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Compliance Week, published by Wilmington plc, is an information service on corporate governance, risk, and compliance that features a weekly electronic newsletter, a monthly print magazine, proprietary databases, industry-leading events, and a variety of interactive features and forums.

Founded in 2002, Compliance Week has become the go to resource for public company risk, compliance, and audit executives; Compliance Week now reaches more than 60,000 financial, legal, audit, risk, and compliance executives. <http://www.complianceweek.com>



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BEYOND REGULATORY MANDATES:

A Framework for Protecting Corporate Reputation in Compliance Programs

John Arvanitis | Tom Hollobone

Years of regulatory action have provided companies with a fairly reliable basis for quantifying the potential costs when accused of bribery and corruption: i.e., legal bills, the burden of remediation work, and opportunities lost while the organization puts its house in order. It is no surprise, then, that most enterprises build and focus their compliance programs exclusively on meeting regulatory requirements.

Increasingly, however, senior executives, managers, and boards of directors are coming to understand that the associated *reputational damage* can pose an enormous and long-lasting risk to the enterprise. For example, according to a 2014 university study, for firms accused of both bribery and financial fraud, indirect costs related to reputational damage amounted to nearly a 50 percent reduction in market capitalization.¹

The findings of another study covering 32 years of data were even more eye-opening: Not only was the aggregate loss in value for public firms facing bribery investigations nearly \$62 billion, but more than 80 percent of that could be attributed to “reputational penalties.” Additionally, firms that did not consider reputational damage in their risk assessments underestimated their bribery-related costs by 4.5 times. As the authors noted, “The results suggest that firms

should not underestimate the importance of market-imposed reputational penalties by merely considering regulator-imposed fines and sanctions.”²

Today’s hyper-connected world compounds the risk of reputational damage. Bad news about a company’s alleged or real compliance issues can take on a life of its own. Claims of corporate bribery, corruption, and fraud can be covered incessantly not only in mainstream media outlets, but also in the burgeoning number of social media platforms. This scrutiny is amplified when victims of corruption take on a tragic human face, as happened in the 2013 collapse of the Rana Plaza in Bangladesh that killed over 1,100 people.³

Finally, the nature of the internet inherently ensures that information – factual or not – can be perpetuated for years to come. With so much at stake, it is paramount for an organization to recognize and appropriately address the reputational risk of compliance-related issues. These include those that originate within a growing web of partners, vendors, and other third parties.

Billionaire investor Warren Buffet has stated, “It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you’ll do things differently.” So, what can a company do differently to safeguard itself from reputational risk?

¹ The foreign Corrupt Practices Act: Economic Impact on Targeted Firms, http://masonlec.org/site/rte_uploads/files/FCPA%20II%20Final%20Executive%20Summary.pdf.

² Corporate Reputation’s Invisible Hand: Bribery, Rational Choice, and Market Penalties, <https://link.springer.com/article/10.1007/s10551-016-3242-3>.

³ What’s Changed Since More Than 1,110 People Died in Bangladesh’s Factory Collapse?, <https://www.theatlantic.com/business/archive/2017/05/rana-plaza-four-years-later/525252/>.

1. Create and Foster a Proactive Culture-Based Approach, Driven By Tone at the Top

In the 2017 Anti-Bribery and Corruption Benchmarking Report (ABC Report) produced by Kroll in partnership with the Ethisphere Institute, Kristen Ludgate, Chief Compliance Officer at 3M, noted the importance of the “tone in the middle,” which involves departmental and business unit management keeping a watchful eye on business practice at the local operational level. She adds: “Compliance doesn’t really happen at the center of the company, it happens on the ground.”

Indeed, a culture of compliance must be exemplified in the behavior of every member of the organization, from board members and senior leadership to frontline employees to the organization’s partners operating throughout the world. Kroll has even seen organizations going further, tying their anti-corruption programs to their wider corporate social responsibility initiatives.

This kind of culture-based approach, however, starts at the top, with leaders clearly defining and modeling the enterprise’s code of conduct and ethics. Corporate leaders must not only represent the business ethically themselves, but given today’s round-the-clock news cycle, they must also be prepared to take responsibility for all aspects of compliance within their organization, 24 hours a day, seven days a week.

Leaders in this environment understand that their organization’s anti-corruption program must go beyond “box-ticking” exercises to one that reflects a highly nuanced understanding of business risks, including those that affect its reputation.

With compliance expectations ingrained in the consciousness of every employee and third party – and practical mechanisms available to help align decision-making with pre-set risk thresholds – the compliance program and policies can then be leveraged across the entire organization.

Regardless of the framework, however, it is imperative that senior leadership allocates sufficient resources to support the compliance program. For example, establishing a more stringent corporate risk threshold

will entail vetting and monitoring procedures that go above and beyond those outlined in regulatory guidance. Likewise, critical to the success of this approach is ensuring that staff and third parties demonstrate their understanding of what is acceptable behavior.

2. Take a Long View to Transactions

Recently, an organization entering a joint venture conducted due diligence, in line with its compliance program risk parameters, on a shipyard owner in Spain and a number of third parties. Although no bribery or corruption concerns were identified, the due diligence unearthed concerns about the financial management of the shipyard owner’s other businesses. Due to the unique location of the shipyard, it was not possible to find an alternative partner. The organization pressed ahead, and armed with this information, was able to mitigate the risk by negotiating for control of the joint venture’s finance functions.

This example demonstrates how a well-conceived and implemented compliance program can save the organization from making the costly mistake of contracting with a risky partner or supplier. Along with neutralizing the reputational damage and litigation risk, the process reduced the internal fallout, including wasted time and the need to source an alternative.

