

Don't Get Caught with your Knickers Down:
Strategies for Maintaining a Compliant Share Plan

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What We Will Cover

- Five good reasons to care about compliance
- Best practices for a compliant plan (and how to maintain compliance)
- How to undertake a full compliance review
- What to do if there is a problem
- Case studies throughout



Five Good Reasons to Care about Compliance

Reason #1: Meet local laws and regulations in a cost-efficient and systematic way

Reason #2: Government audits and large fines

Reason #3: Corporate governance concerns

Reason #4: Avoid negative corporate publicity

Reason #5: Facilitate employee compliance



Best Practices – Clearly Define Roles and Responsibilities in Ensuring a Compliant Plan

1. Centralized “ownership” at corporate HQ vs. delegation to locations.
 - Corporate has big picture of plan operation at home and overseas
 - Quality control
 - Many issues require interface (corporate legal, finance, treasury)
 - Corporate can select and work with a core team of external global equity experts; local HR may use local law firm that may or may not have expertise with foreign equity plan issues
 - Oversight of development, documentation and performance of compliance procedures provides process and baseline for monitoring
 - Corporate typically has more resources than local HR
 - Local HR often has strained resources or other constraints, e.g., pressure from country head not to withhold taxes




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Best Practices – Clearly Define Roles and Responsibilities in Ensuring a Compliant Plan

2. Establish team at corporate HQ for ongoing collaboration, i.e., tax, finance, treasury
3. Assign responsibility and accountability (typically head of country HR) and communicate this as a collaborative effort



Story to Remember #1: US multinational with operations in 60 countries delegated responsibility for local compliance to its largest operation in Japan – was assured for years by Japan that it was in compliance with Japanese laws. However, Japan did not aggregate with other plans and was not in compliance.



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Best Practices – Document and then Review Processes Regularly

1. Review and document tax and regulatory requirements specific to your plan(s) provisions, administration and operation, corporate structure, etc.
 - Generic reports with customized documentation
 - Customized tax and legal reports
 - Compliance manuals
 - Consider online or hard copy
 - Access by team at corporate HQ and local HR

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Best Practices – Document and then Review Processes Regularly

2. Begin at home: establish procedures for HR input on, updating plan document and grant materials.
 - Example: impact on award agreements Denmark, Italy
 - Example: Impact on agreements, etc., due to change in plan design, e.g., France qualified plan

Many companies have revised/are revising plan document and award agreements to reflect changes in plan design. Good opportunity to establish new and improved procedures



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Best Practices – Document and then Review Processes Regularly

3. Monitor new developments.
 - **Get up-to-date information and transfer knowledge immediately**
 - **Do a mini-due diligence on a regular basis:** perform a **compliance review** of your share plans where implemented
 - **Do not** rely on assurances of overseas locations

Global Tax and Legal Compliance



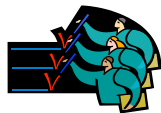
- Tax
- Securities laws
- Exchange controls
- Labor laws
- Data privacy



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Best Practices – Document and then Review Processes Regularly

4. Revise design, administrative and operational procedures, documentation as necessary or desirable, get updated headcounts from local HR, administrator.
 - Generic reports
 - Updated customized reports, manuals
 - Factor in impending corporate changes, e.g., merger, sale of business unit, change in plan design
 - Communicate the new development to local HR and discuss changes, document decision



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Best Practices – Document and then Review Processes Regularly

Story to Remember #2: Company audits plans for compliance. In compliance with French securities laws because fewer than the threshold at the time (less than 300 eligible employees). Acquires a business in France bringing employee population up to 250. Threshold then lowered to 100. New enrollment cycle for ESPP but no prospectus filing made. Plan out of compliance.



