

THE REGULATOR AND THE COMPLIANCE OFFICER: **CAN THEY LIVE HAPPILY EVER AFTER?**

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Ladies and gentlemen

I am delighted once again to address a gathering of regional compliance officers. I have been looking forward to today because for us regulators, you compliance officers are essential partners in our efforts to preserve and enhance the safety, soundness and competitiveness of our respective jurisdictions.

I must confess that when the organisers of this timely and important conference approached me about speaking. I agreed without checking the subject. I thought of what I would like to say but then I was told what my topic would be

Of course, whether regulators and compliance officers can live happily ever after is a good topic. But what I wanted to speak about would have been even better.

Let me tell you. It would been: are regulators and compliance professionals preventing and curing disease or merely treating the symptoms? In other words, have all the energy and resources devoted to enforcing the new international AML/CFT framework been directed towards the right thing? Will they prevent a new crisis occurring?

However, that is not for today. Perhaps next year!

So let me turn to whether regulators and compliance officer can live happily ever after. I know that some of you here today will expect me simply to say, “Yes, as long as the compliance officer sings and dances to the regulator’s tune”.

I also know that there are compliance officers who would say, “Yes, as long as the regulator leaves us free to get on with the business – as long he stops interfering, criticising or promulgating new and incomprehensible rules and procedures which hit our bottom line.”

Neither of these views is exactly a recipe for the trust, understanding, communication and commitment that any successful marriage or partnership requires.

Without such trust and understanding between regulators and compliance officers, the answer to the question will inevitably be “No”.

[The importance of compliance]

The first step in building this trust and understanding lies further back. We have first to build it within companies themselves.

I can understand why compliance can seem a burden for many businesses. Just because compliance is the law – which it most certainly is – doesn't mean industry likes it. Complaints about red tape bogging down innovation and preventing professional firms from acting nimbly and flexibly can be genuinely heartfelt.

I realise that there are still senior directors who honestly don't understand why they should bother introducing a compliance culture. Who don't get why they need a decent compliance function that enables them to meet regulatory expectations, verify client data, corroborate identification and explain fully what individual businesses are about and where their money comes from.

Your own bosses may be uncertain or reluctant about compliance. Let me help you build their trust and understanding by giving you just three words to say to them about why good compliance means good business.

It reduces risk.

Yes, by ensuring that all employees do their job in a proper and prudent way, compliance reduces the risk of individual firms losing business to better regarded competitors and even facing local regulatory action.

Indeed, I would go further. Given the ever-closer regulatory scrutiny of the financial services industry the world over these days, for those in financial services, investing in compliance is fundamental to corporate survival.

Equally, the survival of each international finance centre as a whole depends on the industry managing its risks properly through compliance.

Jurisdictions whose firms collectively present a poor picture of compliance find it hard to market themselves for new business. They may even face blacklisting by countries or international bodies.

So good compliance protects and grows businesses and jurisdictions together.

[Successful relationships]

I hope you can see, therefore, why regulators and the regulated community share a common interest in protecting the reputation of their jurisdiction and its company structures from the sharp practices of shysters and the ethically challenged.

Only if we work relentlessly together and spare no efforts to ensure the safety, soundness and stability of our financial sector can we live happily together.

Whether we can live happily for ever after is another question! This is the standard fantasy of fairy tales, once the glass slipper fits and the prince kisses the fair maiden.

Writers of fairy tales would have us believe that living happily ever after is par for the course, an inevitable phenomenon. But we know in reality that life and relationships are not as in fairy tales.

They balance happiness with opposite feelings and emotions, like being sad or bored – or being overwhelmed, irritated, upset and outraged about the things other people do. About lacking contentment or fulfillment and often feeling discouraged and disappointed.

Real life stretches past the glorious wedding day and into a future filled with stress, hardship, tensions and the mundane daily routine.

In short, making a success of relationships in real life requires more hard work than fairy tales suggest.

We are probably better off turning to the discipline of marriage counselling for advice. What does that teach us?

