

LL4461V / LL5461V / LLJ5461V / LL6461V Compliance and Risk Management

This course examines the rules and standards that govern the subject of compliance and risk management. It starts by examining questions of governance: boards of directors, and executives. We then examine the compliance function through the lens of *managers, regulators, prosecutors, whistleblowers, and gatekeepers*. Next, we consider particular areas of the law: corruption, anti-money laundering, and export controls. We examine case studies where compliance fails and initiatives that go beyond compliance. Finally, we consider risk management as it pertains to lawyers; topics here include the governance of risk; approaches to risk management; reputational, operational, and enterprise risk.

At the end of the course, students should be able to

1. Demonstrate an understanding of both domestic and international rules, and key standards that impact the compliance and risk function
2. Demonstrate an understanding of devising effective compliance frameworks / internal controls
3. Identify enterprise risks, and critique control strategies and mitigation options.
4. Correctly identify and implement measures to detect and prevent compliance weaknesses / failures

PART I: THE NEED FOR INTERNAL CONTROLS AND MANAGING THE KEY STAKEHOLDERS INVOLVED IN COMPLIANCE AND RISK MANAGEMENT

Week 1: A primer on Compliance & Risk Management

In this seminar, the students will be introduced to the importance of developing an understanding of the legal and regulatory standards beyond domestic laws. We briefly examine the consequences of non-compliance with international laws and regulations, and how compliance and risk management intersects with traditional areas of the law. We then consider the multifaceted role a modern law lawyer plays when having to advise corporations which operate within a global marketplace. Students will be introduced to the relevant stakeholders, the applicable rules, and commercial considerations that can arise in connection with the rest of this course.

To inject real-life learning and application of the course syllabus, the class would be directed, over the duration of the course, to consider the causes of notable past compliance failures and corporate scandals (e.g. Siemens, VW Emission Scandal, IMDB, Boeing 737 Max, Odebrecht (Carwash), Keppel Offshore & Marine, Wire card, Hin Leong), and examine how these failures could have minimised / prevented by the use of thoughtful and calibrated internal controls. The class will be split into groups of 5. Each group would be assigned a compliance failure / scandal as a case study to present to the class in **Week 5** (30 minutes per group, 20 presentation slides (excluding the cover slides), 5 minutes per student, 10 min Q&A).

Week 2: Director's Duties, and the Board of Directors

In this seminar, students will learn the importance of the concept known as the 'tone at the top', the challenges a company's board of directors ("Board") faces, and importance of creating internal controls in order to reduce informational asymmetry. We consider the practical challenges a Board faces in establishing oversight over the activities undertaken by the executives when making strategic decisions on behalf of the company, and how the lawyer can be expected to assist the

Board. We also consider policy and legal issues relevant to the Board such as independence, directors' qualifications, and fiduciary duty. We then undertake a deep dive of the Board by considering the various sub-committees a Board is typically made up of (i.e. audit committee, governance and nominating committee, risk committee, compliance committee, and compensation committee).

Week 3: Executive Officers – the Three Lines of Defense

We study the concept of the 'three lines of defence'. We begin by generally considering the misalignment of interest that often exists between the business line executives (first line of defence) and the corporation. We then explore the role performed by the General / Chief counsel ("GC") and Chief Compliance Officer before moving on to examine the third line of defence; served by the internal audit function. Finally, we consider the how outside / external counsel would be expected to assist the GC in real life, which sets the stage for Parts II and III of the course.

PART II: IDENTIFYING THE CAUSES OF COMPLIANCE FAILURES AND DEALING WITH REGULATORS

Week 4: Internal Enforcement & Investigations

We begin by critically examining the compliance function, and what makes for a good compliance function. We study the importance of setting the tone for internal enforcement, establishing a compliance policy and how to go about designing a compliance programme.

We then go on to learn about the different types of investigations (routine v non-routine) a corporation can be expected to conduct, and how lawyers assist corporations to conduct such investigations. In this respect, the students will also examine some of the common practical challenges external counsel can be expected to face, such as coordinating cross-border regulatory intervention, access of information, and the collection of evidence).

Week 5: Case Presentations

The presentation would require each group to present on 5 distinct areas, namely, (i) *'What went wrong'*, (ii) *'How the problem/scandal was uncovered'*, (iii) *'Why was there a compliance failure'*, (iv) *'What challenges did investigations throw up'*, and (v) *'What remedial steps were taken / what additional measures could have been implemented as part of the compliance program.'*

At the end of each presentation, the class will have an opportunity to pose questions to the group. The convener will also emphasize the learning points by drawing on themes covered in the course.