3. Be Prepared to Escalate and Respond

Despite an organization’s best efforts, the possibility always exists for behaviors or activities that violate its code of conduct. For this reason, it is imperative for the compliance program to outline practical guidance on how the organization should respond when violations are identified, including the roles and responsibilities of individual responders. Having a well-thought-out action plan may mean the difference between significant corporate liability and a declination of prosecution, which ultimately can help maintain the integrity of the company’s reputation.

Immediate, but deliberate, action is key when compliance matters arise. Best practices for effective response plans include the following:

- Launch timely and proactive investigations to reveal how and potentially why the violation occurred. (Ensuring that investigations are directed

by legal counsel can help preserve privilege and confidentiality as necessary.)

- Address and mitigate any unethical conduct that transpired.
- Provide training to organizational members and partners to help ensure that the activity or conduct does not happen again.
- Hold accountable those responsible for the conduct.

These types of actions by corporate leaders will go a long way toward remediating violations; most importantly, they will help protect the integrity of the organization and its reputation throughout its global market.

Should the compliance department discover the problem, it is important that there are protocols in place to escalate the information and ensure senior leadership immediately addresses the issue, both within and outside of the organization. This is critical because the actions of leaders in these high-pressure situations are increasingly being scrutinized by government prosecutors, regulatory bodies, company stakeholders, and the general public.

Timely notification serves as an indicator to those who will subsequently review the events that the organization acted in accordance with its established code of conduct and that it sought to address the problem in a transparent and swift manner. Should the business not act in an appropriate manner, it is potentially creating an even greater risk for regulatory action and adverse impact to its reputation.

4. Mandate Accountability

The Yates Memo and the U.S. Department of Justice's willingness to allow organizations to voluntarily self-disclose issues, e.g., through its Pilot Program, both seek to ensure that all individuals involved in any illegal conduct are identified and if warranted, prosecuted. However, another aim of the Pilot Program is to provide a framework to help organizations remediate bad behavior by conducting thorough investigations and using the findings to enhance the compliance program.

Although we briefly touched on this facet above in our discussion of an effective corporate response to compliance violations, mandating accountability drives home the point that individuals in the company can and will be held responsible for negligence or bad behavior.

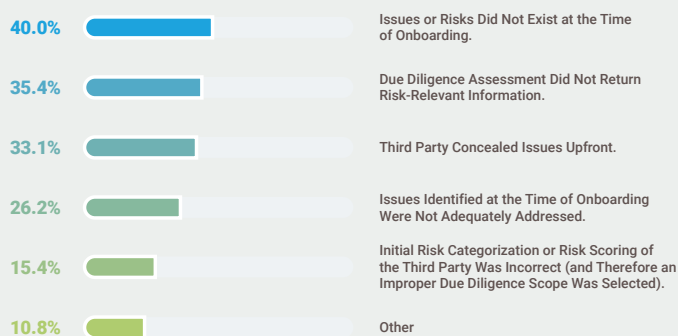
In the eyes of public opinion, self-reporting may be viewed as admirable and potentially help to uphold an organization's reputation.

5. Maintain Vigilance

More than half of the survey respondents in Kroll's ABC Report indicated they had identified legal, ethical, or compliance issues with third parties after pre-onboarding due diligence had been conducted. When these same respondents were asked to provide a reason why they thought these risks were not flagged earlier, the most commonly cited explanation was that these issues had not existed at the time of onboarding.

Monitoring a large number of third parties can be achieved for a relatively low cost with the help of automated tools, which can flag the most recent results that need to be reviewed. This again should be weighed against the cost of an issue arising when a third party is acting on an organization's behalf.

Q: If You Experienced Issues With Third Parties Post Onboarding, Why Do You Think This Issue Occurred?

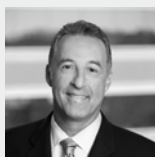


CONCLUSION

The goal of a robust and effective compliance program is to prevent, detect, and address risk via corporate governance and ethical business practices. As company leaders and boards of directors are increasingly reporting, reputational damage is one of their greatest concerns.

Should a compliance matter arise, being able to clearly demonstrate a comprehensive, culturally ingrained anti-corruption approach can protect the organization from lasting damage to its reputation and brand. For regulators, law enforcement, company stakeholders, and the general public, this can make the difference between what is deemed an aberration or unforeseeable lapse and what is considered a callous, negligent, or systemic problem that warrants a much closer look. By taking proactive measures to better understand and mitigate risks to its reputation, organizations are in a far better position to safeguard this most fragile, but vital, of corporate assets.

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John advises clients worldwide on anti-money laundering matters and other aspects of compliance programs, bringing impactful and valuable insight to their challenges via his extensive international and domestic financial investigative experience. He is knowledgeable in a broad range of compliance-related programs, including anti-money laundering, know your customer, global AML processes, and program and policy formation. John joined Kroll after a distinguished 27-year career with the U.S. Department of Justice, Drug Enforcement Administration.

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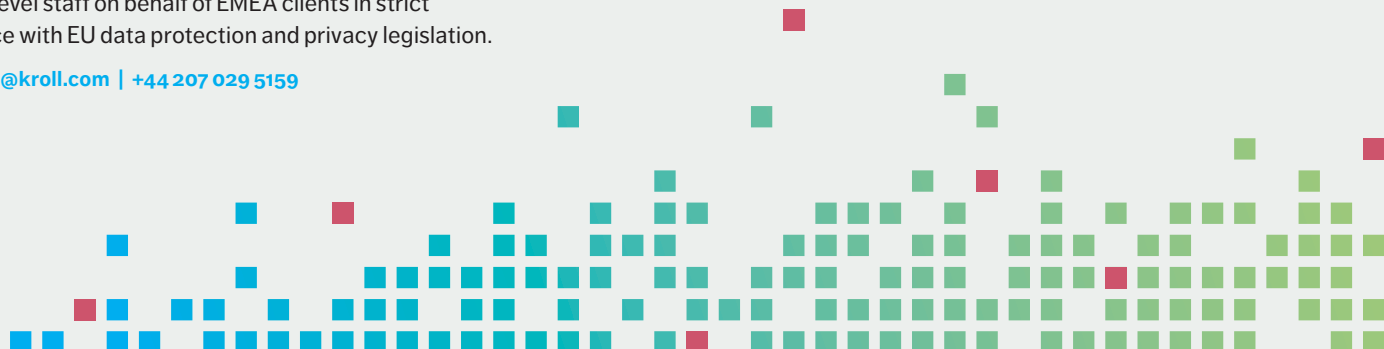
CONTACT US

