A view on the Dutch Corporate Sector
Compliance in Motion
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“Being prepared is critical and will give you confidence that compliance risks are being managed to acceptable levels across your company.”
Preface

Welcome to the first in an annual series of benchmarks designed to gauge the challenges faced by Compliance functions across all corporate sectors.

This report marks the launch of Deloitte’s ‘Compliance forum’ - a platform enabling you to engage with peers and socialize about insights into the trends and challenges companies (excluding the financial and public sector) and their Compliance functions face.

The ‘Compliance topic’ has made a steady progress to the top of the agendas of companies’ Boards of Management and Supervisory Boards in recent years. The increasingly changing and globalizing world, combined with new or strengthened laws, regulations and guidance, and with tougher industry standards, has created a complex compliance labyrinth.

The focus on acting ethically and the rapid rise in enforcement actions through existing regulations, has increased the fines imposed (both corporate and personal).

The Compliance function, though, is a fairly new concept to many corporate companies. Of those interviewed, about 39% had only set up their Compliance function within the last five years. Many Compliance functions are likely to rapidly mature to meet the ever changing regulatory environment.

This benchmark was performed by Walter Swinkels and Marijn van Daelen. Many people have contributed to its realization. We take this opportunity to express our special thanks for Karin de Jong, Marianne de Feijter, Floor Oosterwechel for their cooperation and for Laurent Claassen as supporting partner. Likewise, we extend our thanks to NYSE Euronext for their partnering in this benchmark.

We especially thank all of those who have participated in the benchmark. We hope you and your colleagues find this document thought provoking and useful.
Introduction

As companies operating in and from the Netherlands face a profusion of regulatory requirements many of them are now focused on organizing their compliance. This introduction will capture the signature features of compliance and why a Compliance function should be set up.

On the back of a rapidly changing and globalizing world and tougher market conditions, the Dutch corporate sector is challenged to stay in control of compliance.

This benchmark includes the different compliance aspects, such as organization, scope, processes and compliance reporting. Compliance is not limited to the organization’s internal organizational boundaries either - it covers reporting and communicating on this subject to outside parties as well. This being an emerging topic, it will be discussed in this benchmark too.

What do we mean by compliance?
Our benchmark defines “compliance” as conformity with regulatory, legislative, industry and internal requirements that apply to companies’ activities. Some examples:

- **Regulatory requirements**
  National and international laws such as competition, anti-bribery and corruption; regulations on the export of products, and prohibitions on commerce and trade with particular countries.

- **Industry standards**
  Leading practices in industries that are not regulatory requirements, such as sustainability requirements, attention for health, safety and environment.

- **Internal policies**
  Internal policies may involve measures implemented for external regulatory and legislative requirements such as those covering business conduct, risk appetite, training and regulatory reporting.

Compliance represents an often overlooked risk - until it hits on firms and shows how important it is to their reputation.
Establishment of a Compliance function
The introduction of a Compliance function can, to a large extent, be attributed to the institutional attention for regulatory compliance. Figure 1 below indicates an increased number of new Compliance functions between 2000 and 2004, when the Dutch construction fraud, and US and Dutch accounting scandals occurred. The second wave represents 2008 to the present and can be explained by market developments where compliance is a common practice due to developments in corporate governance requirements, public listing, acquisitions and mergers and/or compliance incidents.

Approximately 33% of the participants interviewed stated that a strong regulatory body and increasing legislation had contributed to the establishment of their Compliance function. This particularly applies to the Energy and Telecom sector.

The other main reason for establishing a Compliance function relates to incidents and enhanced enforcement actions, which brought to light the value and impact of compliance for an organization.

Lastly, attention in the market for good governance and the existence of a Compliance function as a common practice is mentioned by 17% of the participants interviewed as a reason to establish the Compliance function.

Budget growth
Regarding the expected compliance cost for coming years we asked if the interviewees expect a budget increase, decrease or a level budget. Of the companies interviewed, 57% expect their compliance budget to increase. The other companies interviewed do not expect a budget growth, as they state their compliance organization to be sufficiently mature in relation to management’s risk appetite.
The existence of a Compliance function is a fairly new concept to many corporate companies. The organization of compliance in the corporate sector shows a variety of flavours.

