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Compliance and ethics programmes and the Federal Sentencing Guidelines for Organizations in the United States: implications for international HRD specialists

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Organizations doing business domestically and internationally are under increasing scrutiny by federal regulatory agencies in the United States for compliance with statutory, regulatory, and ethical business practices. This is especially evident for banking and financial services firms, pharmaceutical and health care institutions, and businesses that harm the environment or commit fraudulent business crimes. Organizations accused of criminal activity and unethical business practices are prosecuted by the United States Department of Justice (DOJ). The Federal Sentencing Guidelines for Organizations provide incentives for organizations to mitigate penalties by self-reporting criminal activity to the DOJ, cooperating with investigators, not obstructing justice, and by developing and implementing compliance and ethics programme prior to disclosing criminal activity. The purpose of this review is to describe the structure of these guidelines for human resource development specialists in US domestic and international contexts. Practical problems, challenges, and suggestions for improvement are offered.

Keywords: ethics and compliance programmes; corporate governance; federal sentencing guidelines; international HRD; organizational criminal activity

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Introduction

Consider the fictional plight of Fiona Blackmoor, vice president for communication and organization development for a large European financial services company with subsidiaries worldwide. She has just returned from the United States where she and her team have recently implemented the latest update of the company's leadership and ethics programme for all its subsidiaries in the United States. Her weekend begins with an email from Sir Harry Steele which reads in part:

> I have been informed that investigators from the US Department of Justice are requesting records regarding our compliance and ethics program in the New York office along with financial transactions going back seven years! It appears that one of our high level financial officers went rogue and embezzled more than $30-million from our clients. We will comply on this end with the financial information, but we need an accounting of your compliance and ethics programs by Monday first thing!

Sir Harry is the senior finance officer for the companies' international business interests. Fiona is reeling from the email and its implications. She had hoped this day would never

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come on her watch. She wonders if she and her department are out of balance with the globalized business interests of her employer. Given these circumstances, she wonders if she is ethically 'fit to practice' as a HRD specialist (Keep 2007).

The globalization of world economies comes with a price (Short and Callahan 2005). Businesses are challenged to conform to aspirational codes of ethics (Hatcher and Aragon 2000) while satisfying the expectations of shareholders and employers who are operating in complex international markets while using risky investment and financial strategies (Heineman 2008). It is a given that HRD specialists are expected to contribute to the development and implementation of compliance and ethics programmes for their organizations. It is also likely that HRD specialists in globalized business environments do not fully understand the practical implications of laws and regulations governing ethical business conduct from one country to the next (Russ-Eft 2004; Sample 2007). The issue becomes more complicated if the business is accused of criminal activity and serious unethical conduct. Just what is the scope and depth expected of HRD specialists in these contexts? How much responsibility should they share with human resource managers and compliance professionals?

The purpose of this paper is to review the importance for designing, developing, and evaluating compliance and ethics programmes for organizations that meet the requirements specified by the Federal Sentencing Guidelines for Organizations (FSGO). These guidelines specify seven programme elements designed to mitigate financial penalties and other court-ordered sanctions for organizations that are convicted or plead guilty to a serious crime in the United States. Organizations subject to these guidelines include domestic and international businesses that conduct business in the United States. The review includes successes and continuing challenges with the FSGO as they apply to the practice of HRD.

A review of major international corporate crimes, financial scandals, and mega fines

During the 1990s, financial scandals involving criminal acts and unethical conduct in the United States plagued the corporate business landscape. Examples include Enron, Adelphia, WorldCom, HealthPlan Southeast, and Tyco International (Sample 2007; Petrick and Scherer 2003). Numerous 'mega fines' have been imposed against international businesses conducting business in the United States (Kaplan 2010).

British Petroleum pleaded guilty in 2013 to 11 counts of felony manslaughter, felony obstruction of Congress, and violations of the Clean Water Act that occurred in the mammoth oil spill in the Gulf of Mexico in 2010 (U.S. v. BP Exploration and Production, Inc., 2013).

