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Regulatory emergencies - what can in-house lawyers in Asia do to prepare themselves for compliance crises

Ahead of the Corporate Counsel Singapore Forum, Pinsent Masons
corporate crime partner Neil McInnes talks to Legal Week about what
general counsel can do to prepare themselves for regulatory emergencies





Speaker Q&A

Regulatory emergencies – what can in-house lawyers in Asia do to prepare themselves for compliance crises



Neil McInnes
Partner
Pinsent Masons MPillay

Some examples of ways you can prepare:

- Make sure you have an incident response protocol so everyone on the team knows how to respond in an emergency.
- Engage likely external support in advance of an emergency so you are not scrambling around in a crisis.
- Who will you use for crisis PR? Who will deal with any forensic issues – whether forensic IT, accounting or to help isolate a cyber security issue? Who will be your external investigation or litigation counsel? Who will your local lawyers be in the jurisdiction?

How can you check for early warning signs?

There are a range of actions you can take to get a handle on your risks and if an issue does bubble up, then you will be on the front foot to tackle it early and, ideally, before it becomes a crisis. Here are some good ways to spot indicators of potential compliance headaches:

- Test your ethics and whistleblowing hotlines and reporting channels to ensure that they are working, that people know about them, and reports are being received and actioned appropriately.
- Keep your compliance-related risk assessments up-to-date and review these regularly. Have additional reviews when you enter a new market; new type of venture; or new jurisdiction.
- Use technology to help effectively triage your risks by vetting third parties that are part of your business process and identifying your most high-risk relationships.
- Use forensic IT to run tests over you accounting databases to spot red flags early.
- Work with your internal auditors closely to have an oversight on control weaknesses that may point to a compliance risk.

Neil is a Partner and Barrister, qualified in England & Wales. A criminal defence specialist, Neil has extensive experience of conducting anti-corruption and other investigations across Asia and Europe.

His practice includes related compliance advisory work for European, UK, Asia-Pac, and multinational corporates. Previously based in the London office of Pinsent Masons LLP, Neil relocated to Singapore in August 2014 to set up the firm's corporate crime practice in the region, working across South East Asia.

He regularly advises clients on the implications of the UK Bribery Act and global anti-corruption trends, as well as on fraud, money laundering and related global regulatory investigations, frequently involving multiple law enforcement agencies around the world.



Speaker Q&A



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How can you protect your compliance function from the perception of conflicts of interest?

The US and UK authorities have looked at compliance programmes in a much more interrogative fashion in the last 18 months, so there is now a spotlight shone on those post-holders. You need to think about how you protect the compliance function from allegations that there is a conflict of interest between what the compliance function does and what the business pressure is. Crucially, a compliance officer or lawyer responsible for a compliance programme needs unfettered access to raise concerns directly to senior management.

And if the compliance function is not adequately resourced or staffed with a strong enough team these things can cause real problems with regulators.

That is an interesting trend in crisis situations, you can't just prepare to be the person the board will turn to for paid legal advice, you have to be aware that the regulators are increasingly interested in your decisions and the resources at your disposal.

How to co-operate effectively when dealing with multiple regulators?

You need to think about your approach before the crisis happens because things will happen very quickly. That is why you need a good understanding of these issues in advance, so you have the framework to respond – based on international and local law factors and the relevant regulatory environments in which your business operates across different jurisdictions. There can be a range of regulatory-related areas to have had advice from local counsel about in advance of an issue emerging, so in the initial stages of handling a crisis you don't inadvertently compound a problem, whether it is understanding the powers of local regulators; duties of cooperation; or other best practice steps.

How can you test your level of preparedness?

Some companies do mock inspections or raids, or simulate crises involving compliance incidents or cyber breaches to see how their teams would respond. These sort of things are a really good way of learning how your organisation works together in a crisis. It doesn't really matter what the subject matter of the hypothetical scenario is, but it is useful to see how you work within your in-house team; with external providers; how you can work with your stakeholders and that they can have confidence in you and that you are the person that should be coordinating this crisis.

Everyone does fire drills, but are you doing drills for crises that can knock a huge amount off your share price and be reputationally damaging across all your markets?