**Figure 2. Compliance Organization**

<table>
<thead>
<tr>
<th>Option</th>
<th>Percentage</th>
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<tr>
<td>Separate department</td>
<td>44%</td>
</tr>
<tr>
<td>Dedicated officer</td>
<td>15%</td>
</tr>
<tr>
<td>Combined function</td>
<td>3%</td>
</tr>
<tr>
<td>No function</td>
<td>38%</td>
</tr>
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**Separate Compliance department and dedicated officer**

The results of this benchmark show a separate Compliance department and a dedicated Compliance Officer to cover 53% of the companies involved. Currently, 38% of the companies interviewed have a separate Compliance department at the corporate level of their organization. This is most common in the Energy and Telecom sector due the regulatory oversight and industry specific regulations referred to earlier.

A listing at the NYSE Euronext or size does not seem to be a significant variable for the establishment of a separate department or appointing of a dedicated officer. As mentioned earlier, regulatory oversight, common market practice (also in relation to US linked companies) and specific compliance incidents are the reasons to set up a separate department or appoint a dedicated officer.

Of the respondents 15% mentioned to have a dedicated Compliance or Integrity Officer, but not a separate department. Such officer is usually part of the Legal function, but Internal Audit is mentioned as well.
Most of the companies interviewed have combined the compliance responsibility with another function. In 70% of the companies interviewed the Compliance function is combined with a Legal/Company secretary role. Other departments where compliance is positioned are Human Resources (HR), Finance and Internal Audit (see also figure 3).

In most of the researched companies the Compliance Officer collaborates with different departments, with Internal Audit and Legal being mentioned the most by far. An upcoming theme in the positioning of compliance is the rise of the Compliance Committees (or similar Committees). The reason is to collaborate, as “compliance” relates to various topics covered by different departments. The larger, listed corporations in scope of this benchmark have initiated an umbrella committee to ensure the identification of regulatory changes and industry standards is implemented, managed and monitored in a coordinated way, including the management of potential incidents. The Compliance Officer or Chief Legal usually chairs such a committee. Most commonly the participating departments are Legal, HR, Finance, Internal Audit, Investigations/Scurity.

Of those interviewed, 54% state their compliance responsibility is spread across the business - into divisions and business unit levels, rather than being considered an exclusive corporate responsibility and function. The majority of the Dutch based companies (71%) have not designated this responsibility to a function in their business structure. This is part of the responsibility of local management. Of the internationally operating companies, 60% have indeed designated compliance to a local function - varying from a fulltime designated function (33%) to a combined function (27%), mostly with HR, Legal or Finance. The remaining 40% of the companies does not have a designated local Compliance function: there it is the responsibility of local management.

Only 3% of the companies interviewed do not have a Compliance function. The background of this choice relates to the assumed compliance risk. Current compliance risks are assumed to be managed by existing corporate functions, such as Legal and Finance. However, compliance has now become a topic on the agenda of the board as part of the discussion on risk appetite.

“The evolution of Compliance functions has been reactionary as opposed to risk aligned and strategically focused on value creation for the business - much of this because of the turbulent regulatory environment.”
Scope of Compliance

Compliance may be a widespread concept, not all companies interpret it in the same way. This leads to differences in the scope companies assign to compliance, as described below.

**Focus**
The interviews indicate that the scope of compliance differs per company and is strongly connected to the reason for establishing a Compliance function. Yet, the key scope areas are anti-bribery and corruption (74%), integrity (74%), anti-fraud (69%) and anti-trust and competition (69%). These high scores relate directly to the emphasis Compliance functions place on adhering to companies' business principles and codes of conduct.

Some companies primarily focus on a specific compliance topic such as export control or anti-trust and competition, or specific industry regulations (such as the Telecommunications Act, the Electricity Act or the Gas Act). This from the perspective of good governance and behaviour as well as the result of compliance breaches. Likewise, specific legislation has sometimes been incorporated into a quality function from a historic perspective, which is why it is not within the scope of the Compliance department and/or officer.

Figure 4. Scope Compliance function/department
Conflicts of interest and insider trading are in scope too, but these topics are mainly covered by combined Compliance and Legal functions. Privacy is an upcoming topic, identified by 61% of the respondents interviewed. No surprise, considering the recent and future developments in the privacy law and regulations and the increased media attention for privacy infringements.

