

## “State of the Art” Governance & Compliance

What reasonable measures are recommended according to the “Governance & Compliance Cube”?



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**A**t the End of November 2011, the Office of the Attorney General of Switzerland closed a criminal procedure in which a company was fined 2.5 Million Swiss francs for not having taken all the necessary and reasonable organisational measures to prevent bribes to foreign public officials according to art. 102 of the Swiss Criminal Code. The article at hand shows what kind of general preventive measures a company should take in the area of Governance & Compliance (G&C). On the last page, you can assess your own G&C with the help of a checklist.

### The Governance and Compliance Cube

The G&C Cube is a model based on which all the relevant aspects of a “state of the art” G&C in a company can be classified into six areas. It helps to assess the current G&C set-up in a given company.

The six relevant areas are the following:

6. Corporate culture
5. Embedment
4. Activities
3. Personnel
2. Resources
1. Foundation

#### 6. Corporate Culture

The corporate culture is paramount for a successful and sustainable G&C. Consequently, the following should be considered, such as:

- Are the core values known within the company?
- Are they lived and exemplified on every level of the company (“walk the talk”) and taken seriously?
- Do the (top) managers of the company regularly

communicate those values towards the relevant stakeholders within and outside the company (“tone at the top”)?

- How and how often are G&C topics dealt with and discussed at meetings of the top management, annual meetings and other in-house events?

#### 5. Embedment

According to Swiss legislation, the board of directors has amongst others the following non-transferable and inalienable duties: the overall management of the company and the issuing of all necessary directives, the determination of the company’s organization and the overall supervision of the persons entrusted with managing the company, in particular with regard to compliance with the law, articles of association, operational regulations and directives. In this context, the following should be considered, such as:

- How and how often are G&C topics put on the agenda and discussed at the level of the Board of Directors and Executive Committee?
- Who is explicitly responsible for G&C at the level of the Board of Directors and Executive Committee?
- Who within the company is responsible for following the newest trends and developments in the area of G&C?
- How do the directors and managers learn about such trends and developments, who informs them?
- Is there a direct reporting line to the Board of Directors?
- If Board of Directors’ assessments, if any at all, are conducted, forms G&C also part of such a review?

#### 4. Activities

Sustainability with regard to G&C requires on the one hand embedment in the existing structures and processes and on the other hand a set of activities. In this context, the following should be considered, such as:

- Does the company have a holistic Enterprise Wide Risk Management, of which G&C is an integral risk component?
- Are the developments, trends and best practices concerning G&C being consciously followed and systematically evaluated? Is this process followed by a gap analysis to highlight potential need for action and to recommend the appropriate measures early enough?
- Is G&C periodically audited?
- Is there a policy about when and by whom an investigative audit can be conducted and is this known within the company?
- Does a regular and standardized G&C reporting exist?
- How are potential infringements of the G&C guidelines sanctioned within the company and how are such cases communicated internal and external?

#### 3. Personnel

Despite all processes, tools and structures, the culture of a company, e.g. the people are the decisive factor for a sustainable G&C. Thus, the people in the company should be assessed and supported in many ways. In this context, the following should be considered, such as:

- Are the most relevant aspects of G&C already mentioned in an appropriate way at the stage of the recruitment of personnel, for instance through special questions or, for some positions, by asking the candidates to hand in a copy of their excerpt of the criminal record?
- Are the fundamentals and the importance of G&C for the company pointed out and emphasized appropriately when introducing new employees, managers and directors?
- Are the people periodically and appropriately

trained, in groups or with e-learning tools, in order to always be up to date?

- Is the attendance at internal or external trainings registered and updated in the personnel records?
- Are those who missed a training session followed up again later?
- Are there individual agreements, especially for the management, regarding incentive performance goals in the area of G&C?

#### 2. Resources

G&C can only be sustainably implemented and seriously conducted if appropriate personal and financial resources are made available by the company. In this context, the following should be considered, such as:

- Are G&C matters consciously and explicitly assigned to specific people?
- Is this known to the other people working for the company and do the directors and managers support and assist visibly those people responsible for G&C matters?
- Do the responsible people have a certain amount of money at their disposal and if so, how high is that amount compared to the total costs in the company?
- Can the responsible people regularly attend training courses in the area of G&C in order to be up to date?
- Does the company invest in effective and efficient systems and tools, e.g. e-learning?

#### 1. Foundation

All permanent things need a solid foundation. Such a foundation may include, e.g. the following:

- Does your company have a Code of Conduct and how many employees know the basic content of the Code?
- Do the organizational regulations of the company thoroughly regulate the delegation of the management (by the board of directors to the managers)?

- Does a competence and decision matrix exist within the company, i.e. who has the competence to decide and about what amount of money?
- Does everyone in the company have access to a "Helpline" regarding compliance?
- Are there policies about all relevant areas of the company (e.g. finance, tax, marketing, branding, occupational health & safety, procurement, R&D) with principles, accountability and mandatory provisions?
- Does the Board of Directors have a Board Manual where the most important documents and records of the company are regularly updated?

### Summary

The G&C Cube, six sides, six areas:

6. Corporate culture
5. Embedment
4. Activities
3. Personnel
2. Resources
1. Foundation

What is the current situation concerning G&C matters in your company?

### Checklist

The following checklist helps to identify roughly, what the current situation concerning G&C matters in your company is. Tick the box per sector you think applies best to your company.

Sectors	existing	partly existing	not existing
6. Corporate Culture	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Embedment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Activities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Personnel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Resources	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1. Foundation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Result</b>	<b>A</b> <input type="checkbox"/>	<b>B</b> <input type="checkbox"/>	<b>C</b> <input type="checkbox"/>

**Score:** Count the crosses per column and write down the number next to A, B and C. Double de points you had in column A and add the points you had in column B. This is your total score (maximum 12 points).

### Evaluation:

*10-12 points:* Excellent! Keep on following the developments, try to optimize your organization and keep your G&C updated.

*7-9 points:* You are on the right track, but you should review some of the areas in your company more thoroughly and try to update your G&C as soon as possible.

*4-6 points:* Your G&C is insufficient und should in many regards be brought to a higher level.

*0-3 points:* Are the setup and the improvement of G&C part of your goal list for the next year?

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