service providers? Why?

Eastwood: Where a company engages third parties, such as agents and intermediaries, to act on its behalf, it may be appropriate to train those third parties on their legal and regulatory obligations under applicable law, the company's broader expectations, their obligations under the company's third-party risk management programme, such as under a supplier code of conduct, and their contractual compliance-related commitments with the company. It is important that a company is confident that its third parties will be able to meet their contractual

obligations regarding compliance. One driver for this is the fact that improper conduct of third parties acting on the company's behalf could confer legal liability on the company itself under certain laws, irrespective of where that third party is operating. Beyond legal liability, companies are increasingly focused on managing the reputational risk of supply chain-related issues. As a matter of best practice, the most robust compliance programmes will assess the risk profile of all third parties acting on the company's behalf, and will consider educating those third parties that present more significant risks, for example based on their geography or sector. Delivering training to third parties that act on a company's behalf may help to demonstrate how seriously a company takes its regulatory obligations and its commitment to ethical business, both internally and externally, whether to clients, service providers or competitors.

Durant: Whenever you engage with external parties to provide goods or services to your business, whether it be suppliers of raw material, services such as logistics or customs clearance, sales distributors or representatives, it is important that they comply with all applicable local and international laws and regulations, as well as your organisation's internal values and principles. This is particularly true in industries that are highly regulated or involve interactions with governments. Noncompliance by one of your business partners could ultimately become the organisation's problem and you may

be held responsible for the actions of that business partner, such as bribery, breach of data privacy, or breach of health and safety regulations. For example, in the pharmaceutical sector, a breach could have a catastrophic impact on patient safety. The impact on your organisation, both financially and reputationally, can be extremely damaging, such as the 2013 case of horsemeat being discovered in beef burgers at a leading UK supermarket, being sourced from a subcontractor in Ireland which wiped £300m off the supermarket's value in the days following the incident. Providing regular training to your business partners should be considered as important as the training given to your employees when designing and implementing an effective compliance programme.

Debnath: Could you outline the elements of a best-in-class annual compliance training and awareness programme? When is in-person, as opposed to remote or online training, preferable?

Anthony: There are five key elements to designing and delivering an effective annual compliance training and awareness programme. First, annual compliance training is just one part of your organisation's culture and you need to take time

to plan your training, making it part of your overall compliance culture. Second, tailor the training to fit the needs of your organisation's risk profile, culture, values and your employees. Third, build in refresher training and quizzes throughout the year to update your employees about changes in regulations or

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*Sam Eastwood,
Mayer Brown*

legislation and to test the effectiveness of the annual compliance training. Fourth, set metrics and measure the effectiveness of the training, both at the end of the training session but throughout the year as well. Finally, use a variety of methods and mediums to deliver the training, combining classroom-based sessions with e-learning based on your risk analysis. When considering which training delivery method to use, organisations should look to a risk-based approach to identify the organisation's high-risk areas and highest risk employees, based on their roles

and responsibilities, such as sales representatives engaged with foreign government or state-owned enterprises (SOEs). For these areas, in-person training would be preferable as it allows opportunities to have detailed discussions and roleplay different scenarios, which enables employees to retain more knowledge over just reading on-screen text. When new legislation is being considered which is deemed to be of high importance, all employees should receive in-person training. Further, in order to establish the importance of this training, it should be led by a senior person within the organisation. Refresher training on this subject could be held online.

Eastwood: A key point of emphasis here is that there should be a training 'programme', and an integral part of this will be a strategic training plan, with assigned responsibilities, which addresses the company's training needs. A well-developed compliance training and awareness programme will be grounded on a robust risk assessment and an identification not only of the compliance risks a company faces, but also of the functions and staff within the company who need to identify, assess and analyse such risks. Training programmes should tailor the depth and breadth of training to its different internal, and sometimes external, populations. Training should be integrated into the operations of the business. Training can include online training and assessment, in-person training delivered in-house and in-person training delivered by external

experts in the relevant field. Workshops or facilitated discussions can be very effective and tailored dilemmas or case studies will ensure that there is an engaged audience. Training should be accompanied by testing or assessment and it is critical to secure feedback from employees. Attendance at external conferences could also be appropriate for in-house experts who want to learn best practice from others in their area. While it may not be manageable or appropriate to provide regular in-person training for every function, more developed compliance programmes will give thought to the different risk populations and tailor their level of training accordingly. Maintaining a record of training delivered is very important.

Debnath: What are the benefits of tailoring a training and awareness programme so it is audience specific, based on a particular business line, product, sales model, geography or customer base, for example?

Eastwood: DOJ guidance notes that companies should give thought to the form, content and effectiveness of their training programmes. The more tailored a training programme can be, the more useful it will be to the relevant staff being trained in their day-to-day work. Ultimately, this should lead to more effective outcomes. For example, case study driven workshops that give consideration to

a specific business line and geography will likely be more pragmatic than generic training that merely outlines the law with no practical application. Tailored training sessions can also be a good opportunity for colleagues to share the practical challenges they have faced and to share their own best practice experiences. Often, hearing about such challenges faced by others within your company rather than from an external expert can resonate more. This can also help to create a more open and collaborative internal culture where functions are more comfortable consulting other functions in connection with any new and emerging compliance risks.