Privacy law and regulations have become stricter over recent years, both on a European and Dutch level and they are bound to change significantly in the near future. For instance, recently a strict “Cookie law” was implemented in the Dutch law. More importantly, the European Commission has drafted a proposal for a new EU Privacy Regulation which will present companies with significant challenges. It is no coincidence therefore that companies have increased their focus on privacy compliance, since a thorough preparation may prevent reputational damage and penalties.

Defining the boundaries of compliance is not an easy task. Yet the code of conduct is an umbrella for most of the organisations interviewed, suggesting an ongoing desire to “do the right thing”.
Compliance processes should at the same time support a company’s competitiveness and its compliance and ethical behaviour. This section analyses the current approaches to compliance and the use of compliance capabilities.

Embedding compliance
Embedding the various compliance topics from the previous section requires compliance processes - from risk assessment, translation of regulations into policies and procedures, training and creating awareness, assessments as to whether conduct aligns with procedures, screening, investigating possible compliance breaches, and monitoring.

Figure 5 shows that training and awareness to be the main common key compliance process within the companies interviewed. The other main compliance processes are translation of regulations into policies and procedures and investigation of possible compliance incidents.

Additionally we identified an advisory role for compliance in decision-making processes. This, too, will be discussed in this section.
Risk analysis
Risk assessment is generally accepted within the companies interviewed, as part of the requirements for annual reporting and/or as part of an organization’s risk management. Of the companies interviewed 77% perform a risk analysis on compliance related topics. This analysis varies from a strict focus on industry-specific regulatory requirements, while others predominantly focus on integrity-related risks. The people responsible for compliance, are most often not responsible for managing the coordination of the process.

Translating regulations into policies and procedures
As stated before, most Compliance functions are linked to a Legal function. So logically a large part of the Compliance Officers, 74%, is responsible for translating regulations into policies and procedures.

Assessing the implementation in relation to policies and procedures
Assessments as to whether conduct is in line with the policies and procedures in place are carried out at 44% of the companies interviewed. This concerns the mature Compliance functions, or companies with a mature risk management, Internal Control and Internal Audit function. Even though using an internal control framework may provide support in this respect, it is not yet common practice at the companies interviewed.

Training and awareness
Almost 91% of the companies have training programs to create awareness on compliance related topics. This is done either through face-to-face training or by e-learning. The more mature Compliance functions have an underlying training program, a mixture of face-to-face and periodic e-learning training, with completion rates being monitored. However, this is far from being common practice. This is not to say companies without robust training programmes fail to actively create awareness; this is also possible via newsletters, speeches, etc.

Screening business partners
Many companies do not, or only partly, conduct compliance and integrity-related due diligence as a standard procedure in relation to business partners. The interviews indicate screening of business partners to be mostly limited to financial strength and/or defined sustainability criteria as part of supply chain processes. The manufacturing and larger multinational companies in scope with strong ties to US and UK mostly have a more robust screening process in place, especially due to the stringent anti-bribery and corruption requirements regarding third parties. This topic will become more important as many companies will expand into emerging markets. These markets are perceived to have higher levels of public-sector corruption, based on the Transparency International’s Corruption Perception Index.

Investigation of potential incidents
Of the compliance responsibilities interviewed 69% coordinate and/or are involved in investigating potential compliance incidents. Such investigations are often performed together with Internal Audit and/or internal investigative functions. The results of and follow-up of the potential incidents investigated is discussed with other functions such as the above Internal Audit and investigative functions, but also with Legal and HR. Some firms, as referred to earlier, have formalized the coordination and discussion of these topics in an umbrella Compliance committee.

Advisory role in decision-making processes
We also asked the interviewees if compliance as a function has an advisory role in the decision making process, for example in the event of potential mergers, acquisitions, development of joint ventures, disposals. Of the interviewees, 21% stated to currently be involved in the decision-making process at board level. This involvement is related to screening business partners and other compliance-related due diligence activities. The interviewees are not involved in the initial identification and choice of the activities referred to before. The advisory role is not yet common practice, but we see this as an upcoming responsibility for the Compliance Officer or his equivalent. This increasing responsibility is in line with the increasing importance of senior management’s focus on compliance.
Internal and External reporting

Transparant internal reporting is an element of good governance and management an indication of the awareness and importance of a properly functioning compliance framework. Transparancy on compliance towards external stakeholders is an emerging topic.

**Internal Reporting**
The Board of Management and the Audit Committee receives their information on compliance via the Compliance department or officer in 97% of the companies interviewed.