Kroll knows the risk landscape well. Our global team of experts have decades of real-world experience aiding clients with matters related to bribery and corruption, and our offices around the world are staffed with local nationals who are knowledgeable in their countries' business, political, social, and economic landscapes. The combination of these capabilities and resources, along with our flexible technology platform, helps maximize your company's ability to identify current vulnerabilities and anticipate areas of risk to support more successful ventures.

Please contact us to connect with one of our local experts to discuss your compliance and due diligence needs, whether you are looking for support in enhancing compliance and due diligence programs or establishing new strategies, like an automated monitoring program.

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United Kingdom grapples with modern slavery in its own backyard

There is far more modern slavery in the United Kingdom than one might think, but regulatory efforts have led to a sharp rise in referrals, awareness, and detection of forced labour.

Neil Hodge explores.

In the wake of the U.K.'s Modern Slavery Act, there is no doubt that large companies are taking their obligations to monitor their supply chains for incidences of child, forced, or bonded labour seriously. But there is evidence to suggest that their focus—typically on suppliers and contractors working in developing countries with histories of lax controls, oversight and enforcement—may result in overlooking exploitation that is happening right under their noses in the United Kingdom.

Unfortunately, there is plenty of evidence of slavery in the United Kingdom. Most recently, on 16 June a Nottingham landlord received an eight-year prison sentence after pleading guilty to human trafficking, two counts of forced labour, and fraud.

Some cases have resulted in stiff penalties. In May 2016, four Latvians were jailed for a combined total of more than 23 years for offences relating to the exploitation of migrant workers, while in November five members of a Plymouth family (all from the Czech Republic) were jailed for a total of 20 years following the first prosecution for human trafficking offences in Devon and Cornwall.

In January 2016, the Gangmasters and Labour Abuse Authority (GLA), which investigates forced labour offences, became the first UK law enforcement agency to use new powers under the Modern Slavery Act to secure a Slavery and Trafficking Prevention Order (STPO) for labour exploitation. Judges can use such orders when they feel that there is a significant risk that defendants might re-offend.

The case involved two Lithuanian nationals who admitted transporting two male twins from Lithuania to Norfolk and subjecting them to forced labour in food factories in Suffolk. The twins were paid a combined total of £20 for four months work. They were starved and forced to sleep on the floor in accommodation described as “barbaric”. As well as receiving STPOs, the traffickers were each given three-and-a-half-year prison sentences.

Recent research has identified that awareness of U.K.-based slavery is growing. The number of potential victims of labour exploitation referred as part of the framework set up to identify victims of modern

slavery in the U.K. increased by 33 percent between 2015 and 2016, according to analysis of National Crime Agency data by forensic risk specialist Kroll.

The data, which is taken from the National Referral Mechanism (NRM)—the framework in which potential victims of human trafficking or modern slavery are referred by authorised agencies such as police forces, the UK Border Force or Social Services—reveals that there were 1,575 referrals for labour exploitation in 2016. Seventy percent of these were adults, and 30 percent minors.

According to Kroll, the increased numbers cast a spotlight on an issue that is of increasing concern to businesses, particularly in sectors such as retail and manufacturing.

Kroll's analysis shows that Vietnam was the country of origin for the highest number of potential labour exploitation victims referred in the U.K. in 2016, with 307 individuals. Albania followed in second place with 194 potential victims, while Poland came third with 140. However, Kevin Braine, head of Kroll's compliance practice (EMEA), says that these numbers “may just be scratching the surface of what the true figures could be.”

“These numbers demonstrate two things,” says Braine. “Firstly, with an estimated 13,000 victims of modern slavery, the U.K. is still far from immune to this type of appalling human rights abuse. Secondly, the sharp increase in the number of referrals shows that awareness and detection of modern slavery has improved since the introduction of the Modern Slavery Act.”

Experts believe that the approach that companies use to detect possible incidences of forced labour in their overseas supply chains could easily be used to monitor and audit U.K. based companies too.

Aidan McQuade, director at human rights organisation Anti-Slavery International, says that there is no difference in the methods that companies should use to determine whether there are incidences of forced labour in their supply chains in the U.K. or in places like India, China and other emerging markets. He adds that the tell-tale signs of forced labour are also often the same.

“Check to see if the company is undercutting its’ nearest rivals, and by what margin. If the cost looks too low, you should assume that forced or child labour is being used somewhere in the process. Other warning signals may be if the supplier refuses to agree to onsite audits, refuses to provide details of its suppliers or subcontractors, or does not allow unionised labour,” says McQuade.

Moreen Romans, senior director, global supply solutions, risk and supplier diversity at credit rating agency Dun & Bradstreet, recommends a five-step process to help detect modern slavery in U.K. operations. These are:

- » Identify who the risky suppliers are in your supply chain;
- » React to that information with additional monitoring and investigation to identify problems;
- » Track and report findings and relevant information;
- » Adjust your approach by replacing suppliers connected to forced labour; and
- » Monitor continuously to assure data, information and analysis is current, including regular audits.

Anna Fletcher, director at law firm Gowling WLG, says that a compliance checklist for minimising the risk of modern slavery, should start with a “top down” commitment to tackling modern slavery, as well as the establishment and communication of a code of conduct for staff and suppliers alike. She says that companies need to engage with the entire workforce to raise awareness about modern slavery and how they can identify “tell-tale” signs, and know how to report them and take action.

