Chapter 2
From Conformism to a Culture of Integrity

2.1 The Compliance Framework: Essential Requirement

Regulating activities and complying with regulations, practice and professional codes, as well as the acknowledged good practices have therefore become more and more important. These necessities appear the more pregnant in the context of an economic crisis generated specifically by not complying with regulations, good practices, ethical principles, and values, which ultimately led to corruption. One of the most important responsibilities of the management structure in any organization is creating an appropriate framework, **an internal control system that ensures the organization's compliance** with the applicable regulation framework, and with the applicable codes of conduct, practice codes and professional codes, as well as with their own policies and procedures. This system must ensure the **prevention, detection**, **and the correct management of the organization-specific compliance risks**.

Compliance can be defined as the conformation/alignment of an organization with the previsions of the regulation framework applicable to its activity, norms, and own standards, as well as with the conduct and professional codes and standards set on the market or the related industry, making sure that this regulation framework is followed.

Noncompliance risk is represented by the risk that an organization may incur the sanctions mentioned in the regulation framework, significant financial losses, or reputation loss as a consequence of the company's noncompliance with the rules of the regulation framework, with its own norms and standards, as well as with those regulations of conduct codes established by the markets or industry applicable to its activity.[1]

Compliance system is represented by the sum of processes, instruments, measures, and methods through which compliance is ensured. This is done by establish-

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[1] After the definition given by the National Bank of Romania's Rule no. 18 of Sept. 17, 2009, published in the Official Journal, part I, Sept. 23, 2009, on the framework for the administration of credit institutions' activity, the internal process of assessing capital risk-fitness, and the circumstances of outsourcing those institutions' activity.

ing a proper and transparent administrative framework vertically, from management to employees and vice versa, as well as horizontally (between departments), reporting lines, as well as allocating clear responsibilities and clear, precise, well-defined, transparent competences that are coherent and utilized, respectively applied. In addition, it is done by delegating and allocating responsibilities and proper workflows, possibly by organizing a function or a compliance department within the company or hiring a professional consultant.

2.2 The Compliance Processes

Management structures are the ones that have the final responsibility of the company's well-being and therefore of the company's compliance process with the applicable regulation framework, conduct codes, and its own policies and procedures. In addition, each employee has the obligation of ensuring, within their daily activities, compliance with the legal requirements, and reaching the targets while complying with the law as well as the internal policies and procedures. Each employee has the obligation of providing management and the person in charge of the compliance position with all the information necessary for a successful implementation of the compliance system/framework. There is often the completely wrong understanding that the compliance responsibility belongs only to the compliance department/officer. Complying with the regulations applicable to the company's activity is the responsibility of each of the employees. This is, in fact, what our professional activity stands for.

2.2.1 External Processes: The External Compliance Processes Are Those That Encompass the National and International Compliance Framework as well as the Best-Practices Standards Developed by Certain Industries or Professional Associations

The regulations are normative acts emitted by the national compliance authorities (the Government, Romanian Parliament, or other authorities with ruling power, such as the National Bank, the National Securities Commission, etc.) or international (the European Commission or The Council of Europe). The codes of conduct or the professional codes are those standards for good practices issued by certain sectors or professional associations. Even if they are not ratified by law (there are cases where they are ratified, and then they become mandatory regulations), not observing them can lead to consequences as serious as not complying with the laws.

There are countries where the legislation and compliance framework are adopted as a principle, not on a level of regulation/detailed rule—like in our country (as opposed to, especially, Anglo-Saxon legislation, where practice is the source of

law). Therefore, the distinction between regulations and best-practices standards becomes practically insignificant, its negative effects being the same.