Well, if we want a good relationship between regulator and compliance officers, just as in a sound marriage we need to:

- Keep passion alive
- Be willing to put in an effort to keep the relationship strong
- Make sure we are compatible
- Avoid getting addicted to the past
- Appreciate what we have
- Not hold grudges and
- Keep talking!

[The need for a compliance culture]

To put in more formal language, the interplay between the compliance officer and the regulator plays a vital role in safeguarding the soundness of the financial sector.

As I touched on a moment ago, navigating today's regulatory landscape is a complex challenge for governments, industry practitioners and regulators alike. Maintaining the appropriate response to challenging international expectations must be a constant preoccupation for both the regulator and the compliance officer.

Today more than ever, for all jurisdictions, being seen as compliant is an essential part of staying competitive – because with good compliance comes international respectability, and respectability allows the financial sector to continue trading and pursue new opportunities.

If a business wants to survive and thrive, it needs to be actively compliant – not wait for a kick from the regulator. Because regulators cannot examine or vet every file. We must rely on the infrastructure that firms put in place to ensure compliance. And we must rely on the performance and independence of the compliance officer in ensuring that this infrastructure is appropriate, robust and effective.

The implied contract with the regulator is that the compliance officer provides assurance – not insurance – that risks are properly mitigated and managed. So having an effective compliance programme can be a mitigating factor for organisations that fall victim to fraud and other sharp practices.

Sadly, whether through ignorance, inertia, incompetency, indifference or ineptitude, the compliance culture in a number of organisations isn't exactly where it should be. As I mentioned, it is still the case that too many senior managers and boards see compliance not just as a cost centre but as the enemy, the business prevention department.

As a result of their failure to invest in their compliance function, these firms may lack appropriate internal controls, systems and resources. They may fail to make statutory filings, offer no evidence of relevant staff training and have poor morale and low pay.

And yet compliance is quite simply pivotal to the success of financial services firms. Without compliance, there is no control of risks, whether these are regulatory, reputational, or due to liability, negligence or finance. As a result, the organisation is more susceptible to legal and regulatory sanctions, financial loss and reputational damage.

A proper compliance function can be used to protect the organisation against the media, unscrupulous and unethical clients or staff, insurers – and even over-zealous regulators!

All this means that compliance officers, whether you know it or not, are the nerve centre of any properly and effectively functioning company. You are essential to its positive growth.

If only more companies realised that. If only they understood the balancing act you have to undertake between your duty to your employer and your legal obligations.

If only more realised that that in policing and improving internal procedures you are safeguarding your firm's future.

[Compliance 101]

It helps if both the employer and the compliance officer understand some basics.

The employer must understand and appreciate the following.

- (i) The compliance officer is employed to ensure that the organisation complies with the established laws of the jurisdiction and with the internal procedures of the organisation.
- (ii) The compliance officer is vital to the development and growth of the organisation and to perform this role efficiently and effectively, he or she must be enabled to exercise independence.
- (iii) The compliance officer is vital to preventing the organisation from harming itself by getting key compliance questions wrong.
- (iv) The compliance officer is not just a troubleshooter for when problems arise but is the four eyes of the organisation to advise and protect it from making errors with damaging consequences.
- (v) The compliance officer is certainly not a spy for the regulator but an advocate for what is right, with the ultimate objective of supporting the growth of the organisation by protecting its reputation.
- (vi) Compliance officers are not the regulator's friend. The fact that they and the regulator share statutory responsibility for ensuring their firm is compliant means the regulator is forever breathing over compliance officers' shoulders to check how well they are discharging their duties.

Employers who grasp all this will ensure that their compliance officers are enabled to do their essential job properly.

What about compliance officer themselves? They must also understand and appreciate an important range of things.

