



Executive Compliance Certificates – CEO Submission (2021)

Date: December 2, 2021
To: TTC Audit and Risk Management Committee
From: Chief Executive Officer

Summary

The Audit and Risk Management Committee (ARMC) Terms of Reference establishes the ARMC as having oversight responsibility for compliance with laws and regulations; and it is the responsibility of the TTC CEO and ARMC to maintain the public's trust by demonstrating transparency and accountability over legal compliance to reduce the risk of liability to the organization, its employees, officers and directors.

In order to support the ARMC in fulfilling its governance responsibilities over legal compliance, the Audit, Risk and Compliance Department (ARC) collaborated with the Legal Department to provide the CEO and ARMC a mechanism for demonstrating Executive accountability for compliance with statutes and By-laws through formal compliance assertion reporting. As such, the Executive Compliance Certificate (ECC) was implemented in October 2020 and identified 15 statutes selected for their organization-wide impact and because they represent sources of significant responsibility for the TTC.

All 14 TTC Executive members completed their Certificates for the period covering October 1, 2020 to September 30, 2021. Each Executive reported that they had exercised due diligence to meet the obligations set out in the statutes and By-laws by ensuring that appropriate policies and procedures are in place to govern compliance and report non-compliance issues. TTC Executives were also given the opportunity to identify compliance matters they believe would benefit from further assessment and possible procedural improvements.

In terms of next steps, ARC and Legal will meet with TTC Executives and relevant Department Heads to survey relied upon policies, procedures and processes that support compliance attestations. ARC, in consultation with relevant stakeholders, will independently assess the reasonableness of these assertions as an additional measure of validation. Particular attention will be given to compliance matters highlighted by Executives in their Certificates.

This report summarizes the results and insights derived from ARC and the TTC General Counsel's review of signed ECCs. As 2021 is the inaugural sign-off year for the ECC, the TTC has relied on the Executives' collective knowledge and judgement for the reporting of legislative compliance. However, additional guidance will be provided for future certificates as the process continues to mature, and consideration will be given to feedback solicited from the Executive Team in preparation for next year's certification.

Recommendations

It is recommended that the Audit and Risk Management Committee:

1. Receive this report for information.

Financial Summary

The implementation of the actions outlined in this report has no additional funding implications beyond the costs of the ARC and Legal Departments that were included in the 2021 Operating Budget and approved by the TTC Board on December 21, 2020 and City Council on February 18, 2021. The Interim Chief Financial Officer has reviewed this report and agrees with the financial summary information.

Equity/Accessibility Matters

The TTC is committed to promoting and supporting equity and accessibility in all corporate policies, procedures and processes to reflect and respond to the needs of our customers and employees. This includes programs put in place to support compliance with applicable legislation. As part of the newly implemented Executive Compliance Certificate process, TTC Executives have received legal education on related equity and accessibility statutes, including the Accessibility for Ontarians with Disabilities Act, the Ontario Human Rights Code, the Employment Standards Act and the Occupational Health and Safety Act.

Decision History

At its meeting on February 9, 2017, the ARMC confirmed its oversight responsibility for compliance with laws and regulations and requested the TTC to report back on the feasibility of implementing a process to facilitate an annual compliance confirmation of the various laws and regulations governing the TTC.

https://ttc-cdn.azureedge.net/-/media/Project/TTC/DevProto/Documents/Home/Public-Meetings/Audit-and-Risk-Management/2017/February/Minutes_February_9_2017.pdf?rev=e36a4c1d178245eb8f0a91f050d5ba73

On February 11, 2020, the ARMC endorsed the development of a TTC Executive Compliance Certificate and annual attestation process.

https://ttc-cdn.azureedge.net/-/media/Project/TTC/DevProto/Documents/Home/Public-Meetings/Audit-and-Risk-Management/2020/February/11/Reports/1_Audit_Risk_and_Compliance_Report_Flexible_Work_Plan_2020.pdf?rev=643f03550ff14ab8925c160652efa105&hash=02222432C83CB2E1AEF54F9810255891

A draft Executive Compliance Certificate – Legislation was then presented to the ARMC for comment on September 24, 2020.

https://ttc-cdn.azureedge.net/-/media/Project/TTC/DevProto/Documents/Home/Public-Meetings/Audit-and-Risk-Management/2020/Sep-24/Reports/1_Staff_Presentation_Executive_Compliance_Certification.pdf?rev=102343214c034c15aa57f42956dd7f32&hash=EA00428AC32C325120A91687008B1428

In its 2021 Flexible Work Plan Status Update, presented on September 9, 2021, the ARC Department provided the ARMC an overview of progress, including the completion of three Executive legal education sessions covering the 15 statutes and By-laws listed on the Executive Compliance Certificate.

