

The Cover Note

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EDITORIAL

The pendulum has swung in the recent past and regulators are far more present than ever. It is unfortunate that the misbehaviour of certain companies ends up increasing compliance demands on all. The question of balance is irrelevant when it comes to complying with regulation, once it is in place, either you are compliant or you are not. It is, however, very relevant for regulators to keep in mind the concept of balance; after all, companies are essentially in business to sell products and services, not to focus on compliance.



Barry F. Lorenzetti

Notwithstanding the above, a Compliance function can be a great tool for management in any organization. Despite this, however, "Compliance" is a word many love to hate. And upon preparing to review and approve budgets for the upcoming fiscal year, some organizations may be tempted to reduce the resources they dedicate to ensuring compliance with the numerous laws, rules, regulations and standards by which they must live.

What is "Compliance" really? A broad way to define it would be: the imposition of a set of rules and the subsequent verification of adherence to

these rules. In plain language, compliance is control and the various departments performing the controls are the eyes of Directors and Officers and of Management on what goes on in the field – these would be Quality Control, Internal Audit, Compliance, the Legal Department, etc. Many functions of each organization are involved in controlling one or several parameters.

There is compliance to external authorities (laws, regulations, governing bodies, etc.) and compliance to internal rules (quality control, customer service standards, budget, employee code of conduct, etc.) External compliance is generally driven by objectives such as the public good, equity, protection of consumers or investors, business conventions, etc. On the other hand, internal compliance derives from specific business objectives, culture, etc. Adherence to the rules is verified by a variety of means including auditors, engineers, compliance officers and technology. Whatever the means, verification is achieved at an expense to the company. Any innovation in the execution of verification that effectively reduces its cost is obviously desirable.

In the end, however, compliance (both internal and external) - or if you prefer controls, is a question of risk management, with a wide

range of potential impacts, from the benign to the catastrophic. This makes compliance/controls an essential tool/process on which Directors and Officers and Management need to rely on to take the pulse, to measure performance/progress, to ensure the safeguarding of assets (including permits and reputation), to assess risks, flag potential issues, identify opportunities, take corrective measures, and more. In other words, an investment worth its weight in gold when properly implemented, maintained and tapped into by Directors and Officers and the Management of the organization.

As principals, we have a choice; we can choose to make compliance simply a necessary evil and a cost, or an essential risk management tool and a profitable investment for the sake of all stakeholders, most importantly for the success of the organization - just a thought, on the eve of budget season.

Our main article is signed by BFL's own Corporate Compliance Officer, Connie Tambasco, and offers insight into our firm's take on this function. On the Employee Benefits side, Tim Wade and Carol Soluk look at employee benefit programs and pension plans, and the areas of potential liability for employers. ♦

The question of balance is irrelevant when it comes to complying with regulation

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COMPLIANCE – A FORMIDABLE MANAGEMENT ASSET

Connie Tambasco, Corporate Compliance Officer, BFL CANADA Risk and Insurance Inc., Montreal

No matter where you turn these days, standards and/or regulations lurk, with Compliance in tow. Basically, in today's world, you can try to run but you certainly can't hide from Compliance. Just about every organization, discipline and jurisdiction in the world has some form of rules or standards in place which must be adhered to. The scene becomes even more complicated with globalization, where company personnel must become at least conversant with the rules and regulations of those countries they deal with day to day.

Generally, Compliance is incorporated into our daily routine; we are being compliant with rules almost every minute of everyday without even realizing it, whether it is stopping at a red light on the way to work or refraining from stealing from the corner store. And you comply without any protest because you do understand how such rules make for a better experience for society as a whole.

In business, it is our quality control or assurance, accounting rules, laws, code of conduct, confidentiality agreements, etc. that regulate our activities. When an organization sets internal rules, some may be very arbitrary and their logic or benefit may not be as easily understood as the red traffic light, but they are still necessary to attain some of the organization's objectives – this would include an objective common to all organizations: avoiding chaos. And, let's face it, Compliance is the great equalizer, it affects a company from top to bottom, from the C-Suite to the mailroom and vice versa.

The concept of abidance to rules has been around for a long time. The difference in recent times is that rules are being enforced more and more and regulators have a tendency to be rigid, therefore, the success or effectiveness of any function that monitors compliance is dependent on the support of management.