2.2.2   Internal Processes: The Internal Compliance Processes Are Those Which Encompass Internal Mechanisms Developed by the Company in Order to Ensure Application of External Standards in Agreement with the Particularities and Needs of the Company, Thus Bringing Added Value to the Legal Regulations in the Field and Ensuring the Company's Increase in Compliance and Integrity

Policies, procedures, processes, and internal flows are those internal regulations regarding a company's activity. In addition to the strategic and/or operational side, they take on and transpose in the activity of the company, the regulations, the conduct codes and professional codes, and best-practices standards. The regulations, conduct codes or the professional ones, the best-practices standards, and the organization's mission/values are key components taken into consideration when that organization's strategy (short, medium, and long term), business guidelines, and risk appetite are established. These together materialize in the organization's policies (set of general principles), which afterwards become mandatory for the personnel. Failure to respect them leads to sanctions applicable to the personnel. Implementing external and internal compliance processes involves a continuous internal process that falls under the responsibility of the management structure, of the compliance function/department/services, and of the entire staff of a company.

2.3   Compliance Principles

- Compliance and Integrity in Business

  This principle involves a company aligning to the provisions of the compliance framework applicable to its activity, interiorizing and implementing them within the company, and complying with their own standards and norms, but it also involves creativity in developing complementary mechanisms, which will ensure the implementation of legal norms beyond the mere law.

- Respect for the Clients

  This is a principle that places the client at the center of all activities of the company. The private sector must comply with the legislative framework and develop

internal mechanisms so that it adds value to its relationship with the clients and thus increases the company's credibility.

• Organization and Control: Adapted, Efficient, and Effective
  (Corporate Governance, Internal Control System)
  Any company that wishes to observe compliance standards must develop a system of internal control, both horizontally and vertically, toward the management structures, through which it will ensure that the internal compliance procedures of the company are followed. Such control allows them to properly analyze the compliance framework and take action on the higher structural and strategic levels.

• Transparency, Fairness, Reciprocity, Proactivity, Equality, and Fraud Prevention Systems

A company following compliance standards will develop, implement, and communicate its internal mechanisms for the prevention of the corruption phenomenon. Special importance is given to the dissemination of information regarding compliance at all organizational levels, among partners, shareholders, and clients.

• Proper Risk Management

It implies effectively identifying, monitoring, and controlling compliance risks throughout the entire flow of an activity, process, product, or service, from the first operation to the last one. By analyzing compliance principles, we will see they overlap for the most part with the requirements that govern the idea of moral leadership. However, compliance alone isn't enough. Building a culture of integrity is needed.

2.4   Legal Conformism

> *Businesses cannot prosper without proper and responsible corporate governance… companies that spend their resources financing corrupt businesses will progressively lose their competitiveness.* —United Nations Global Compact Office, *Business against Corruption*

Conformism implies mechanical and uncritical acceptance; the legal submission of the private sector vis-à-vis the judicial norms without having an internalization and taking-on process of the content of those norms and without preparing particular instruments to serve its application in the organization. In the private sector, unethical practices have a great impact on the image and reputation of a company and, ultimately, on its profit. In this context it seems insufficient for the business sector to accept automatic obedience for the legal norms, without finding complementary and efficient mechanisms for its implementation and observance. Moreover, a company that aspires to be an integrity leader is a proactive company in implementing and developing complementary mechanisms that ensure respecting and applying legal norms. In addition, a company that does not prove to its stakeholders that it is a business partner preoccupied and involved in developing the mechanisms that ensure integrity in its actions and decisions will lose profit, professional rela-

tionships, reputation, image, etc. Building a business environment of integrity, responsible and sustainable, that will regain the public's trust by creating and maintaining an open, mutually profitable relationship not with its own shareholders but with the entire public assumes more than mere conformism.

Passing from legal conformism to a culture of integrity requires the companies to be preoccupied with fighting corruption, creating mechanisms for implementing the legislative framework, developing internal mechanisms and instruments to restrain employee behavior such that they may act with responsibility and integrity in their activities, and improving the company's regulations in order to directly contribute to building a culture of integrity.

