The Use of Corporate Compliance Programs to Prevent Criminal Liability - Private Sector Experience from Chile

Submitted by: Falabella
The Use of Corporate Compliance Programs to Prevent Criminal Liability

Private Sector Experience from Chile

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Falabella – About us

Who we are, what we do and where we do it

• Multi-format retailer, financial services business and commercial real estate developer
• Largest Chilean Company measured by market capitalization
• We operate businesses in seven economies throughout Latin America, plus support operations in China and India
• In excess of 300 million transactions per year
• Over 500 million visits to our websites per year
• More than 390 million visits to our shopping malls per year
• In excess of 3 million square meters of gross leasable area
• Net revenue of US$14.5 billion in 2018
• Over 110,000 direct employees throughout the world
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Roadmap to the presentation

I will try to provide a practical private-sector approach, based on experience, for the prevention of criminal liability through the use of corporate compliance programs

In order to do this I will address the following aspects:

- Strategy
- Structure
- Challenges
- Process
- Suggestions
Our Legal & Compliance Strategy consists of **modeling or shaping behavior**:  
- whether we are advising the board, writing a contract, litigating a case or implementing a compliance program, everything we do results in the modeling of behavior  
- Such behavior can be the corporation’s behavior, that of our associates or behavior relating to or connected with our organization

Our Legal & Compliance Strategy is also based on the fact that there are three sides to our organization:  
- we are a **legal entity** (actually, a number of them) that has a legal life to it  
- we are a **business**  
- we are a form of **societal organization** that connects with the community at large on several and different levels (hence, our stakeholders have expectations we must thoughtfully consider)

Our Legal & Compliance Strategy further believes that:  
- businesses need management  
- corporations (as societal organizations) need to be governed  
- simplicity is better than complexity  
- exceptions are very expensive (they all need further controls and monitoring)
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Structure

• Our Legal & Compliance strategy impacts our structure

• Because of the three different sides to our organization, our Legal & Compliance strategy impacts our structure as follows:
  - Because we are a legal entity our GC Office includes a Vice Presidency of Corporate Legal Matters
  - Because we are a business, our GC Office includes a Vice Presidency of Legal Operations
  - Because we are a form of societal organization our GC Office includes a Vice Presidency of Governance, Ethics & Compliance

• Reporting lines: In order to protect the independence of judgment of our legal & compliance professionals all lawyers practicing law or professionals within our Legal & Compliance structure within our organizations report directly within our structure, all the way up to the CL&GO of the entire organization (no business manager can hire or fire members of our Legal & Compliance structure)
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Process

• Our Legal & Compliance process comprises the following main steps:
  ▪ Risk identification, assessment and management (the what, where, how and who of our risks)
  ▪ Preparation of programs for the modeling of behavior (some result in compliance programs, some do not)
  ▪ Implementation of our programs
  ▪ Continuous improvement of our programs

• All our behavior modeling programs have four types of elements:
  ▪ Regulatory elements (the expected behavior is determined)
  ▪ Communication elements (the expected behavior is transmitted)
  ▪ Execution elements (the expected behavior is made real)
  ▪ Control elements (the quality of the program is assured)
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Process

• Our programs for the modeling of behavior follow our 5-Ds approach:
  ▪ Decisión (decision)
  ▪ Dirección (direction)
  ▪ Dedicación (dedication)
  ▪ Deliberación (deliberate action, not chance)
  ▪ Dotación (resources)

• Finally, following the work and teachings of social psychologists Geert and Geert Jan Hofstede, we believe a corporate culture of integrity is not a stand-alone attribute of an organization, but rather a feature existing (or not) within a series of cultural choices made by organizations that make it more plausible
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Process

The Hofstede Model to Understanding Corporate Culture

<table>
<thead>
<tr>
<th>Cultural Dimensions</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Process-Oriented vs. Results-Oriented</td>
<td>Concerned with means vs concerned with goals</td>
</tr>
<tr>
<td>Employee-Oriented vs. Job-Oriented</td>
<td>Concerned with people vs concerned with completing the job</td>
</tr>
<tr>
<td>Parochial vs. Professional</td>
<td>Employees identify with the organization vs with their type of job</td>
</tr>
<tr>
<td>Open System vs. Closed System</td>
<td>Open to newcomers or outsiders or not</td>
</tr>
<tr>
<td>Loose Control vs. Tight Control</td>
<td>Amount of internal structuring and rules (written or not)</td>
</tr>
<tr>
<td>Pragmatic vs. Normative</td>
<td>Focused on the customer vs customer satisfaction through process</td>
</tr>
</tbody>
</table>
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Process

• Regulatory elements of our behavior modeling programs
  ▪ These are the rules we work with, whether internal or external.
  ▪ Our internal rules:
    ✓ Are first based on principles and only after those are set they shift to prescriptive mode
    ✓ Should serve only two purposes:
      Explain the expected behavior
      Set out the consequences of not following it

• Communication elements of our behavior modeling programs
  ▪ These are designed to “put the word out there” about what the company expects
  ▪ They include the following types of communication actions:
    ✓ Advertising (difusión): mere “brand recognition” that something is important to the organization
    ✓ Awareness (concientización): an argument is made as to why something is important
    ✓ Training (capacitación): actual content or knowledge is conveyed
    ✓ Exercising (entrenamiento): simulations or mock situations are conducted
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Execution elements of our behavior modeling programs

- These are the elements that make a program exist in reality
- Examples:
  - Processes and controls specifically designed for compliance purposes
  - Our Integrity Line
  - Ethics & Compliance Officers
  - Ethics & Compliance Committees
  - Vendor, partner and TPI due diligence

Control elements of our behavior modeling programs

- Continuous auditing of our programs
- Project management of our programs
- Periodic revisions to our programs:
  - On an as-needed basis
  - Programmed obsolescence (three years max.)
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Challenges we see

Preventing crimes has been a long-standing public duty that is now shifting to the private sector.

The legal means afforded to corporations do it have not followed suit (especially labor law and privacy restrictions).

Unresolved issues with intrusive measures by the authority and attorney-client privilege (i.e. privileged communications, redacted reports, etc.).

Lack of coordination between governmental agencies as to what compliance functions and programs mean, entail or what they should look like.

General unwillingness of governmental agencies to publicly announce their compliance priorities.
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Suggestions

The criminalization of corruption is not new, what is new is the introduction of institutionalized liability by corporations and the means to ameliorate or prevent institutional consequences.

This new approach to fighting corruption seems to be working much better than the (sole) banning of individual conducts that constitute corruption.

Because corruption is always a two-sided story, economies could presumably improve their success in the fight against corruption if some form of institutional responsibility and compliance obligations existed also in the governmental and public sector.
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THANKS FOR LISTENING!

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