

DEVELOPMENT AND IMPLEMENTATION OF A COMPLIANCE FRAMEWORK

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WHAT IS COMPLIANCE?

Compliance is either a state of being in accordance with established guidelines, specifications or legislation or the process of becoming so.

Compliance in a regulatory context is a prevalent business concern, perhaps because of an ever increasing number of regulations and a fairly widespread lack of understanding about what is required for a company to be in compliance with new legislation.

EVOLUTION OF COMPLIANCE

Several items, events have contributed to the evolution of the compliance function

- The disastrous failures of entities such as Enron, Global Crossing, American Insurance Group, TYCO, Fannie Mae has underscored the need for corporate compliance with the highest regulatory and ethical standards.
- ***Sarbanes Oxley Act 2002 (SOX)*** In the wake of these corporations have become more increasingly concerned about corporate compliance with the enactment “SOX” of the which seeks to protect shareholders and the general public from accounting errors and fraudulent practices in the enterprise. It imposed a number of new rules, standards and penalties for non-compliance.

EVOLUTION OF COMPLIANCE

- As compliance has increasingly become a concern for corporate management, corporations have turned to specialized software, consultancies and the creation of a new job title-The Chief Compliance Officer (CCO).
- Changes in the Regulatory methodology.
Regulators are moving away from the rules based supervision to “principles based regulation”. This is very evident in the UK/Europe scenario when we look various initiatives such as BASEL 11, Solvency 11, EU Directives such as MIFID (Markets in Financial Instruments Directives), the Third Money Laundering Directives.

EVOLUTION OF COMPLIANCE

- Principles based regulation focus on outcomes that the principles are directed at delivering (FSA Handbook) such as -
 - Do firms have adequate capital resources?
 - Are firms treating customers fairly (*covering issues from product design to customer complaints*)?
 - Are firms protecting client's assets?
 - Are firms being open with the Regulator?

There are many different ways in which firms can achieve these outcomes hence the movement away from rules to Guidelines (*standards of good practice*) which are issued explaining how these outcomes may be achieved.

EVOLUTION OF COMPLIANCE

- This shift gives senior management, more scope to decide for themselves how they should comply and therefore an opportunity to shape compliance to the overall needs of the business.
- In the UK, the FSA is rolling out a new supervisory framework *ARROW 2*, which incorporates their judgment about the risks that a particular firm possesses to its statutory objectives, and communicating this to the firm. Within this framework, oversight and governance, including compliance, plays the most important role

EVOLUTION OF COMPLIANCE

- Regulators have moved away from extensive on site checking and box ticking and are now placing more reliance on mechanisms such as compliance functions in determining whether firms are complying with regulatory requirements.
- Increasing importance of training and competence;
- The need to prevent and detect money laundering and fraud.
- Increasing focus on data protection and health and safety.
- Emerging principles such as corporate governance and risk management.

EVOLUTION OF COMPLIANCE

Due to business complexities and the “evolution of regulation” Compliance has evolved from a mainly rules based, technical, back room, box ticking role to a more advisory and strategic role.

Compliance & Internal Audit

There is often some confusion as to the relationship between internal audit and compliance.

- Both require the appropriate level of independence and authority to perform effectively.
- Both shall have no other delegated powers and shall not have any direct responsibility over operating areas nor be subordinate to the managers of operating areas.

Compliance & Internal Audit

Compliance

- However, forms part of the risk management control functions of the institution's internal control system participating in the determination of compliance risk measurement/ assessment methodologies, developing appropriate procedures for controlling the risks identified and requesting their adoption.

Internal Audit

- Is responsible for testing the effectiveness and adequacy of the compliance function and it should be subjected to periodic verification by internal audit

THE COMPLIANCE FUNCTION

The Compliance Function is defined as follows –

*“ An independent function that identifies, assesses, advises on, monitors and reports on a financial institution’s **compliance risk**, that is the risk of legal or regulatory sanctions, financial loss, or loss to reputation a financial institution may suffer as a result of its failure to comply with all applicable laws, regulations, codes of conduct and standards of good practice (together “laws, rules and standards”)”.*

FROM THE BASEL COMMITTEE ON BANKING SUPERVISION

COMPLIANCE RISK

Compliance risk is the current and prospective risk to earnings or capital arising from violations of, or non conformance with laws, rules, regulations, prescribed practices, internal policies and procedures, or ethical standards.