The reporting chain from the Compliance department or officer to the Board of Management and Audit Committee does, however, vary: 63% of the respondents report directly to the Board of Management and Audit Committee, while 24% only reports to the Board of Management, which in turn reports to the Audit Committee, if necessary. Of the Compliance departments or officers interviewed, 10% reports to the General Counsel who, in turn, reports to the Board of Management and Audit Committee. Of the Compliance department or officers, 3% report to Internal Audit.

Figure 6. Internal reporting line Compliance officer
The reporting frequency varies per company. The larger companies and companies with a separate Compliance department or dedicated officer predominantly report on compliance-related risks every quarter or every six months (except when high impact incidents occur). Among the issues included these reports are the Letter of Representation that senior management should prepare every year or every six months and which includes questions regarding compliance and incidents. Others report specifically, when incidents occur.

Less than 15% of the companies interviewed elaborately reports on the progress of a compliance programs’ different elements and the effectiveness of these programs.

Management of incident reporting
The Dutch corporate governance code prescribes the possibility for employees to report alleged irregularities; this should also be visible on these companies’ intranet. Of the participating non-listed companies, 42% noted to have a whistleblower policy.

The larger multinational companies have various means to report incidents - from telephone (helpline), dedicated email or via the intranet. They also have a logging tool to ensure centralized access of all incidents. The challenge for these firms is to also categorize the different incidents as part of the required follow up and reporting.

The number of incidents varies from none in a year up to nearly a thousand. This is, obviously, proportional to the company’s size, the type of incident (broader than the scope of this benchmark), The AEX and US listed companies report most of the cases while the national firms report the least number. This is most likely due to their size, business, compliance approach, awareness, and/or robust registration systems.

External reporting
Companies also tend to issue compliance reports to the outside world. Of all the companies researched for this benchmark, 13% included the incidents reported at their organization in their 2011 annual report, 40% included this information in the corporate governance section, 40% in the sustainability section, and the other 20% in the Board of Management’s report.

The companies that include compliance in their external reporting operate in the Energy sector (43%), the Building and Construction sector (43%), and across the other industries (14%). The compliance topics included in the annual reports vary from fraud to sexual harassment and from integrity to security incidents. One organization reported the remediate and corrective actions set as a reaction to the incidents, along with the number of incidents received through the whistleblowers’ hotline.

Attitude Senior Management
All the companies interviewed indicated that their Board of Management and their Supervisory Board have compliance on their radar; most of the companies permanently have compliance topics on the agenda of the board meetings, either specifically or implicitly (“are there any red flags?”). Furthermore, in their annual reports a limited number of the large multinational AEX firms (13% of the companies interviewed) pay attention to the importance of compliance from a board perspective.
The environment nowadays is increasingly challenging and across a wide range of dimensions the focus on compliance has become more important. Regulators have tightened the supervision and the focus on compliance has increased.

The main - and frequently mentioned - regulators for the Dutch companies across all industries are the Dutch Competition Authority (Nederlandse Mededingingsautoriteit; NMa) and the Dutch Authority for the Financial Markets (Autoriteit Financieele Markten; AFM).

Communication with these regulators is not always facilitated by the Compliance Officer or his equivalent. In 39% of the companies interviewed the Compliance Officer maintains contact with the NMA. Of the Compliance Officers, 31% is responsible for the contact with the AFM. In other cases Public Affairs or Legal handle the communication.

The Independent Post and Telecommunications Authority (Onafhankelijke Post en Telecommunicatie Autoriteit; OPTA) is an important regulator for the Telecom and Post sector. The Compliance Officer is usually the person to coordinate communication with this regulator.

Various other Dutch regulators/oversight bodies were mentioned during the interview, such as the Dutch Central Bank (De Nederlandsche Bank; DNB), the Dutch Data Protection Authority (College ter Bescherming van Persoonsgegevens; CBP), the Dutch Tax Administration, but international regulators and oversight bodies, too, such as the European Commission (EC) and the US Security and Exchange Commission (SEC) and Department of Justice (DOJ).

Figure 7. Main external regulators from compliance perspective
The interviews indicate almost 72% of the companies not to frequently contact regulators. They state that contact only takes place ad hoc, in the event of specific questions or incidents. Another 28% of the companies interviewed mentioned to periodically be in contact with one or more regulators.

