

Compliance

08

A question of attitude

Organizing the compliance function: The ABB experience

20

The role of compliance

How to seize business opportunities in an increasingly risky world

32

Effective compliance training

Changing employees' behaviors for the long-term



From department
to state of mind



FROM COMPLIANCE TO INTEGRITY

08



AVOIDING PAPER TIGERS

14



THE WHISTLEBLOWER

26



THE ROLE OF COMPLIANCE

20



EFFECTIVE COMPLIANCE TRAINING

32

Clarity on

Compliance

03 EDITORIAL

04 KEY FINDINGS

From compliance to integrity:
A question of attitude

08 ABB's experience in evolving
the compliance function

Avoiding paper tigers:
Creating an effective Code of
Conduct

14 How to embed your Code successfully
in your business

The role of compliance:
Beyond traditional lawyering

20 Interview with Peter Kurer,
BLR & Partners AG

The whistleblower:
A compliance asset

26 Possible benefits for your business

Effective compliance training:
What's the secret?

32 The trinity of knowledge, skills and motivation

38 PINBOARD

39 CONTACTS & IMPRINT





Anne van Heerden
Head of Advisory, KPMG Switzerland

Changing attitudes towards compliance

The time businesses spend on managing compliance risks seems to be constantly expanding. Yet despite their best efforts, the task can seem endless as new compliance risks continue to spring up. New and ever-evolving regulations, quicker and more robust enforcement and fundamental societal change together create an increasingly complex compliance environment. The burning question for management is how to best respond to – and where possible, pre-empt – compliance risks in order to protect their assets and reputations.

Unfortunately, there is no single silver bullet. Best practice compliance is achieved only when various components are brought together to produce the right environment and approach. The good news is that there are many tools available to management when seeking to actively promote compliant behavior throughout an organization.

In this publication, we share insights into the most important of these tools. We discuss how the setup of the compliance function and its relationship with legal professionals should be scrutinized. And in fact, whether compliance should be a department or function at all – or whether it is primarily a state of mind. We also offer some views into Codes of Conduct, which are key to setting expectations, for instance, but are redundant if they are not implemented properly and embedded in your ‘business as usual’. Management should meanwhile pay less attention to the media’s negative stories around whistleblowers, instead actively encouraging employees to highlight fraud and other compliance violations.

With so many issues circling time-constrained compliance officers, we trust you will find this first issue of Clarity on Compliance useful. We would be pleased to discuss with you the implications of these issues for your organization.

Companies do not operate in a perfect world. They must work with limited resources, tough competitors, and stakeholders with varying priorities. Against this backdrop, people are susceptible to temptation – including a focus on short-term results and dilemmas when faced with gray areas. This is where both the good and the bad sides of human nature can be seen. Taking a stance against a dominant manager is not easy, sticking to your principles and leaving a lucrative deal to the competitor can be unrewarding. Which is why a robust compliance framework and encouraging the right behaviors are key.



Codes of Conduct, whistleblowing procedures and compliance training are all valid responses. The right framework can facilitate good behavior. However, it's not the whole story. Measures will fail unless management encourages an appropriate compliance culture.

When violations occur, it is often said that the 'tone at the top' was wrong. How then to drive change and ensure the effectiveness of the significant investment that goes into compliance efforts?

Compliance is a battlefield. The right tools can help ensure that your organization stays on the right side of the legal, regulatory and ethical line.



KEY FINDINGS

EFFECTIVE ENFORCEMENT

Ignore the skeptics; compliance supports good business, which is in your long-term interests

THE THREE WAVES OF COMPLIANCE

From a legalistic view of the world to an integrity-based approach

PAGE 08

CONVERTING COMPLIANCE INTO INTEGRITY

"Integrity goes beyond rules-based compliance... It's not about looking good, it's about being good... There has to be humility."

Diane de Saint Victor
General Counsel and Company Secretary, ABB Ltd

THE ROLE OF THE 'NEW LEGAL ADVISER'

Lawyers and compliance officers need an attitude and skillset that goes far beyond a pure professional's traditional expertise

PAGE 20

SEIZING OPPORTUNITIES IN AN INCREASINGLY RISKY WORLD

"Legal risk management... [is about] supporting a change of mindset throughout an organization."

Peter Kurer
Author and private equity partner

REAP THE REWARDS OF COMPLIANCE

Lower legal costs, less litigation, improved reputation and colleagues who understand the benefits of complying

HOW DOES YOUR CODE COMPARE?

See what the top 50 Swiss listed companies have in theirs

PAGE 14

CODES OF CONDUCT MAKING THEM VALUABLE

Employees will only live by a Code if they understand its relevance to them

HELPING STAFF ADOPT THE CODE

Eight activities to embed your Code in your business as usual

HELPING THEM TO HELP YOU

Create the right conditions to safeguard your organization's assets

PAGE 26

EMBRACING YOUR WHISTLEBLOWERS

Can you afford not to know about fraud or misconduct?

EFFECTIVE DETECTIVES

Whistleblowing is one of the most common ways to identify occupational fraud

E-LEARNING VS FACE-TO-FACE

Cost-efficiency is good, but is it at the expense of discussion and understanding?

PAGE 32

THE SECRET TO EFFECTIVE COMPLIANCE TRAINING

Training can help effect behavioral change, but it needs to be approached intelligently

THE TRINITY OF KNOWLEDGE, SKILLS AND MOTIVATION

Give your staff all three if you want post-training compliance to stick





FROM COMPLIANCE TO INTEGRITY

A question of attitude

ABB has made considerable progress over recent years in organizing its compliance function to deal with the challenges it faces. But it's not all about structure. For Diane de Saint Victor, it's a question of attitude. Get that right, and the rest will follow.



CURRICULUM VITAE

DIANE DE SAINT VICTOR

Non-Executive Director, Audit Committee Member, and Conduct, Operational & Reputational Risk Committee Member, Barclays Executive Vice President, Member of the Executive Committee, General Counsel and Company Secretary, ABB Ltd

Since 2007, Diane has been General Counsel and a member of the Group Executive Committee of ABB Ltd (ABB), the publicly listed international power and automation technologies company headquartered in Switzerland. Her responsibilities include Head of Legal and Integrity Group and Company Secretary.

She was formerly Senior Vice President and General Counsel of the Airbus Group (2004 – 2006), VP & General Counsel International at Honeywell International (1993 – 2003), and held various legal positions at GE (1988 – 1993) both in Europe and the US.

Her focus is on global legal, compliance and regulatory matters, international policy and government relations. Diane de Saint Victor is an independent director of Barclays PLC and Barclays Bank PLC (Barclays).

She is a non-executive director and member of the Audit Committee and the Conduct, Operational & Reputational Risk Committee of Barclays.