Japanese banking giant Daiwa Bank was fined $340 million in 1996, when it discovered that a trader had lost over $1.1 billion in unauthorized sale of securities during an 11-year period. The trader secretly sold government bonds held in custody by the bank to cover pension fund accounts (Copeland 2000). More recently, two international banking firms have paid mega fines for criminal activities conducted in the United States. The US subsidiary of British bank HSBC agreed to pay the United States $1.92 billion in 2012. HSBC admitted to advising drug traffickers, as well as sanctioned countries that included Cuba, Iran, Libya, Myanmar, and Sudan, on how to circumvent laws of the United States (Protess and Silver-Greenburg 2012). Credit Suisse pleaded guilty in 2014 to illegally assisting US clients in the preparation of their tax returns. The fine totalled $2.6 billion (DOJ, 2014). In 2014, French bank BNP Paribas agreed to settle a criminal complaint brought by the United States Department of Justice (DOJ). Paribas admitted to

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creating a complex monetary scheme to avoid US-imposed economic sanctions against Sudan, Cuba, and Iran. The settlement in the amount of $8.83 billion is the largest criminal fine enforced against a foreign bank so far (DOJ, 2014).

Swiss and German pharmaceutical giants Hoffman-La Roche and BASF agreed to pay $500 million in fines in 1999 for price-fixing the cost of vitamins marketed to the United States (DOJ, 1999). A recent study conducted by the Public Citizen's Health Research Group of the pharmaceutical industry concluded that four companies, GlaxoSmithKline, Pfizer, Elli Lilly, and Schering-Plough, accounted for more than 53% or $10.5 of the $19.8 billion in financial penalties imposed for fraudulent claims from 1991 to 2010 (Almashat, Preston, Waterman, and Wolfe, 2010). British drug maker GlaxoSmithKline pleaded guilty in 2012 to three counts of criminal misdemeanour and other civil liabilities relating to prescription drugs, and agreed to pay a total of three billion dollars in criminal fines and two billion dollars in civil penalties. The payment is the largest fraud settlement in US history and the largest fine ever paid by a drug company (Mercola 2012).

> While the defense industry used to be the biggest defrauder of the federal government under the False Claims Act ... The pharmaceutical industry now tops not only the defense industry, but all other industries in the total amount of fraud payments for actions against the federal government. (Almashat, et al. 2010, 2)

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Federal Sentencing Guidelines for Organizations

Organizations accused of criminal activity and unethical business practices in the United States are prosecuted by the United States DOJ. These organizations are sentenced under the FSGO if convicted of a serious federal crime (Steer 2001; Kaplan and Murphy 2011-2012). The United States Sentencing Commission adopted the FSGO in 1991 (USSC 2012a, §8A1.2). The FSGO requires that organizations develop 'effective compliance and ethics programs' along with other requirements. For the sake of brevity, USSC (2012a) citations refer to United States Sentencing Commission. These guidelines are designed to modify the conduct of organizations by seriously increasing the negative cost of unethical behaviour and criminal activities (USSC 2012a, §8A1.1). According to Biegelman and Bartow (2006, 55–56),

> The guidelines were an attempt to lessen the harshest aspects of federal sentencing for crimes if an organization could demonstrate that it instituted an appropriate compliance program before being charged. There was a substantial reduction in fines for corporations that have vigorous fraud prevention and detection programs in place prior to the offense, and that self-report the crimes.

These guidelines are highly encouraged, yet for the most part are voluntary on behalf of the organization. The one current exception is the Sarbanes–Oxley Act of 2002 (SOX) that mandates covered organizations must design and implement a compliance and ethics programme that includes training of employees. This 'carrot and stick' philosophy of incentives and consequences undergirds the FSGO (Steer 2001; Weber and Wasieleski 2013). Organizations accused of a serious criminal act that do not accept the programmatic conditions of the FSGO are prosecuted in US federal court.

