

“Legal Compliance Transformation”

No more only ticking the box

Nowadays we are hearing more and more about this new trend called “Legal Compliance”, so before going deeper in the analysis of this topic, it is important to understand what is considered “Legal Compliance”. In this regard we can say that it is the process or procedure to ensure that an organization or company follows relevant laws, regulations and business rules. However, this definition of Legal Compliance has recently been expanded to include understanding and adhering to ethical codes and any other internal policies which need to be also compliant with the applicable local Laws.

The scope of this article is not to analyze whether or not the protection of the compliance is appropriately regulated, under which legal framework it is regulated or if it should be regulated under a sui generis set of laws. The purpose of this article is to (i) highlight the change on the company’s culture regarding compliance, (ii) to have a brief insight of the regulatory development that enhances the wide scope of the regulations, that makes compliance (iii) a worth long term investment that needs (iv) a customized solution. Finally, I will close with a final consideration on the company and legal team’s approach to compliance.

Having said the above mentioned, the purpose of this article is to deliver a message to the different organizations, companies and the management of such entities, in order to understand that being compliant is not any more about “ticking the box”, the time when this was enough is over and in the past, now the new regulations and authorities are requiring more, they are requesting to go one step beyond to be compliant. This means that compliance is not and shall not mean just putting make up to the organization or company, to pass the audit and get a nice certificate to evidence passing the audit report, no more ticking the box of a check list would be enough. In this new era such conducts are already outdated, and the new trend is to educate and to develop and implement a compliance culture in the company, but this transformation needs to be both ways, this means that not only the base of the structure needs to be compliant but also and mainly the top management, and this can only be achieved with a constant flow of communication and trainings to be compliant, from the top to the bottom of the structure.

It is important to know that this corporate cultural and behavioral transformation did not come overnight; it has evolved through different venues and with different regulations. Many sectors have addressed this compliance approach to their regulations. By way of an example we can mention one of the first steps in this direction, which was the SOX, covering some finance and accountability procedures and regulations in USA and linked companies abroad. Likewise, we can also mention more recent examples like the FCPA (Foreign Corrupt Practices Act (USA)), UK Antibribery Act, GDPR (EU General Data Protection Regulation), the AML (Anti Money Laundering) Regulations in the most important markets and venues, some new Data Protection regulations in Asia Pacific, like the one in Singapore, etc. But in all these examples we cannot say that its applicability is limited to the country where such regulation was issued, it is not the case, we cannot rely on frontiers anymore, we need to count with the extraterritorial reach or effect of those regulations. We live in a global world, so compliance is not anymore a localized phenomenon, but a global reality with a global approach, which we all need to pay attention in order to survive in our business.

The Legal Compliance is not free or cheap, but being non-compliant could be very expensive and imply a very undesirable high risk for any company. Therefore being compliant must be considered a long term investment, definitely not a one payment issue, but a constant investment in the company's compliance health. But if we are talking of an investment, there has to be a benefit, and this benefit is the tranquility and good health of the company, which of course, may have a commercial impact as well as it would be highly appreciated by our shareholders, customers and authorities.

How to proceed in order to achieve Legal Compliance? Well in this regard I will not go in detail but the clue of a successful Legal Compliance Program is to be realistic and to have a customized solution or Compliance Program, duly implemented with transparency and knowledge of all the stakeholders, as this is the tool to be compliant. The best way to avoid a conduct is being aware of the existence and qualification of such conduct and its consequences. Therefore, in order to achieve this purpose, the communication and information within the organization is essential, hence the starting point is to feel secure and comfortable to notify, not to hide any breach, in order to improve and correct the non-compliant conduct or breach. At the end, a Legal Compliance Program should be seen not only as a life jacket, but also as the sword and the shield to keep the company safe.

I think the question today is: What's the future for us? What should be our role in this new regulatory trend? Our target should be to find the balance between Digital Economy, New Technologies, IoT and Legal Compliance. The technology is not our enemy, but our partner in this adventure to facilitate our purpose. But we all know that usually the legal regulations are obsolete or one step behind the technology development, so it is very important to consider this gap, in order to avoid that the new regulations become barriers to this development. The Legal Compliance needs to be considered in a very smart and efficient way, by not only the companies or organizations, but also by the authorities and legislators to protect and facilitate in a responsible way the communications and Global Economy growth.

In conclusion, Legal Compliance has to be a way of life in any company or organization, a common target embedded in the DNA of the company, only then Compliance will become a natural conduct in the daily activities and targets.



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