Integrity implies complying with the legal norms, their internalization, and their assumption on behalf of the company; it does imply compliance with internal norms, but at the same time, integrity implies creativity in developing complementary mechanisms beyond the law. A first step in developing a business that promotes a culture of integrity is identifying the main integrity risks—it is important for the business sector to identify the main threats that bring vulnerability to respecting the integrity standards in any areas of the employees' work activity, in order to develop efficient mechanisms to prevent it. Developing mechanisms to support promoting a culture of integrity is the second important step—the business environment must promote among its employees the corporate values and principles that would govern their entire activity.

2.5   Moving from Conformism to a Culture of Integrity

Besides *developing internal compliance instruments* at company level, transitioning to a culture of integrity requires promoting "living the values" among employees, i.e., a strong alignment to the values and principles that define the company.

Through *integrity* in the private sector, we will understand the ensemble of the legal aspects at the core of all decisions, internal compliance instruments developed for their compliance and implementation, and the commitment and perspectives employees have on company's values and principles.

Transposing the company's values, principles, and beliefs into practice brings long-term performance, competitive advantages, and profit for any organization. The values and principles of the company are the ones guiding the employee when making decisions.

A strong organizational culture has a strong alignment to the values and principles of the organization, and building an organizational culture is based on the following:

- The example and quality of leadership, a clear and unequivocal commitment of complying with the company's values and principles
- Permanent communication of the company's values and principles among employees and stakeholders

- Continuous education and training of the employees in the spirit of the company's values and principles
- Appreciating the values and principles as real business partners which improve the company's activity and long-term profit

It is proven that all organizations that promoted a culture of values, ethics, and professional conduct, based on compliance and social responsibility, have long-term sustainable profit (a few examples: Disney, Starbucks, General Electric, Johnson & Johnson, Ford, etc.).

2.6   Ethics, Integrity, and the Fight Against Corruption

Unethical practices, or those that lack integrity, have a huge impact on the image and reputation of companies from the private sector, affecting their profit too. Taking on the values and principles of the company will determine an ethical business sector within which there will be an interest for developing instruments to combat corruption. Therefore, an ethical business sector, with a strong organizational structure, will develop and promote internal corruption-combating instruments, which will prohibit[2]:

- Offering, receiving, or accepting any kind of bribe or using any kind of means or channel to offer benefits to the clients, suppliers, or any public institution with the purpose of maximizing the company's profits through illicit or unethical means.
- For employees to facilitate or accept bribe or commissions on behalf of the clients, suppliers, or public institutions for their own benefit or that of their family, friends, associates, or acquaintances.
- Direct or indirect contributions of political parties, organizations, or people involved in politics, with the purpose of obtaining advantages in trading transactions. All donations must be done by complying with the principle of transparency.
- Transforming/using charitable contributions and sponsorships as a cover-up for bribe.
- Offering or accepting gifts or protocol expenses or having other expenses paid for them whenever such measures can affect the result of transactions and do not involve reasonable, good-faith expenses.

Corruption is one of the major causes affecting and breaking the principle of free competition in trading transactions: it discourages investments and raises the cost of goods and services. In this context, it is extremely important for the private sector to develop mechanisms that diminish corruption and its impact globally. According to the definition proposed by Transparency International, corruption represents *the abuse of entrusted power*, *in either the public or private sector*, *with the purpose of*

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[2] Transparency International, The Business Principles for Countering Bribery, 2009.

satisfying particular or group interests. Therefore, any act of an institution or authority that has as consequence any damage to the general interest with the purpose of promoting a personal interest/profit can be classified as corrupt.[3]

Corruption can manifest in the private sector under different forms:

(a) **Receiving bribe** is the deed of the public officer who, directly or indirectly, claims or receives money or other benefits that are not appropriate to them or accepts the promise of such benefits, or fails to refuse it, with the purpose of fulfilling or not fulfilling or delaying the application of an act regarding their own work duties or in view of doing a deed contrary to their duties.