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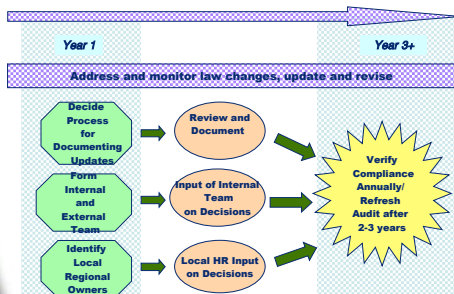
Best Practices – Document and then Review Processes Regularly

5. Verify that local HR is complying on ongoing basis with annual certification
6. "Refresh" compliance review periodically by updating original compliance questionnaires and redistributing



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Best Practices – A Compliance Timeline



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Best Practices - Maintain Compliance

Change is constant

- Tax and legal requirements change
- Plan design and plan terms change
- Plan procedures change, e.g., implementation of recharge program
- Plan demographics change, e.g., headcounts, location of expatriates, TCNs

"Health Check"
Undertake a "Full" Compliance
Due Diligence Every X Years



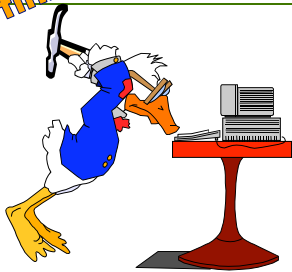
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Finally, I am done




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**But,
I just finished it !**




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Undertaking a Compliance Review

Best Practice 

1. **Form a team** (include HR, tax, legal, accounting, finance and external advisors)
 - Appoint a project manager at corporate HQ
 - Identify regional and country "owners"
2. **Identify scope**
 - Which plans—all or one at a time?
 - Which countries—all at once? Tiered approach? Select countries?
 - How far back—"all open" years or snapshot approach
 - Which areas of compliance—all or highest risk, e.g., tax?

Pitfalls  **Danger!**

1. **Going it alone**, achieving compliance requires involvement of several functions and external experts
2. **Snapshot approach** could cause you to miss noncompliance
 - Law changes—what is compliant in one year not necessarily compliant in other years
 - If noncompliance found, may need to review prior years to complete process of voluntary disclosure

Undertaking a Compliance Review


Best Practices 

3. **Develop a project plan and timeline**
4. **Evaluate and identify data sources**


Pitfalls  **Danger!**

3. **Data gathering**. Build in adequate time for data gathering (typically several months if many countries) and resources for chasing down local HR
4. **Availability and quality of data**
 - Companies that have grown by acquisition or have had large turnover in HR
 - Separate databases or company-wide database
 - Country heads, others who have not reported income from plan on their individual income tax returns
 - Quality of data maintained by third party administrators

Undertaking a Compliance Review


Best Practices 

5. **Address challenges posed by multiple lines of business**
6. **Clearly communicate** that objective is to correct noncompliance, not to find fault
7. **Corporate level fact-finding**: Take inventory of plan documentation, procedures (e.g., charge backs to local companies), previous filings, e.g., securities filings, administrative procedures

Pitfalls  **Danger!**


5. **Data needed from multiple sources**
 - Compliance status can vary by line of business
 - Extends the time line
6. **Local business leaders, local HR may be defensive or may resent intrusion of corporate HQ**
7. **Failure to coordinate with legal, finance, etc.**
 - Change in administrators—availability of data
 - Corporate HQ turnover limits historical knowledge

Undertaking a Compliance Review



Best Practices

8. **Develop questionnaire** for locations to complete
9. **Review and analyze data**, verify responses where necessary, ask follow up questions
10. **Evaluate alternatives** for correcting past noncompliance and prospective compliance
11. **Implement alternatives and document**




Pitfalls

8. **Consider language speaking ability** of country head/HR
9. **Questions should be specific**, give examples, ask for specific responses, e.g., form numbers, names of agencies
10. **Follow up with locations** if responses indicate noncompliance or if too good to be true

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Problems - Government Audits

- Some countries have audit programs for employee share plans, e.g., the Netherlands
- Can result in fines in the millions of \$,£,€!
 - Example: UK fine in excess of £2 million in March 2005 for failure to withhold income tax on an unapproved scheme of US parent
- Facilitated by international tax cooperation treaties
- Voluntary disclosure can result in reduced fines and penalties
 - Example: France



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Problems - Government Audits

Example of Tax and Penalties for Tax Non-Compliance in Germany

Approach to Resolving Noncompliance	Estimated tax and penalties for failure to withhold and report income taxes
Audited before voluntary disclosure	€10 million + penalties and interest expected to be in the millions
Tax amnesty (since expired)	€4.8 million (but company must pay tax and penalties up front)
Self-incrimination	€10 million plus interest
Voluntary reporting	€4 million less taxes reported by employees on their returns. Company pays only net amount owed

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Questions?

Thank you for your participation



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