
Outsourcing Compliance

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Baker Tilly Fraud Summit
Feb. 23 -25, 2021





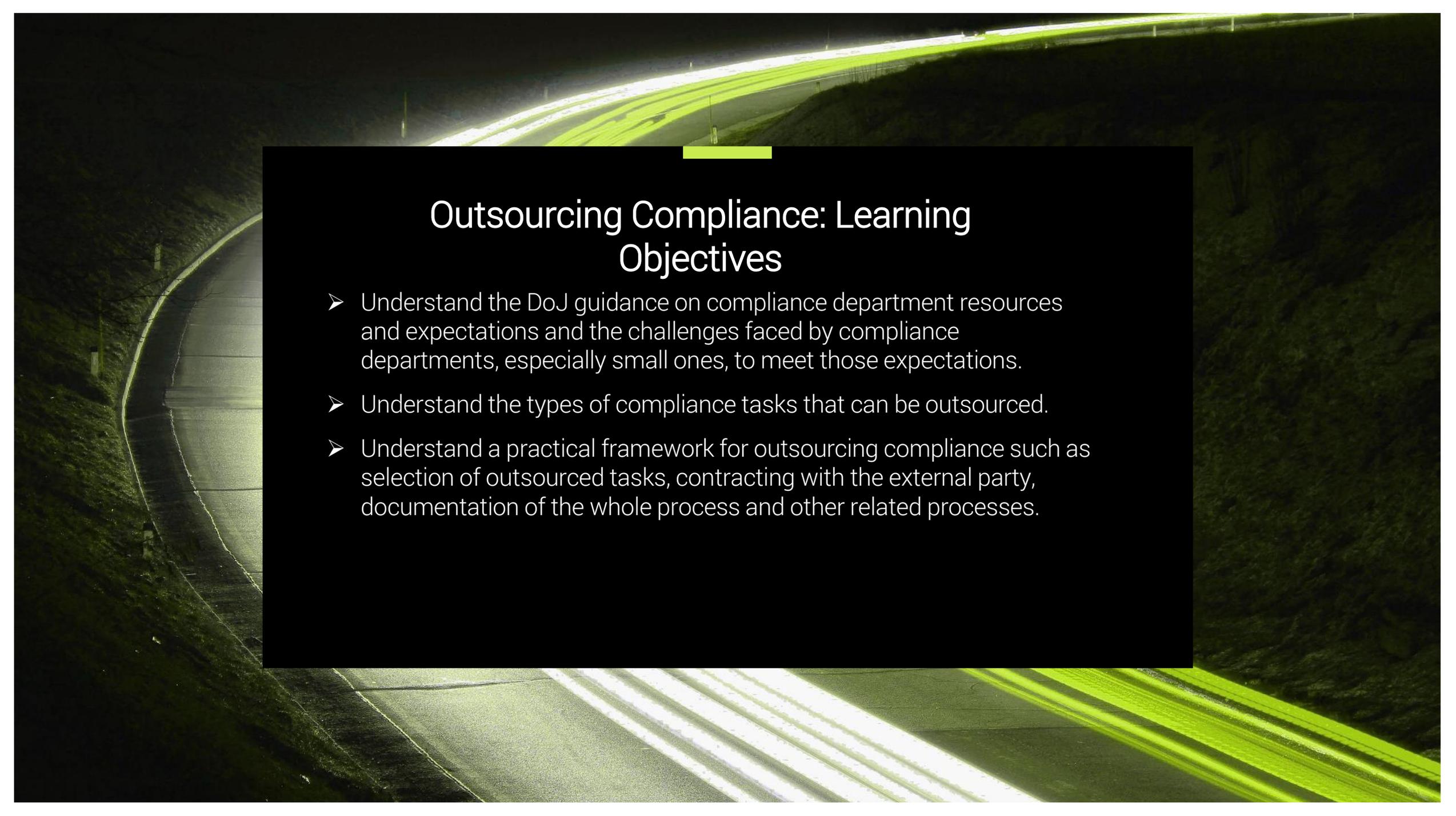
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Vanessa Rossi is a compliance consultant who focuses on third party due diligence program creation, enhancement and assessment and third party corruption risk analysis. She develops risk-based, resource-appropriate due diligence and third party management programs that are flexible enough to adjust to changing business needs while remaining efficient, consistent in application and easily operationalized. Immediately prior to her current role, Vanessa managed a highly recognized, world class third party due diligence program for a large oilfield services company. In that role and in her previous positions, Ms. Rossi was responsible for ensuring adherence to company policies and procedures and for designing, implementing and testing processes that are efficient, practical, global and aligned to regulatory requirements. Her projects focus on the selection and implementation of compliance management systems and software, continuous improvement models, training development, risk ranking methodologies, corporate integrations and inter-department collaboration. She also has experience conducting internal investigations and has designed workflow processes to remediate and “close-out” audit and investigative findings.



