

THE IMPORTANCE OF LEGAL COMPLIANCE

Definition of Legal Compliance

Compliance can be narrowly defined to mean the process by which an organisation ensures that it observes and complies with the external statutory laws and regulations.

There are a number of requirements for an enterprise to be compliant with the law:

- it needs to know what external laws apply to it
- it needs to know what business rules, codes, policies and non-binding requirements apply to it.
- it needs to know how to comply (and to what extent) with these external binding laws, internal binding codes or practices and with the non-binding laws and requirements
- it needs to ensure that its internal procedures and policies are consistent with the law and that its procedures and policies are complete with respect to the law.
- it needs to assess its risks in relation to these laws and requirements
- it needs to ensure that adequate controls are in place to minimise or eliminate these risks. This is done through self-assessments and audits or other measurements
- it needs to address areas where non-compliance has been identified—which is done through or by the implementation of corrective actions.

Role Players

The next step to achieving legal compliance involves the identification of role-players within an organisation who would be responsible for ensuring that the organisation complies with all applicable legal duties and obligations.

Compliance Matrix and Framework

Any compliance exercise must be underpinned by a *Compliance Matrix* and *Framework*. A Compliance Matrix and Framework sets out in a structured and organised manner , what an entity, organisation or company–

- must comply with, being the identified Acts, laws, regulations, codes and practices;
- how these identified Acts, laws, regulations, codes and practices impact on the organisation;
- whether there are any related internal policies & related documents or related bylaws;
- what the risk of non-compliance is;
- what controls should be in place and implemented within the organisation to prevent instances of non compliance and infringements; and
- where applicable, stated compliance dates and compliance red flags.

The Matrix and Framework should identify all the areas, which have to be complied with, which will include (and are not limited to, some of the following):

- National, Provincial and Local legislation and regulations including by-laws where applicable
- Policies, Procedures, Standards and Codes of Practices
- Standard Operating Procedures, Guidelines, Directives, Best Practices (specific to an organisation)

Ratings

A Compliance Matrix and Framework should also identify the laws, which pose significant risk to the operation or business, and those which pose a nominal or low risk and to the business or operation.

Significant laws must be given preference. These are the laws which have High risk consequences in the case of a non-compliance which will result in severe penalties being imposed. Laws having Moderate risk ratings must be complied with followed by those of Minimal risk.

Risk Rating Criteria

The risk of non compliance is measured using a variety of factors and considerations which are all largely impact related, including:



- Type of sanction whether criminal or civil
- Possible personal liability
- Value of penalties which vary from imprisonment or fines
- Injury or death to persons and consequential liability
- Damage to assets especially core ones
- Loss of permits or licenses
- Reputational damage and harm
- Financial losses



RISKS OF NON-COMPLIANCE

When weighing up any risk of non compliance, with any law or regulation, one should consider not only the size of any fine or penalty, but one should also consider the following factors, alone or in combination:

- the physical risk of non compliance
- the criminal sanction
- the possibility of any civil liability
- any loss of reputation
- the potential of losing or not being granted a trading license, permit or accreditation
- possible loss of insurance cover
- loss of business
- Financial woes and business rescue or worse- insolvency

No organisation or its office bearers can afford the risk of non-compliance and as the number of requirements increase, the risk increases.



CONTROLS

Once one has analysed the following:

- the laws and the risks which an organisation will be exposed to as a result of non-compliance
- the measurement and rating of these risks,

the organisation must then determine the controls which will have to be implemented in order to ensure that compliance is taking place and that the risk of any non-compliance and the consequential impact minimised or eliminated.

- Controls are physical in nature and can be measured for effectiveness and appropriateness. The application of the controls is the task of all within an organisation, and in particular those who have been tasked with compliance within a stated discipline.
- Controls will also change depending on the environment, and hence should be monitored and tested for effectiveness on an ongoing basis. This is usually the function of an internal audit department.

CONCLUSION

Compliance can no longer be viewed in isolation of the rest of the organisation as some function off to the side to keep an organisation out of jail.

Compliance must become part of the overall business strategy of any operations or organisation, no matter how big or small.

Compliance and related practices should be a non-negotiable and pervasive practice implemented throughout the entire organisation and performed by all.

Ultimately, taking this integrated approach will lead to better overall performance and compliance will become less of a burden on the business.