The FSGO define 'organizations' as corporations, partnerships, associations, joint-stock companies, governmental entities, as well as unincorporated and non-profit organizations. All organizations regardless of size convicted of a federal felony or a Class A misdemeanour are subject to sentencing under the FSGO (USSC 2012a, §8A1.1). Typical

offenses include environmental protection (water, air, and toxic pollutants, wildlife), fraud, money laundering, antitrust violations, public corruption, and food, drug, and agricultural violations (Desio 2004; Kaplan and Murphy 2011-2012).

Organizations sentenced under the FSGO are expected to conform to the following four principles (USSC 2012a, introductory comments to §8A1):

(1) the organization must remedy any harm caused, not as punishment, but as a 'means for making the victim whole for the harm caused;
(2) an organization operated primarily for 'criminal purposes' shall be fined 'high enough to divest the organization of all its assets;
(3) probation will be used to ensure compliance with sanctions or when the likelihood of future criminal activity is diminished; and
(4) culpability of the non-criminal organization and the seriousness of the offense are used to determine sentencing.

Although organizations cannot be sent to prison, they can be ordered to pay restitution for the full amount of the victim's loss, pay a fine, and comply with a remedial order in those circumstances where an order of restitution is insufficient (USSC 2012a, §8A1.1–4). The ultimate severity of the sentence may be mitigated by (1) the existence of an effective compliance and ethics programme, and (2) self-reporting of criminal activity, (3) cooperation with investigating authorities, and/or (4) acceptance of responsibility for criminal activities (USSC 2012a, §8B2.1).

Having an effective compliance and ethics programme may mitigate an organization's culpability score by a multiplier of three at the time of sentencing and may increase the likelihood of probation (USSC 2012a, §8C2.5). According to Hasnas (2006, 46), the importance of the culpability score cannot be emphasized enough. An organization's culpability score 'can reduce the organization's fine 95% or increase it by 400%.'

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Elements of an effective compliance programme

The seven necessary elements for an effective compliance and ethics programme for organizations begin with exercising due diligence to detect criminal misconduct and to 'promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.' To this end, organizations shall:

(1) establish standards and procedures to detect criminal misconduct;
(2) ensure a culture of compliance and oversight by high-level board members and personnel to ensure legal compliance;
(3) provide reasonable efforts to prohibit illegal and unethical activities with background checks prior to delegating authority;
(4) provide training and communication on compliance and ethics policies;
(5) implement procedures to monitor and evaluate employee and organizational compliance;
(6) provide incentives to comply and progressive discipline to consistent enforcement of standards and procedures; and
(7) provide ongoing assessment of safeguards and prevention measures (USSC 2012a, §8B2.1; Sample 2007, 199–200).

There are several provisos in the language of the FSGO that help further define the scope of what constitutes an effective compliance programme. 'The failure to prevent or detect the instant offense does not necessarily mean that the program is not generally effective in preventing and detecting criminal conduct' (USSC 2012a, §8B2.1, 478). The emphasis is on prevention and detection of unethical and criminal conduct, the self-reporting of criminal activity by an organization, and cooperation with investigative authorities, including attorneys for the United States DOJ. The compliance programme must have been in place prior to any conviction of an organization before a judge will consider the adequacy of a compliance programme as a mitigating factor in the sentencing process.

Impact of the FSGO

The 187 organizations prosecuted in 2012 either pleaded guilty (174 or 93.5%) or were convicted after a trial (12 or 6.5%). Environmental pollution cases constituted 58 (31%) of the 187 cases, followed by fraud 29 (13.9%), food, drug, agriculture, and consumer products 25 (13.4%), import and export 12 (6.4%), and public corruption 5 (2.7%). The federal courts also ordered restitution averaging $447,440 in 40 cases (21.40%), and imposed fines averaging $11,207,081 in 144 cases (77%) (USSC 2012b).