Issue Background

Prior to the development of the ECC, the TTC did not have a formal corporate-wide process to confirm and document compliance to legislative requirements. In collaboration with the Legal Department, ARC developed an Executive Compliance Certificate to strengthen the TTC's level of due diligence for legislative compliance and assist the CEO and the ARMC with monitoring compliance matters.

Comments

As part of the ECC process, the TTC Legal Department delivered education sessions to the Executive Team and their direct reports to ensure understanding of the selected statutes and By-laws. Individual consultations with the TTC General Counsel and ARC staff were also provided to ensure understanding of the expectations and final sign-off of the Certificate.

ECC Executive Legal Education Sessions

The Legal Department prepared summaries outlining compliance and due diligence expectations for 15 key statutes and By-laws listed on the ECC and their applicability to the TTC. Three Executive legal education sessions covering all 15 pieces of legislation were completed by the end of Q2 2021. These sessions were designed to provide Executives with a high-level overview of the requirements that impact, or may impact, the TTC on a day-to-day basis. The goal of these sessions was to ensure each Executive was reasonably aware of their legislative compliance obligations and provide an opportunity to clarify any matters and inquire as to legal interpretation.

Individual Executive Consultations

Subsequent to the Legal Education sessions, individual consultations with each Executive were provided by the General Counsel and representatives from ARC to address any final questions related to the reporting process prior to their signing off on the Certificate. During these sessions, the following key comments and feedback on the certification process were expressed:

- There is a need for greater understanding of the City of Toronto Municipal Code, Chapter 192 – Public Service. Executives recognize that the By-law is key to understanding duties as employees of a public service organization like the TTC, and expressed that additional assurance is necessary to ensure adequate policies and procedures to support compliance under the By-law exist. Specifically, it was suggested that the reporting of conflict of interest matters would benefit from more formal processes, and that communication and a By-law sign-off should be implemented across the organization.
- There is a need to enhance training in legislative compliance as part of the TTC's employee onboarding process. Executives suggested that the onboarding of new hires should be used as an opportunity to introduce the Executive Compliance Certificate and provide awareness of the key legislative requirements to employees immediately upon joining the TTC.
- The feasibility of an automated and customizable Executive Compliance Certificate based on statutes and By-laws most applicable to Executive roles and responsibilities should be explored.
- To support future Executive Certificate sign-offs, additional assurance and validation of the adequacy of existing policies, procedures and processes to ensure legislative compliance to the 15 statutes and By-laws named on the Certificate should be provided.
- Where business functions intersect, there is a need for clarity on the extent of accountability for legislative compliance between Executives that have overlapping oversight; and whether there are required compliance activities for which there is no or unclear accountability.

The Executive Compliance Certificate

The 2021 Executive Compliance Certificate covers the period from October 1, 2020 to September 30, 2021. All 14 Executives submitted their completed Certificates by October 15, 2021. By signing the Certificate, TTC Executives acknowledged that for the statutes and By-laws listed on the ECC, they and their direct reports are:

1. Subject to and required to comply with the legislative requirements;
2. Exercising due diligence to meet the obligations by ensuring that appropriate policies and procedures are in place to govern compliance and report non-compliance issues;
3. Reporting non-compliance matters not already reported through an existing governance process, policy or procedure, if any; or areas in which they are aware or uncertain that there are appropriate policies and procedures in place to govern compliance and/or report non-compliance issues; and
4. Providing action plan details for any items identified in item #3 (above).

(See **Attachment 1** for the Executive Compliance Certificate – Legislation form)

Many TTC Executives arranged for additional legal education sessions for their direct reports in order to improve compliance awareness, as well as to promote proactive compliance issue identification and direct communication with TTC Legal staff. In some cases, Executives provided additional notations on their signed Certificates to indicate applicability of the statute or By-law for their areas of responsibility. And a number of TTC Executives also solicited and documented input from their direct reports prior to signing their Certificates.

Consideration will be given to amending the Certificate format to allow for and encourage TTC Executives to provide specific legislative references that may apply, granted that in some cases, a matter will invoke more than one statute or By-law, various provisions and/or underlying regulations and codes. The introduction of more standardized methods that provide further formality and uniformity to the process that Executives can use to obtain assurance about the level of compliance in their areas, as well as formal sign-off from their direct reports, will also be explored as part of ECC enhancements. Such refinements will provide Executives with a greater level of confidence prior to signing their annual certificates.

Next Steps

Assessment of Reported Policy, Procedure and Process Concerns

Based on the results of the 2021 ECC, attention will be given by ARC and Legal staff to address comments noted and provided by Executives during individual consultations. In particular, the need to improve policies, procedures and processes governing compliance with City of Toronto Public Service By-Law, Chapter 192 – Public Service. Also, to determine the coverage of existing safety assurance programs with respect to all equipment certification and step ladder safety under the Occupational Health and Safety Act.

