



TOPICS COVERED

// *Ethics & Compliance*

In the forty years since the US Foreign Corrupt Practices Act (FCPA) was enacted, large companies have established ethical policies and practices across their organizations. But efforts now go far beyond regulatory compliance: there is focus on meeting investor and consumer demands for responsible business conduct, including mitigating climate change and respecting human rights. There is also acknowledgment of multiple benefits in combatting corruption, including fair pricing, higher quality standards for suppliers and attracting workers who value ethics.

The nature and level of compliance efforts varies widely by geography and industry. In late 2015, the Association of Corporate Counsel published the ACC *Global Census Report*, which interviewed 5,012 in-house lawyers in 73 countries. While Latin America and Asia Pacific respondents said corruption remains their top concern, privacy topped the list in Europe, Australia/New Zealand, Sub-Saharan Africa and North America.

Yet for all these differences, significant compliance trends are emerging around the world.

New regulations are affecting key, multiple jurisdictions. Several new non-financial disclosure rules have recently landed on the books. In 2014, the U.S. Securities and Exchange Commission (SEC) began enforcement of public disclosures by the use by companies of conflict minerals. As of October, Britain's Modern Slavery Act now requires companies with \$50 million or more of business in the country to report that their products/services do not utilize forced labor or trafficked workers. And there are regulatory shifts in key jurisdictions towards reporting on royalties paid to foreign governments in the extractive industry sector and compulsory disclosures of personal data breaches.

Existing regulations are being more aggressively enforced. The SEC is clear regarding its industry focus on pharmaceutical companies and financial institutions. In the former, it has focused on "pay to prescribe" cases, where public

COMPLIANCE CHALLENGES

Iohann Le Frapper on the Value in International Relationships

Written by Iohann Le Frapper

With Brexit and the expected swing towards protectionism in a new US administration, globalization faces major challenges. Yet financial and trade globalizations have made an indelible mark on how modern business is conducted. Sustainable prosperity is dependent on many factors, among them continued discourse about meeting compliance demands around the world.



Stats & Data

Limiting Supply Chain Risk

Intermediaries are increasingly of interest to regulators and companies are building robust compliance systems around third party relationships.

Does your company maintain a third-party Code of Conduct?



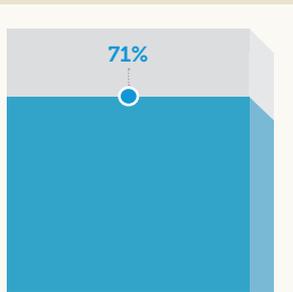
With whom does your company communicate at least quarterly on sustainability performance?



Conclusion: For companies with vast supply chains, maintaining compliance with third parties can be daunting. Developing a supplier/vendor code of conduct is an essential first step to limiting the risk of scrutiny by regulators and acting in good conscience. Organizations are now also expected to regularly communicate their expectations to supply chains beyond anti-bribery to CSR and related issues.

Source: The 2016 World's Most Ethical Companies Data Set provided by Douglas Allen

Facts & Figures



A large percentage of in-house counsel at larger companies have cross-border work, (71 percent in companies with at least 50,000 employees), and half of those in smaller companies (fewer than 500 employees) are also taking on global duties.

Source: 2015 ACC Global Census

official doctors and public hospitals accept bribes in exchange for prescribing certain medications or medical devices and bribes to get products on government reimbursement lists.

The agency made good on this in prosecutions of Pfizer in China and Europe and more recently with GlaxoSmithKline in China, the jurisdiction that was also the focus of an investigation that resulted in a \$264 million payout by JPMorgan Chase for hiring the children of Chinese leaders to win business.

The Chinese government has also cracked down, particularly in the area of gifts and entertainment. While related laws have been on the books for years, central authorities are now enforcing them in earnest; this has hit the luxury sector particularly hard, as its products are now less often purchased to advance business interests from domestic or foreign companies.

Intermediaries are becoming a serious focus for regulators. While most large companies have strong compliance poli-

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cies in place, many recent prosecutions are related to bribery schemes involving intermediaries. This October, *The Guardian* and *BBC* reported that leaked documents and testimony from insiders suggest that the venerable Rolls-Royce plc may have benefitted for years from the use of illicit payments to a network of agents. Both UK and US authorities are investigating.

Mature industries are grappling with more sophisticated bribery schemes. Increasingly, we see allegedly good intent mixed with influence peddling. Enforcement authorities are getting wise to subtle bribes such as contributions to charities or foundations. For example, in 2013, the SEC charged medical device maker Stryker with paying bribes to win business in Europe and Latin America. In one instance, Stryker made a purported 'donation' of nearly \$200,000 to a public university in Greece to fund a laboratory that was a pet project of a public hospital doctor. In return, the doctor agreed to provide business to the Stryker subsidiary. The company eventually agreed to pay \$13.2 million to settle these and other charges. Eli Lilly and Schering-Plough faced a similar fate due to payments made to foundations in Poland.

Cross border discussions and cooperation are more important than ever. Within the Association of Corporate Counsel, for example, we have a network with immediate answers about key risks in particular markets. For in-house lawyers working in multiple countries, this is a tremendous resource.

Compliance demands also impact small- and medium-size entities, which are increasingly of interest to prosecutors of corruption issues in supply chains. The International Chamber of Commerce (ICC) in 2015 released a practical guide titled *Anti-Corruption Third Party Due Diligence: A Guide for Small and Medium Size Entities* to help SMEs meet the challenges presented by third parties in supply chains.

While recent events have reminded us that the systems that support economic interdependence are not bulletproof, organizations like ACC and ICC can foster true discussions that support anti-corruption efforts around the world.

Author Biography

Iohann Le Frapper is General Counsel at ChetWode, a company specializing in industrial asset financing. He is also the chair of the Association of Corporate Counsel (ACC) board of directors, and vice-chair of the International Chamber of Commerce (ICC) Commission on Corporate Responsibility and Anti-Corruption. Le Frapper has a wealth of experience with corporate and commercial transactions across Europe, the Middle East, Africa, Asia-Pacific and North America. He offers counsel on corporate governance, mergers and acquisitions and compliance and litigation.

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