Fletcher also advises that companies should review the recruitment practices that they and their suppliers use to ensure they are fit for purpose, as well as ensure that there is a transparent process for confirming the way in which these suppliers operate (usually better guaranteed through the strength of the relationship with a tier one vendor). “Overarching this,” she says, “should be a clear set of performance indicators with which to assess suppliers—and their

suppliers—activities, with the issue of slavery and exploitation being a key element.”

Matt Cormack, partner at law firm Ward Hadaway, advises companies to analyse the industry. “The most common instances of people being trafficked into forced labour occur in industries such as agriculture, construction, hospitality and manufacturing. Consider the overall risk profile of your industry, then tailor your response and due diligence accordingly to the high and medium risk areas identified,” he says.

Paul Johnson, executive partner at the same firm, also advises companies to provide training to ensure that employees know how to spot signs of modern slavery, and understand the requirements of the Modern Slavery Act. He also says that companies should consider requiring the personnel of high and medium risk suppliers to undertake training alongside their own teams.

Perhaps most importantly, says Cormack, companies should make sure that their contracts include strong contractual rights, including rights to visit a supplier’s facilities on an independent and unannounced basis. But he adds: “Ensure that you restrict sub-contracting of work to known and identifiable sub-contractors, and that audit and visit rights extend to these entities.”

Some companies have already fallen foul of incidences of slavery in their U.K. supply chains, but have learned from the experience and have put in place tighter controls as a result.

In January 2016, the boss of a bed-making firm that supplied major retailers including John Lewis and Next was found guilty of human trafficking. Mohammed Rafiq employed large numbers of Hungarian men as a “slave workforce” at the now defunct Kozee Sleep in Ravensthorpe, Dewsbury, West Yorkshire. He paid them as little as £10 per day. The company’s clients had conducted ethical audits, but they had failed to spot what was going on.

Consequently, John Lewis Partnership (JLP), which owns high-street retailer John Lewis and supermarket chain Waitrose, has substantially changed the way it works with U.K.-based suppliers to identify and protect vulnerable workers, according to the compa-

ny's latest human rights and modern slavery report.

Firstly, the high-street retailer has become a member of the "Fast Forward" programme, which aims to measure and improve labour standards, increase supplier transparency and protect vulnerable workers in the United Kingdom. As part of this programme, John Lewis hosted a number of workshops for suppliers covering modern slavery, right to work, contracts and health and safety. Some 107 suppliers took part in these workshops.

The company has also launched a Model Factory Programme, which has tested a new detailed auditing methodology used by the Fast Forward initiative (10 factories took part in 2016). It has also conducted confidential online worker surveys at each participating factory with the support of worker representative councils and union representatives. "It is hoped that feedback from these surveys will support managers to facilitate more meaningful discussions with their workers to address issues that will improve their experience of being at work," says the report.

The Fast Forward audits have shown that there is room for improvement on recruitment processes and personnel checks so that they are robust and fit for purpose. In addition, the audits have found that many suppliers have limited due diligence measures in place to assess labour providers used to supply their workers.

In 2017 John Lewis Partnership will work with Model Factory Programme participants to review results of worker surveys and audits. It will support them to develop action plans and complete training programmes to address issues identified. The company also hopes to extend the Fast Forward audit methodology for all suppliers' factories in the U.K.

Meanwhile, the report also found that during 2016/17 Waitrose's auditing process identified eight instances where management processes "had not been followed as they should have," which could have increased the risk of modern slavery. It says that risk assessments were carried out on Waitrose suppliers on 13 sites in the United Kingdom, Spain and Italy, responsible for growing mushrooms, leeks, cabbages, salad crops, tree fruit and tomatoes. ■

U.K. RESPONSE TO SLAVERY CRITICISED

Below Neil Hodge explores the recent sentence against Guus Kouwenhoven.

Despite being a leader in trying to tackle slavery, the U.K. government, it seems, is still falling short in its attempts to address the problem properly. At the end of April a cross-party group of MPs, the Work and Pensions Committee, published its report on victims of modern slavery.

The report said that while there is an estimated 10,000 and 13,000 slaves in the United Kingdom, the current mechanism for identifying and supporting them out of slavery means that victims, once identified, have no automatic formal immigration status or rights and are often faced with a total lack of understanding or even recognition of their situation. MPs said the system's failures were "inexcusable."

The committee also found that front line support is weak and uncoordinated and instances where a person is re-trafficked are not even recorded, which "helps to explain the country's appalling conviction record". It heard testimony of one victim, Client M, who "escaped from his traffickers but it took four years before someone recognised that he was a potential victim of modern slavery .. the adviser in the Jobcentre [who knew his story] did not pick up on that .. he lost four years before someone finally offered him the help and pointed him where he should go further."

—Neil Hodge

I deeply regret any offense this article may cause

In an era of global public shaming, viral outrage, and reputational risk, the art of delivering a good, sincere apology is perhaps more important than ever before. **Bill Coffin** has more.

If you Google “public apology” in the news, you’ll see any number of public personalities issuing some kind of mea culpa for a wrong they have committed. One apology that made the rounds came from movie star Chris Hemsworth, who apologized for dressing up as a Native American at a Halloween party. He made the apology while making a social media post with Taika Waititi, his director for the superhero movie *Thor: Ragnarok*. Waititi, a New Zealander of Maori descent, is an active supporter of the rights of indigenous people, and both he and Hemsworth were using their star power to support the Standing Rock protest against the proposed Dakota Pipeline. Along the way, Hemsworth figured he had never really given a proper apology for how he dressed at a Lone Ranger-themed costume party in 2015. The apology felt genuine, was well-received, and was hypocrisy insurance. One can’t say you’re standing for the rights of Native Americans when you dress as Tonto for Halloween.