In its broadest form it encompasses anything from tax, business continuity planning, health and safety to conduct of business rules.

Compliance risk also arises in situations where the laws or rules governing certain financial products, or activities of the financial institution's clients may be ambiguous or untested.

COMPLIANCE RISK *cont'd*

This risk exposes the institution to fines, civil money penalties, payment of damages, and the voiding of contracts.

Compliance risk can lead to diminished reputation, reduced franchise value, limited business opportunities, reduced expansion potential, and an inability to enforce controls.

Compliance risk is sometimes referred to as **integrity risk**, because a financial institution's reputation is so closely connected with its adherence to principles of integrity and integrity.

LAWS, RULES AND STANDARDS

The applicable rules, laws and standards are principally those relevant to the activities of the financial institution. They include those dealing with

- the prevention of money laundering;
- the prevention of terrorist financing;
- the conduct of business (including issues such as avoiding or mitigating conflicts of interest),
- employment laws;
- tax laws;
- health and safety.

LAWS, RULES AND STANDARDS

The applicable laws, rules and standards are likely to have various sources, including -

- primary legislation;
- rules and standards issued by regulators;
- market conventions;
- codes of practices promoted by industry associations;
- internal codes of conduct applicable to all staff members.

They are likely to go beyond what is legally binding and embrace broader norms of integrity and fair dealing.

INTERNATIONAL STANDARDS

The legislative/regulatory framework for financial institutions is modelled on international standards. These standards are set by the following bodies-

- The Basel Committee on Banking Supervision
- International Organization of Securities Commissions (IOSCO);
- International Association of Insurance Supervisors (IAIS); and
- The Financial Action Task Force (FATF).

INTERNATIONAL STANDARDS

BASEL	IOSCO	IAIS	FATF
- Core Principles for banking supervision	- Principles for the regulation of securities markets	- Principles for the supervision of insurers and intermediaries	- 40 Recommendations on Money Laundering
- Credit Risk management	- Protection of investors	- Conduct of insurers in relation to risk assessment	- 9 Special recommendations on terrorist financing
- Rules for loan accounting & disclosure	- Maintaining fair, efficient and transparent markets	- Capital Adequacy - Insolvency - Insurance activity - Liabilities - Investments	
- Supervision of foreign establishments	- Reduction of systemic risk	- Dealing with intermediaries - Consumer protection	
- Internal controls		- Transparency	
- Compliance functions		- Fraud	

LEGISLATIVE FRAMEWORK

BASEL	IOSCO	IAIS	FATF
- Banking Law	- Securities Law	- Insurance Companies	- All financial institutions
-Mortgages	- Mutual Funds Law	- Insurance Intermediaries	
- Non banking financing institutions	- Stock Exchanges Rules	- Pension Funds	

INSURANCE COMPANY LEGISLATIVE FRAMEWORK

TRINIDAD

Companies Act	Value Added Taxes Act
Insurance Act	The Maternity Protection Act
The Securities Industries Act	Minimum Wages Act
The Proceeds of Crime Act	Equal Opportunities Act
The Anti-Terrorism Act	Industrial Relations Act
Anti Money Laundering Regulations	Retrenchment and Severance Benefits Act
Corporation Taxes Act	Trade Marks Act
Income Tax Act	Occupational Safety and Health Act.
Health Surcharge Act	Regulators' Guidelines etc

INSURANCE CO-MULTI JURISDICTION REPORTING

TITLE	Trinidad	Barbados	BVI	St. Vincent
Companies Act	X	X	X	X
Insurance Act	X	X	X	X
Proceeds of Crime Act	X	X	X	X
Anti Terrorism Act	X	X	X	X
Taxes Act	X	X	X	X
Employment Laws	X	X (Branch)	X (Branch)	X (Branch)
Health and Safety	X	X (Branch)	X (Branch)	X (Branch)
Other				

CORPORATE GOVERNANCE

Corporate Governance deals with the way in which corporations make decisions.