At BFL, the Compliance function serves an array of objectives and purposes amongst others:

1. Regulatory compliance
2. Information/feedback to Management and Board
3. Awareness and training of personnel
4. Flawless client experience
5. Resource center for personnel

6. Dishonesty detection
7. Errors and Omissions prevention
8. Standardization/Image management
9. Safeguarding of reputation

In view of the above, I would say Compliance is a useful risk management tool and, as an organization, we have chosen to put a lot of effort into awareness and training as we feel it is the natural course to take.

An example of this philosophy is that we provide mandatory training for new employees in order to give them a good overview of the rules, requirements and tools in place. This is a definite advantage to our firm as the employees are integrated



much more rapidly and efficiently but, as importantly, also a definite advantage to the employees themselves who are very grateful for the guidance and the help in mastering their new environment. As an organization, we feel that properly trained employees are more efficient and productive in addition to being more compliant.

After the novelty of joining has worn off, there are times when employees need to be reminded of the rules or the policies – let's face it; staff is busy doing what they were employed for, whether it is production, servicing, marketing, etc. Although they should know every rule, regulation and internal policy in existence, they are human. This means they can forget or disregard the rules for any number of reasons. This is where compliance as an education or training opportunity comes in, by providing ongoing training to staff and management. We train, provide updates and educate, so that the business runs smoothly with less risk of an error which, as we know, is anathema to any business.

Many companies perform audits of all kinds, but unless you train to the weaknesses identified by audits, there will


BFL CANADA Risk and Insurance Inc.

45 Westwind Drive
Hammonds Plains, NS B3Z 1K6
Tel: 902-864-4982
Fax: 902-864-0200

2600 Laurier Blvd, Suite 857
Quebec City, QC G1V 4W2
Tel: 418-658-6337
Fax: 418-654-2045

2001 McGill College, Suite 2200
Montreal, QC H3A 1G1
Tel: 514-843-3632
Fax: 514-843-3842

BFL CANADA Risk and Insurance Services Inc.

1565 Carling Avenue, Suite 606
Ottawa, ON K1Z 8R1
Tel: 613-722-7798
Fax: 613-722-7829

181 University Avenue, Suite 1605
Toronto, ON M5H 3M7
Tel: 416-599-5530
Fax: 416-599-5458

BFL CANADA Insurance Services Inc.

175 Carlton Street, Suite 205
Winnipeg, MB R3C 3H9
Tel: 204-594-0260
Fax: 204-594-0259

877 Henderson Highway
Winnipeg, MB R2K 2L8
Tel: 204-661-2446
Fax: 204-663-0344

1167 Kensington Crescent NW, Suite 200
Calgary, AB T2N 1X7
Tel: 403-451-4132
Fax: 403-313-3365

1177 West Hastings Street, Suite 200
Vancouver, BC V6E 2K3
Tel: 604-669-9600
Fax: 604-683-9316

1-866-688-9888

be no progress. No matter how many audits you perform, if personnel do not understand what is expected of them, you will not attain your goals.

As we train our people through various initiatives, we also learn from them. We learn how to improve our rules and requirements, processes, systems and tools, how we can better manage certain risks and how other risks can be further mitigated. The members of the BFL National Compliance Team are partners to the firm to support the achievement of the core business objectives and to employees personally as trainers/coaches. In fact, Compliance is on everybody's side.

For entities in any industry sector, there is obviously regulatory compliance – all companies are under some measure of it – but there is also compliance to internal rules. For manufacturers, as mentioned above, a good example would be quality or performance standards, or the standards you set in order to achieve maximum sales at set costs, customer satisfaction thus client retention and growth by word of mouth, minimization of returned products, minimization of bad publicity, etc. In other words, the standards to which your output must measure up and at the same time, a system that will red flag any deviation from these standards. You could say that the basic measurement common to all organizations is customer satisfaction – there's a factor that hits home and normally does not require any system to be detected. But without some measurement, small irritants which add up and can lead to loss of business may not be readily detected.



In a service industry, you rarely find a Quality Control function by that name. It doesn't mean that it does not exist, it is just named differently or it is not a formal function or is partly assumed by a number of company functions; but make no mistake, all organizations need to manage risks and thus watch/measure their performance by some standards. At BFL, Compliance is a quality control tool which doubles as a risk management tool. I would even go so far as to say that Compliance is an "insurance policy" against certain known risks.

It is not uncommon to hear of employees or companies in any industry sector who get into trouble because they do not follow even the most basic rules. The classic excuse is that rules create additional work – which, of course, is not always the case. Rules usually require a change in the way the work is being done by certain employees, or all employees. This is where the difficulty lies. Human beings in general don't take too well to change, they like to keep things the way they have known them to be in the past. It is reassuring. This is also why training/information is such a crucial element in order for any organization to succeed when implementing any change whether of equipment, environment or simple behaviour of employees.