Hemsworth will hardly be the only person to make an apology for questionable Halloween costumes this year. There is something about Halloween that gets people to make the worst fashion calls of their life. Remember that time Prince Harry went as a Nazi for Halloween back in 2005? He probably wishes you didn’t.

Of course, in the United States and the United Kingdom, we are used to celebrities making public apologies for whatever it is that has tarnished their image. These are almost always attempts to make up for a non-criminal wrongdoing, such as a marital affair or using a slur. And in a social media environment

where even the smallest of misbehaviors can cause viral, global outrage, one can see why anybody with a public profile is quick to beg forgiveness.

But one of this holds a candle to the televised confessions we see in China, where televising confessions on state-run China Central Television (CCTV) has become a thing. Since President Xi Jinping took over three years ago, airing public confessions has become a method of choice to make examples out of those deemed by the state to be out of step with the law. Critics of the practice—and there are plenty of them—note that the confessions often involve trumped-up charges, and often are coerced by those who have not yet even been given the benefit of a trial. But despite these misgivings, the public does not seem to mind, as these shows are becoming must-watch TV.

Somewhere between the rote and basically meaningless apologies of the wayward movie star and the forced public humiliation of Chinese television lies the corporate apology, and this is something with real weight to it, because if done correctly, it can stave off significant reputational damage. If done poorly, or not at all, it can add fuel to the fire and encourage legislators to double down on whatever corrective actions regulators may have to take.

When General Motors CEO Mary Barra testified before Congress in 2014 over a faulty ignition switch that had killed more than 120 people, her apology was direct, sincere, and generally considered to be as good as could be, considering the circumstances. It didn’t

exclude GM from paying \$900 million in restitutions, but nobody went to jail, either.

Throughout 2015, Korea Air had to contend with an air rage incident in December 2014, when executive Cho Hyun-ah, daughter of Korea Air chairman and CEO Cho Yang-ho, went into a fury over how she had been served macadamia nuts prior to take off from JFK Airport. She ordered the plane back to the terminal causing a flight delay at the airport, and kicking off a cascading scandal fueled by her initial refusal to apologize for her actions. Eventually, her father apologized to the public for not doing a good enough job raising her daughter, but by then, the damage had been done. Heather



Cho nearly did jail time for essentially tinkering with flight safety over a bag of nuts.

At the 2016 Consumer Electronics Show in Vegas, VW CEO Herbert Diess wasted no time in apologizing to the American people for Dieselgate. In a four-minute act of contrition, Diess went out of his way to assure the public that VW had not only learned its lesson from its ongoing diesel emissions switch scandal, but it was committed to regaining the trust of a skeptical public. As apologies go, it was pretty good. It probably won't do much to blunt the DoJ's multibillion lawsuit against the carmaker, however.

And then there is John Stumpf, the ex-Wells Fargo CEO whose apparent cluelessness when testifying before Congress over the illegal creation of customer

accounts to meet aggressive cross-selling goals easily stands not just as the most visible compliance failure of 2016, but also the worst example of public contrition by a major CEO. Stumpf's inability to accept responsibility for what had happened at Wells—initially trying to blame it on more than 5,000 “rogue employees”—infuriated lawmakers, especially Senator Elizabeth Warren, who called Stumpf “gutless,” demanded his resignation, and left the distinct impression that Congress was by no means going to let the matter rest there. Stumpf eventually would try to apologize, but it was too little, too late, and too poorly done to alter the perception that Wells had gone seriously astray.

Stumpf has already lost his job over this, Wells has already suffered a ratings downgrade and a stock price decline. Key executives faced criminal charges. And it was all preventable; the initial fines from this were small, compared to the bank's total worth. But in an environment that still remembers the financial crisis of 2008, for a bank to trample the trust of its customers so openly, and then to not even acknowledge what it had done was practically an invitation for regulators and lawmakers to act, and that is how a massive compliance problem becomes something even bigger.

Apologies aren't rocket science, but they require some key points. First, make it about those you offended, not about yourself. Nobody cares that you didn't mean to offend people. You did. That's why you're apologizing. Second, imagine what it feels like to be the one who wants the apology. You goofed because you showed a lack of emotional intelligence. Now is the time to gain some and speak from somebody else's perspective. Third, rebuild the trust you've fractured by your transgression. Trust is hard to build and easy to break, but a heartfelt and contrite understanding of this goes a long way to repair the damage.

It is not the role of the CCO to issue the apology. But with the possibility of compliance officers being made to face personal liability—both civil and criminal—for any compliance failures that happen under their watch, being able to craft a worthy apology during a time of crisis might become a skill worth cultivating, even if, hopefully, one never need use it. ■

Keeping customer service on the right track



A poor customer interaction can result in a PR nightmare, especially on social media. How can compliance help ensure that staff is properly trained to avoid a reputational fiasco?

Jaclyn Jaeger explores.

As the spouse of a train conductor, I've heard my fair share of crazy stories about train incidents.

There was the infamous story about a mother who had instructed her children to hide behind the car when it got stuck on the tracks—because, apparently, she thought she had the powers of Superwoman (thankfully, the train stopped in the nick of time).

Then there was the time a guy carried a machete onto the train and then proceeded to argue about what the big deal was when he was asked to get off.

And more people than you can possibly imagine jump on or off moving trains, because they either get to the station too late, or miss their stop, and simply panic—and then attempt to blame the railroad for the injuries they suffer.

All of this is to say that employees are not always in the wrong, but we must remember that an organization cannot expect that its customers will see it that way. Employee-facing customers are particularly susceptible to encountering tense and heated situations that, if not handled appropriately, can quickly escalate into a public-relations nightmare, fueled by social media, leading to a potentially costly settlement.