Diane is a member of the Advisory Board of the World Economic Forum's Davos Open Forum.

When it comes to compliance, ABB's road has been far from smooth. In fact, in recent years it has been quite bumpy. To have either anti-trust or corruption on your agenda would be enough to give any lawyer or compliance professional a headache. But having them both is a challenge for even a veteran officer. Especially while the group is firmly on the radar of law enforcement agencies.

Martijn de Kiewit, KPMG Switzerland

For ABB, something had to change. And it did. In fact, so impactful were the changes implemented by the group that its compliance achievements are externally recognized as leading practice. A leading international think tank based in the US – the Ethisphere Institute – named ABB as one of the world's most ethical companies in 2013, 2014 and again in 2015.

Not that the journey is over – there remains much to be done. ABB's Diane de Saint Victor talks about her experience during this time of change.

"We are only as good as we are today," she says. "Things change rapidly and we need to keep pace through our compliance efforts. With more than 140,000 employees it may happen that someone somewhere will do something wrong. But when we make mistakes, what makes the

difference is how we look at these mistakes. We have to be humble. We want to do everything we can to detect wrongdoing and resolve possible violations in order to prevent further incidents. This is our challenge."

**The three waves:
From compliance to integrity**

There was a time when Legal dominated compliance. Lawyers would concentrate on translating laws and regulations into internal policies. This first wave of compliance led to the establishment of policies and procedures on topics such as multinational anti-bribery and corruption laws, anti-trust and trade sanction requirements. Compliance was regulatory-driven, dictating the specific policies that employees should follow.

Then came the second wave of compliance, which saw internal teams

translating the regulatory requirements into workable processes. Policies became controls in the internal business processes, designed to prevent and detect violations.

The third wave of compliance is the age of the behavioral approach. This is much more an art than a science. It aims to communicate compliance requirements in a way that enables people to understand the underlying reasoning, adopt the intent, and turn it into action by running the business in a compliant manner. This is the integrity approach.

As Diane points out: "Integrity goes beyond the rule-based compliance approach to a value-based approach. It is not about looking good but about being good. People should ask themselves: Would I tell my kids what I've done?"

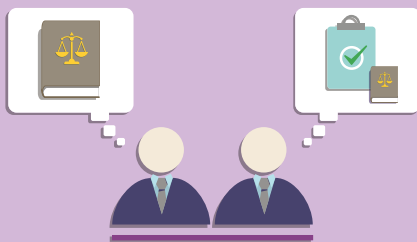
Various ways of organizing the compliance function

1.



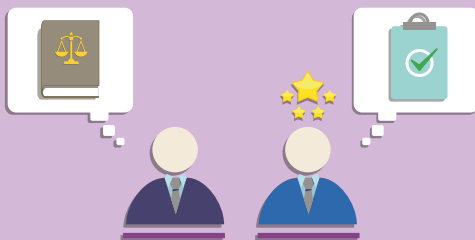
The compliance function typically starts life as part of the legal department. It is seen as the function that analyzes external regulations and implements them in internal policies.

2.



A second way to organize it is separating the compliance department from the legal department while maintaining a focus on it as a legal topic. The compliance department is staffed with legal & compliance professionals.

3.



A third way is setting up an independent compliance department. The Chief Compliance Officer has direct access to a supervisory entity.

Irrespective of how the compliance function is organized, the most mature way to run it is to integrate it into internal business processes, focusing not only on legal aspects but also on behavioral aspects of guiding, training and advising employees.

“Since beginning our integrity approach to compliance at ABB, we have seen an increase in the reporting of possible violations. This might appear to be a contradiction but it’s not: People no longer turn a blind eye. Instead, they report on possible violations, concerns or questions. That’s a good result! Don’t look the other way. This is how we think about it at ABB. In encouraging our staff to ask questions and report on concerns, we have combined safety and integrity. Both require a culture of speaking up.”

Compliance:
An attitude, not a department

“Compliance cannot be just a department in your organization. First and foremost it is an attitude. At ABB, therefore, we changed the department name from compliance to integrity. As changing names has little impact, what’s most important is that we put integrity on the agenda of the business leaders globally. The integrity team helps local management to communicate around compliance and integrity, offering tools to discuss it with employees as part of the regular business reviews.”

“We have not separated the compliance function from Legal at ABB. I provide leadership to Legal and Integrity on an integrated basis. In this capacity the function is represented on the Executive Committee of the company and has a dotted line to the Finance, Audit & Compliance

Committee of the Board of Directors. ABB’s ‘Chief Integrity Officer’ reports to me and is dedicated to integrity throughout the business. Finally, integrity has a more positive connotation than compliance.



Our focus on positive communication and training is important to engage actively with all employees. This is key to achieving genuine compliance behavior.”

Enforcement: Be strict but recognize the right behaviors

Not everyone jumps for joy at the thought of compliance. The same old protests can be heard: “It hurts our business”; “It creates bureaucracy”; “Our competitors also do it this way”; “You are putting the company at a competitive disadvantage”; “There is no level playing field” etc. Compliance

teams must take a firm line against such voices. “We are sincere about our compliance goals,” comments Diane. “We are not doing this only because we have to, we are doing it because good business is in our long-term best interest. But crucially, we also hold our business leaders accountable for compliance and integrity within their part of the organization. We are strict with disciplinary measures to enforce compliance and integrity. Without enforcement the compliance commitment becomes artificial.”

Performance evaluation can be a powerful enforcement tool. This can mean taking tough decisions – and this in itself must be recognized. Diane concludes: “We thank managers who dare to make the right decision and employees who speak up. It is a ‘we thing’: We as ABB want to do clean and good business and if we make mistakes we must learn

from that. Doing our very best to avoid reoccurrence. In the end, it is not only the tone at the top that matters – it is the tone of all employees.”



AVOIDING PAPER TIGERS

Creating an effective Code of Conduct

After investing significant resources in drafting a Code of Conduct, too many companies allow it to fail through poor implementation and enforcement. Are you confident that your Code of Conduct is worth the paper it's written on?

Codes of Conduct are sets of rules and ethical guidelines intended to outline responsibilities and proper practices within organizations.

Many compliance initiatives start with the best intentions but fail to deliver. The Code of Conduct (Code) are no exception. Writing a good Code is the easy bit. But well-planned implementation is vital for it to actively contribute to your compliance efforts. If you feel your Code is not adding the value it should, our experience shows that you may not be the only one.

Martijn de Kiewit, KPMG Switzerland

As recently as the 1990s, companies that introduced a Code often felt the need to explain why they needed it. Times have changed. More than 85% of large companies now have a Code, and it is those that don't that must do the explaining.