Independent Assurance Work – Policies, Procedures and Processes

In accordance with ARC's Flexible Work Plan (2022), ARC will independently assess the adequacy of policies and procedures attested to by TTC Executives in their inaugural certifications. This will involve surveying the Executives to identify the specific policies and incident reporting mechanisms they rely upon to support their compliance attestations. The results of ARC's work will ultimately provide TTC Executives with additional assurance and serve as a source of reliance for future Certificates.

Potential Future ECC Enhancements

Much was learned during this first year implementing the ECC. Executives adopted different approaches to obtain input and gain confidence regarding compliance matters from their direct reports. Much feedback was also shared during Legal education sessions and Executive individual consultations on how the ECC process and certificate may be enhanced in future years. Consideration will be given accordingly, including the

feasibility of ARC and Legal partnering with the IT Services and Training departments to explore opportunities to automate the Executive Compliance Certificate sign-off process and develop e-learning training modules.

The mapping of legislative requirements to existing policies, procedures and processes to assess the existence of any gaps is necessary work that will support future attestations and action plans. Such work will be undertaken by ARC in collaboration with other stakeholders, and the statutes and By-laws selected for mapping will be prioritized based on risk.

Conclusion

The introduction of the Executive Compliance Certificate and submission of formal compliance assertions by TTC Executives to the CEO and ARMC has played a key role in reinforcing a compliance-oriented culture at the TTC. While there is additional work to be done to enhance the ECC process, this initiative has succeeded in raising awareness of compliance issues, prompted compliance-related discussions and has led to a more proactive approach in identifying potential legal risk and related issues requiring further mitigation.

As outlined in ARC's Flexible Work Plan (2022), completion of assurance work will also further support the integrity of the ECC process by providing an independent assessment of the current state of organizational compliance. This work will involve undertaking a systematic approach to mapping the identified statutes and By-laws to the existing TTC policies, procedures and processes that Executives have relied on to attest to their compliance, as well as opportunities for proactively improving controls and addressing gaps. The TTC will continue to strengthen its oversight over legal compliance through the Executive Compliance Certificate initiative and ongoing commitment to mitigate compliance risks.

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Signature

Richard J. Leary
Chief Executive Officer

Attachments

Attachment 1 – Executive Compliance Certificate – Legislation

Executive Compliance Certificate – Legislation **(For the period October 1, 2020-September 30, 2021)**

The purpose of the Executive Compliance Certificate is to support the Audit and Risk Management Committee (ARMC) in fulfilling its oversight responsibilities and to provide the Chief Executive Officer and ARMC a formal mechanism for reporting Executive compliance assertions. The statutes below are not an exhaustive list of legislative requirements but have been selected for their organization-wide impact and because they represent sources of significant responsibility for the TTC.

Please sign this certificate and return to the Audit, Risk and Compliance Department (ARC) by October 15, 2021.

1. I acknowledge that my direct reports and I are subject to and required to comply with the legislative requirements as set out in the statutes and by-laws noted below.

2. To the best of my knowledge, and on behalf of my direct reports, I exercise due diligence to meet the obligations set out in the statutes and by-laws noted below by ensuring that appropriate policies and procedures are in place to govern compliance and report non-compliance issues.

- Accessibility for Ontarians with Disabilities Act, 2005, S.O. 2005, c. 11
- City of Toronto Act, 2006, S.O. 2006, c. 11, Schedule A
- City of Toronto Municipal Code, Chapter 192 Public Service
- City of Toronto Municipal Code, Chapter 279 Toronto Transit Commission
- Construction Act, R.S.O. 1990 c.C.30
- Criminal Code, R.S.C. 1985, c. C-46
- Environmental Protection Act, R.S.O. 1990, c. E.19
- Employment Standards Act, 2000, S.O. 2000, c. 41
- Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4
- Highway Traffic Act, R.S.O. 1990, c. H.8
- Human Rights Code, R.S.O. 1990, c. H.19
- Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56

- Occupational Health and Safety Act, R.S.O. 1990, c. O.1
- Toronto Transit Commission Labour Disputes Resolution Act, 2011, S.O. 2011, c. 2
- Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Schedule A

3. To the best of my knowledge, and on behalf of my direct reports, below are the following:

a) Non-compliance matters not already reported through an existing governance process, policy or procedure, if any; or

b) Any areas in which I am aware or uncertain that there are appropriate policies and procedures in place to govern compliance and/or report non-compliance issues.

4. For items identified in 3 above, please provide action plan details.

Executive Name: _____

Signature: _____

Date: _____