Outsourcing Compliance: Learning Objectives

- Understand the DoJ guidance on compliance department resources and expectations and the challenges faced by compliance departments, especially small ones, to meet those expectations.
- Understand the types of compliance tasks that can be outsourced.
- Understand a practical framework for outsourcing compliance such as selection of outsourced tasks, contracting with the external party, documentation of the whole process and other related processes.

Polling question one

What is the size of your Compliance Department?

- A. 1-3
- B. 4-8
- C. 9-15
- D. 16-25
- E. 26 and higher

U.S. Department of Justice
Criminal Division
Evaluation of Corporate Compliance Programs
(Updated June 2020)

The Dept of Justice's expectations and guidance for an effective compliance program are clear. Even though the DoJ acknowledges and expects compliance programs to develop compliance programs suitable for its "size, industry, geographic footprint, regulatory landscape, and other factors, both internal and external to the company's operations", many small Compliance Departments still struggle to meet all government expectations or their own desires and expectations for a robust and effective program due to lack of resources.



If meeting the expectations of the DoJ guidance wasn't enough, compliance departments are still slogging through the pandemic's ongoing effects on their companies and bracing for new regulations like the Corporate Transparency Act or EU Whistleblower protection or regulations potentially on the horizon such as human rights due diligence on the horizon or GDPR expansion and others.

One solution to ensure you are meeting regulatory obligations and program expectations is to outsource some of your program processes to external experts.





Three Fundamental Questions from the U.S. Dept. of Justice

- Is your corporate compliance program well-designed?
- Is your corporate compliance program adequately resourced and empowered to function effectively?
- Does your corporate compliance program work in practice?



Categories in Dept of Justice Evaluation of Corporate Compliance Programs

Is the program well-designed?

- i. Risk Assessment
- ii. Policies and Procedures
- iii. Training and Communication
- iv. Confidential Reporting Structure and Investigation Process
- v. Third Party Management
- vi. Mergers & Acquisitions

Is your corporate compliance program adequately resourced and empowered to function effectively?

- i. Commitment by Senior and Middle Management
- ii. **Autonomy and Resources** ←
- iii. Incentives and Disciplinary Measures

Does the corporation's compliance program work in practice?

- i. Continuous Improvement, Periodic Testing and Review

Autonomy and Resources



- a. Structure
- b. Seniority and Stature
- c. Experience and Qualifications
- d. Funding and Resources
- e. Data Resources and Access
- f. Autonomy
- g. **Outsourced Compliance Functions** ←
 - i. Has the company outsourced all or parts of its compliance functions to an external firm or consultant? If so, why, and who is responsible for overseeing or liaising with the external firm or consultant?
 - ii. What level of access does the external firm or consultant have to company information?
 - iii. How has the effectiveness of the outsourced process been assessed?

Polling question two

What tasks are you already outsourcing? Check all that apply.