Durant: It is important to recognise that each organisation's risk profile is different, based on the type of goods or services they provide, where and how they sell these goods and services and to whom they sell. Therefore, it is essential that any training given resonates with the audience and the best way to achieve this is to make it specific and relevant to their roles and responsibilities. Tailoring such training, for example by a risk ranking of employees' roles, would identify employees who are operating in a high-risk area, such as sales representatives that interact with foreign governments or SOEs and who would benefit from specific training around anti-bribery and corruption. Tailoring your compliance training programme to your organisation's risks and geographical location makes it more engaging for participants and hopefully more memorable as they

can see how it relates to their day-to-day roles. It also strengthens your organisation's ability to respond to regulatory enquiries demonstrating that you are highlighting the compliance risk areas specific to your organisation and providing specific training to your employees to minimise the risk of breaches.

Debnath: How can training be made more engaging for the audience, with greater audience participation?

Anthony: Studies show that students only remember 10 percent of what they read from textbooks but up to 50 percent when they engage in discussions on a specific topic. Applying these principles, in order to maximise the engagement of participants throughout the training, one should consider a number of factors. First, the use of real-life stories and scenarios as a basis for group discussions and presentations. Second, employees should roleplay typical situations your organisation may face. Third, companies should facilitate group discussions to come up with practical tips to address specific risks. Fourth, companies should consider the 'gamification' of the learning process. Making learning part of a game, a challenge or a quest can both make it more engaging and motivate participants to learn. Fifth, avoid flat, text-heavy, textbook-style learning by using multimedia, such as powerful images, animations and real-life video. Sixth, divide the training into smaller parts that can

be rolled out over a period of time, rather than trying to cover as much as possible in one attempt. And finally, make the training relevant and specific to your organisation's risks and the participant's roles and responsibilities. Overall you need to respect your employees and pitch the training at the right level; no one wants to sit through an hour-long presentation covering something they could learn in 15 minutes.

Eastwood: More proactive training sessions that involve case studies and workshops tend to produce greater audience participation and engagement. Breakout discussions to discuss both compliance success stories and compliance failures, whether internal or external, can help set the tone for an open discussion. These practical examples will give cause to reflect on any lessons learned, which may provide valuable practical tips for staff to take away from a training session. In addition, focusing on hot topics and recent trends is a good way to emphasise the most recent developments and to highlight that the need for ongoing monitoring and review of compliance risks, particularly given the constantly developing compliance landscape. Of course, training does not stop the moment the session ends; handouts with key takeaways and practical tips can also be an effective way to reinforce key messages after a training session has concluded.

Debnath: What compliance risk areas should be included in mandatory annual training? How can companies track and enforce completion?

Eastwood: There is no one-size-fits-all model when it comes to a compliance training programme. The nature and scope of a training programme

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*Wayne Anthony,
FTI Consulting*

should be based on the outcome of a robust risk assessment and should look to cover the areas of risk a company faces. This may include areas such as the company's code of conduct, anti-bribery and corruption, data privacy, cyber security, sanctions, export controls, anti-money laundering, competition and business, and human rights. In this digital era, it is generally quite easy to track the completion of online training by employees. Regarding in-person training, accurate training records should be logged by the

appropriate function, such as human resources, so that appropriate accreditation can be given. Placing a requirement on managers to make sure their reports have completed their mandatory annual training can also help to enforce completion.

Durant: Each organisation's compliance risks will vary, depending on the nature of the business, and are constantly changing due to factors such as regulatory and legislative changes, expansion into new markets, new products or services, and new customers, to name but a few. Therefore, compliance training needs to be regularly evaluated and updated to reflect the changing risk profile of your organisation. However, there are several key compliance risks that should be included in all annual compliance training. The first area which should be included is legislative areas such as health and safety, anti-money laundering, public safety and information governance. The second is data privacy and protection of confidential information. Third is anti-slavery and child labour. The fourth area is conflicts of interest. Fifth is anti-bribery and corruption. And finally, discrimination. In respect of tracking and enforcing completion of mandatory training, as organisations have shifted toward online or e-learning, tracking completion of compliance training has become easier. The satisfactory completion of mandatory training, including passing the end of training assessment, should be included in





each employee's end of year performance appraisal and potentially be linked to their remuneration.

Debnath: What are the pros and cons of linking completion of compliance training to an annual bonus or other incentive award?

Anthony: Linking compliance to compensation, annual bonus or other incentive awards is a challenging topic. There are several views, with one being that employees should not be rewarded for doing their job or simply doing the right thing. On the other hand, many companies do reward individuals for reporting incidents of noncompliance. In my view, satisfactory completion of your organisation's compliance training throughout the year should form part of the employee's end of year evaluation and therefore be taken into account when considering that employee's annual bonus. This has the advantage of focusing the employee's attention, emphasises the importance of compliance and reinforces the organisation's values. However, one must balance the level of incentives linked to the completion of compliance training to ensure it does not lead to promoting obsessive focusing on the completion of the training over knowledge retention or potentially encourage management to provide misleading completion metrics to generate the desired financial result. As with all bonuses and incentives, a balance must be struck to ensure

employees understand the importance of the issues without driving bad behaviour to achieve personal financial gains.

