

The Distinctive World of the Compliance Officer¹

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The archetypal lawyer's view of the world, courts, juries, contracts, and settlements is well understood by many practitioners. Their law school education likely prepared them for transactional and litigation roles that have evolved over the centuries since the barrister and solicitor roles of old England. That said, the last few decades have seen the remarkable and exponential growth of a very different role: the individual, typically with a law degree and some business acumen, earning the title of "compliance officer." The view from inside the compliance role is quite apart from the isolated scholarship of self-referential academia or the rough-and-tumble world of corporate deals, litigations, and trials.

A person who becomes a compliance officer must be comfortable—and content—with being the legal department's "jack of all trades." He or she candidly does not have an opportunity to master all of the fine details of all of the regulatory programs to which the corporation is subjected. Instead, often the compliance department finds itself in the unenviable—but often necessary—position of having the regulatory agencies examine the corporation's conduct through the lens of hindsight vision, wondering whether its operations may violate one or more specific laws or regulatory imperatives.

Stated simply, the corporation can expect to be constantly under surveillance. However, establishing a designated compliance function means that executives need not be hypersensitive about the existence of government agency oversight. The executive recognizes that the company's legal future is in the hands of its capable compliance professionals.

Every experienced compliance manager is expected to possess a broad awareness of the company's known and foreseeable risks, know when to turn to trusted outside advisors, be willing to work within a team setting, and otherwise be able to apply practical knowledge and frontline experience to the corporation's risk issue or factual predicaments.

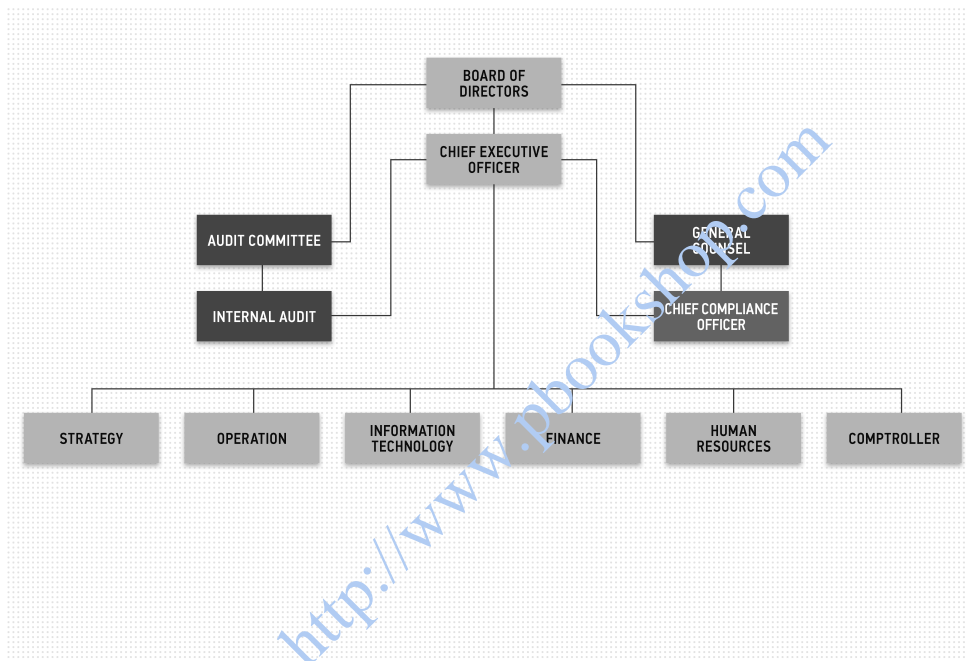
Setting aside for now whether the foregoing, at least to some extent, represents hopeful thinking, it certainly is true that the compliance role inside the company provides the compliance chief with virtually unparalleled access to what types of legal problems cause senior managers and directors the greatest stress and concern. When one of our authors held a compliance position in a large company, he enjoyed virtually immediate access to senior executives because the compliance function included the

¹Prof. James O'Reilly was the primary author of this chapter.

delivery of (bad) news about company noncompliance. “What now?” was a frequent observation by managers to his visits.

Of course, visits by the regulatory compliance official to a senior or divisional executive can be uncomfortable. As such, the special access that the prudent compliance officer obtains when dealing with senior executives and members of the Board of Directors requires discretion and cautionary self-restraint. The ability to command access to senior executives and Board members requires that the compliance officer exercise that power and access judiciously and with respect and self-awareness. Access is a great advantage and should not be squandered, abused, or taken for granted. It is all driven by trust—an attribute that takes time to earn but can be lost in an instant.

Standard Organizational Structure



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The Board of Directors’ decision concerning how to respond to a compliance problem should be based on the informed recommendations of the compliance officer and be in line with the position of the chief executive officer (CEO), who should be guided by moral uprightness. Together, they are the pillars of strength. The compliance officer, who is interfacing with both the Board and the CEO, at times may feel like a high-wire acrobat weaving across to the other side, knowing that either pillar could cut the rope—and a freefall, career-changing event might result.