- A. Audits of third parties
- B. Investigations
- C. Country audits
- D. Due diligence of third parties
- E. Compliance program assessment
- F. Other



How To Select Which Tasks to Outsource

1. Review your current risk assessment. Which tasks are high priority and would benefit from extra resources, technology or expertise not within the company?
 - i. Audits of risky third parties
 - ii. Risk assessment
 - iii. New country entry
 - iv. High profile investigation
2. Repetitive or time-consuming (but still important) tasks that take too much time from your dept
 - i. Due diligence of third parties
 - ii. Hotline triage
 - iii. Conflict of Interest survey reviews
 - iv. Updating compliance training material
 - v. Implementation of new software
 - vi. Culture surveys



How to select the right external professional or firm for your outsourced tasks?

Attorneys	Consultants and Consulting Firms	Compliance Tech Vendors
Advocacy: Defense in a lawsuit or representation in front of the government	Compliance Program Design	Software platforms for many compliance programs: third party management, GTE management, COI management and hotlines
Sensitive internal investigations	Repetitive, process/policy driven tasks such as third party due diligence review and management, conflict of interest review	Fraud detection using AI
Matters requiring Attorney-Client Privilege protection	Risk Assessment	Forensic analysis; Forensic accounting
M&A support	Assistance with new software implementation	Due Diligence
Training	Training	Training
Audits	Compliance Program Assessment	Audits
Advice on disclosing a violation to the government	Trade surveillance	Social media surveillance

→ This is not an exhaustive list. Many of these tasks can be performed by all three categories. ←



Consider Issuing an RFP

- The RFP Protocol:
 - Get input from all relevant stakeholders at your company
 - Clearly explain your department or project needs, expertise required and time frame.
- Prepare a comparison tool showing each criteria of the protocol so you can have a scorecard. Leave a place for your notes and of course the price!
- Be upfront if cost is a driver for selection. Be wary of lower introduction or first year rates. You need to know the cost of the entire project or service.



Payment Models for Outsourcing

- a. Subscription-based services or managed-services
- b. Project-based flat fees
- c. Monthly Fee for general on-call services
- d. Secondment
- e. Although not as popular, traditional hourly rates





Some Suggested Contract Provisions for External Consultants*

- a. Mutual NDA
- b. Precise payment terms
- c. Language on treatment and ownership of final work product
- d. Independent contractor language
- e. Data protection language
- e. Consider a master agreement or engagement letter with subsequent Scopes of Work if multiple projects are expected

* Not an exhaustive list of all recommended contractual clauses.

Polling question three

Will you be outsourcing compliance tasks in 2021?