Of late, the airline industry has been taking the brunt of the reputational beating for poor customer-service etiquette. Its springboard was United Airlines, which has been battling an internal cultural issue since April, when a paying passenger was forcibly removed off a flight to make room for its own staff.

Since that incident, however, other airlines have had to deal with public-relations nightmares of their own.

Take, for example, the airport worker who—after an argument sparked by an 11-hour flight delay—was recorded punching an EasyJet passenger who was carrying a baby in his arms. Or, consider the family shown being kicked off a JetBlue flight over a dispute involving where to store a birthday cake. And then there's the American Airlines flight attendant who reportedly had an altercation with a mother trying to bring an oversized stroller onto a flight.

In many industries, not just transportation, the quality of customer service is the most visible way customers immediately judge a company; it's a crucial determining factor in whether a customer remains a customer and whether it recommends business to others. Yet, customer service continues to be an often challenging and overlooked business ethics and cultural issue.

Maybe it's time to ask some difficult ethical questions: How many of your customer-facing employees feel comfortable dealing with complaints? How do you measure that? Are customer-facing employees trained in dealing with angry or upset customers? How often, if ever? Do you use real-life case studies or role-play potential customer encounters to get employees comfortable with dealing with uncomfortable situations?

Training employees to be patient, be empathetic, and to act with integrity is not an easy feat, but an educational component may be a good starting point. ■

Employee-facing customers are particularly susceptible to encountering tense and heated situations that, if not handled appropriately, can quickly escalate into a public-relations nightmare, fueled by social media, leading to a potentially costly settlement.

Reputational risk leading boards to focus on anti-corruption efforts



Jaclyn Jaeger looks at a recent study that cites increasing board activity and awareness in response to increased regulatory expectations and reputational risk.

A rise in reputational risk is driving many boards of directors to get more involved in the oversight of anti-corruption compliance efforts, according to a new benchmark report.

The 2017 Anti-Bribery and Corruption Benchmarking Report, from Kroll and Ethisphere, examined the types of bribery and corruption risk compliance officers face and discussed the know-how necessary to mitigate those risks. One overall trend to come from this year's report is a clear focus on reputational risk.

As a direct result of this, boards are "increasing their activities and enhancing their knowledge and expertise" to better evaluate and monitor the effectiveness of anti-bribery and anti-corruption compliance programs, according to the report. In particular, the findings revealed a "marked increase in discussions about potential bribery and corruption exposure among boards of directors."

Also, more firms are including anti-bribery and anti-corruption matters in director onboarding and

periodic training. Similarly, more cover anti-bribery and anti-corruption concerns during their ethics and compliance program updates with the board.

"Directors, particularly independent directors, know that this is a significant reputational risk for the organizations they are charged to oversee, and they want to be well-grounded in the steps the company is taking to address the risk," said Erica Salmon Byrne, executive vice president at Ethisphere. "In addition to a rise in reputational risk, mounting regulatory expectations place additional pressure on boards to escalate compliance-related matters and enhance their levels of expertise. The Department of Justice's recently released "Evaluation of Corporate Compliance Programs" is just one example.

When evaluating the effectiveness of corporate compliance programs, one element it will consider is board oversight. Specific questions the Department of Justice mentions include:

- » What compliance expertise has been available on the board of directors?
- » Have the board of directors and/or external auditors held executive or private sessions with the compliance and control functions?
- » What types of information have the board of directors and senior management examined in their exercise of oversight in the area in which the misconduct occurred?

The report further indicates that senior leadership engagement regarding anti-bribery and anti-corruption efforts also is on the rise. Fifty-one percent of 388 ethics and compliance professionals said that their senior leadership is "highly engaged" with anti-bribery and anti-corruption efforts, reflecting a four-percentage point increase over the previous year.

Finance as a partner. Another notable finding from this year's report is the invaluable role that the chief financial officer and the finance team play in regard to anti-bribery and anti-corruption efforts.

37 percent of respondents said the CFO plays an "active" role, while another 36 percent said the CFO plays a "supportive or passive role." Fourteen percent

said that the CFO is "not involved" in such efforts.

With an enterprise-wide view of operations and transactions, including dealings with complex cross-border accounting controls and awareness of customs regarding local payment terms, "the finance team is turning into a formidable line of defense against corruption," the report states.

"No matter how many compliance controls and procedures you have in play, the finance function and, ultimately, the CFO will always be the third line of defense," said Zoe Newman, managing director at Kroll. "Local country operations are often the most at risk in terms of bribery and corruption; they're often small, acquired, and isolated from the head office."

"As a result, the practicalities of implementing head-office compliance controls locally are more complex and fraught with risk, particularly when dealing with an autocratic country head," Newman added. "In these situations, the finance function plays an even more important role."

It is critical that the CFO provide sufficient oversight, she said, "and that the local function is empowered to question transactions, ensuring that they are carefully reviewed before being signed off and authorized by finance."

Respondents who said their CFOs played an active role in anti-bribery and anti-corruption compliance were almost four times as likely to feel "extremely prepared" to manage bribery and corruption risks.

Mitigating reputational risk. The report also discussed ways in which companies can mitigate reputational risk in the context of anti-bribery and anti-corruption compliance programs. That starts with understanding where vulnerabilities lurk.

Survey respondents cited third parties as the biggest risk to their company's anti-bribery and anti-corruption programs. "Consistent with these stated concerns for the respondents who rejected one or more third parties at the outset of screening, general reputation concerns were the most likely reason," the report stated. This finding is in stark contrast to last year's report, when general reputation and integrity concerns were the least likely reason third parties failed to meet company standards, "a stun-

ning reversal in just one year.”

Managing personal risk. Respondents continue to be concerned about personal liability, with one-third of respondents reporting a greater level of concern in this area than the prior year.

