

# Adotti & Associati Law Firm

---

## ***What is compliance ?***

Considerations of a “simple lawyer”

Alessandro Adotti

December 12 th 2015

**Università di Tor Vergata – Corso di Business Audit**

For research and study purposes

# Agenda (what we do here guys?)

**1. Terms and definitions: (Lawyer, compliance , simple... ???)**

**2. The perimeter of compliance:**

**a) Rules and/vs. Ethics**

**b) Hard core compliance and “integrated” compliance (an olistic approach)**

**c) Functionally Speaking...**

**d) Cost of (non) compliance (budgetary wise)**

**3. Conclusions : “No compliance, no party”**

# Terms and definitions: lawyer

***“A lawyer is a person who writes a 10,000 word document and calls it a “brief”***

***Franz Kafka***

***“The first thing we do, let’s kill all the lawyers”***

***Shakespeare – Henry VI***

***“Tomorrow at six I will be executed fro a crime for which I am not guilty. I should have been executed at five, but I have a good lawyer”***

***Woody Allen***

***“Lawyers are the sales prevention force”***

***Marketeers***

# Terms and definitions: compliance

***Compliance: stands for  
Conformity with ruling, standars, wishes.  
(Source: Oxford – Paravia Dictionary)***

# Terms and definitions: simple

*Simple : stands for  
“Not complicated”  
(Source: Oxford – Paravia Dictionary)*

# The perimeter of compliance – Rules and / vs. Ethics

*If we try to define “compliance” we have to question ourselves with reference to which set of values and rules*

*It is clear that the term compliance has a lot to do with the rules (legal compliance) but what has compliance to do with ethics ?*

*Rules are super-imposed but what about the relationship between the entrepreneurial environment and ethics?*

# The perimeter of compliance – Rules and / vs. Ethics - 2

*Over and beyond the legal conformity today more and more companies implement ethical codes, policies and “standards of business conduct”*

*On the basis of this observation one can infer that compliance is not only related to the respect of the law but to the respect of self imposed rules, sometimes over and beyond the law*

*The ethical standards are, sometimes, a real “competitive tool” for the companies*

# The perimeter of compliance – Rules and / vs. Ethics - 3

...so the companies are, or pretend to be –  
generally speaking –, extremely serious with all the  
subjects related to compliance and, sometimes,  
even more serious vis a vis the “ethical side” (i.e.  
self-imposed standards) !

This means that not only legal conformity should be  
measured but that also the “ethical” one has to be  
assessed



# Hard core compliance and “integrated” one

Coming to the merits, in definitory terms, it is rather difficult to say to which rules and ethical standards is really applicable the term “compliance”

# Hard core compliance and “integrated” one - 1

Each legal environment has its own specificities but if we consider the term compliance as related to the obligation to give evidence / track of the respect of the law (in order to prevent disputes), in the Italian legal environment it is evident that at least rules related to:

## Hard core compliance and “integrated” one - 2

- White collar crimes (Legislative Decree 231/01)
  - Health and Safety and environmental rules
  - Anti money laundering rules
- ...and others, can be considered (and are intended/defined) as part of the “hard core “ compliance...

## Hard core compliance and “integrated” one - 3

...but if we move to a broader scenario and we divert from the idea that compliance is only “give evidence of the conformity” but also “what is really important” (e.g. antitrust policies/records management/tax compliance/ ethical rules and so on ) and “what we want to be “ ,then compliance becomes a question of “integrated” subjects (on top of the above mentioned ones) and an “olistic” approach is needed

## Hard core compliance and “integrated” one - 4

...so if we want all this we need to accept that :

- Compliance is not only “respect the law “
- Compliance is more than “thick the box”, on two or three subjects;
- Compliance needs an olistic approach which means also “ownership”...

# Functionally speaking ...(who does what?)

Another relevant issue regards the “accountability”: in short terms, who is the owner of the compliance’s issues? It is worth to say that - even if the compliance function is present – the real accountability should be on every “interested party” (i.e. legal/finance/hr/ehs/board ...) and the level of interaction should be guaranteed - with the necessary “indipendence” - from the compliance officer

## Functionally speaking ...(who does what?) - 2

While the level of interaction between legal and compliance (if divided) is intuitive, sometimes is difficult to say or to establish the level of relation among the compliance officer and other functions (e.g. finance/hr)

Often the boundaries are not pretty clear and only the “rule of reason” and, (sometimes), good job profiles, make the relationship workable (and acceptable).

## Functionally speaking ...(who does what?) - 3

Finally, the level of interaction between the compliance officer and the internal audit function (one can even note that often the two functions are even “group” ones) deserves attention.

There has not to be any “ancillary” approach between compliance and IA and inputs and outputs should be more than welcomed



## Functionally speaking ...(who does what?) - 4

Standards for controls and measurements (risk and gap analysis, methodologies) are normally in the IA “territory” while ensure that the legal and ethical standards on compliance are respected are normally part of the duties of the compliance officer and of the general counsel - head of legal - company secretarial

# Cost of (non) compliance

Define a methodology for the tracking and balancement of the cost of compliance (what is the right one?) is extremely difficult (one can measure the average cost but not the ROI ...until something bad happens !!!)

Using the “*argumentum a contrario*” (i.e. appeal from the contrary) one should ask: what would be the cost of non compliance?

## Cost of (non) compliance - 2

In order to “defend your case” in front of a problematic board or CFO , put on the table a SWOT/what if analysis and the “worst case scenario” scheme

Sometimes the cost of non compliance is really a scary topic !!!

# Conclusions

In order to defend Your “license to exist” (specially in strictly regulated environments) one should remember that , strategically wise:

**“NO COMPLIANCE, NO PARTY”**

And, coming really to conclusions, it is not difficult to show why...

# Conclusions - 2

# Thanks !!!!

## Any questions ?