Eastwood: Linking the completion of compliance training to a bonus or other incentive could help to encourage staff to attend and complete all mandated training. Such incentives could improve certain statistics around a company's compliance programme, such as training completion levels. However, this does not necessarily mean that staff will 'do the right thing' and potentially risks staff viewing compliance training as a 'tick box' exercise. Providing such incentives could discourage staff from thinking about values-based compliance in favour of a more rigid rules-based culture. However, there could certainly be value in rewarding positive stories and recognising staff for 'doing the right thing', which could be achieved through naming individuals as compliance champions or recognising them through a certificate. Incentives aside, there should be sanctions for failing to complete mandatory training or for failing to ensure that such training is completed, in the case of senior management.

Debnath: How can companies measure whether training and awareness programmes have been effective?

Eastwood: As a company continues to monitor the effectiveness of its compliance programme, a picture will likely emerge as to whether a compliance training programme has been effective at cascading and embedding among staff an understanding of the risks and mitigations in different compliance areas. Periodic testing and assurance of a company's

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compliance programme, such as through external auditing, would likely give an indication as to the effectiveness of a company's training programme and how it is being implemented in practice. In addition, a company could undergo both qualitative and quantitative analysis to assess whether its training programmes have been effective. From a qualitative perspective, a company could conduct informal interviews across a random population from different functions to gain a sense of how well the

relevant compliance policies have embedded into those functions. From a quantitative perspective, a company could look to conduct a staff survey to measure the level of understanding of the company's compliance policies or otherwise draw data from online training modules to see how staff performed in online assessments.

Durant: The effectiveness of an organisation's compliance training and awareness training can be measured in several ways. Completion and implementation rates are one of the primary measures to consider as it can lead to false conclusions about the effectiveness of training – if employees did not complete the training you cannot say the training was not effective. Companies should measure information retention rates following the compliance training; this is typically measured with an end of course assessment or quiz to test that the participants retained knowledge. Employee feedback also allows participants to provide feedback on usability, information retention and engagement. Companies should consider refresher training by asking employees to periodically complete the end of course assessment or quiz again without the training course to test their information retention rates post the course which can then be compared over time. Discussions with managers regarding any changes in an employee's behaviour or the number of reports received from employees is another important means of judging the programme's effectiveness.

Companies should evaluate changes in the use of the organisation's whistleblowing or ethics reporting hotline. They should also consider reductions in the number of regulatory investigations or enquiries, reductions in the legal spend on regulatory matters, and internal or external independent evaluation via interviews, review of incidents and so on. Organisations should ensure they continually monitor the effectiveness of their compliance training and update the material as there is no point in seeking feedback from your employees if you then ignore it.

Debnath: In what circumstances is it apposite for training to be delivered by external experts rather than internal professionals – and visa-versa?

Anthony: There are several factors to consider when deciding whether to deliver compliance training via external experts or internal professionals. The size of the organisation is a key factor. Large global organisations operating in many geographical locations may wish to use global external experts to deliver training across multiple locations in local languages simultaneously, whereas smaller organisations with only one or two overseas operations may choose to run the training internally at head office. Another factor is internal expertise and capacity. Does your organisation have sufficient internal, up to date expertise and capacity to design, develop and deliver consistent compliance

training across all locations? An organisation under regulatory scrutiny or part of a post-investigation monitorship may wish to use an external expert to demonstrate to the regulator its commitment to change. The use of organisational knowledge and external expertise should also be considered. Internal professionals can bring a wealth of experience and knowledge of the organisation, but this familiarity may bring a narrow perspective to the training, whereas an external expert can bring an impartial outside perspective. From a cost perspective, internal training is undeniably more cost effective, but this advantage needs to be weighed up against the time it takes for internal professionals to design, develop and deliver the training, taking them away from their day-to-day roles and responsibilities. There are other benefits of internal professionals. For example, if the organisation uses a senior individual to lead compliance training, staff may feel that the organisation is taking matters seriously as it is being led from the top. It may also break down barriers between staff and those involved in compliance and management, so staff feel better able to report a concern to someone they have already met. Staff

may also feel encouraged to discuss other matters that are not the subject at hand. Whichever route an organisation takes, it is important that the training is up to date, tailored to the organisation's risk profile and, above all, is made memorable.

Eastwood: External training can be most effective where a company lacks in-house experience in an area or in particularly technical areas. External experts can often bring a wider industry perspective and offer up-to-date views on current trends. However, training in certain compliance areas may be better served by in-house professionals who know and understand the company's business. For example, training on the practical aspects of a company's third-party management system may be more effectively delivered by in-house staff who know how that system is used by the business in its day-to-day operations. Sometimes, however, more effective training adopts a combination of the two – where external experts can supplement and support internal professionals through a joint training programme. **RC**