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Lost in translation: The difficulties of implementing a global compliance program

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I am the U.S. General Counsel of a multinational conglomerate (VCNA) operating in North America, South America, Europe, Asia, and Africa. VCNA's businesses cover a spectrum of industries, including mining, transportation, construction, pulp and paper, food products, insurance, and banking. VCNA is headquartered in Sao Paulo, Brazil, where economic and political strife have caused a high degree of marketplace chaos for the past several years. In the midst of this chaos, the company has maintained a fantastic equilibrium—free from scandal or corruption charges. But obviously the company is being hurt by the economic fallout that has resulted from multiple ongoing investigations into corruption at many levels of government and commerce in Brazil.

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However, there are problems with trying to implement a coherent compliance program that is either comprehensive or global—language, culture, and legal structure, to name a few.

Language

The issue of language is, for lawyers, one we assume we can tackle, and fix. We go at the problem of reviewing various drafts of the policies coming from the company's global Compliance department with vigorous redline in an effort to correct misuse of words, concepts, and legal principles. But in the end, there is still a wide gap between the words in the policy and the comprehension of the employees tasked with adherence to that policy. There is also a wide gap between the words in the policy and the ability of the Legal department to implement the policy, given the differing cultural mores in each country where we operate. There is a wide gap between the words in the policy and the ability of the Human Resources department to discipline fairly for failure to adhere to the policy, given the legal structure of each country. And finally there is a wide gap in the legal impact of the policy on the company as a whole, as well as the employees and executives in the various countries where the policy is being implemented.

One recent policy was circulated for review by the Legal departments in each of the global regions (North America, South America, and Europe/Asia/Africa). The resulting comments that were returned to the Compliance department in Brazil were impossible to reconcile. What is a "public" company in one country has an entirely different meaning in another. Who is considered a "government official" or an "agent" of the company is entirely different from country to country, as are the concepts of "family" and "bribe" as opposed to "gift." All of these distinctions result in a wide divergence of understanding and ability to implement the policy. And most important, the distinctions result in varying legal impacts from country to country.

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Culture

It is commonly understood that there is a cultural divide in the way employees and executives in various countries view gift giving. In many of the countries where my company operates, giving gifts is an essential element of the relationship building that leads to successful business operations. Forbidding gift-giving may prevent new business relationships from forming, and it may also break down long-standing relationships. Attempting to circumvent this problem by allowing executives and employees who operate in those countries to give a gift—but only if it has "nominal" value—can have disastrous effects as well, particularly in those cultures where a nominal gift is an insult to the receiving party. Plus, to then define the nominal value with a fixed dollar/reals/euro amount—as if there were a global marketplace from city to city, let alone from country to country—may be a path to disaster for the Legal, Human Resources, Compliance, and Internal Audit departments of the company.

Legal structure

The legal foundation at the heart of each of the countries where my company operates is inherently different. Even between the United States and Canada there are distinctions that continue to surprise and perplex those of us operating in North America. And on a global scale, the distinctions are enormous.

One example glaringly brought this issue to everyone's awareness recently. The Compliance department of the company developed a global compliance "dashboard" for implementation by all the business units. The idea of the dashboard was for each business unit to self-audit, identify, and then self-report any issues regarding compliance with laws, regulations, and policies and procedures on the dashboard for all to see. The dashboard would, in a perfect world, have become a way to ingrain the culture of compliance by forcing employees of each business unit to think hard about every aspect of the operation and then report those aspects that are not in compliance, whether by a long shot or just by a small margin of error.

The idea arose out of the global Compliance department in Brazil, where the legal system values and even rewards self-reporting, even if there is no corrective measure yet put into place. In North America, the Legal department went into overdrive in an effort to convince the global Compliance department to stop the dashboard from being implemented. We spent hours on conference calls and GoToMeetings advising that in the North American legal structure, to have a compliance issue identified but neither corrected nor even budgeted for correction would be a road map straight to summary judgment for eager plaintiffs' lawyers. We advised that if the dashboard was going to be implemented, it had to simultaneously require specific corrective measures that were being implemented, as well as the budget and timeline for implementation of those measures. Eventually the dashboard plan was scrapped, but not without a lot of consternation among the company's global legal team.

Over the course of almost four years of effort to implement a comprehensive global compliance program, several truths seem to have emerged. I note that these truths, while exceedingly apparent to me, are not universally accepted within the company. But little by little, there appears to be a willingness to consider the following:

- **"Comprehensive" and "global" do not necessarily have to mean uniform.** There is room for country variation in a comprehensive global compliance program, and the variation, if allowed thoughtfully, will lead to a stronger, more consistent, and enforceable program.
- **More words are not always helpful.** There is a significant risk of miscommunicating when a policy is excessively wordy and the translation of those words is not wholly accurate, or more to the point, accurate translation isn't available even with the best effort. Keep it simple; let the concepts govern the behavior rather than trying to write out every rule, every exception to the rules, and every scenario that depicts application of the rules.

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- **Be careful of dollar/euro/reals limits that are spelled out in a compliance policy.** These are the types of provisions that quickly become outdated based on economic changes that move far faster than the corporate bureaucracy of a Compliance department, despite attention to annual review and revision of each policy.
- **Leave room for change of direction.** Don't box your company in! There is value in creating a compliance policy that can truly be a living document, one that ages well and supports the type of interpretation that allows for differing concepts of "family," "public official," "entertainment," "supervision," and all the other concepts that populate compliance policies. These are concepts that change with the times over the life of a company.

As the world shrinks, with all the wonderful impact that has had for the good of mankind, it also becomes apparent there are still differences among us that need to be respected and taken into consideration for a company to function smoothly in the world. We have all experienced the dreadful embarrassment or discomfort that arises when we misinterpret an event, a comment, or a gesture. The good intentions of even the most perfectly worded policy can get lost in translation when we attempt to use a one-size-fits-all approach to compliance.

Takeaways

- Language, culture, and legal structure are key elements when implementing a comprehensive compliance program globally.
- "Comprehensive" and "global" should not necessarily be interpreted to mean "uniform" across different countries.
- There is a significant risk of miscommunication when a policy is too long or too wordy.
- Leave room in policies for the company to change direction as markets and conditions change.
- Don't assume one size fits all for compliance on a global scale.

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