International organizations doing business in the United States should understand the consequences of a criminal conviction and the importance of effective compliance and ethics programmes. Indeed,

> the criminal conviction of a company doing business with the government may have consequences more severe than the penalties imposed under the guidelines. In general, companies believed to have engaged in serious criminal conduct are not considered to be suitable to contract with the government for goods or services. (Brown 2001, 13)

The FSGO is credited with helping to create an entirely new job description in the United States, that of the ethics and compliance officer. These positions, which had limited existence prior to 1991, are responsible for the development, implementation, and monitoring of an organization's ethics and compliance programme.

The FSGO has had an impact internationally as well. The Organization for Economic Co-Operation and Development (OECD) Working Group on Bribery in International Business Transactions developed a 'Good Practice Guidance' for anti-bribery programmes in 2009 that overlap with the FSGO (Organization for Economic Co-Operation and Development OECD, 2009). In South Africa, the King II Report on Corporate Governance (Institute of Directors in Southern Africa 2002) incorporated the key provisions of the FSGO. According to Bussman (2007), the FSGO and SOX are models for a worldwide movement for whistleblowing systems, crime risk management systems, and business ethics.

Challenges and improvements

The advisory group that reviewed the first 20 years of service by the FSGO for the Ethics Resource Center (Harned and Swenson 2012, 70) concluded that the guidelines have 'successfully driven changes in organizational thinking so that the promotion of ethical behavior and the reduction of misconduct have become a core responsibility of businesses' senior leadership.' That being said, the study also identified several areas of necessary improvement before the FSGO can claim the complete trust and respect of its stakeholders – the public, the federal judiciary, and corporate leadership.

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What constitutes a creditworthy compliance and ethics programme?

According to the Ethics Resource Center, only 5 out of more than 3400 organizations convicted and sentenced under the FSGO since 1991 have received credit for their compliance and ethics programmes (Harned and Swenson 2012). This is a stunning revelation, given that organizations are paying attention to the requirement for the development and implementation of such programmes which are costly to design, implement, monitor, and evaluate.

Judges and prosecutors do not have adequate education or advanced training in the principles and practices associated with the design, development, implementation, and evaluation of an ethics compliance programme (Sample 2007). They are left with the likelihood of concluding 'we know a good compliance and ethics programme when we see one.'

We might be reminded at this juncture that the Equal Employment Opportunity Commission (EEOC) requires the use of the following external sources for validating selection decisions: the Principles for the Validation and Use of Personnel Selection Procedure (Society for Industrial and Organizational Psychology 2003) and Standards for Educational and Psychological Testing (American Education Research Association 1999). Would it not be in the best interests of all involved in the sentencing of organizations if an external authoritative frame of reference were required for determining the effectiveness of a compliance and ethics programme? One such resource is The Program Evaluation Standards (Sanders 1994) which are also approved by the American National Standards Institute (ANSI) (http://www.ansi.org/). Another set of references for evaluating organizational programmes is available from the International Board of Standards for Training, Performance and Instruction (IBSTPI) (Russ-Eft et al. 2013a, 2013b).

Finally, a legitimate use of qualified expert witnesses would be to assist the federal courts in determining the effectiveness of compliance and ethics programmes. Expert witnesses are used in several states in Occupational Safety and Health Act (OSHA) claims, either to defend a personal injury claim or to appeal an OSHA citation. In those instances, expert witnesses are used to prove that safety programmes are effective in practice (Clark 2006). The Federal Sentencing Commission could adopt a similar process in which qualified expert witnesses are engaged by the federal courts to opine the effectiveness of an organization's compliance and ethics programme.

Unclear and confusing expectations

As many as 25 federal agencies enforce laws and regulations governing the legal and ethical conduct of organizations. According to Harned and Swenson (2012, 54), 'What sorts of policies and practices have these agencies and divisions adopted toward compliance and ethics programmes, and do these policies and practice facilitate or frustrate efforts by the business community to adopt them?'

Consider the dilemma of senior leadership and corporate board members in a hypothetical internationally based business with a subsidiary located in New York. Table 1 lists federal and state agencies that have statutory and regulatory requirements regarding compliance and ethics programmes.