- (i) Their role is to help to protect and grow the organisation, which requires tact and a commitment to doing the right thing and doing things right. This isn't just about adherence to rules and codes, essential though that is. It is also about ethics.
- (ii) Compliance officer must also realise they are not to spy on their employer. If they do, the regulator will not give them a hearing.
- (iii) Their first priority is to their compliance functions, which they must dutifully carry out.
- (iv) They must be transparent with their employers in order to build confidence in their work. This means they must always bring to employers' attention in a timely manner any shortcomings that need remedying. An employer would rightly be upset to know that a compliance officer had included in a report to the regulator matters that had not been brought to the employer's attention. This is not about sneaking – it is about is doing the right thing.
- (v) Part of compliance officers' core duties is to implement measures appropriate to the nature, size and complexity of their firm. They cannot shirk this duty on the pretext that it is someone else's responsibility.
- (vi) Compliance officers must always keep conflicts of interest at bay. If in doubt, they should seek advice from the regulator.

It is only when both employer and compliance officers have got these basics right and are clear about the role and responsibilities of the compliance officer that they can begin to trust and work better with each other.

It is no coincidence that in some of big organisations today, the most powerful employees are the compliance officers. Their employers trust them to grow and protect the organisation by exercising independent judgment and demonstrating commercial acumen.

I must confess that here in the BVI, as in a number of other jurisdictions, there seems to be some disconnect between company directors and the compliance officers they employ. They seem to grudgingly accept that they must live together rather than seek to become the best of friends.

[Relationship between compliance officer and regulator]

I would like to see this change – it is in everyone's best interests if it does. For a good employer-compliance officer relationship is essential if the regulator-compliance officer relationship is to work as it should.

A properly supported and enabled compliance officer becomes the adhesive bond between the regulator and the regulated entity. They manage relationships with regulators, with strategic clients and within their firm. They know how to strike the balance between risk and reward.

Too often, however, the situation can leave much to be desired.

In my own territory, we find that compliance officers' annual reports about the compliance function in their organisation can sit in stark contrast to the results of onsite regulatory inspections of those licensed entities. The rosy compliance report may simply not match what was uncovered during the inspection.

This is because some compliance officers still don't grasp – or aren't encouraged to grasp – the core importance of their role. They are too concerned to walk a straight line, not to ruffle feathers, to keep their eyes half closed and do nothing that upsets their employer.

But how will this help to grow and protect their employer? How will it ensure that the firm – and their job – ultimately survive? It won't. It is a recipe for failure.

Our territory cannot afford this failure. In order to ensure a long-term future for the BVI financial services industry the Financial Services Commission is determined to see that each and every compliance officer ensures their organisation consistently meets its obligation to reduce its risk.

Like other regulators, of course, the Commission is alert to the particular challenges that confront compliance officers.

For example, we realise that compliance officers need to be protected against any victimisation. It is precisely for this reason that our Regulatory Code stipulates that a compliance officer must not be “subjected to any undue influence or pressure with respect to the carrying out of the compliance function”. Any such action shall be considered a serious breach of the law.

As a regulator, I freely admit that there is some confusion over the plethora of rules, codes, laws and policies which exist today. This not only applies to domestic laws, which may not always be as clear and succinctly formulated as we all would like, but equally applies where a foreign country’s laws are being applied extraterritorially.

I would also accept that all regulators must strive to find more effective and efficient ways to supervise our regulated entities. Here in the BVI, for example, we want to work to improve supervision together with the best firms in our industry, those which we consider taken the compliance function seriously as an integral part of corporate risk management. Is it not only right and sensible that we should listen hardest to the best?

In conclusion, then, can regulator and compliance officer live happily ever after? Certainly they can live together – they need each other too much for this not to be possible.

Whether they can live happily ever after depends on employers letting compliance officers do their job properly and on officers themselves carrying out their responsibilities diligently and firmly and avoiding making basic errors.

I should like to leave you with an idea of the biggest mistakes that every compliance officer should avoid making.

- Trying to cut corners – particularly to please clients.
- Having a policy and not following it.
- Putting yourself, or allowing yourself to be put, in a position where you cannot explain why you did what you did.
- Saying nothing where:
 - You think or know something has gone wrong
 - A mistake has been made, or
 - Someone is behaving inappropriately

When you make these mistakes, rather than happy ever after, our relationship risks coming to a premature end. If you can avoid them, a long-term future is definitely on the cards.