



How can a company benefit from a third-party assessment of its Ethics and Compliance Program?

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What is a third-party assessment?

A third-party assessment is an independent evaluation of a business entity or professional practice conducted by an experienced ethics and compliance professional. Its purpose is to provide an unbiased evaluation of company operations, assess its ethics and compliance policies and anti-corruption controls, and its overall ethical culture. Such an evaluation can help a forward-thinking company identify potential problem areas and improve its ability to manage the risk of ethical violations. Companies have found great value in using such highly specialized outside consultants because the assessments are focused, benchmark the company's programs against industry standards, and are not influenced by internal politics.

Why would a company open itself up to an outsider?

Usually a third-party ethics and compliance assessment is performed under the attorney/client privilege. This allows the company to obtain an objective evaluation of processes or controls that may not be as strong or as effective as the company believes. The outside perspective removes the biases and subjectivity that we all bring to our own work and office environment. We have found that when companies conduct self-assessments, their findings are often inaccurate or incomplete because staff are frequently uncomfortable about questioning the policies and practices of their employer. Yet, that information can be crucial in understanding how effective an ethics and compliance program actually is in driving company behavior. Having such an evaluation from a credible, independent third party can be beneficial down the road whenever a government regulator or law enforcement is assessing the company's due diligence in preventing employee misconduct that may occur. In such instances, the assessment would identify whether the company's ethics and compliance activities address applicable guidance from the [Organization for Economic Development and Cooperation \(OECD\)](#), the [UK Serious Fraud Office \(SFO\)](#), the US Federal Sentencing Guidelines ([FSG](#)), or other countries' specific statutory guidance.

What does a third-party assessment entail?

Assessments can vary greatly depending on the needs of the company. Typically, an assessment first looks at the company's written ethics and compliance policies and procedures to determine whether they are comprehensive and comply with government regulations and best practice standards. Beyond that, the assessment can evaluate how those policies and procedures are actually implemented and whether they are genuinely effective. The assessment can also include a deeper dive into the ethical culture of the company and identify any weaknesses in the company's ethics and compliance infrastructure. This process typically requires input from senior leadership, mid-level management, and working level staff. It can also involve discussions with other stakeholders such as Boards of Directors, government regulators, and customers.

What are the benefits that companies gain from using third-party assessments?

The principal benefit of a third-party assessment is that it avoids the biases and challenges that can hinder an objective evaluation of a company's ethics and compliance culture. Too often, companies develop ethics and compliance programs in something of a vacuum, and then impose these programs on their staff with little or no insight into whether the programs adequately address the specific ethical and compliance challenges that may exist within the company. A neutral, objective assessment will test the company's programs, identify its strengths and weaknesses and help the company enhance the effectiveness of those programs.

How does a third-party assessment differ from an Internal Audit or internal company-wide review?

Internal audits are generally intended to address specific programs, controls or processes, test their effectiveness and recommend improvements. In our experience, internal audits do not generally attempt a comprehensive review of a company's overall compliance infrastructure or ethical culture. When a company does undertake such a comprehensive review, it is usually the company's compliance officer who is assigned that task. We are aware that compliance officers are generally underfunded and overtasked. Asking them to take on such an in-depth review in addition to the daily requirements of training staff, investigating/resolving compliance and ethics-related issues and the overall program requirements, can put a significant strain on their capacity. Further, it is challenging to ask the officer responsible for implementing the program to evaluate their own effectiveness or success.

What are typically the weakest elements of a compliance program in the companies you have seen?

Although the importance of ethics and compliance and anti-corruption programs has expanded, we have seen companies allocate very limited resources to these activities. Those tasked with the responsibilities of implementing and maintaining such programs face great challenges of not having

sufficient staffing or funding to execute their mandate. That often speaks to the level of leadership commitment to compliance and anti-corruption programs.

Beyond that, multi-national companies often face significant challenges regarding the connectivity and accountability of satellite offices and factories. Another area where companies can often improve is in exercising due diligence over the company's vendors, subcontractors, and suppliers. This is an area that is least within the company's control, yet the actions of these third-parties represent one of the greatest ethical risks to the company. For example, the activities of third-party agents are often the source of Foreign Corrupt Practices Act and UK Bribery Act violations, and subcontractor procurement violations represent the most frequent source of procurement fraud in federal contracts.

You described one of the services that you provide is independent monitoring. How does that compare to third-party assessment services?

As a monitor, the oversight we provide is fully dictated by the language of the relevant government agreement. For example, a Deferred Prosecution Agreement ("DPA") or settlement agreement that requires an independent monitor to oversee compliance with the agreement is usually very targeted on specific subject areas or provisions of an agreement. Sometimes, the monitor is asked to conduct a comprehensive assessment of a company's ethical posture. Over the fourteen years [Affiliated Monitors](#) has been in business, there have been a number of instances in which the government agency asks the monitor to more closely examine the compliance program or ethical culture of a company. In those situations, the evaluation work performed usually mirrors the type of proactive review that we would conduct during a third-party assessment

In either instance, the company benefits because the monitor or evaluator will undertake an independent review that the company does not have the capacity to conduct on its own. For companies who are not the subject of an investigation or government action, the investment in an independent third-party assessment can, in the long term, be the greatest investment the company can make.

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A practicing attorney for 35 years, Mr. DiCianni started at the Commonwealth of Massachusetts Attorney General's office. In private practice, he represented clients before regulatory agencies on licensing matters, which often included ethics and compliance issues. For 13 years, Mr. DiCianni served as an instructor in ethics in a graduate degree program. He founded [Affiliated Monitors](#) in 2004 to offer remedial services for the types of companies and professionals that he had previously represented for many years. In many instances, Vincent believes that the disciplinary actions they faced could have been prevented with effective ethics and compliance programs and controls.

The ETHIC Intelligence Expert's Corner is an opportunity for specialists in the field of anti-corruption compliance to express their views on approaches to and developments in the sector. The views expressed in these articles are those of the authors.
