

# Compliance: Why 'by the book' is good for the books

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**Tommy Helsby:** *A well-run business should engage in forward-planning to make sure that the necessary resources and relationships are in place before a problem emerges.*

A year ago, the Global Fraud Report highlighted the return of the active regulation of businesses. The past twelve months have brought not only tougher regulation, including the Dodd-Frank Act in the United States and the Bribery Act in the United Kingdom, but also more active enforcement – notably increased resources devoted to corruption investigations in the United States at the Department of Justice and the Securities and Exchange Commission as well as a similar business crime focus in Britain at the Serious Fraud Office. Meanwhile, storied magistrates elsewhere in Europe – Joly in France, Garzon in Spain, DiPietro in Italy – have been succeeded by a new generation of officials keen to make their names. Prosecutors in Germany, often in cooperation with their counterparts in the United States and elsewhere, have successfully targeted a series of major

domestic businesses.

In emerging markets, institutional developments may be slower, but public attention to fraud issues, especially corruption, is intense. Looking only at the BRIC countries in just the last few months: in Brazil, both Vivendi and Credit Suisse paid multi-million dollar settlements – without acknowledging wrongdoing – in relation to allegations of investment fraud and insider trading, respectively; in Russia, President Medvedev has proposed that fines in

corruption cases should equal up to 100 times the size of the bribe; in India, the Prime Minister, Manmohan Singh, recently bowed to demands to initiate an investigation of corruption in the award of third-generation mobile telecom licenses; and in China, the two top executives of the country's largest e-commerce firm, Alibaba.com, resigned after acknowledging that the company had failed to respond to external fraud issues. Further afield in Asia, 28 governments have now signed up to the Anti-Corruption Action Plan for Asia and the Pacific, overseen by the OECD and the Asian Development Bank.

The exposure for companies operating in emerging markets is not just to local regulators but also to their home regulators acting extraterritorially: corrupt operators cannot rely on lax or venal local prosecutors to turn a blind eye. Indeed, United States prosecutors have successfully pursued non-US companies for alleged offenses committed outside that country when they have been able to show some US nexus or interest. Law enforcement agencies elsewhere have told Kroll that they intend to follow the same path and cross-border cooperation between prosecutors is now the norm rather than the exception.

Inevitably there has been a backlash from the regulated. Most visible, from where I sit, is the response to the new UK Bribery Act, which will take effect on July 1. The objections seem to me either ill-informed or inappropriate.

ate. They are generally some variation of, "I could be arrested for taking my client to a football game" – that won't really happen unless you bribe the referee to get your client's preferred result. People also still insist to me that paying bribes is the only way business gets done in some parts of the world, so aggressive extraterritorial policing of corruption will be a serious disadvantage to British companies operating there. The same argument was voiced by American businesses when the Foreign Corrupt Practices Act (FCPA) was passed forty years ago, yet US companies have remained effective competitors in all those difficult markets.

Good business – meaning fully compliant – turns out to mean good business in terms of commercial and financial performance. Siemens, following a massive bribery scandal several years ago, changed its culture (along with many of its senior management), established a dynamic compliance operation, and has been more commercially successful ever since. Even in the most challenging markets, business can be conducted legitimately, and both the deal and the market will be better for it.

There is a broader conclusion to draw from this. Procedures for ensuring that business practices are compliant with the UK Bribery Act or the FCPA should already be in place: a good, well-run business is already operating comfortably within the requirements of these laws and the only additional requirement the laws bring may be the

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need to document that fact. The enterprise should operate that way because it is better for the business, not just because the law requires it: opportunities won without corruption are more secure and competitive, and likely to lead to more of the same; corrupt deals are risky, expensive, and vulnerable to further bribe demands or a change of regime.

For the past few years, bribery issues have dominated seminar and conference agendas, in the way that money laundering concerns did for the five years before that. If you measure by the size of the fines, though, competition issues need to be on the list of a company's compliance concerns. If you consider overall cost, in terms of both money and reputation, then environmental regulation remains paramount; trade sanctions have emerged as an issue in an increasingly complicated world; and you could add plenty more to the agenda.

Although I prefer to leave forecast-

ing to economists and astrologers, I see two other specific issues that should be added to the list. Globalization and communication technology have together changed the game for privacy issues. Regulation, though, is still very inconsistent and local, and compliance is similarly variable. After all, why comply with laws that don't exist? But sensitive data may relate to individuals in one country, be controlled in a second, and accessible in a third: prudence dictates that the highest regulatory standard should apply.

The second issue may be a surprise: human rights governance. This generally sits in the corporate social responsibility agenda, if anywhere, and is often viewed as important but not business-critical. There are, however, movements towards making corporations legally responsible for direct and indirect violations of human rights, such as use of child labor, tacit support for unsavory regimes through trade or investment, or sale of equipment used in repression. The UN's initiatives have been taken up by the OECD, and it may be recalled that the OECD's initiatives on anti-corruption measures have spurred much of the new legislation on bribery.

A well-run business should engage in forward-planning to make sure that the necessary resources and relationships are in place before a problem emerges. By doing so, companies will be less likely to allow current preoccupations to distract them from the wide range of regulatory risks. ■

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