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# C&E programs for subsidiaries and joint ventures

*Jeffrey Kaplan will be speaking on this topic at SCCE's Compliance & Ethics Institute, October 6–10, 2013, in Washington DC.*

**T**he intersection of corporate law and compliance and ethics (C&E) program practice can be challenging for all involved. Corporate lawyers will frequently advise that a parent company adopt a “hands-off” approach when it comes to the C&E



Kaplan

programs of the organizational “children,” such as subsidiaries and joint ventures. C&E professionals often see these boundaries are posing artificial and undesirable limits on the reach of a program.

Given my professional experience, I certainly understand the concern of the corporate lawyers, yet I also know of several cases where a “cross-border” approach would likely have prevented C&E-related losses to the parent. In the end, when it comes to resolving this tension, sweeping principles tend to matter less than using an analytic approach to determine what will work best for any given organization (or family of organizations).

The starting point for such an analysis is considering what the “gross” C&E risk is to the related entity (i.e., the joint venture interest or subsidiary). If, for instance, the entity operates in high-risk industries or locations, then the gross risk should be considered significant, which, in the absence of any other factors, argues in favor significant parent company involvement.

The second part of the analysis seeks to determine that entity’s “net” C&E risk (i.e., how well it is currently mitigating its risks).

The stronger such internal effort is, the less the need for the parent to help out.

The third stage of this exercise considers the risk of wrongdoing by the entity in question to the parent itself, which combines considering the entity’s net risk with other factors, such as the size of the investment the parent has in the entity, whether a violation by the entity would likely cause harm to the parent’s brand, and whether such a violation would disrupt the parent’s business (e.g., where a joint venture serves as the marketing arm of the parent in a strategically important market). The final step in the process is considering how well the parent company can mitigate the gross risks it faces.

**I certainly understand the concern of the corporate lawyers, yet I also know of several cases where a “cross-border” approach would likely have prevented C&E-related losses to the parent.**

Beyond using a framework for analyzing risks in subsidiaries and joint ventures, a parent company should consider implementing various tools to help with whatever C&E governance framework is ultimately implemented. One of these is a procedure for routine reporting to the parent on C&E risks and plans. A second is an escalation procedure for significant allegations of wrongdoing. \*

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