**Quality over quantity:
The makings of a good Code**

Effective Codes achieve a smart balance between clarity over ethical goals and detail on important compliance risks. It makes it easy for employees to understand and follow. A good Code shows the links between a company's mission, core values, responsibilities to stakeholders and its more detailed rules.

A Code can be depicted as a pyramid comprising four layers. The lower the layer, the more extensive, detailed and technical the information usually is. The four layers together form the company's ethical backbone. While they must be consistent

and reinforce each other, they do not necessarily need to be contained in a single document. Companies often choose to elaborate on one or more layers in separate documents.

In practice, unfortunately, our experience shows that many Codes are sets of inconsistent rules, ethical claims and wishes. Too often they are drafted as comprehensive but

indigestible policy that no-one applies in their daily work.

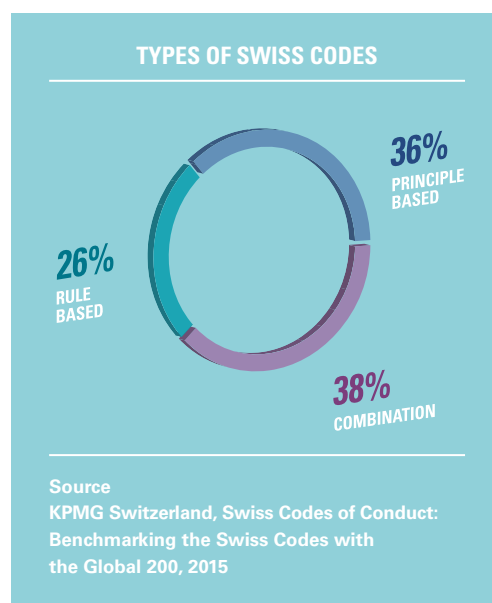
How does your Code compare?

Studying the Codes of the world's 200 largest companies shows a clear trend towards embedding Codes into everyday business.

The frontrunners seek to integrate the Code into decision-making and business processes. Some companies find it useful to establish ethics committees to guide employees facing dilemmas.

We assessed the Codes of the top 50 Swiss listed companies against the KPMG benchmark¹. This revealed some interesting insights:

- 8 of the top 50: have not formally adopted a Code.
- 15 pages: average length of a Swiss Code (though lengths vary from a single page to 60 pages).
- Rule and principles-based: more common is to combine the two.



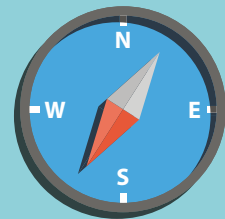
¹ Described in KPMG CH, Swiss Codes of Conduct: Benchmarking the Swiss Codes with the Global 200, 2015, Page 44-48

THE FOUR LAYERS OF A CODE

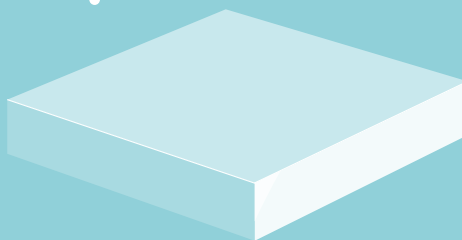
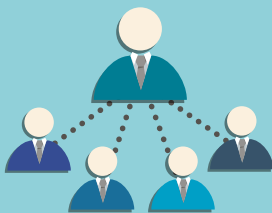
Mission



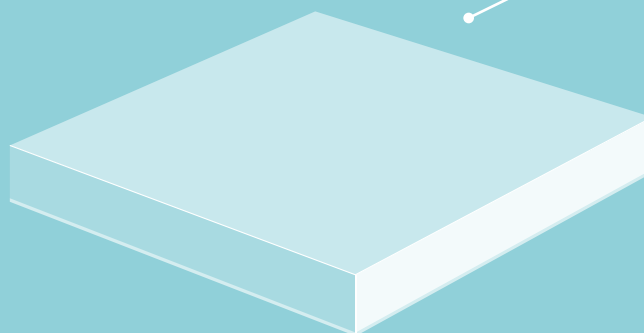
Core values



Responsibilities



Standards & rules



Content of Codes

Most frequently addressed issues: workplace responsibilities and employees' conditions, discrimination, harassment and a healthy and safe environment.



More than 90% cover conflict of interests situations, with some addressing specific topics such as related party business, personal investments and the use of the company's resources or reputation



Around 90% refer to a whistle-blower or reporting procedure, with three-quarters explicitly stating that employees are protected from retaliation if they report a breach of conduct



86% cover free market and fair competition (anti-trust)



80% take a stand against bribery and corruption with 70% regulating gifts and entertainment



More than two-thirds recognize environmental responsibility



Only 60% explicitly require employees to report suspicious activities



Fewer than half cover child labor or forced labor



40% specifically mention compliance with anti-bribery laws



Around one-third mentions social responsibility



30% address facilitation payments. An equal number discuss political support

Source
KPMG CH, Swiss Codes of Conduct:
Benchmarking the Swiss Codes with the Global 200, 2015

Implementation is key: What steps have you taken?

A Code's effectiveness depends largely on how it is implemented. Communication is only the first step. Specific activities are required including leadership, training, monitoring and reporting. Employees must genuinely understand how to apply it in their everyday work if it is to contribute meaningfully to your business.

Interestingly, most people believe they don't face any dilemmas in their work. And that, if they are faced with one, they would find it easy to resolve. Most people are wrong. It's not always easy to recognize a situation as a dilemma. And people will often try for a quick solution, ending in the wrong choice. This means that most compliance breaches are not black and white situations involving a rogue employee. In practice, they are generally unintended consequences, or circumstances that influence a person's behavior – turning a good employee into a negligent employee simply because they've made the wrong choice in a difficult situation.

We have compiled eight examples of activities to facilitate adoption of your Code:

1. Distribute to all staff: Publicize that you have a Code and explain the importance of following it. Distributing it in print helps enhance awareness.

2. Train staff in how to apply the Code: Your CEO could introduce the Code and corporate values during employee induction. Complement this with guidance on how to apply the Code in practice.

3. Train managers in communicating and applying the Code: Managers set the 'tone in the middle' and guide employees' behaviors.

5. Business ethics and compliance intranet and internet pages: After the initial communication, regular information and news is needed. Active sites can be an effective platform. Consider a Code of Conduct app.

6. Annual e-learning with sign-off for all employees: Ask employees to confirm that they have read, understood and complied with the Code.

7. Internal audits on the Code's workings: Monitoring and enforcement is key to effectiveness. Monitor whether people are acting in line with it.

8. External reporting on the Code's effectiveness: Showing the results of the Code helps establish importance and relevance. Employee commitment can benefit, as people are motivated to work for a business with a strong ethical and compliance culture. Having a tangible result on measuring the effect on culture is challenging but possible.

