

# Global Compliance on Limited Resources

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## Anti-Corruption Enforcement Surge

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- The 15 year anti-corruption enforcement surge is going strong with no end in sight.
- The DOJ and the SEC continue to rack up an impressive number of corporate resolutions and individual prosecutions, year after year.
- Now, it's not just the US regulators that are threats; other countries have become increasingly aggressive enforcing their own laws.
  - UK, Brazil, France, Italy
  - And they are all working together closely
- Whistleblower activity is on the rise and primes the pump: 5,282 SEC tips in 2018.

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## Enforcement Trends

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- Self-disclosure, extensive cooperation, effective compliance programs, speedy remediation put companies in best position to receive declination or to significantly mitigate penalties (DOJ FCPA Corporate Enforcement Program)
  - Mobile TeleSystems – DOJ sends a message

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## Enforcement Trends

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- Emphasis on company's compliance program: DOJ and SEC will evaluate effectiveness of compliance program. Increasing expectations: Is it well-designed? Is it being applied in good faith? Does it work? Does it develop?
  - DOJ's April 2019 Evaluation of Corporate Compliance Programs contains a list of questions that DOJ will ask of every company that comes before it.

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## Rising Challenges

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- The primary risks are still the same:
  - Agents and other third parties
  - M&A activities and JV partners
  - Gifts and hospitalities, including overseas travel and educational trips
  - Use of cash
- But the bar is rising . . .
- And compliance program funding is inevitably scarce.

If you think compliance is expensive . . .

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***“It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you’ll do things differently.”***

**...Warren Buffett**

## The Essential Elements Of Corporate Compliance

The key themes from the compliance program expectations of government regulators around the world can be distilled into five essential elements of corporate compliance that should be present in every company's compliance program.

Leadership
Risk Assessment
Standards and Controls
Training and Communication
Monitoring, Auditing and Response

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## DOJ/SEC FCPA Guide: The Ten "Hallmarks of Effective Compliance Programs"

1. Commitment from Senior Management and Clearly Articulated Policy
2. Code of Conduct and Compliance Policies and Procedures
3. Oversight, Autonomy and Resources
4. Risk Assessment
5. Training and Continuing Advice
6. Incentives and Disciplinary Measures
7. Third-Party Due Diligence and Payments
8. Confidential Reporting and Internal Investigations
9. Continuous Improvement: Periodic Testing and Review
10. Mergers and Acquisitions: Pre-Acquisition Due Diligence and Post-Acquisition Integration

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## Leadership

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- Expectations and best practices
  - Culture, oversight, autonomy and resources
- Cost efficiencies
  - Use cost effective mechanisms to gain the board's attention and support
  - Use technology to document your "tone from the top"
  - Use technology to enhance communication up, down and across the company

## Risk Assessment

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- Expectations and best practices
  - Regular compliance-focused risk assessment
  - Results incorporated into the compliance program
- Cost efficiencies
  - Use technology to assist - surveys and checklists

## Standards and Controls

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- Expectations and best practices
  - Code of Conduct, company-appropriate policies and procedures
- Cost efficiencies
  - Company-appropriate may mean less elaborate policies/procedures
  - Electronic code certifications
  - Free services for basic third party due diligence
  - Focus on the most risky areas first
  - Consider third party vendor due diligence programs
  - Consider third party vendor gift and hospitality approval and tracker programs

## Training and Communications

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- Expectations and best practices
  - Blend of online and in-person training appropriate to your company
  - Calibrate your training, and who is trained on what, according to risk
  - Case studies and role playing
  - Be conscious of language and culture
- Cost efficiencies
  - Electronic attestations
  - Surveys to gauge effectiveness
  - Many compliance training vendors who can assist

## Monitoring, Auditing and Response

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- Expectations and best practices
  - Company-appropriate efforts to monitor the extent to which the compliance program is being implemented and is working
  - Risk-based compliance audits
  - Company-appropriate whistleblower hotline
  - Well-designed plan for how to investigate allegations of misconduct
  - Evenhanded discipline and other remedial measures
  - Incentives for good behavior

## Monitoring, Auditing and Response

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- Cost efficiencies
  - Use surveys to collect information about how the compliance program is being implemented at the local level
  - Leverage those surveys to support and focus the audit program
  - Use scorecards or other electronic summaries to summarize results and provide a baseline for comparison in the future
  - Make sure your whistleblower hotline is compliant with local law
  - Create an investigation policy now
  - Get your data privacy house in order now
  - Document all allegations, investigative actions and remedial measures