Week 6: Introduction to Key Foreign and Local Regulators

This seminar provides the students with an overview of the key regulators in the United Kingdom, the United States (US) and Singapore (including the amendments to our Criminal Procedure Code (i.e. codification of the Deferred Prosecution Agreement, the guidelines used by US prosecutors) and examines the considerations regulators typically take into account when making prosecutorial decisions, and offering deferred prosecution agreements, which are vital for a lawyer to be able to advise a client.

The students will also have a chance to hear first-hand from the sitting First Secretary of the US Department of Commerce – Mr Michael Burnett), over a fireside class room conversation led by the convenor, where Mr Burnett will share about the US enforcement policy as well as the recent actions taken by the US against non-US entities, including Singapore companies / individuals.

PART III: IMPLEMENTING ADEQUATE INTERNAL CONTROLS

Week 7: A Primer to the FCPA, and anti-bribery compliance frameworks (ABCs)

The sanctions imposed by the US Department of Justice (DOJ) or the Securities Exchange Commission (SEC) in connection to FCPA violations typically run in the tens of millions of dollars. Notably, between 2010 and 2021 (Q1), the monetary penalties imposed exceeded US\$10 billion dollars. The seminar will provide the student with an overview of the salient aspects of the law in this area including the:-

- Anti-bribery provisions;
- Accounting provisions;
- Voluntary Disclosure and Co-operation; and
- Significant FCPA enforcements actions and recently negotiated settlements,

Apart from the basics of the FCPA, the students will learn about how the extraterritoriality of the FCPA has serious implications for both individuals and corporations (including non-US subsidiaries) operating in Singapore. The seminar will also comparatively examine Singapore's Prevention of Corruption Act and the U.K Bribery Act before discussing how to design an Anti-Bribery Compliance programme.

Week 8: Whistle blowers & The Role of Gatekeepers

This seminar focuses on how a corporation can incentivise self-reporting and augment its internal controls through the implementation of a whistleblower programme. It also introduces the students to standards for whistleblower protection and the consequences that may follow corporations which either seek to impede individuals from communicating directly with a regulatory or take retaliatory action against the whistleblower.

In the second part of the seminar, we explore and consider the roles played by gatekeeper (i.e. those whose certification or support is needed before a corporate can reach its intended goal): accountants, auditors, corporate monitors, and consultants, and the issues that confront these gatekeepers and how lawyers can be expected to work with them. During a 40-minute fireside conversation between the convenor and the Managing Director of FTI Consulting, the students will also have an opportunity to learn about how lawyers work alongside a consultant cum forensic accountant when it comes to designing compliance frameworks.

Week 9: Suspicious Transactions, and Countering Money Laundering & Terrorism Financing

The United Nation estimates that US\$2 trillion dollars in illicit proceeds flow through the global financial system. Financial crime has a substantial impact on economies and society, particularly on city states such as Singapore which rely on its reputation to maintain investor confidence.

In this seminar, the students will be introduced to suspicious transactions (and the related obligations under the law (e.g. filing STRs), money laundering and terrorism financing. We then consider how compliance programs can be used and designed to detect and prevent fraudulent activities from taking place.

Week 10: International Obligations under the UN Act and ensuring compliance with Export Controls

In this seminar, we examine the obligations created by United Nation Act and in particular the United Nation Security Council's ("UNSC") sanctions regime put in place to combat nuclear weapons programmes. In this context, we examine the relevant Singapore legislative provisions including the

Strategic Goods (Control Act), Regulation of Imports and Exports Act, UN DPRK Regulations as well as recently decided decisions by the local courts. We also consider the unilateral sanctions such as those imposed by the US (e.g. OFAC sanctions) and how these sanctions have an impact on entities outside of the US.

We study the interplay between these sanctions obligations and business risks. We review the typologies used to circumvent sanctions obligations (e.g. dual use goods, ship-to-ship transfers, fraudulent documents), and discuss the use of 'KYC' controls (Know-Your-Client).