A series of recent regulatory developments occurring around the world may be fueling this concern, including the U.K. Senior Managers Regime, the Yates Memo in the United States, and new, stringent legislation, such as France’s Sapin II law. “Together, these regulatory changes make higher fines and prison sentences a much sharper risk for directors and risk professionals,” said Kevin Braine, Kroll’s managing director and head of compliance, EMEA.

Another troubling aspect to this development:

“Qualified compliance professionals may be chilled from taking on this key governance role in organizations in high-risk industries,” creating the potential for even greater risks to emerge, the report warns.

Particularly in an era of regulatory uncertainty in combination with a greater focus on personal liability by regulators, it is more important than ever before for ethics and compliance professionals to reevaluate and develop their anti-bribery and anti-corruption compliance efforts as one of the most effective measures in preventing both reputational and financial damage. It is of increasing importance, too, that boards of directors and senior management get actively involved and seek ways to foster these efforts. ■

WHY THIRD PARTIES FAIL TO MEET STANDARDS

In the Kroll Anti-Bribery and Corruption report, respondents were asked to rank the reasons that potential third parties fail to meet their standards. Below are the 2017 responses in comparison to the 2016 responses.

REASON	2016 OVERALL RANKING	2017 OVERALL RANKIN
General Reputational or Integrity Concerns	7	1
Conflicts of Interest	Not an option in 2016	2
Questionable Relationships With Potentially Exposed Persons	3	3
Unusual Contract and Payment Structures	5	4
Opaque or Suspect Corporate Structures	4	5
Clear-cut Evidence of Bribes in Previous Business Dealings	6	6
Known Dealings With Sanctioned Entities	2	7
Other	1	Not an option in 2017

Source: Kroll

Better ways for boards to care about reputation risk



Boards too often make reputation risk their top priority, when there are better ways to manage that risk while placing a greater focus on culture and operational details that will lead to a well-run business, writes **Rick Steinberg**.

Reputation risk is never far from a board's mind, and rightly so. That doesn't necessarily mean boards should make management of reputation risk their first priority—despite many examples of reputation failures leading to catastrophe. Rather, boards need to obsess over culture and

operational details that lead to a well-run business.

Few things are more important than one's reputation, whether a company's or a person's. How one is viewed in the marketplace, and by those with whom we come into contact directly, affects our well-being. In the business environment, a positive

In business, the reality is that an organization's reputation is the result—the outcome—of the integrity, ethics, and myriad actions of the corporate entity and the executives who run it. Attempting to manage reputation directly misplaces effort and harms outcome. It's critical that attention is given to where the underlying risks actually exist.

reputation provides tremendous benefits, including attracting and retaining top human talent, business partners, and the most desired customers and clients. In addition, it can have an effect on dealings with suppliers, lenders, and shareholders, and other client relationships.

Certainly, the words of Warren Buffett are on point: "It takes 20 years to build a reputation and five minutes to ruin it." We can look to what happened to companies whose reputations were damaged, such as Firestone Tire, Arthur Andersen, BP, News Corp., SAC Capital—and others too numerous to cite. Some survived, some didn't, but all paid a significant price.

Because of that critical importance, if you're a member of a board or directors or otherwise active in corporate governance, you probably spend considerable time and energy focusing on your company's reputation. You read about it in board journals, hear it at conferences, and address it in board meetings. There's an urgent call for directors to consider the company's reputation, to monitor it in various forums, and to be prepared to act if it is threatened or damaged.

Recognize What Drives Reputation

There's no doubt that directors need to give attention to their company's reputation, to nurture it, and ensure it has achieved and maintained a positive glow in the marketplace. How to do that is open to debate.

We're seeing the suggestion, or rather the demand, that boards look at reputation first and foremost, as the primary focal point in managing corporate risk. And much of a board's responsibility is said to revolve around close monitoring of how

the company is perceived, from customer surveys to monitoring reactions to products, service, and other events in a range of venues including social media. Another primary focus is establishing response plans to deal with a crisis should a crisis arise.

Yes, knowing how your company is viewed, and being prepared to deal with a crisis, are both important. That being said, logic and experience show that focusing first on reputation itself as a way of mitigating the associated risks is badly misplaced, and frankly counterproductive. For golfers out there, it's akin to making your backswing while looking down the fairway to see where you want that little ball to end up. That's not how hitting a golf ball works. Rather, you need to tend to the basics of your swing, with your eye on the ball, to have the best likelihood that you'll ultimately find your ball far down the middle.

In business, the reality is that an organization's reputation is the result—the outcome—of the integrity, ethics, and myriad actions of the corporate entity and the executives who run it. Attempting to manage reputation directly misplaces effort and harms outcome.

Yes, keeping abreast of how outsiders perceive the company's brands, products, and activities, and being prepared to deal with a crisis, are necessary. But it is absolutely critical that attention is given to where the underlying risks actually exist.

Focus Attention Where Really Needed

When Firestone's tires were found to be defective, the company's reputation was critically damaged.

But if the board had been focusing on the status of the company's reputation (which was quite positive before the defects became known), it would likely have seen no problem. The board should have been focusing on ensuring that risks related to product quality were identified and effectively managed. It should have ensured management was identifying and managing risks in product design, supply chain, and manufacturing processes, to be comfortable that quality continued to be built into the organization's tires.

When Arthur Andersen imploded, its reputation took a direct and lethal hit. Before the Enron fiasco, Andersen had one of the best reputations in the accounting and auditing profession. If its board of partners was monitoring reputation, it should have been delighted. But the board should have been looking at risks related to allowing an engagement partner to ignore the direction of its national office and unilaterally make final decisions. It should have been looking at risks related to trying to rebuild its consulting business at the expense of good accounting. And, significantly, it should have been looking at risks associated with allowing a staff lawyer in its general counsel's office to advise on destroying documents related to the subject audit.