- A. Yes
- B. No
- C. Under consideration



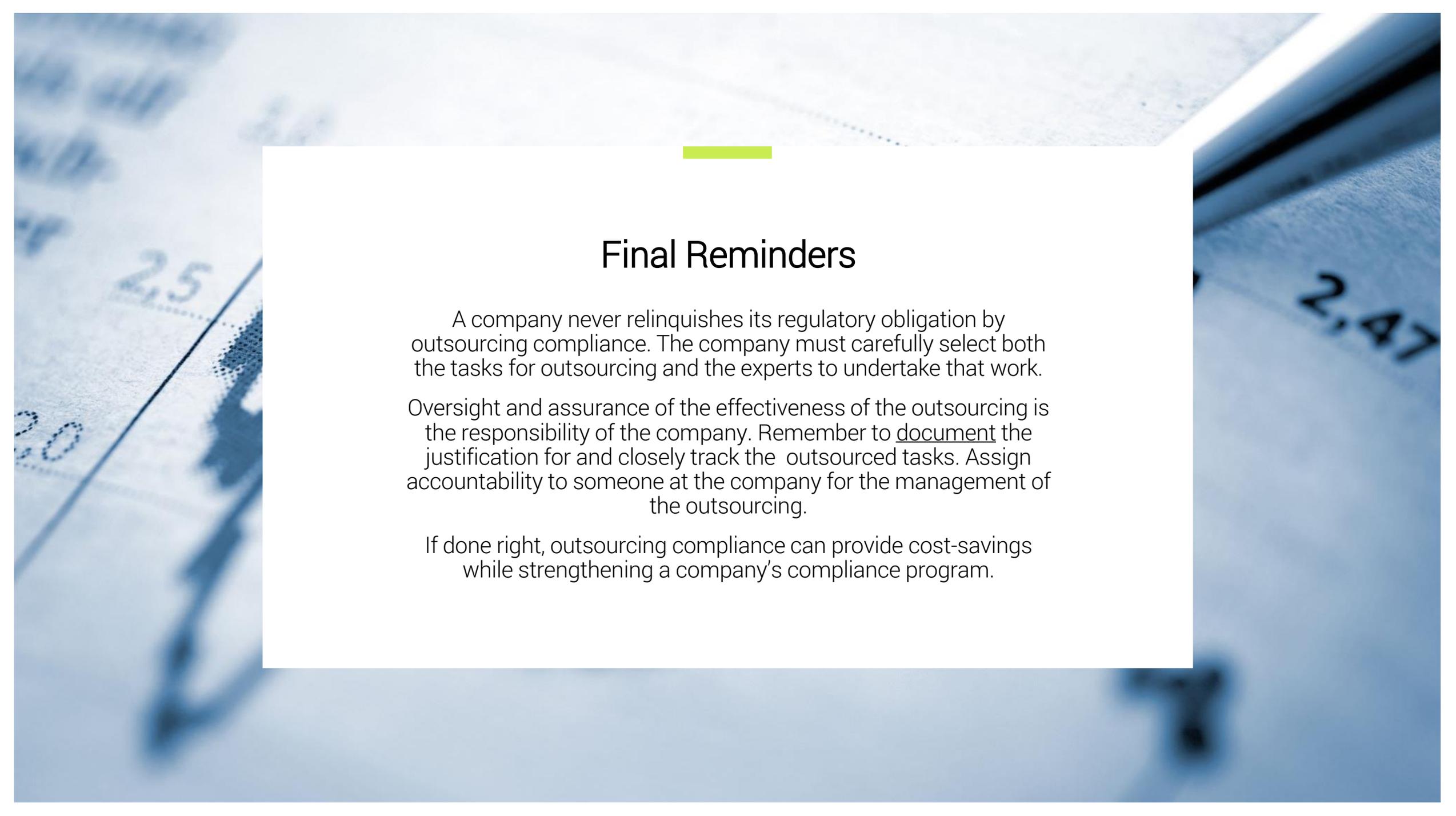
Benefits of Outsourcing

- Shows objectivity
- Independence
- Leverage expertise and technology of external experts and tech providers
 - Compliance software creates efficiency with its process workflows and AI
 - Helps a company meet its regulatory obligations
- Cost-savings by not hiring a FTE
- Flexible...project-by-project
- Allows Compliance Dept to focus on more strategic tasks



Risks of Outsourcing

- Complacency with the company employees;
- Data breaches;
- See this blog post regarding financial firms and risks of outsourcing compliance. It can be done safely with strong protective measures and oversight by the company.
<https://blogs.thomsonreuters.com/answerson/strategic-compliance-outsourcing/>
- Some small companies have outsourced GCs. Whether that is advisable is beyond the scope of this session. I do believe that outsourcing the CCO role takes critical analysis and Board approval and is not advisable for medium or large companies at all. Below is one article about the risk the SEC sees with outsourcing the CCO role. [The risks of outsourcing compliance | Article | Compliance Week](#)

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Final Reminders

A company never relinquishes its regulatory obligation by outsourcing compliance. The company must carefully select both the tasks for outsourcing and the experts to undertake that work.

Oversight and assurance of the effectiveness of the outsourcing is the responsibility of the company. Remember to document the justification for and closely track the outsourced tasks. Assign accountability to someone at the company for the management of the outsourcing.

If done right, outsourcing compliance can provide cost-savings while strengthening a company's compliance program.

Disclosure

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