

CEP Magazine – March 2021

Are compliance officers of today the integrity leaders of tomorrow?

By Brook Horowitz

Brook Horowitz (brook.horowitz@iblfglobal.org) is a strategy consultant and CEO of UK-based IBLF Global and Business Integrity Advisor to the United Nations Development Programme in Southeast Asia.

The views expressed in this article are the author's own.

The forces buffeting today's multinational corporations are fundamentally changing the role of compliance. Growth in high-risk countries and new, unregulated markets; stronger regulatory coordination by national authorities; and new technological challenges—these are all factors in how companies are being forced to reassess their approach to compliance.

In this article, I examine what the changing business environment means for compliance officers and corporate culture overall.

The changing environment for compliance

To define the new role for compliance, we need to first understand the context and environment in which the compliance function has to operate.

Growth of high-risk markets

Outside the G-7 and European Union, a significant majority of countries in the world present a high corruption risk—the very markets where companies want to invest more in order to capture the growth that has been elusive in the more stagnant developed markets. Transparency International's Corruption Perception Index,^[1] the World Bank's Ease of Doing Business Index,^[2] and the World Economic Forum's Global Competitiveness Report^[3] all show corruption as a major issue in doing business in most emerging and developing markets.

In these countries, debilitating bureaucracy and red tape, weak rule of law, and poor enforcement all contribute to environments in which many find it difficult to do business without, at best, making facilitating payments for minor favors and, at worst, paying full-scale bribes to win major contracts.

In other words, there is a culture gap between the rules put out by justice departments in the developed world, multinationals' compliance departments, and business practices in most emerging and developing markets. For example, in many countries, “wining and dining” and gifting are fundamental parts of the local business culture. Indeed, it is more than a cultural gap. It is a juxtaposition between Western traditions of law and any number of distinct systems stemming from traditions such as the primacy of the family, caste, tribe, community, religion, and social relations.

Despite this juxtaposition, compliance programs of multinational organizations are often based on a global company code of conduct developed in US or European headquarters, which is then translated and rolled out to employees, distributors, and partners in different countries by the local subsidiary. But a global concept of integrity and ethics, especially if it emanates from principles of common law, is not necessarily the most

convincing or understandable framework for people brought up in an environment with different cultural reference points and legal and regulatory systems.

Extended reach of regulation

Partly as a result of both perceived and actual lack of effective regulation, governments have been tightening their anti-corruption legislation and enforcement. Although the Anglo-Saxon world has traditionally led with extraterritorial prosecutions, now other countries have been following suit, for example the introduction of the Sapin II anti-corruption legislation in France. Many other countries, not known for their leadership in anti-corruption, have introduced new legislation and are enforcing it. A case in point is Malaysia, whose Section 17A of the Malaysian Anti-Corruption Commission Act 2009 (MACC Act) came into force in June 2020.^[4]

At the same time, international efforts to combat bribery and corruption have been reinforced by growing cross-border cooperation through bodies such as the G-20 and the Organisation for Economic Co-operation and Development. New voluntary standards in the form of ISO 37001 have gained popularity among leading companies, as pressure from regulators has pushed them to demonstrate their commitment to rigorous compliance processes.

Last, but by no means least, the risk landscape is not limited to anti-bribery/anti-corruption compliance. Similar globally driven legislation around environmental, social, and governance issues (often referred to in the investment community as “ESG” and in the world of multinational and multilateral organizations as “Sustainable Development Goals” or “SDGs”) are resulting in a convergence of these issues. For example, governance topics as varied as anti-corruption, director compensation, diversity and inclusion, sustainability, and human rights compliance are all increasingly linked in terms of law, policy, and practice.

In terms of day-to-day compliance management, critical legal issues such as antitrust and competition policy, the General Data Protection Regulation and data privacy, sanctions and export controls, and supply chain liability are increasingly landing on the desk of the compliance department. While other departmental heads, such as the chief legal counsel, the chief information officer, the chief security officer, the head of risk management, and others may have functional responsibility for these external aspects of a company’s operations, the proliferation of converging risks and their complexity are challenging traditional compliance strategies and competencies to their core.

The challenges and opportunities of technology

The emergence of data analytics as a management tool is providing new opportunities to address compliance challenges, yet these same tools are challenging the traditional role of the compliance department. With the automation of many compliance-related functions, such as surveillance and detection, some activities that were traditionally the responsibility of the compliance manager may no longer be required.

With the business world being on the cusp of a full-scale introduction of artificial intelligence that will transform many administrative functions, the question has been asked, “Will robots replace compliance officers?”^[5] The answer, of course, is no. A company seemingly with all its safeguards in place—a strong reputation, an army of compliance officers, codes of conduct, and a public commitment to responsible business standards—can still run afoul of the law because of an undetected rogue employee; ineffective information technology (IT) or security systems; the ignorance of managers or the “ethical blindness” of board members; or, worse, by a deliberate cover-up.

Human intelligence will always be needed in addition to artificial intelligence, but the compliance role is

undoubtedly on the verge of being radically transformed by the breakneck speed of technological innovation.

‘Stakeholder capitalism’

The final challenge for the compliance function is “stakeholder value” or the radical heightening of expectations for companies’ roles in society. Consumers, shareholders, and regulators are increasingly expecting companies to consciously contribute to a fair, clean, and transparent environment in their markets of operations, just as they are expecting companies to contribute to climate change management or social development.

In August 2019, 181 CEOs of America’s largest corporations, members of the Business Roundtable, overturned a 22-year-old policy statement that defined a corporation’s principal purpose as maximizing shareholder return. They adopted a new “Statement on the Purpose of a Corporation,” declaring that “companies should serve not only their shareholders, but also deliver value to their customers, invest in employees, deal fairly with suppliers and support the communities in which they operate.”^[6]

What began as a movement has become a revolution—a revolution that may redefine capitalism.^[7] Endowed with the values and principles of “stakeholder capitalism,” companies really do have the potential to be the agent of social change. Compliance is emerging as the key function to ensure that a company meets these expectations, not only within its own four walls but in the supply chains, markets, and broader society.

This document is only available to members. Please [log in](#) or [become a member](#).

[Become a Member](#) [Login](#)