Similarly, if the BP board monitored the organization's reputation, it may well have been pleased in the 2000s. But that was before the Deepwater Horizon offshore platform blew up in 2010. The board should have been focusing on risks surrounding the configuration of its blowout preventers and related limitations, including the cutting ability of the blind shear rams. The board should have placed more of a focus on the quality of cementing and capping devices, the ability to monitor pressure, and clear division of responsibility between BP and Transocean.

We could go on, but the point has been made extremely clear. Having a positive reputation is extremely important. But how to get there and how to oversee it calls for looking closely at what drives that reputation.

Do the Basic Blocking and Tackling

Organizations that enjoy a positive reputation demonstrate integrity and high ethical values in dealing with employees, customers, suppliers, joint venture partners, shareholders, regulators, and others. They focus like a laser on product and service quality, innovation and new product development, and opening new markets. They respect legal requirements and the importance of related compliance. And when a problem surfaces, they are active and effective in dealing with any damaged parties.

Behind this is what should be an effective enterprise risk management process. The company should have in place the right culture and related internal environment, and an effective objectives-setting process and identification of risks to meeting those objectives—as well as identification of related opportunities.

The process should ensure that the risks are properly assessed and the appropriate actions and controls are put in place to manage the risks within risk appetite and tolerances; and it should ensure that applicable opportunities are seized. Relevant information should flow up, down, and across the organization such that managers act on the basis of accurate and relevant knowledge, and the process needs to be monitored by management closely.

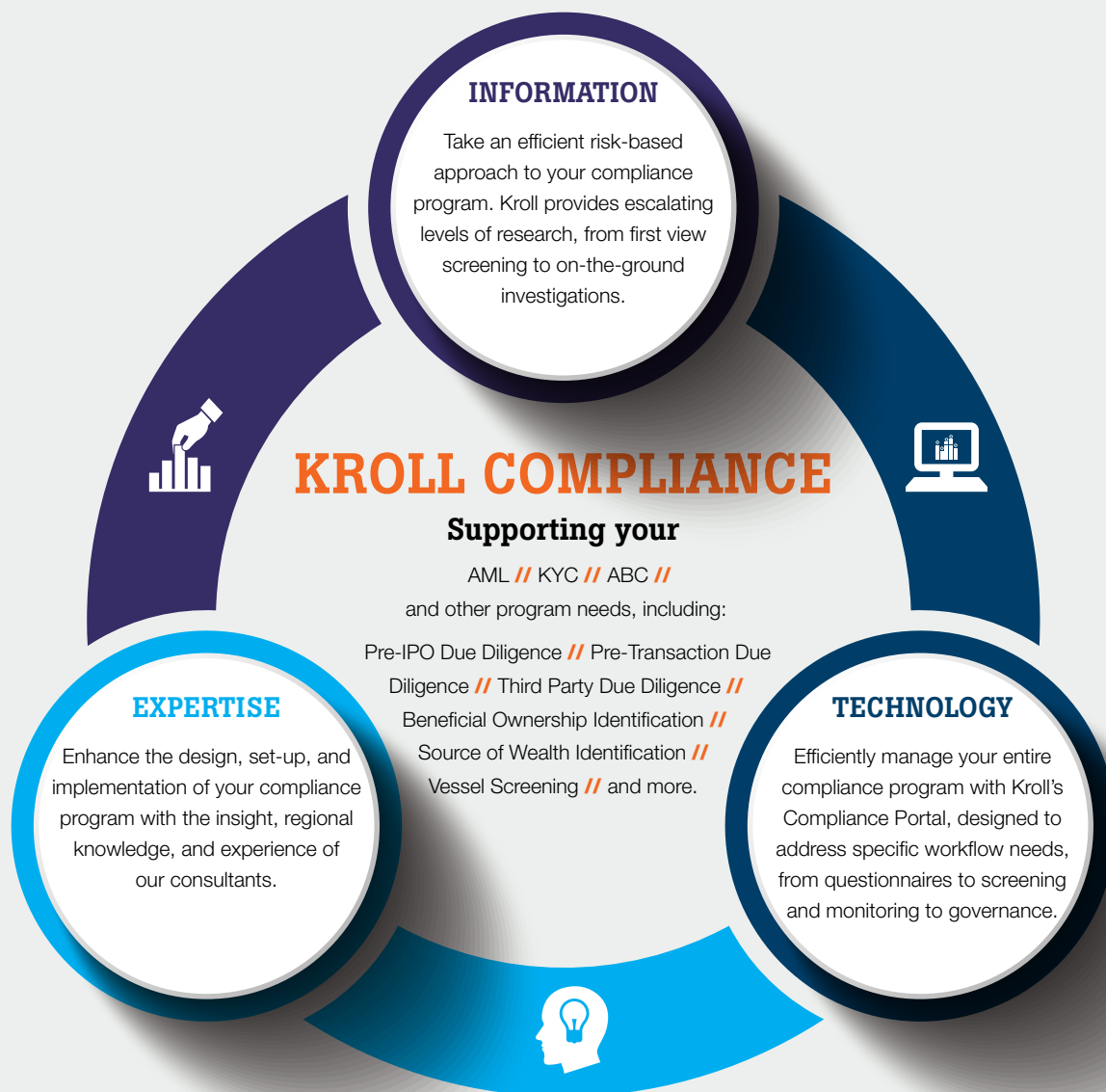
The board of directors' responsibility is to ensure that this process is in place, working effectively, and driving the desired results. If the board questions, probes, challenges, and satisfies itself that the organization and its business processes are risk-based with the quality needed to achieve corporate goals, then it's likely its reputation will follow accordingly.

Yes, the board should monitor the company's reputation as well, and be prepared to act quickly and appropriately when necessary. But keep in mind what really drives reputation; it doesn't form by itself in a vacuum. It's the product of everything a company and its people do. And that's where the board needs to focus its attention. ■



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