Used correctly, Codes are a central tool in strategic positioning, reputation, culture and performance. Employees won't adopt and live by a Code if they don't understand its importance and if it's not embedded in business processes.

Our experience shows that a well-written but badly implemented Code may actually have a negative effect on compliance. Crucially, when ethical incidents arise, the response should be to address the underlying problem, not to simply add new rules to the Code. Ignoring this advice is a sure way to turn your paper tiger into a paper monster.

THE TOP 10 SWISS CODES

1. Holcim	44	parameters
2. ABB LTD	41	parameters
3. Actelion	40	parameters
4. Clariant	39	parameters
5. SGS	38	parameters
6. Roche	38	parameters
7. Sulzer	37	parameters
8. Zurich Insurance	36	parameters
9. Swiss RE	34	parameters
10. UBS	34	parameters

Source
KPMG CH, Swiss Codes of Conduct: Benchmarking the Swiss Codes with the Global 200, 2015

4. Dilemma training for particular functions: For groups that represent higher compliance risks, special training can bring the Code to life, especially around subjective and gray areas.

THE ROLE OF COMPLIANCE

Beyond traditional lawyering

Despite businesses investing more and more significant resources in legal and compliance departments, risks seem here to stay, and are even growing in magnitude.

Peter Kurer shares his insights into how to seize business opportunities in an increasingly risky world.



Pursuing business opportunities while managing legal risks. This is one of the priority challenges facing companies in today's environment.

Doing so successfully requires an intelligent blend of an appropriate legal and compliance framework, personnel skills and, last but not least, developing the role of the compliance officer. "New legal advisers" also play a key role in managing legal risks, moving far beyond traditional lawyering.

CURRICULUM VITAE

PETER KURER

Attorney-at-Law, Partner, BLR & Partners AG

Peter is a partner with private equity firm BLR & Partners AG and an independent advisor on corporate finance transactions, corporate governance and legal management strategies. He was previously a business lawyer and a bank executive. In 1990, Peter became a partner in Zurich law firm Homburger, going on to head its Corporate Law Practice Group. He specialized in M&A and corporate law and also served on a number of boards of public and private companies. In his most recent corporate position, he was Chairman of UBS. Peter regularly publishes articles and speaks about M&A topics, corporate governance issues, financial services regulation and the evolution of the legal profession. He recently authored a book titled "Legal and Compliance Risk. A Strategic Response to a Rising Threat for Global Business".

JÖRG KILCHMANN

Attorney-at-Law, Partner, KPMG Switzerland

Since joining KPMG Switzerland in 2001, Jörg has been advising Swiss and foreign clients on mergers and acquisition as well as restructuring and other cross-border transactions. He has led many legal due diligences for national and international clients in the retail, textile and chemicals & pharmaceuticals industries. Jörg has in-depth experience of managing complex international projects involving foreign jurisdictions. He is an expert in contract law, competition law and joint ventures.

DR. FELIX SCHRANER

Attorney-at-Law, KPMG Switzerland

Felix advises Swiss and foreign corporate clients on most aspects of business law. His key areas of expertise are competition law, IT & data protection and corporate governance & compliance. Prior to joining KPMG, Felix worked for Switzerland's State Secretariat for Economic Affairs (SECO) as a legal advisor on international economic law and as a research assistant to Professor Roger Zäch (emeritus) at the University of Zurich. Felix has published a doctoral thesis in the field of competition and intellectual property law.



We brought together three lawyers - Peter Kurer, Jörg Kilchmann and Felix Schraner – to discuss how businesses might tackle these challenges.

Jörg Kilchmann: Managers are working harder than ever to ensure legal and regulatory compliance. Despite this, non-compliance issues remain high on the agenda and seem to continue growing. Why is this the case?

Peter Kurer: *The rise of corporate legal and compliance risks arises from a number of economic and sociological developments. Most obvious is the incredible degree of globalization we have experienced over the past 25 years or so. Global companies operate in many countries; say 60, 70 or even 110. They meet the various legal rules there but also many diverse moral and ethical concepts under which their activities are seen and judged. In many of these countries, there is no rule of law or stable institutions that we are used to in the West. We have also become a risk-averse society: We enjoy a lifestyle in which we incur new risks such as those associated with mass transportation, high energy consumption and artificially processed food. If these risks materialize, we however quickly cry “foul and shame” and want to take revenge against the culprit - who often is big global business. NGOs, politicians,*



Top: Peter Kurer | **Below left:** Felix Schraner | **Below right:** Jörg Kilchmann

prosecutors, regulators and the media ride on these waves of indignation against business. They demand new laws and begin prosecutions. They are aided by an ever more transparent business environment where scandals and crises travel around the globe within an hour thanks to social media and the blogosphere.

Felix Schraner: *It is only a few years since legal departments were solely responsible for managing a company’s legal risks. Today, many in either regulated or non-regulated markets have built up compliance departments to help in this task. What drove the establishment of a separate department?*

Peter Kurer: *Lawyers advise on the content of legal rules; they draft contracts and other legal documents; they represent a client; and they manage legal projects such as litigation*

or M&A transactions. If this is done well, it goes a long way to shield a company from legal and compliance risks. Given the ever increasing risk level, and the sheer size of the modern corporation, more is needed. You need now to govern employees’ behavior by writing specific policies, and educating and training them. You have to monitor certain sensitive transactions, make specific investigations, and mine data. All this requires a different skillset than the one mastered by traditional lawyers. Hence the creation of compliance departments, first in regulated industries such as pharmaceuticals and banking, and increasingly now also in non-regulated industries.

Felix Schraner: Compliance officers tend to interpret their role in a more and more pronounced way. How can General Counsels and Management Boards profit from this?

Peter Kurer: I don't think you can talk about it in terms of 'profiting'. It goes far beyond this. In view of the high risk level, you can no longer run a serious company without a well-established compliance process including, in most cases, a compliance department. In creating and implementing opportunities for the company to make profits, senior and line managers must do so within legal requirements. In this sense, they bear primary responsibility for legal risks. Lawyers review and advise on the legal requirements and any limits to the opportunities. Compliance managers do a third and a different thing: They check that operations and staff conduct stay within the limits of legal, regulatory and ethical rules. Therefore advice by lawyers, and the control activities of compliance are all integral parts of legal risk management. We must sit on a three-legged stool; two legs are not enough.

Jörg Kilchmann: What in your view are the requirements for an adequate legal and compliance framework, and what opportunities does such a framework offer?

Peter Kurer: State-of-the-art legal and compliance risk management requires an integrated process.

