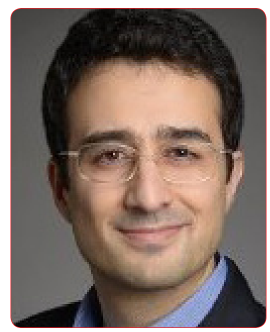
Measuring ethics

BY FARES TABBA



One of the common challenges the compliance professional is often faced with is the leadership buy-in. Despite the fact that compliance to laws (usually national laws) is not questioned, the compliance professional is looking for compliance in its complete sense, which normally includes ethical compliance; or simply put: doing the right thing beyond the letter of the law. The right thing for most leadership in the corporate world is the bottom line, and anything that does not directly or indirectly contribute to it is considered a wasted activity.

As a compliance professional in the field for over 10 years, I have seen huge mistakes committed by good leaders by limiting their thinking to the bottom line in the traditional way and not looking beyond the numbers. Despite what many see as the rise of the compliance profession in the last 15 years, one cannot ignore that the motive behind compliance is very often not the will to do the right thing, but rather to mitigate the risks. Sadly, the risks identified are usually the ones that have already been materialized one way or another, so that the need to deal with them is what actually drives the compliance activities. Often, this could be too late. The Enron case, for example, represents one of the milestones in the compliance profession in the financial world. The cases of the labor scandals in the textile supply chain represent another, and so on. These examples (among others) demonstrate that compliance's contribution to an organization goes way beyond the bottom line and touches the whole being of the organization. In the following lines I will try to dispel one of the most common misconceptions of top management about compliance.

Measurement

I like to call this "obsession with indicators." The idea is not new; many acclaimed scholars have preached this already,[1] albeit more in the development and social sciences than in the management and business fields. The dominating "management thinking" today requires data; intelligent information in order to make decisions. Information shall be quantifiable and deliverables shall be measurable. Anything that cannot be measured is disregarded. Often, ethical compliance activities are disregarded at this stage. More accurately, they are left to the minimum and to address the "already known risks." Eventually, compliance is detached from the management and the organization practices to be annexed to any "general service" department. I have seen many cases where compliance is reduced to a mere checklist performed by an unqualified administrator, or where compliance is enshrined in a policy, mission statement, or other document with no "real" existence in the practices of the organization. Compliance, however, shall be a culture, a nature, and shall be incorporated in every and each activity of the organization.

The real challenge for traditional managers is to justify the cost of compliance activities, especially if these activities are related to ethical compliance. Big corporations found the answer in the "Brand Image" or "Corporate Social Responsibility" programs; however, in the globalized world we live in today, those same organizations are outsourcing parts of their supply chain to others. The complex supply chain relations are usually managed by "services" companies that perform on margins of the profits, and they need to justify each single activity by measuring its cost and comparing it with the impact on their bottom line. There is no doubt that effective compliance programs need good investments in people, knowledge, and training. This investment is usually translated into the high cost of the transaction of the compliance activities. Although all supply chain contracts today emphasize the compliance dimension, the practice shows that compliance is not often identified but kept open ended.[2] This leads service companies to minimize their compliance activities that are not translated into a "measureable" deliverable but manifested as a high cost. When trying to measure compliance, businesses recourse to audits, and hence compliance is reduced to a completion and issuance of an audit report. Such an activity has no impact on revenue. Management is often inclined to reduce the frequency, content, and weight of such audits as much as possible to manage their cost.

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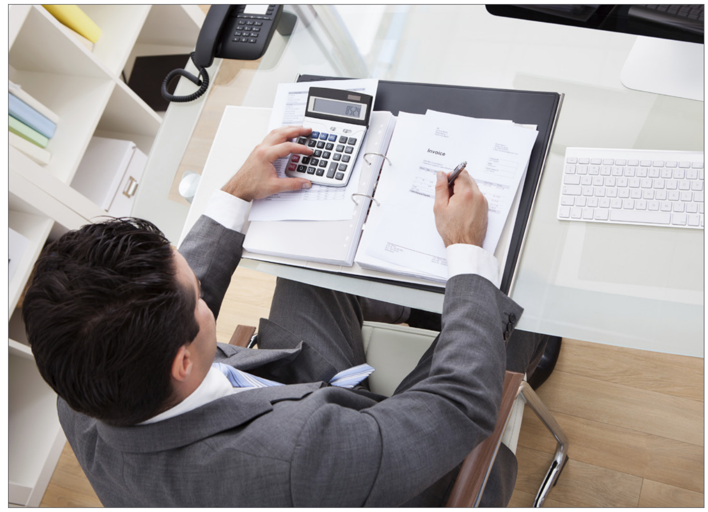
The question of measuring compliance becomes more apparent when looked at from the lens of any of the common management or quality tools widely used in businesses today. These tools aim at eliminating waste. Waste is any activity that does not improve the bottom line. Compliance, in essence, cannot be measured in that sense, hence, from such a perspective it is a wasted activity.

Reversed measurement

Yet we are still witnessing the spread of compliance. The main reason, in my opinion, is the immense cost of non-compliance. This is what I call reversed measurement. Take the example of data privacy: the cost of non-compliance could expose companies to high financial risks as well as destroying the image and the trust of clients. Those "potential" costs are what drive management to invest in compliance. As mentioned earlier, those are risks that have been materialized for the industry: in other words, known risks. So companies are not performing these compliance activities merely because they are willing to invest in protecting the privacy of their clients out of an ethical commitment. Such an investment is a "waste" if it does not contribute to the bottom line, but when it does contribute to the bottom line by avoiding a financial liability, it can be justifiable.

Building on this concept, social activists and human rights enthusiasts have realized this. They have also realized the diminishing power of the national state to organize business in the global supply chain world of today. Their work in reshaping the landscape of international law is undeniable. These activists are the main reason the Rana Plaza incident is still alive; they are the ones documenting the violations in the global supply chain and holding violators responsible. Most importantly, their work has led to the creation of many industry-specific codes of conduct, the enforcement of international standards (whether in safety and health or labor), and the enactment of new standards. They have highlighted the issues way before the endorsement of the guiding principles on business and human rights by the Human Rights Council. They are the ones that are translating the principles into binding tools. They are leading us by creating the legal framework that is holding corporations accountable by imposing sanctions and penalties. As compliance professionals, we shall be thankful for their work in making it possible to "reverse measure" compliance in order for managers to continue investing in compliance.



Conclusion

Business management today uses tools that are focused only on quantifiable information and the impact on the bottom line. This is leading to classifying "compliance" as a wasted activity unless the risk of non-compliance carries a serious legal and financial burden that cannot be ignored. Yet the compliance profession is prospering more than ever before. This is due to the improved ethical environment, promoted successfully by social and human rights activists who are turning non-binding ethical behavior into sanctionable obligations. This means that more areas will be covered under compliance. Whether managers will start to see this and simply opt for compliance before it is too late for their organizations is still to be seen. ■

Fares Tabba, LLM, MBA, is an Editor with InternationalLabourRights.com.

ENDNOTES

1 For example, Stephen Morse in his work about sustainability, especially "Indices and Indicators in Development: An Unhealthy Obsession with Numbers, 2004" and Alain Supiot in "The Spirit of Philadelphia: Social Justice vs. the Total Market, 2012."

2 It is common not to define compliance in supply chain contracts, but rather enumerating examples of broad compliance areas i.e. to comply with all national and federal law, safety standards or data protection. The brands prefer this open approach in order to indemnify themselves from any potential new risk, while the suppliers prefer this in order to keep the compliance activity to the minimum and not commit themselves to any concrete deliverable.