The framework encompasses the mechanisms, structures and processes that enable the Board of Directors to set the objectives and strategies of the institution, monitor and evaluate its performance and take corrective action promptly.

Mechanisms set up by the Board to facilitate reporting

- (i) The Audit and Compliance Committee
- (ii) The Conduct Review Committee
- (iii) The Compensation Committee
- (iv) The Nomination Committee
- (v) The Risk Management Committee (may also *include compliance*)

CORPORATE GOVERNANCE AND INTERNAL CONTROLS

In keeping with principles of good corporate governance a Board of Directors should ensure that the corporation complies with all relevant laws, regulations and codes of best practice.

An effective compliance programme is an important internal control mechanism employed by the Board of Directors, Management and other personnel which is designed to provide reasonable assurance that the company has achieved its objective to comply with applicable laws and regulations.

GHL GROUP COMPLIANCE POLICIES

In recognition of the emerging role of compliance, good corporate governance and International Best Practice the GHL Board adopted two policies

1. The Guardian Holdings Group Anti-Money Laundering Policy (*adopted 15th March 2004*)
2. The Guardian Holdings Limited Group Compliance Policy (*adopted 4th August 2004*)

GHL GROUP'S ANTI-MONEY LAUNDERING POLICY

In this policy the GHL Board (and therefore the Group) articulates its commitment to prohibit and actively prevent money laundering and the financing of terrorism and to adhere to the following basic principles-

- Comply with anti-money laws, regulations and guidelines;
- Observation of international standards for combating money laundering and combating terrorism set down by the FATF;
- know your customer;
- Co-operate with law enforcement authorities, insurance supervisors and other investigative and supervisory authorities; and
- have in place anti-money laundering policies, procedures and training programs.

GHL GROUP'S ANTI-MONEY LAUNDERING POLICY

Scope

the Policy applies to GHL, its subsidiaries and agents worldwide.

Group Anti Money Laundering Compliance Officer

The policy provides for the appointment of a Group Anti-Money Laundering Compliance Officer who is vested with the full responsibility and authority to formulate and enforce the Group's policies and procedures related to money laundering and to administer the Group's AML Program in its subsidiaries.

GHL GROUP'S ANTI-MONEY LAUNDERING POLICY

Group Anti Money Laundering Compliance Officer

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The duties of this incumbent includes –

- monitoring the GHL Group's AML compliance;
- overseeing communication and training for employees;
- direct responsibility for implementation and updating of the AML Policy
- supervision of business units' AML compliance officers.

GHL GROUP'S ANTI-MONEY LAUNDERING POLICY

AML Compliance Officers at a business unit level

AML Compliance Officers appointed at a business unit level

- will be responsible for coordinating and monitoring the day to day compliance of the business unit with the Policy and Program; and
- shall keep the Group AML Compliance Officer informed and apprised of all matters of a money laundering nature.
- report monthly to the Group CML Compliance Officer through the Reporting Officer.

GHL GROUP'S ANTI-MONEY LAUNDERING POLICY

Anti Money Laundering Programs

Every subsidiary shall develop and implement a written anti-money laundering program that provides

- for the adoption of the GHL Group's AML Policy; and
- for the development and implementation of procedures and controls to ensure and monitor compliance with the applicable laws.

In all jurisdictions this is mandatory in order to comply with anti-money laundering legislation.

THE GUARDIAN HOLDINGS LIMITED GROUP COMPLIANCE POLICY

- In this policy the GHL Group articulates its commitment to –
- protect the GHL Group from the risks associated with non-compliance with legal and regulatory requirements;
 - foster a culture of compliance; and
 - ensure that the Group complies with all applicable laws, regulations, and guidelines of the jurisdictions in which its subsidiaries and businesses operate; all internal policies, codes of conduct and standards of good practice.

