The importance of effective Compliance and Ethics Program within Nigerian Corporate Establishments

The Federal Government of Nigeria ("Government") recently approved a 60-day national action plan ("Action Plan") for ease of doing business in Nigeria. The plan is to be implemented in three priority areas; entry and exit of goods, entry and exit of people and government transparency and procurement. These reforms are borne of the Government's desire to increase the already declining foreign participation in the country's economy and are expected to improve Nigeria's ranking in the World Bank Business Index, 2018.

In line with the above, Nigerian business entities are also expected to play their role in ensuring the success of this Action Plan. Specifically, it is imperative that these organizations adhere to local and international corporate compliance regulations. Contravening these regulations can lead to reputational damage, which will in turn, affect foreign business relations and ultimately, stifle the Government's efforts to improve foreign investment.

The undesirable business practices of some organizations are so deeply rooted that they become recognized across the globe. However, the adoption of a combined compliance and ethics programme can help ensure that an organization operates within regulation and stays true to its own ethical principles that are important to the company's business and identity.

A Compliance and Ethics Program, simply put, is a set of organizational policies established to promote law abiding and ethical conduct in an organisation.

Why set up a Compliance and Ethics Program?

Establishing an effective Compliance and Ethics Program ("Program") has become a necessity to protect the reputation of any organization by (a) detecting and preventing unlawful and improper conduct; and (b) promoting adherence to the organization's legal and ethical obligations.

Core Components of a Program

Although there is no "one size fits all" Program there are core components that must exist for every organisation to have an effective Program. They are:

a. Standards and Procedures

   An organization must have standards and internal controls reasonably capable of reducing the likelihood of criminal and other improper conduct.

The foundation of these controls should be a Code of Conduct ("Code"), which should identify the following:

- Those who are responsible for administering the Program, their role and general guidance on the business behaviour expected of all employees in relation to the Program.

- Clear channels for reporting misconduct or violations of the Code; and disciplinary action for violations.

In addition to the Code, an organisation requires specific policies and procedures to provide detailed guidance on the approach employees should adopt in business relationships.

These detailed policies and procedures should address regulatory risks relevant to the organisation's business i.e. conflicts of interest, political contributions, agent and vendor due diligence, internal accounting practices, record retention, government funded projects, export controls and custom issues.

b. Organizational Leadership and Culture

The governing authority of the Organization, i.e. Board of Directors, should be knowledgeable about the content and operation of the Program in order to exercise reasonable oversight over its implementation and effectiveness.

In addition to this, specific individuals among high-level management should be assigned the responsibility for running the day to day operations of the Program. These individuals are required to have complete independence and adequate resources to operate the Program effectively. What is deemed adequate will vary depending on the size and operations of the organisation.

c. Monitoring, Auditing and Evaluating the effectiveness of the Program

One of the hallmarks of an effective Program is continuous planning and improvement based on a dynamic business environment. An organization's Program should have monitoring and auditing systems that are designed to detect criminal and other improper conduct. This is an essential component of the Program as it allows the organization to evaluate its effectiveness.

Whether internally or externally, audits should be conducted by individuals who are independent of the department being audited.

Effective lines of communication with employees regarding compliance concerns, questions, or complaints are also critical; ensuring employees are comfortable discussing compliance matters with the management.

d. Performance Incentives and Disciplinary Measures

An organization should promote and consistently enforce the Program through incentives and disciplinary actions. Appropriate incentives may include rewarding material concerns that are raised and helpful recommendations for improving the implementation of the Program.

Appropriate disciplinary actions may range from a reprimand with additional training, to a demotion or termination, where necessary. In order to be effective, the incentive or disciplinary action should be proportional to the conduct.

e. Risk Assessment

Corporate entities should periodically assess the risk of improper conduct within their operations and take appropriate steps to design, implement or modify each element of a Program to reduce the risk of improper or unethical behavior.

This assessment usually entails evaluating factors such as audit results, recent litigation or settlements, compliance complaints, employee claims, industry enforcement trends, and the existence and sufficiency of policies.

The Organization should map the results of a risk assessment on a matrix to show the level of risk for each area examined, the likelihood of a violation and the likely damage to the organization as a result of a violation. These risk matrices should then be used to prioritize program activities in the future.

f. Training and Education

An Organization should ensure that the Program's code of conduct, policies and procedures are widely promulgated and that employees at all levels and agents are trained to adopt and give effect to those policies and procedures.

It is recommended that trainings be tracked, attested to, documented, and followed-up.

Some benefits of a Program

Imbibing a Program within an organization is beneficial to the employees and the organization itself. The more a Program is embedded in the DNA of business operations, the more efficient tasks become. This creates a workplace culture that helps signal to key stakeholders that compliance and ethics are a top priority.

A Progam also helps an organization to look holistically across strategic, operational and other risks to ensure that all risks (and benefits) are considered together to optimize decision-making. This ensures that risks are managed more effectively and reduces the likelihood of being fined; thereby protecting and enhancing the reputation of the organization.

In conclusion, although regulatory and reputational risks are a part of doing business, how an organization handles those risks can mean the difference between success and failure.

The implementation of an effective Program will aid in the Government's plan to attract foreign investment to Nigeria. It will also bolster the confidence of foreign investors as it demonstrates that organisations are committed to being responsible business partners.

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