These regulatory agencies profess to offer credit for compliance and ethics programmes, yet each may have differing standards, thus requiring the organization to comply with more than one set of standards. According to Higgins, Roach, Swenson,

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Table 1. State and federal regulatory agencies that have jurisdiction over a hypothetical New York business.

- Federal Sentencing Guidelines for Organizations (FSGO);
- New York Stock Exchange standard listing requirements;
- Securities and Exchange Commission (SEC) regulations that highly recommend ethics training;
- Sarbanes–Oxley Act (SOX) requiring internal controls and mandatory compliance and ethics training programme;
- NASDAQ Corporate Governance requirements;
- Bureau of Information and Security of the Department of Commerce Export Management and Compliance programme guidelines;
- Federal Acquisition Regulation (FAR), a joint agreement by the US Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) for purchasing goods and services;
- Environmental Protection Act (EPA) incentives for self-policing by organizations;
- Occupational Safety and Health Act (OSHA) voluntary safety and health programme management guidelines; and
- any additional guidelines issued by countries doing business with the organization (e.g., the OECD Working Group on Bribery in International Business Transactions Good Practices Act, UK Bribery Act, EU Green Paper Framework on Corporate Governances).

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and Wellman (2013, 20), this lack of transparency 'breeds cynicism within companies [and] weakens the clout of those within companies pressing management to adopt best practice programs – not merely "adequate" ones.'

The increased use of deferred prosecution and non-prosecution agreements

The United States DOJ in recent years has increased its use of both deferred prosecution agreements (DPAs) and non-prosecution agreements (NPAs). The distinction between DPAs and NPAs is that a DPA is filed in a federal court along with a charging document (e.g., a criminal complaint) and requires judicial approval, whereas an NPA is a letter of agreement between the DOJ and the organization (Harned and Swinson 2012). The judicious use of DPAs or NPAs enables the DOJ to extend its prosecutorial authority to organizations that would otherwise not have been prosecuted because of a lack of evidence or other discretionary reasons. By agreeing to a DPA or NPA, the organizations 'almost always acknowledge wrongdoing, agree to cooperate with the government's investigation, pay a fine, agree to improve its compliance program, and agree to face prosecution if it fails to satisfy the terms of the agreement' (Breuer 2012).

Moving beyond the 'check the box' approach to compliance

The FSGO, in philosophy and practice, are best described as a rule or compliance-based approach to preventing ethical breeches by organizations (Schminke, Arnaud, and Kuenzi 2007; Hatcher and Aragon 2000). This is to be expected given that the process is steeped in language consistent with law enforcement and judicial proceedings.

Are there alternatives to ensuring ethical compliance and conformity to legal requirements by organizations? According to Collier and Esteban (2007, 25) 'Compliance

programs are likely to elicit conformity; values program are likely to elicit commitment.' Research by Weaver and Trevino (1999) concluded that value and integrity approaches resulted in more significant contributions, awareness of ethical dilemmas and issues, employee commitment by employees to ethical behaviour, the courage to deliver unpopular information, the seeking of ethical advice, and overall decrease in unethical behaviour in organizations. It is more likely that the two approaches are not mutually exclusive and could coexist in the same organization.

In their review of ethical business cultures, Ardichvili and Jondle (2009) commented that leadership has a key role in shaping the morality and ethical behaviour of employees. In this context, the fundamental purpose of senior leadership is to find a balance between the risk-taking of innovation and creativity, and with risk management of financial and operational discipline within the organization, that result in economic performance. These processes must be fused with integrity, which is a commitment to law, ethics, and values in the attainment of longer-term rewards for shareholders and other stakeholders (Treviño, Hartman, and Brown 2000).

It is important to understand that several functions within an organization own different pieces of the 'ethics' puzzle. These functions include senior management and the board of directors, risk management and compliance personnel, and human resource management and development specialists (Loescher 2006). The distribution of power among these functions is likely to be asymmetrical; senior management and the board have the power to negate or empower the influence of the other support functions. To ignore or diminish these support functions is to invite dysfunctional employee behaviour and corrupt organizational cultures (Ardichvili, Jondle, and Kowske 2012; Feldman 2007; Mackenzie, Garavan, and Carbery 2011).