This starts at the top of the company and flows down through operations to the shop or trading floor. The board must understand the issues and set a strategy. It must then hammer out a legal and compliance risk framework. This framework defines the issues, allocates responsibilities to management, control functions and experts; it regulates reporting lines, provides for coordination and convergence activities, talks about the role of risk identification, audits and special situations such as whistleblowing, self-reporting or investigations. If it is done well and implemented appropriately, the framework establishes a clear governance and effective organization for legal risk management.

Jörg Kilchmann: It can be a fine balance between managing legal risks and seizing business opportunities. What would you recommend focusing on in the short and long-terms?

Peter Kurer: Talking about risk versus opportunities is a slippery slope in the legal space. In many ways, compliance and legal risks are a zero tolerance area. Boards and management should be very serious about them and establish a solid legal risk management. Risk management in this area should be taken as seriously as business operations, marketing, human resources, quality production and all other key management processes. The rewards will come indirectly - in terms of lower legal costs, less litigation, an improved reputation. If successful, it might become a differentiator that sets apart the company from its competitors.

Felix Schraner: Legal functions have grown in size and importance within global groups. What does this mean for the training of in-house lawyers? Should the head of the legal department be a manager with a legal background or a lawyer with a management background?

Peter Kurer: A good general counsel and a good head of legal



should be both a trained lawyer and a solid manager. It is tough but you need both skillsets. If you are not a good lawyer you will not command the respect of your staff, because lawyers like to be managed on the basis of superior professional knowledge. If on the other hand you are a poor manager, you create a mess and lose credibility. Ideally, a typical in-house lawyer's primary training should be as a lawyer, including substantial time with a law firm to learn the practical skills of the job, beyond the academic aspects taught at university. Management skills will be learnt on the job and through specific training which might include an MBA, EMBA, or at least an executive education in legal management.

Jörg Kilchmann: What is the most important advice you would give to universities when educating corporate lawyers?

Peter Kurer: They should teach them good analytical thinking beyond pure knowledge of technical rules. In other words, they should give students the basics to be intellectually robust lawyers who can express themselves

responsibility. If I outsource, I delegate responsibility on the basis of a clear service-level agreement which is subject to checking. The main governance principle should always be: How am I most efficient without losing impact.

Felix Schraner: Until recently, compliance meant being compliant with

companies. As a matter of fact, legal risks are for many companies the most serious threat to smooth operations. Boards and senior management therefore have every incentive to take this area seriously and to manage risks strategically - from the top and in an integrated manner. The challenge goes beyond just having a good legal department or appointing the best outside counsel. It is the in-house lawyers and compliance officers, rather than law firms, who have become the main operators in this space. They need an attitude and a skillset that goes far beyond a pure professional's traditional expertise.

Jörg Kilchmann: What does that mean for outside advisers in this area?

Peter Kurer: With this change of paradigm, new advisors become important in the area of legal risk. These include accounting firms, forensic analysts, specialized consultants and legal process outsourcing providers. Each – including law firms – must adopt its own business model. Technology, combined with knowledge of how people behave and how we can influence their behavior, becomes increasingly important. In other words, legal risk management goes much beyond traditional lawyering. It involves more than just good handling of legal cases and instead moves in the direction of informing and supporting a change of mindset throughout an organization.

“Therefore, ownership of legal risk by management, advice by lawyers, and the control activities of compliance are all integral parts of legal risk management. We must sit on a three-legged stool; two legs are not enough.”

PETER KURER

in clear and succinct language. If they achieve this they have done a lot. The more practical part of the education should be done by the law firms, the companies and the executive management schools.

Felix Schraner: What do you think about outsourcing certain compliance units or legal departments, and how should such a process be governed?

Peter Kurer: I would be skeptical about outsourcing in these areas. I would rather in-source support teams for compliance and legal activities, while outsourcing and off-shoring certain activities to law firms or alternative providers like the legal process outsourcing providers. This framework is important for the key task of establishing responsibility. If I in-source, I retain direct

legal rules. Nowadays, compliance includes ethics and social responsibility, integrity and more. What is your opinion on that?

Peter Kurer: Compliance is a broader concept than merely complying with legal rules. The view is now well-established that compliance activities should extend to ethical and cultural issues and sometimes even to such aspects as consumer protection or certain contractual terms. I only see a few authors - mainly in Germany - who adhere to the old view that compliance is about only the law.

Jörg Kilchmann: In your book, you talk in depth about growing legal risks. What is the key message you would like readers to take away?

Peter Kurer: Legal risks are a growing uncertainty for global



THE WHISTLEBLOWER

A compliance asset

Whistleblowing can be a thankless task. Although vital in reporting misconduct and fraud, it is often unrecognized by management. Does your organization appreciate this potentially valuable compliance asset?

Blowing the whistle means bringing illegal or unethical behavior to the attention of an internal or external body.

Pity the poor whistleblower, for they receive a bad press. Yet the truth is that employers should value someone bringing misconduct or fraud to their attention. Early detection can help your compliance efforts and safeguard the organization's assets and reputation. But is whistleblowing a valuable tool or should it be discouraged?

Martijn de Kiewit, KPMG Switzerland

Listening to the media, you might believe that whistleblowers are determined to cause damage. Yet high profile cases are rare, and not typical of the majority of whistleblowers. Our experience shows that in most serious cases reported by whistleblowers in good faith, the company benefits from knowing about the problem.

Inside the whistleblower's mind

Insight into what motivates a whistleblower is key. It can also provide some reassurance to the doubters who believe whistleblowers set out to bring shame on the organization. 97% of employees report misconduct internally before they even consider turning to an external party¹. This is because they are motivated by the severity of misconduct they witness, not by financial rewards. 99.5% report because they are

convinced that it is the right thing to do. However, the knowledge that management and colleagues will support their action is key for around three-quarters of whistleblowers. Put differently, what would make a prospective whistleblower hesitate? The assumption that nothing would be done about their report (59%), the fear of reprisal (46%) or the fear they would not remain anonymous (39%). To ease your whistleblowers' minds, it is imperative that the environment supports and protects them.

Can you afford not to encourage them?

If you are still in doubt regarding their value, ask yourself three questions:

1. Some reports of fraud or misconduct will be well founded, others not. Would you prefer not to know about the genuine ones?