THE GUARDIAN HOLDINGS LIMITED GROUP COMPLIANCE POLICY

Group Compliance Function

- Establishment of a Group Compliance Unit and appointment of Group Head-Compliance
- Unit includes the office of the Group AML Compliance Officer;
- The Unit shall advisory on compliance;
- The Unit shall seek to foster a culture of compliance;
- The Unit will facilitate compliance;
- Responsible for the administration of the Group Compliance and Group AML Compliance Policies;
- The Unit provides quality assurance to the Board of GHL on compliance matters;
- The Unit reports to the Audit , Compliance and Risk Committee of the Board of Directors

THE GUARDIAN HOLDINGS LIMITED GROUP COMPLIANCE POLICY

Scope

Every subsidiary within the GHL Group must adopt this policy and implement the contents of the ***Corporate Compliance Plan***.

Reporting Officer

The Policy provides for the appointment of a Reporting Officer for every operational subsidiary (this person is effectively the compliance liaison officer who performs the support functions within the subsidiary for the group compliance officer).

CORPORATE COMPLIANCE PLAN

The Corporate Compliance Plan sets out the Group Compliance Program.

This basically sets out

- the reporting structure;
- the procedure by which compliance issues are escalated to the Unit and to the Board;
- the functions of the Board, the Audit and Compliance Committee and the Unit;
- procedures to be developed; and
- the requirements for training, monitoring, reporting, auditing, plan revisions and disciplinary measures.

REPORTING OFFICERS

The Reporting officer is appointed in writing by the Head of the business unit in a letter addressed to the GCU.

Reporting Officers are required to –

- report, monthly, to the GCU on the compliance template issued by the GCU;
- report, monthly on any incidents on non-compliance with legal or other obligations incorporated into the template using the compliance issue form stating the breach/concern, the remedial action taken to address the breach/concern,
- report on the resolution of compliance issues
- convey advice of new legal or other requirements or changes to existing ones to the GCU, monthly on the regulatory development form.

GROUP COMPLIANCE

- Formulate compliance programmes (including AML Compliance Programmes) for each subsidiary, incorporating policies and procedures;
- Established and maintains a system for reporting on compliance and compliance issues from each subsidiary;
- Reviews monthly reporting templates;
- Logging of issues on a register and follow up on compliance issues to resolution;
- Updates compliance templates to incorporate changes in laws, regulations, guidelines and standards of good practice.

GROUP COMPLIANCE

- Performs compliance reviews and compliance audits to test the truth accuracy of compliance reports;
- Performs AML investigations;
- Maintain a Customer Profiling System to facilitate compliance to the Anti-Terrorism Act 2005;
- AML and Compliance Training;
- Ongoing advice to subsidiaries on compliance matters, AML matters, due diligence matters, forms etc.;
- Maintains registers of compliance issues, enquiries from law enforcement and regulatory authorities, suspicious transactions, reporting and compliance officers;
- Reviews correspondence and reports from regulators to identify compliance issues and risks;

GROUP COMPLIANCE

- Performs a constant review for changes in laws, regulations, business activities, injections into new jurisdictions, business practices to assess impact on business units and to effect changes to the reporting templates;
- Prepares quarterly reports to the GHL's Audit and Compliance Committees as well as to the Committees of TT subsidiaries.

COMPLIANCE REPORTING - FORMS

- Compliance Reporting Template
- Compliance Issue Form
- Regulatory Development Form
- Anti-Money Laundering Report Form
- Internal Report Form
- Declaration of Source of Funds Form
- Suspicious Activity Report Form
- Compliance Issues Registers
- Fraud Reporting Forms/Registers
- Customer Due Diligence Checklists

CHALLENGES

- Culture
- Not a profit centre
- Regulatory arbitrage
- Resources
- Skills set
- Manually intensive and time consuming
- Understanding of role and purpose.