(b) **Giving bribe** represents promising, offering, or giving money or other benefits to a public officer by an entity in order to illegally satisfy an interest. Private companies most of the time offer bribes in order to[4]:

- Buy contracts with the State. Bribery can influence the State's decision of granting contracts to certain organizations.
- Obtain benefits on behalf of the State. Bribery can influence allocating benefits on behalf of the State for certain organizations.
- Obtain licenses. Bribery can be offered in order to influence granting licenses for enterprises to perform certain activities.
- Accelerate being granted a certain permission on behalf of the State for the private sector.

(c) **Receiving unwarranted benefits** is defined as the receiving, directly or indirectly, of money or other benefits by a public officer, after doing a deed their position allowed and to which they were tasked by their position.

(d) **Buying influence** is the felony through which money or other benefits are claimed from a physical or legal person by another who has influence or leads them to believe they have influence over a public officer, in order to determine the latter to do or not do an act that is required by their place of employment.

In order to respond to these challenges, the private sector must develop and implement mechanisms **in order to prevent and reduce the probability of having such deeds occurring** and in order to react in case they happen. The main instruments any company must have involve[5]:

- Developing and implementing a zero-tolerance policy concerning corruption, based on legal regulations, and the values and principles of the company
- Developing and implementing warning mechanisms that encourage employees to take notice of irregularities and corruption deeds within the company

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[3] Transparency International, URL: http://www.transparency.org/cpi2011/in_detail, accessed on March 26, 2013.

[4] The World Bank Group, *Helping Countries Combat Corruption: The Role of the World Bank*, URL: http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm.

[5] Transparency International, *Resisting Extortion and Solicitation in International transactions. A Company Tool for Employee Training*, URL: http://www.transparency.org/whatwedo/pub/resist_resisting_extortion_and_solicitation_in_international_transactions.

- Developing and implementing special training programs for employees exposed to the risk of corruption
- Developing and implementing policies regarding conflicts of interest
- Developing and implementing policies regarding receiving gifts
- Developing and implementing policies regarding donations and sponsorships, especially by political parties, but not limited to them

2.7   The Main Instruments that Ensure Evolving from Legal Conformism to a Culture of Integrity

Compliance policies and procedures are those procedures developed within the company through which the company should align to the judicial norms, standards, regulations, and recommendations applicable to its activity, but also comply with the internal policies.

> *If we do not have a set of values—and do not live by them—the company will not be successful.*—Daniel Vasella, Chairman and CEO, Novartis

2.7.1   The Mission Statement

A mission statement has the purpose of guiding a company's actions, of stating precisely its general purpose.[6]

2.7.2   The Code of Conduct

Conduct codes represent collections of obligations, many of them of legal nature, which a company's employees must obey. Others have an extremely general character and concern the company's values. However, these codes must not be value statements or double the law, but contain rules of a professional nature that offer the kind of professional behavior expected of the employees and management within the organization.[7] A company that creates a code of conduct with values and guiding principles will create for its employees a guide that will govern their decisions and actions both within the company and in relationships with third parties. The conduct code is a mechanism developed at a corporate level that contributes to corporate integrity.

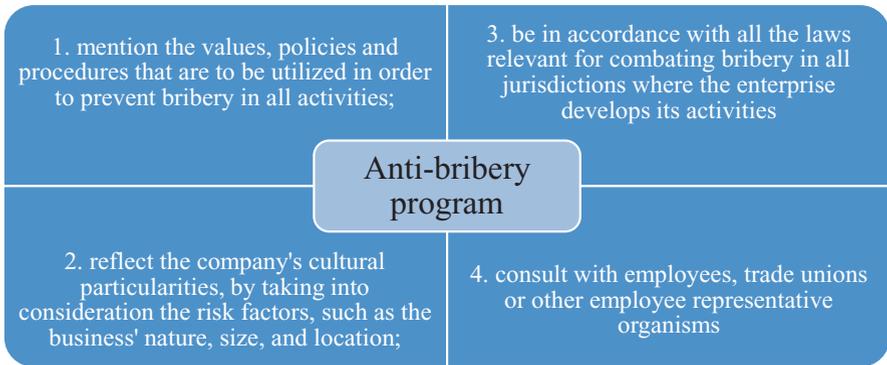[6] Hill, Ch. & Jones, G. Strategic Management. Houghton Mifflin: New York, 2008, p. 11.