Week 11: Engendering a Culture of Compliance

In this seminar, students will examine the inability of established internal control processes, built around technical systems and matrices, to adequately influence the control environment. We study the importance of building a culture of compliance through the use measures to affect the control consciousness of executives, and evaluate how to measure organisational culture.

Week 12: Overcoming Compliance Challenges in an Increasing Complex Regulatory Landscape

The final seminar takes the form of a conversation between Mr. Jerome Robert, Chief Risk Officer, HSBC Global Private Banking and the course convenor on how corporations and lawyers can manage compliance challenges arising from operating in a complex regulatory landscape. We discuss the use of risk based assessments, technology driven analytical tools, and the use of machine learning and artificial intelligence.

Reading List:

1. Geoffrey Miller, *The Law of Governance, Risk Management and Compliance* (2d edition 2017), (pages 1-14, 31-77, 121-146, 197-215, 215-228, 229-276, 339-342, 603-625, 645-667, 749-770)
2. Jenima Kelly, 'Who's going to be the next Wirecard' (26 June 2000)
3. Ethics Resource Centre, '*Peer Influence: How others Impact the Way We Behave.*'
4. Ethics & Compliance Association, '*Understanding Ethical Fading: Why Good People Go Astray*'
5. *PT Sandipala Arthaputra v STMICROELECTRONICS ASIA PACIFIC PTE LTD & ORS* [2018] SGCA 17
6. *Abdul Ghani bin Tahir v PP* [2017] SGHC 125
7. The Economist, 'Daft on Graft' (9 May 2019)
8. The Economist, 'The Rise of the No Men: The past decade has brought a compliance boom in banking.' (2 May 2019)
9. Keppel Offshore & Marine Ltd's Deferred Prosecution Agreement, and Plea Agreement <https://www.justice.gov/opa/pr/keppel-offshore-marine-ltd-and-us-based-subsi-dary-agree-pay-422-million-global-penalties>
10. Criminal Procedure Code (sections 149A-J)
11. FCPA statute [sections 78m, 78dd1-3]
12. DOJ FCPA Resource Guide (2nd Edition) <https://www.justice.gov/criminal-fraud/fcpa-resource-guide>
13. WSJ (2020), New U.K. Code Calls for Stronger Role for Internal Auditors
14. Kenny Foo, 'Money Laundering offences under the CDSA' (2017) 29 SAclJ 163
15. Money-Changing and Remittance Businesses Act, Press Release from MAS
16. WSJ (4 March 2020), Former Risk Officer at U.S. Bank Fined for Weak Anti-Money Laundering Oversight
17. FT (2020), 'Wirecard – What KPMG's Report Found'
18. *Chinpo Shipping Co v PP* [2017] SGHC 108
19. *PP v Ng Kheng Wah, T Specialist Int & ORS* [2019] SGDC 249 (and the Statement of Facts)
20. Nick Blenkey, 'OFAC adds Singapore shipping company to sanctions list' 24 July 2015
21. Richard Barrett: Building A Winning Organisational Culture

22. WSJ, How Compliance Programs Can Create a Better Business Culture (22 Jan 2020)
23. Forbes, 17 Sept 2019, 'Establishing A Global Culture Of Compliance'
24. V Jesudevan, *'Rethinking Compliance Procedures to Combat Insider Trading at Broker Dealer Firms,*
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3021506

Supplementary Reading

1. 'COSO to Issue Guidance on Blockchain'
FT (26 June 2020),
2. US v Siemens Aktiengesellschaft (Plea Offer)
3. News Release by Rolls-Royce, 'Rolls-Royce Completes Agreement with Investigation Authorities' (17 Jan 2017)
4. US v Rolls-Royce (DPA)
5. Corporate Governance: The New Paradigm (9 Jan 2017), Wachtell, Lipton, Rosen & Katz
6. 'Coping with the rising regulatory bars for financial crime compliance'.
7. U.S. DOJ Criminal Division: Evaluation of Corporate Compliance Programs
8. Matthew E Fischbein, The National Law Journal, 'Yates Memo Could Bring Balance to Prosecutions' (2 Nov 2015)
9. Jonathan Schmidt, Kevin Daly and Lauren Modelski, 'DPAs and Plea Agreements: The Tradeoffs' (Jan 5 2015)
10. The American Prosperity Project: A Nonpartisan Framework for Long-Term Investment (Dec 2016)
11. Richard Barrett, The Values-Driven Organization: A Whole System Approach To Cultural Transformation (2006)