Given the continuing glare of media coverage and legal sanctions against large banking, pharmaceutical, and petroleum-based businesses,

> HRD professionals will increasingly be expected to take a more preventative role in the development, implementation, and management of corporate social responsibility (CSR) activities; HRD specialists will have the responsibility to institutionalize these attitudes throughout the organization. (Mackenzie, Garavan, and Carbery 2011, 370)

Corporate learning and development programmes must necessarily be broadened to transform senior leaders through learning experiences that integrate high expectations for integrity with similar expectations for economic performance and managed risk-taking (Loescher 2006). Boards of directors must refocus the selection process when selecting or replacing the organization's highest senior managers. These are the executives who influence the mission, operation, and finances of the organization as they will require a broader set of skills that elevate the integrity-based governance to the same level as economic performance and risk calculation. Directors of boards may require a recalibration of their business values and expectations, if not outright habilitation, in terms of incorporating higher expectations for integrity into the culture and business model of the organization (Heineman 2008).

Implications for international HRD specialists

Fiona Blackmoor is representative of a highly placed HRD specialist who practises her craft in an international and high-stakes regulatory, risk, and compliance marketplace in which offshore legislative requirements impact the employer's business interests, practices, and profits. Planning, conducting, and evaluating programmes for employees in this type of business environment is further complicated by competing political and power

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needs (Caffarella 2002; Cervero and Wilson 2006), organizational and cultural diversity issues (Hofstede 1980; Moran, Abramson, and Moran 2014), and ad hoc temporary structures and relationships that defy accurate prediction and control in the programme development process (Leschinsky and Messner 2010). Finally, one must be prepared to interpret and accommodate the ethics of 'Learning the boss' way' when considering enterprise ownership and profit motives (Ng and Cervero 2005; Short and Callahan 2005).

Adult educators and HRD specialists have a plethora of programme development models to select from, most of which are process-oriented (Pennington and Green 1976). These models have a common theme that includes needs assessment, the development of learning objectives and associated instructional materials and media, and evaluation requirements. Unfortunately, the planning process may collapse when organizational context, subject matter, and technology experts fail to collaborate in the development of a programme of instruction for professionals.

Leschinsky and Messner (2010) report an analysis of the 'Switzerland Case' that involved the planning, development, and delivery of a SOX compliance training programme for financial professionals of a pharmaceutical business located in Switzerland (the primary stakeholder). The business operates in a highly competitive worldwide market that manufactures and distributes pharmaceuticals. The business is also one of the early adopters of the SOX in Europe. The business outsourced the development of a two-day train-the-trainer programme to a global audit firm which was also the subject matter expert on the requirements of the SOX (the second stakeholder). The company also secured the technology services of a software provider that would deliver the training programme and manage the compliance and reporting process mandated by SOX (the third stakeholder).

The case developers used Caffarella's (2002) interactive 12-step programme development model to analyse stakeholder interactions in the Switzerland Case.

> While the devotion of significant attention to each of these planning procedures may have provided the adult educator with an increased opportunity for program success, it is important to note that it is not uncommon for professional training programs to be planned, developed, and administered in an ad hoc basis. (Leschinsky and Messner 2010, 15)

In this instance, each of the three major stakeholder groups had vested power, interests, and influence that fashioned the content and delivery of the SOX compliance programme. The subject matter expert had control over the programme content, whereas the software provider was responsible for the final scripting and delivery of the train-the-trainer programme. The ultimate outcome for the business as an early adopter of SOX compliance requirements was to prevent criminal and ethical breaches in a world marketplace. The subject matter expert and software developer had future aspirations for generating new business ventures based on the success of the current project. These complicated relationships among and between the three stakeholders groups led Leschinsky and Messner (2010) to construct an analysis of stakeholder roles and influence in terms of perceived power and control (Cervero and Wilson 2006). Given the practical results of this analysis, the business, as the primary stakeholder, is in a better position to predict and control the development of the SOX training programme.