2. What would be the consequences if reports of fraud or misconduct reach the media or legislators before you?

3. If faced with a serious compliance breach, how well would your stakeholders accept the excuse 'We didn't know ...'?

The primary detection source of misconduct

Research from the Association of Certified Fraud Examiners (ACFE) supports the notion of whistleblowing. Together with other proactive measures, whistleblowing is more effective than 'passive' approaches. In its 2014 Report to the Nations on Occupational Fraud and Abuse, ACFE notes how tips (whistleblowing) are the most common way of identifying occupational fraud. (See chart 1)

¹ Ethics Resource Center, supplement to the 2011 National Business Ethics Survey

CHART 1: INITIAL DETECTION OF OCCUPATIONAL FRAUDS IN 2014

Source
ACFE, 2014 Report to the Nations
on Occupational Fraud and Abuse

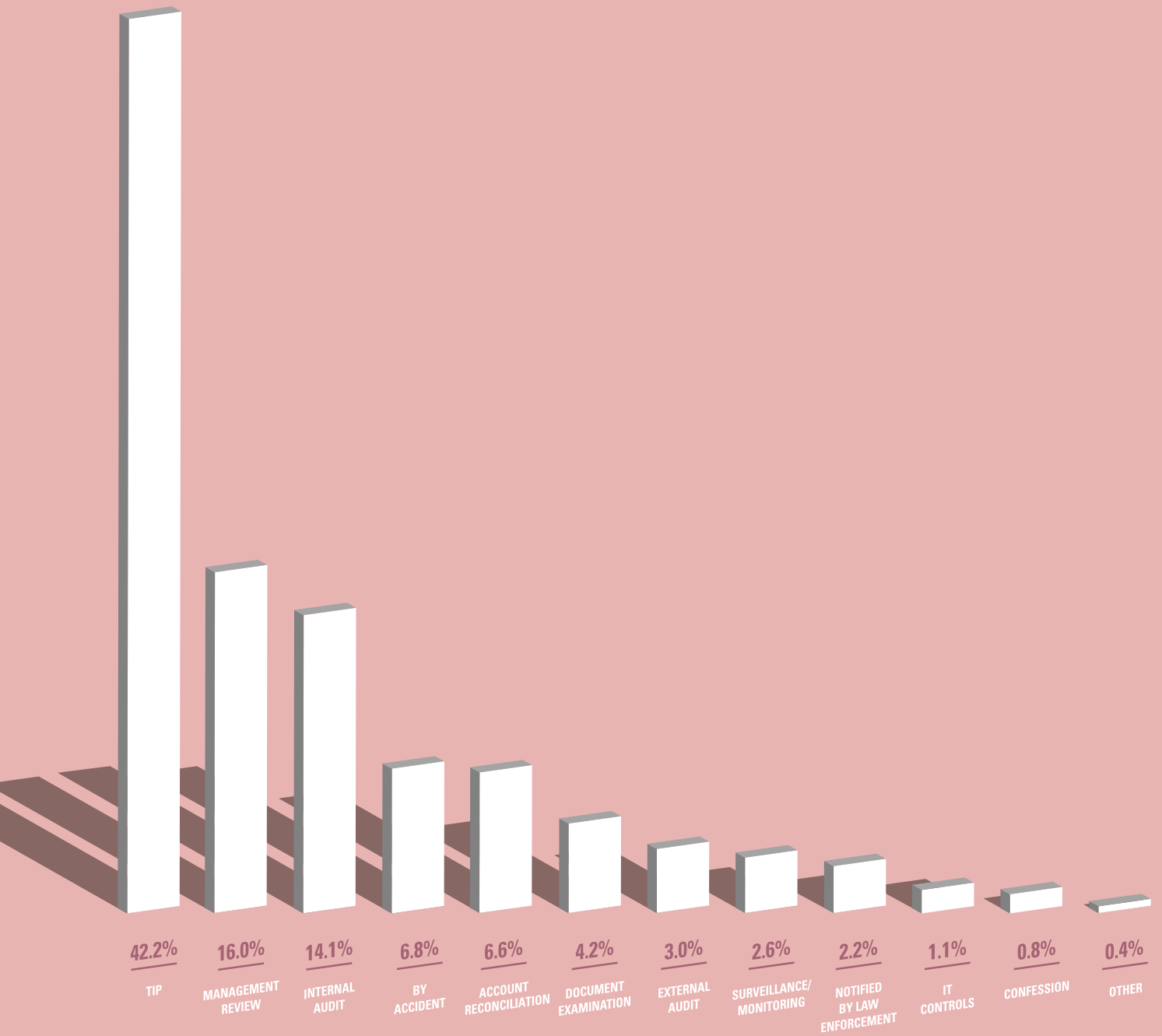
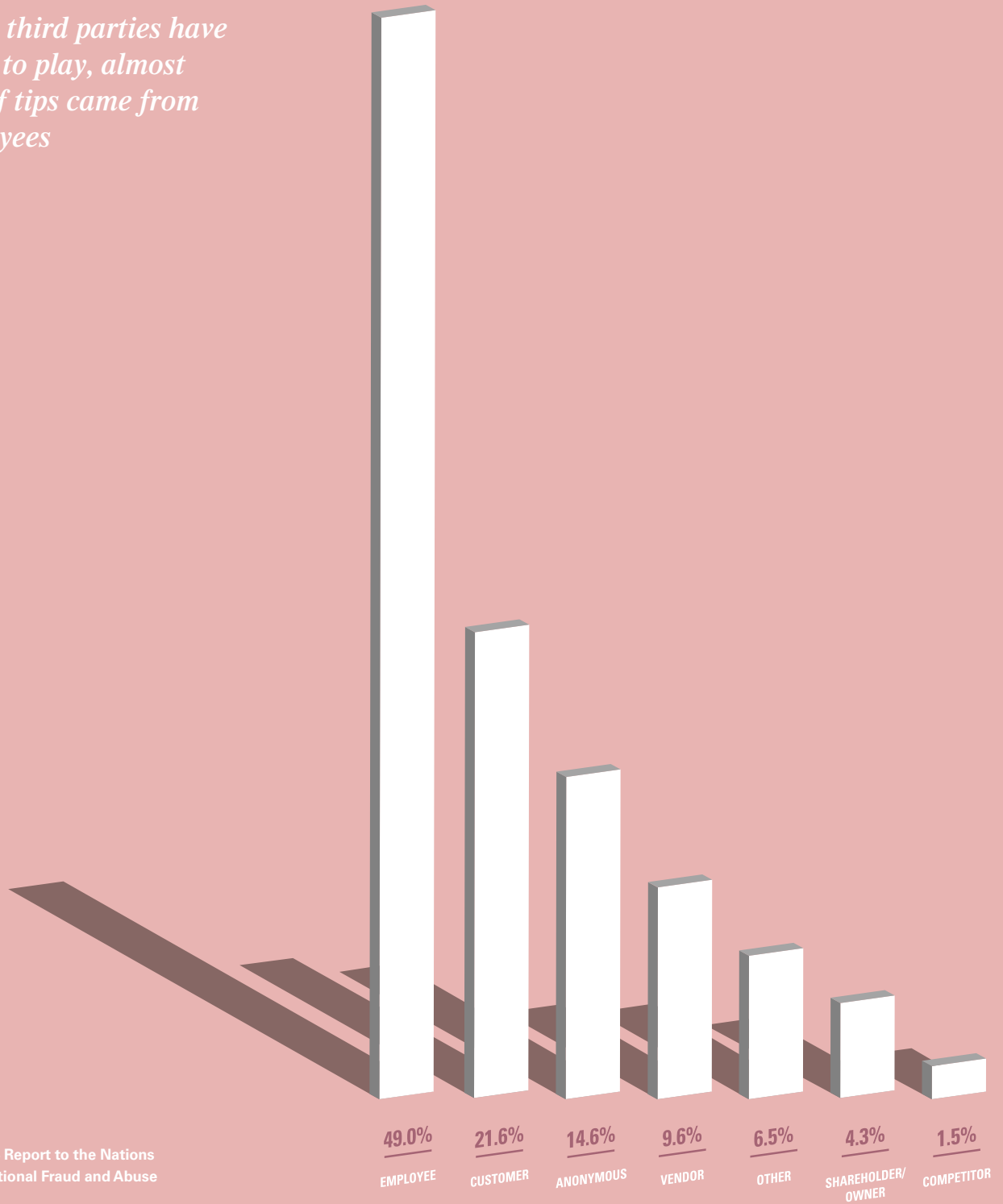