By whatever name you call it, Quality Control, Risk Control, Quality Assurance, Ethical Standards or just plain Compliance, the function or functions which share these responsibilities in your company can be a great risk management asset, and, in view of all the purposes they serve, a formidable management asset, if only you choose to make it so. It is up to each organization to recognize the values in these types of systems – even if they are sometimes imposed by regulators – and to leverage the obligation into an opportunity. ♦



EMPLOYEE BENEFIT PROGRAMS AND PENSION PLANS AREAS OF POTENTIAL LIABILITY FOR EMPLOYERS

Tim Wade, Senior Benefit Consultant & **Carol Soluk**, Client Service Manager
BFL CANADA Consulting Services Inc., Toronto

Benefit Programs and Pension Plan administrators play a key role in the management of the various requests made by their employees. It is the administrator's responsibility to ensure that each employee is fully aware of his/her rights and obligations under the employee benefits and pension plans and to communicate this information in an effective manner.

Several responsibilities (contractual or statutory) befall the administration of Benefit Programs and Pension Plans and we are listing a few below for your consideration:

EMPLOYEE BENEFIT PLANS

- Enrolling employees within 31 days of eligibility. If an administrator fails to do so, the employee is considered to be a "late enrolment" and medical insurability must be provided for the employee as well as all dependents. If the employee fails to qualify, the employer will be responsible for any and all claims for the employees and his dependents.
- Facilitating conversion of the Group Life Insurance benefit to an individual plan in the event of termination. If the forms and instructions are not provided to the terminated employee on a timely basis, the employer could be responsible for purchasing a life policy on behalf of the employee and paying for it. If the employee dies before this can be placed, the employer could be responsible for payment of the Life Insurance Benefit to the employee's heirs.
- At termination - pre-approval must be obtained from the insurance company in order to provide an employee extension of the employee benefits. Which benefits are offered can differ. For example, no insurance company will continue the Long Term Disability (LTD) benefits beyond termination. You need to check with your Insurance Company to find out what it does offer.
- Submitting salary changes to the insurance company promptly so the Life and LTD benefit is adjusted accordingly. Failing to do so, if an employee died or was eligible for LTD benefits, the employer could be responsible for the difference between the limit on the insurance policy and the limit

that would have been available if the employer had submitted the salary change.

GROUP PENSION PLANS

- Employers are required to provide accurate and timely information about their pension entitlements and assisting the employee in obtaining these benefits.
- The Administrator of a pension plan must notify members of any proposed amendment to the pension plan that would result in a reduction of pension benefits.
- Administering and investing pension plan funds.
- Issuing regular filings, statements to employees.

Pension Plans are treated differently than Employee Benefit Plans because of the statutory responsibilities associated with the former. Failure to abide by these provisions could result in heavy fines and/or imprisonment for the employer as well as the directors of the corporation.

Employers can mitigate the liabilities arising from Benefit Programs and Pension Plans by taking very simple measures such as:

- Providing explanations and not giving advice.
- Issuing written communication to employees that is complete, clear and easily understood.
- Providing regular updates about changes, product enhancements and industry trends.

The Supreme Court of Canada has classified the employer/employee relationship as one of the most important relationships in the employee's life, but one in which the employer's bargaining power generally far exceeds that of the employee. In that context, the court has held that employers owe a duty of care to their employees.

It is necessary to conduct audits of the plan design, claims experience and funding arrangements for benefit plans; and pension audits of the contributions, investments, contracts and employee education. It is as necessary, however, to conduct audits of the administration of the benefit program and the pension plans. These audits should be done on an annual basis in order to ensure continued compliance and to minimize exposure. ♦



BFL CANADA Consulting Services Inc.

2001 McGill College, Suite 2200
Montreal, QC H3A 1G1
Tel: (514) 937-4188
Fax: (514) 937-5585

181 University Avenue, Suite 1605
Toronto, ON M5H 3M7
Tel: (416) 599-5530
Fax: (416) 599-5458

1177 West Hastings Street, Suite 200
Vancouver, BC V6E 2K3
Tel: (604) 669-9600
Fax: (604) 683-9316

1-866-688-9888

Send comments or suggestions to
Corporate Solutions, BFL CANADA:
publications@BFLCANADA.ca

