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Compliance considerations for global companies

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A recent report from an EY survey on compliance risk, bribery, and corruption suggests that a large number of business organizations and leaders believe that there is at least a 40% probability that businesses in emerging markets operate in a compromised way; however, only about 12% of incidences are duly reported.^[1] The survey is a must read for all compliance professionals attempting to manage an emerging market risk portfolio, especially in highly regulated industries with multiple government touchpoints. It shows a stark contradiction where, on one hand, 97% respondents agree that integrity is the most important value for an organization, but on the other hand, as many as 20% justify cash payments to help the business survive. More than 52% of those questioned say that corruption practices are more widespread in emerging markets, compared to just 20% in developed markets.

The disconnect, as I see it, is in the fact that perceived levels of bribery and corruption in emerging markets have doubled compared to those in developed markets since the 2012 survey, and this is despite significant improvement in regulations, enforcement actions, awareness, purported ease of doing business, and large investments by organizations in compliance teams and protocols.

Compliance efforts today are more structured. They are backed by new technologies and the use of data insights, a whole new AI platform dedicated to managing compliance risks, and digital compliance tools that help in predictive analytics and real-time risk alerts while being integrated into a forensic data analytic system. But there are more and more disclosures on compliance failure, lack of integrity displayed by leaders in power, and corporate wrongdoing scandals one after the other. Something's amiss—right?

Defining ethical vs. legal standards

I think what we forget is the fact that the heart of this issue is “human values.” Although “integrity” is the new buzzword, very few people apply its understanding in totality professionally. The definition of integrity is “the quality of being honest and having strong moral principles, the state of being whole and undivided,” but integrity doesn't just mean to be honest—it comprises a “concept of consistency of actions, values, methods, measures, principles, expectations, and outcomes.” Most compliance frameworks put routines and processes in place that abide by the law of the land and think that the job is done. Some even go a step further and align objectives with commercial interests and create a win-win model—until the fallibility of human understanding of integrity or ethics plays out.

Is unethical conduct the same as illegal conduct? I have yet to see an organization that makes this distinction crystal clear by design, voice, and action. As compliance professionals, we deal with blurry lines in ethics as we focus on building compliance programs just based on what's legal in a territory:

- What constitutes a felony or an act of criminal intent in a developed market may well be documented as an
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accepted business practice in a country like India or China, so is it okay to continue?

- Are ethical considerations of your American and European employees the same as those in Vietnam, Singapore, or the Philippines?
- Are legal but unethical standards prevalent across the top of the organization, and does that understanding of what's right and acceptable permeate to lower-level employees?
- Do you indirectly force employees in emerging markets to compromise their ethics when the pressure to grow the business and manage costs is exclusively their responsibility? If you do expect them to deliver at all costs, then don't they have a right to justify gaining contracts by bribing?
- Does your organization invest in collecting insights on human dilemmas and values across geographies and incorporate the findings into your local compliance policy (just like the marketing function does)?

Global compliance managers bask in the glory of achieving state-of-the-art benchmark compliance programs across the US and Europe, where, culturally, people are more aware and conscious of these issues. They can convince regulators on the strength of their risk-mitigation efforts. The problem is deploying the same program with the same set of understanding in emerging markets.

If general counsels and ethics and compliance managers truly want to help businesses in emerging markets manage risks and scandals, they should go above and beyond the normal checklist routine. It is a long and hard walk, but the optimist in me wants to believe and convince others that it is possible. The journey will not be perfect, and achievement may not be quantifiable in the short term, but businesses can pursue profit with integrity and a defensible strategy against corruption. No matter how cumbersome, the rules exist for us to make sure that public interest is upheld. Within the rules, each organization has the option to identify the things it wants to stand for to protect its employees, shareholders, influencers, and the public at large. Doing the right thing spreads faster than people can imagine. Do you work on long-term, sustainable solutions or tick-the-box compliance matrices? What does your organization stand for? Do you live by it every day?

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