CHART 2: SOURCE OF TIPS

While third parties have a role to play, almost half of tips came from employees



Source
ACFE, 2014 Report to the Nations
on Occupational Fraud and Abuse

It doesn't stop there. The research shows that large corporations with whistleblowing procedures detect wrongdoing earlier.

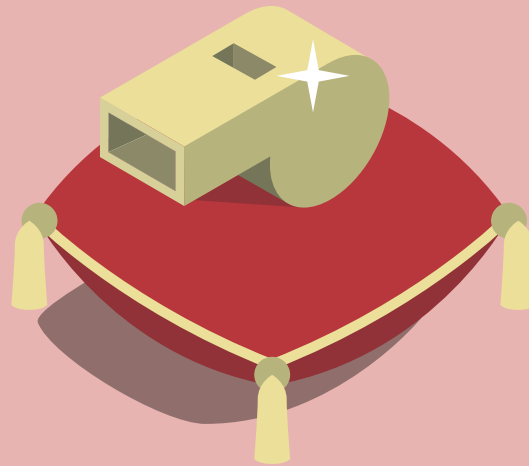
And as we know, the quicker you identify a problem, the less damage it can do. The message? Ignore the benefits of whistleblowing at your own risk, for it can cost you dearly. (See chart 2)

Banish the fear; reap the rewards

It's a brave employee that blows the whistle on his colleagues, especially if the organization's culture is unsupportive. It can make all the difference if you demonstrate to employees that the company takes misconduct seriously and that employees should not fear retaliation if they report a case in good faith.

Apart from simply encouraging employees to do the right thing by reporting wrongdoing, such moves can directly contribute to shielding your organization from fraud. In turn, they help management fulfill its obligation to safeguard the organization's assets. As well as promoting ethical behavior among the workforce.

For all these reasons, companies without strong corporate governance procedures around whistleblowing would be well advised to introduce them. After all, a compliance framework that includes a whistleblowing process protects the business from those who would put it at risk through misconduct. Encouraging your employees to blow their whistles could be a benefit to everyone who has your organization's interests at heart.



The right conditions can be created through a robust procedure and management's attitude to wrongdoing. Among the necessary steps are:

- 1. Establishing a clear policy on whistleblowing*
- 2. Safeguarding the whistleblower's confidentiality*
- 3. Providing for objective investigation into the report*
- 4. Enabling proper escalation if needed (preferably with an external link)*
- 5. Providing feedback to the whistleblower*
- 6. Protecting the whistleblower from retaliation*
- 7. Ensuring enforcement is undertaken properly and transparently*

Source
ACFE, 2014 Report to the Nations on Occupational Fraud and Abuse



**EFFECTIVE
COMPLIANCE TRAINING**
What's the secret?



Most would recognize the key role that compliance training plays in mitigating undesirable behavior. Yet, as the corporate world overflows with compliance-oriented education, true behavioral change remains elusive. What's the secret to effective compliance training?

In theory, it is easy to set up a training course. Book a venue, invite your colleagues, and tell them what they should learn. If it were that simple, compliance training would be more effective than it is. So why do so many courses fail to stick? Giving trainees knowledge, skills and motivation is at the heart of successful training, whether delivered online or face-to-face.

Martijn de Kiewit, KPMG Switzerland

The real challenge lies in the design of training sessions, making them simple yet challenging, convenient yet interactive, educational and motivating.

The trinity: knowledge, skills and motivation

Compliance training should provide three things: knowledge (I know), skills (I am able to) and motivation (I am willing to). These three elements enjoy a strong interrelationship. If done correctly, each should reinforce the other.

- Knowledge is the starting point, ensuring employees are aware of – and understand – the appropriate laws, regulations and standards.
- People need the right skills to apply this knowledge. This includes an

ability to quickly assess situations and respond appropriately.

- Even where an employee understands the issue and knows how to act, there may be a lack of motivation to comply. This can be addressed by setting out the benefits of compliance and why a rational person would behave in a particular way.

The following principles may help to achieve the best learning results:

Find the right tone

Exercise care in how the key compliance messages come across. Managers tend to have a good knowledge of organizational ethics. Ethics training should address their role and responsibilities; it should not focus chiefly on things they should not do

(a moralistic approach). Emphasizing positive actions helps managers to motivate and inspire employees for that desirable 'trickle down' effect.

Find the right balance

Trainees should not only gain knowledge; they should have the chance to practice using the knowledge for their day-to-day work. Use all three elements to help them understand why they should be motivated to do so.

Treat training as a profession

Contrast effective compliance training with a simple presentation of information. A good compliance trainer will translate complex messages into practical, take-away learning. This takes experience, knowledge and memorable examples that are credible.

Introduce some real challenge

Ethics and compliance can be difficult topics to tackle. Try to anticipate this perception when designing the training by putting materials and examples into the right setting that your audience will understand. That said, don't make things too easy or simplistic:

- You want people to try to work things out during the training and to recognize that the right decision is not always the obvious one.
- Avoid statements that sound obvious but give no further guidance – e.g. you should always comply with all the relevant laws. Generic statements are not the way to go.

Bring it to life through interaction

Participants will get the most out of the training if they have to solve real life cases for themselves rather than being provided with answers. Use various means to encourage them to contribute and discuss their thoughts. Listening to these conversations can also give you insights into your colleagues' thinking.