Regular contact with the regulators is not the standard. The interviews show a great variety in frequency and topics discussed. If companies were to have regular and constructive contacts with the regulators, this might contribute to the companies’ compliance systems. The exchange of information between companies and the regulators can be valuable in creating new insights and, hence, increase the knowledge about the organization of compliance. It also can contribute to building a trustworthy relationship.

**Consumer and Market Authority**

One of the changes in the regulatory area is that a new regulatory body is in the process of being formed: the Consumer and Market Authority (Autoriteit Consument en Markt; ACM). This new regulatory body will integrate the Independent Post and Telecommunications Authority, (OPTA), the Dutch Competition Authority (NMa) and the Consumer Authority (Consumentenautoriteit). The new regulator indicates to start a dialogue with the market players. This may impact the approach of this new authority towards companies.

Regulators increasingly encourage companies to have a robust compliance framework in place, to prevent any regulatory issues.
Concluding Remarks

The results of this benchmark provide insight into the status of corporate compliance within the corporate sector. This year’s benchmark is a starting point for further exploration and insight for years to come. This benchmark identifies a number of interesting trends and challenges:

1. A growing trend in setting up Compliance functions, although in most cases this function is combined with the legal function. Separate officers or a department is linked to a strong regulator and compliance incidents. Organizing an efficient and integrated Compliance function is a challenge that the companies within the scope of this benchmark face. Some have started to counter this challenge by setting up umbrella Compliance committees.

2. The scope of compliance is still expanding in most of the companies. The initial scope had a strong connection to the reason for establishing a Compliance function: as result of incidents or new regulations. The most popular compliance topics are related to ethical compliance covered in the code of conduct. Privacy currently forms a key topic of the companies interviewed, due to its current prominence in the market place. Although the scope of compliance is always in motion, companies see their code of conduct as the basis for doing the right things.

3. The implementation of compliance processes differs: from fully implemented and integrated compliance processes for larger, supervised companies, to companies that focus on a limited number of compliance processes, such as translating laws and regulations into policies and procedures, training and awareness, and coordination of incidents. An upcoming topic relates to screening business partners, also on the back of attention to this issue in new international regulations. We foresee a future where many Compliance functions will have to include more robust compliance processes, but also an ingrained compliance framework spanning all compliance areas, supported by one, common methodology to capture compliance requirements, risks, policies, procedures, controls and assurance activities.

4. Internal reporting on compliance is mainly reactive, based on the number of compliance incidents occurred, including follow-up actions. A limited number of companies interviewed elaborately reports on the progress of a compliance programs’ different elements and the effectiveness of these programs. External reporting on compliance is an emergent topic due to the requirements from stakeholders for more transparency, not only about financial information but also regarding other relevant information (such as compliance topics). The number of companies incorporating compliance in their annual report is expected to increase due to the attention for integrated reporting in the public domain.

5. With respect to regulators, the frequency of communication is mainly twofold. Many Compliance Officers or their equivalents only have ad hoc contacts, e.g., about specific questions or incidents. On the other hand, companies communicate regularly with the regulators, e.g., in the Telecom and Energy sector. The exchange of information between companies and the regulators can be valuable in creating new insights and can contribute to a trustworthy relationship.

The overall conclusion we wish to share is that the growing attention and expectations of the outside world requires companies to increase their attention for compliance. Currently we see a great variety of attention for embedding compliance in their organization. There is one commonality: all companies emphasize the importance of compliance in relation to the reputation of their company.

This is not a definitive benchmark. We will continue to extend the number of participants and will gladly work on focusing on more in-depth topics that warrant more attention.
Various companies have participated in the Corporate Compliance Benchmark. This appendix provides an overview of the profiles of the companies interviewed.

Both NYSE Euronext listed and large non-listed companies were included in the scope of the Corporate Compliance Benchmark. About 54% of the companies included in this research are currently listed on NYSE Euronext, of which 21% is AEX listed, 23% has a Midcap listing and 10% is listed on the Smallcap (Figure 9). The remaining 46% of the companies researched are large non-listed companies throughout the Netherlands.

The benchmark has involved companies in the Telecom, Media and Technology sector (20%), the Building and Construction sector (21%), the Manufacturing sector (21%), the Consumer Business sector (15%), and the Energy, Resourcing and Transport sector (23%). The benchmark results reflect a representative group of companies from each of these sectors (see figure 10).
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