[7] Transparency International Romania, *Integritatea în mediul de afaceri din România*, Bucharest, 2011,   http://www.transparency.org.ro/politici_si_studii/studii/integritatea_mediu_afaceri/ StudiucIB.pdf.

2.7.3   The Ethics Training

In order to raise a company's integrity, special attention must be given to trainings focused on the company's employees, trainings through which the laws, values, and principles promoted by the company, and the applicable regulations for the employees' activity are made known. This is probably the most important instrument in promoting a culture of integrity, for in this context employees and managers can talk, and mutually influence values and beliefs regarding the conduct expected of them. The beliefs and personal examples of managers are the best instruments to convince employees to follow their lead.

2.7.4   The Anti-bribery Program

A company that wishes to develop a culture of integrity among its employees will develop such anti-bribery programs. According to Transparency International's standards, *Business Principles for Countering Bribery*, in developing an anti-bribery program, companies must:

1. mention the values, policies and procedures that are to be utilized in order to prevent bribery in all activities;	3. be in accordance with all the laws relevant for combating bribery in all jurisdictions where the enterprise develops its activities
Anti-bribery program	
2. reflect the company's cultural particularities, by taking into consideration the risk factors, such as the business' nature, size, and location;	4. consult with employees, trade unions or other employee representative organisms

Conflicts of interest are oftentimes the starting point of corruption.—United Nations Global Compact Office, *Business against Corruption*

2.7.5   Policies for Preventing Conflicts of Interest

Through the policy of preventing conflicts of interest, the business sector will try to avoid such situations as where an employee may have a personal interest of patrimonial or non-patrimonial nature through which fulfilling their attributions in compliance with company's policies and procedures may be influenced.

2.7.6   Integrity Awareness Policies

Whistleblowers can play an essential role in detecting frauds and malicious resource management and signaling corruption. They may often face consequences, even in the form of layoffs. Through the integrity awareness policies, companies encourage and motivate employees regarding signaling corruption deeds, or any infringements of the integrity compliance mechanisms developed and implemented within the company.

Companies aim to develop an efficient mechanism through which they encourage whistleblowers to signal cases of corruption or other infringements of the provisions of the integrity policies and procedures developed by the company. Moreover, the business sector aims to protect these people in cases where they can suffer direct or indirect consequences that follow complaints or reports they made in respect to lawbreaking.

The instruments employees have in this respect can include a communication channel in the form of an email address, a phone number, or a special website (*ethics and compliance green line*) or a simple procedure for reporting the situations where the provisions of the ethical code have been broken. Employees must also be informed periodically regarding the results of such communications.[8]

2.7.7   Developing Internal Warning Systems

The business sector must encourage establishing and utilizing internal warning systems, which are secure and easily accessible, ensuring a thorough, independent, and time-efficient investigation.

2.7.8   Developing Informing and Awareness Mechanisms Regarding the Existence of Policies Regarding Integrity Awareness Among Employees

Companies must develop mechanisms through which they communicate to the employees their rights and obligations when they do their warning.

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[8] Transparency International Romania, *Integritatea în mediul de afaceri din România*, Bucharest, 2011,   http://www.transparency.org.ro/politici_si_studii/studii/integritatea_mediu_afaceri/ StudiucIB.pdf.

2.7.9   Developing Protection Mechanisms Against Consequences

Companies must develop internal mechanisms that offer complete protection of the whistleblower against discriminatory treatment at the workplace and the consequences that come after their warning. The integrated ethics and compliance management imply coordinating all internal policies and procedures developed by the company in order to promote the culture of integrity.