Yang (Yang and Cervero 2001) has developed a practical process to assess and select tactics that HRD specialists might use when confronting power and influence issues in any programme development context. The Power and Influence Tactics Scale (POINTS) describes and analyses seven distinct behaviours associated with negotiating power in

organizations: reasoning, consulting, appealing, networking, bargaining, pressuring, and counteracting (Yang 1999). The use of any one of the seven tactics is dependent upon (1) conflict among stakeholders and (2) the power base of the programme planner. For example, the tactics of reasoning and consulting are recommended if there are no serious conflicts of interest and the planner has no less power base than the individual or group in which he or she is negotiating. Not so if the planner's power base is limited by the situation; appealing or networking is likely the more prudent tactic. But what if the situation is not favourable at all to the planner (significant conflict of interests coupled with a limited power base)? Given those circumstances, pressuring, counteracting, and reasoning are more plausible.

The Switzerland Case also surfaced two additional problems that HRD specialists may encounter in international contexts – failure to account for diversity and cultural issues and political concerns associated with the SOX itself.

The ad hoc programme planning process utilized by the consultant/trainer in the Switzerland Case failed to consider the effects of age, race, gender, language, and social norms on the learning process. The train-the-trainer programme included 50 finance personnel from Australia, France, Germany, Italy, Japan, Spain, Switzerland, and the United States. Half the participants were female. The lead SOX trainer was a Caucasian female in her mid-20s who had a background in accounting. She was continually challenged by males regarding her competence and qualifications. Another complicating factor was the requirement that the consultant/trainer and participants were all required to speak English during the training programme (Leschinsky and Messner 2010).

The compliance requirements mandated by SOX proved to be controversial for several non-US workshop participates in the training programme. 'The international audience viewed the SOX legislation as addressing a problem fueled by factors in the United States that were not relevant to or caused by factors in the participants' home country' (Leschinsky and Messner 2010, 17). This is an example of a domestic political issue that requires countries doing business in the United States to conform their international business practices to US laws, policies, and regulations. The failure of the programme developers to consider the effects of diversity, culture, and politics related to offshore legal requirements led the case developers to develop a practical process for analysing these variables. Given the results of the analysis, the business is in a better position to predict and control these important contextual variables.

It is necessary but not sufficient for HRD specialists to act ethically in the assessment, design, development, implementation, and evaluation of their programmatic contribution to a business enterprise. They should be prepared to deviate from accepted programme development and instructional design models. The more stakeholders that are added to the development and design phase, the more likely that ad hoc elements will become a necessary and enduring part of the programme. HRD specialists are also well advised to understand the core business processes and legal obligations of their employer, especially if the business is globalized and focuses on pharmaceuticals, financial services and banking, petroleum industries, or one of the several defence industries. Every business unit has a two-fold responsibility: to act with integrity, and to assist the business in the reduction of unethical and criminal business practices.

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Summary and conclusions

Fiona Blackmoor likely does not realize the months of responding to demands from federal investigators in the United States for documented information regarding the business compliance and ethics programme. The same applies in triplicate to the board of directors of the business, their most senior-level managers and executives, and their compliance and financial auditors. It is not unusual for several years to pass before investigations and pre-trial discovery processes are completed, all of which may be accompanied by widespread international media coverage. All this is followed by settlement negotiations or a criminal trial in a United States federal district court.

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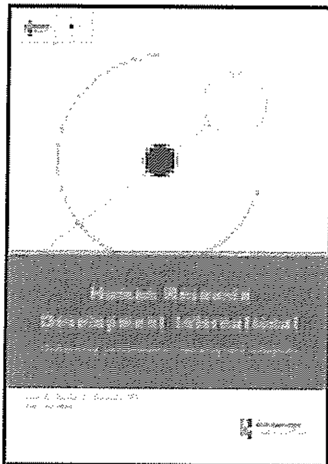

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Compliance and ethics programmes and the Federal Sentencing Guidelines for Organizations in the United States: implications for international HRD specialists

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