



LALIVE

THE DISPUTES POWERHOUSE

STANDARDIZATION IN THE AREA OF GOVERNANCE AND COMPLIANCE

ISO 19600 / DRAFT ISO 37301

Dr Daniel Lucien Bühr, Partner

Zurich, April 2, 2020

Agenda

- Introduction – Compliance management and challenges
- ISO 19600 – The key elements of the standard and the underlying logic
- Draft International Standard/DIS ISO 37301 – What is new?
- Conclusions
- Q&A

Introduction - compliance management and challenges

- Compliance = meeting all the organization's compliance obligations (definition of ISO 19600)
- An organization not meeting its compliance obligations incurs legal risk; legal risks are among the biggest risks for all organizations and their employees
- Compliance management = putting in place all the elements of an organization to establish policies and objectives and processes to achieve compliance
- The driving forces of compliance are leadership, values and culture (= the central theme of ISO 19600)

Introduction - compliance management and challenges

Challenges:

- Only ca. 2% of compliance resources are directly spent on the key drivers of compliance: leadership, values and culture
- 75% of global organizations do not train their C-Suite and Board of Directors specifically on ethics and corporate compliance (SAI Global; 2020 Ethics & Compliance Benchmark Survey)
- Business targets and employee remuneration and promotion processes do not consider ethics and compliance goals.

ISO 19600 – The key elements of the standard and the underlying logic

- ISO 19600 is the international standard on effective compliance management; ISO 19600 represents state of the art / best international practice in compliance management
- Implementation of ISO 19600 = legal presumption of diligent compliance management by senior management
- ISO 19600 is a guideline standard, not a requirements standard
- The standard explains on roughly 20 pages “all” about a genuinely effective compliance management *system*

ISO 19600 – The key elements of the standard and the underlying logic

- A key element is planned, systematic management (no bits and pieces, no mix and match)
- ISO standards reduce complexity and cost (no re-inventing of the wheel), increase effectiveness, create transparency on what an organization is doing and create trust with clients and employees
- ISO 19600 follows the plan-do-check-act iterative management model, applied by ca. 2m organizations worldwide

ISO 19600 – The key elements of the standard and the underlying logic

Structure of ISO 19600 / key elements:

- **Sect. 4: The external and internal issues** must be determined to establish the compliance management system / CMS: Context, interested parties' needs, scope, good governance principles, compliance obligations, risk assessment
- **Good governance is essential:** direct access of the compliance function to the governing body (Board), independence from line management, appropriate authority and adequate resources.
Without these principles in place, better make a donation ...

ISO 19600 – The key elements of the standard and the underlying logic

Structure of ISO 19600 / key elements:

- **Sect. 5 – Leadership:** it is all about leadership and commitment; a policy needs to be established and the roles and responsibilities at all levels must be established.
- *For a compliance management system to be effective the governing body and top management need to lead by example, by adhering to and actively supporting compliance and the compliance management system.*

ISO 19600 – The key elements of the standard and the underlying logic

Structure of ISO 19600 / key elements:

- **Sect. 6/7 – Planning and Support:** Consider the context of the organization and establish the CMS objectives and determine and provide the resources needed for the CMS. Key topics: Training, awareness, behaviour, communication, documentation.
- *The development of a compliance culture requires the active, visible, consistent and sustained commitment of the governing body, top management and management towards a common, published standard of behaviour that is required throughout every area of the organization.*

ISO 19600 – The key elements of the standard and the underlying logic

Structure of ISO 19600 / key elements:

- **Sect. 8/9 – Operation and Performance Evaluation:**
Planning, implementation and controlling of the processes, including outsourced processes (!), needed to meet the compliance obligations. Determine monitoring and performance measurement, audits, and reporting of the results to the governing body and top management.
- *The governing body, management and the compliance function should ensure that they are effectively informed on the performance of the organization's compliance management system.*

ISO 19600 – The key elements of the standard and the underlying logic

Structure of ISO 19600 / key elements:

- **Sect. 10 – Improvement:** The organization should react when noncompliance occurs, evaluate the need for action to eliminate the root cause and make necessary changes to the CMS. A reporting mechanism should be implemented and a process for continual improvement.
- *An effective compliance management system should include a mechanism for an organization's employees and/or others to report suspected or actual misconduct or violations of the organization's compliance obligations on a confidential basis and without fear of retaliation.*

Draft International Standard/DIS ISO 37301

– What is new?

- ISO 37301 builds on ISO 19600, there will be no fundamental changes. The standard is now complemented by guidance.
- New elements are
 - the inclusion of the employment process (due diligence before hiring and promotion; disciplinary action in case of violation of compliance obligations)
 - further strengthening of employee reporting (“whistleblowing”) and employee protection, and
 - an outline of the principles for investigation processes.

Summary

- Businesses and managers depend on a good reputation and stakeholder trust (more than ever).
- Effective compliance management is nothing else than diligent management, as required from all senior managers worldwide.
- Organizations should follow international standards because they reduce complexity and cost and increase effectiveness.
- The forthcoming ISO 37301 will set the global benchmark for state-of-the-art compliance management. Managers not following the ISO standard will sooner or later be asked to explain what other method for systematic compliance management they employ(ed), and why (comply or explain).

Q & A

Thank you for your time and attention.

Daniel Lucien Bühr

LALIVE SA

dbuhr@lalive.law

www.lalive.law