Tailor the program to achieve focus

A single core message should shine through. Too often, a whole range of topics are crammed into one training

course. An introduction day with 15 minutes on the Code of Conduct (and 10 other topics spread over the day) will not get the message through. Anti-trust training for all employees doesn't make much sense for most organizations. Work out who needs to know what, and deliver training appropriately. And do so positively – encourage employees to understand the benefits of compliance, not simply to be scared of non-compliance.

**Use appropriate language and tone**

Keep in mind that your audience is made up of adults. Reflect their culture and level of expertise. Cartoons are widely used in Japan for example, but in Europe they convey a childish impression.

Avoid legalistic language

It may look impressive on paper, but a non-legal audience will quickly lose their way or their interest. Focus on what the company expects as professional behavior in given circumstances.

Got the message.**Now, what's the right medium?**

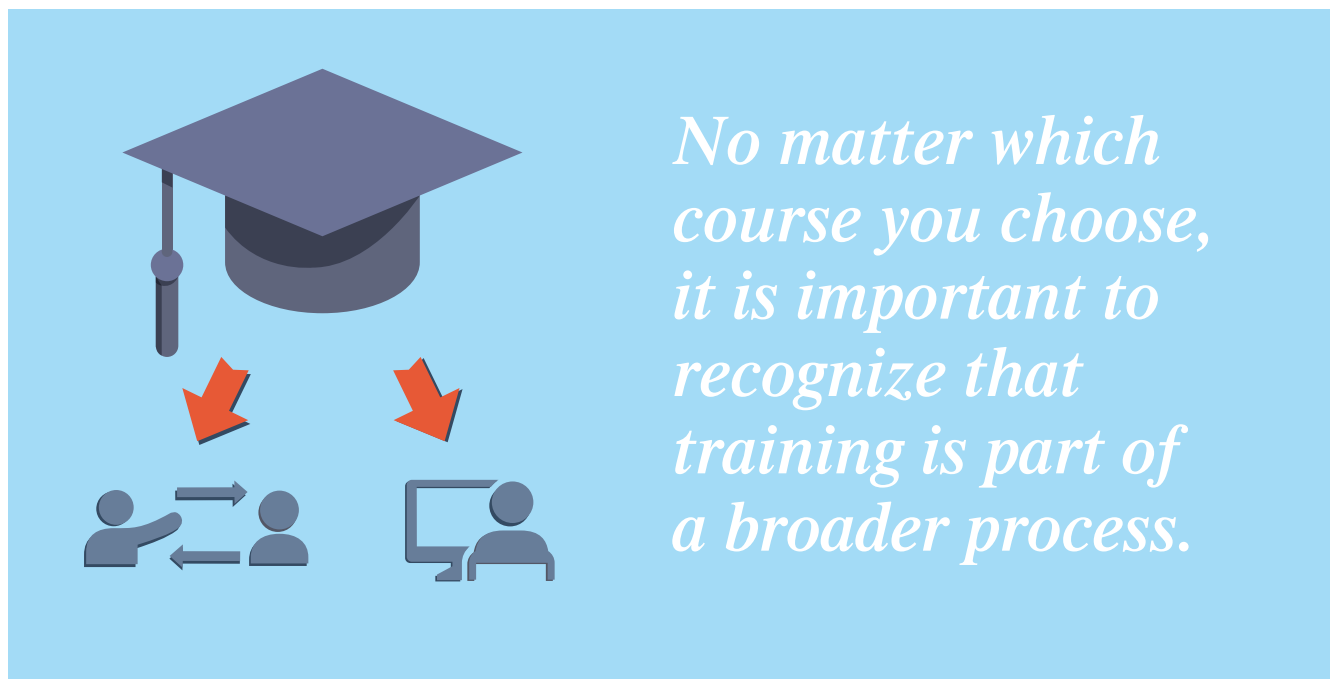
E-learning? Face-to-face?

Or a combination of both? Firstly, the financial benefits of e-learning should not be underestimated.

The National Center for Academic Transformation (NCAT – US) provides evidence that e-learning can increase enrolment, reduce costs, and improve the learning experience. This is based on a study involving 30 institutions that redesigned training courses to use online technologies. Costs were reduced by an average of 37% (ranging from 15% to 77%)¹. Our experience suggests that online training is indeed substantially cheaper per head than face-to-face training. In fact, online

training can be 80% to 90% less costly. Of course, the higher the number of employees, the greater the economy of scale.

¹ See also: Meyer, K. PhD. (2008). If Higher Education is a Right, and Distance Education is the Answer, then Who Will Pay? Sloan Consortium, Journal of Asynchronous Learning Networks, Vol. 12 (1), February



'Off the shelf' e-learning with minimal adaptation will always be more cost effective than entirely tailor made IT solutions.

Experts argue that e-learning is sometimes too simplistic and – due to the lack of interaction that is found in face-to-face training – doesn't allow deep understanding. Indeed, even the best e-learning cannot replace the exchanging of views with a trainer. For the trainee, the social interaction between the trainer and peers is key in encouraging behavioral change.

The optimal solution is probably a combination of e-learning and face-to-face, providing efficiencies but giving people the opportunity

to interact and collaborate. Take anti-bribery and corruption training as an example. This is full of gray areas, especially if the company has foreign operations. An e-learning can clearly describe the rules and policies, some real life cases and interactive scenarios. What it lacks is the chance to discuss gray areas in depth.

This is where face-to-face excels, equipping employees with the tools to identify the right course of action in given cases. There is also of course the opportunity to ask questions – with the right trainer/moderator, employees can express not only their questions on specific cases, but provide examples from their own experience to seek advice.

No matter which course you choose, it is important to recognize that training is part of a broader process. It's not a case of simply providing the knowledge then expecting employees to live it. Increasing their awareness of compliance topics is the start, but will only take root when it is reinforced as part of an ongoing managerial, cultural and educational strategy.

The KPMG DilemmApp for iPhone and Android devices is an interactive training tool that lets you vote and discuss on ethical dilemma cases that may arise in the business world.

KPMG DilemmApp will:

- + Present you cases where you can vote on possible actions.*
- + Show you how other players have voted on the dilemma.*
- + Let you engage in a discussion with other players about the specific dilemma.*
- + Give you a separate scoring screen where your scores are presented on three levels: Personal, Organizational and Society.*
- + Give you the opportunity to share your own dilemmas.*

This app is an ideal tool for basic ethical dilemma training to raise awareness of potential compliance risk in the workplace. It helps to resolve challenges that inevitably arise when conflicting interests, norms, rules, values or principles are at stake.

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