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CONNECTED COMPLIANCE

The business case for
compliance integration



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New evidence and best practice advice from Baker McKenzie, designed to help you leverage the value of connected compliance to your competitive advantage.

About the research

Baker McKenzie's Connected Compliance report examines the compliance approaches and concerns of multinational corporates in the UK. Opinion research was conducted in Autumn 2017 amongst 537 companies with a UK turnover of £1 billion or more. Study participants include a representative sample of compliance leaders (Head of Compliance, Chief Compliance Officer), growth leaders (Head of Strategy, Chief Strategy Officer, Business Development Director) and general managers (General Manager, UK Managing Director). Participating companies were drawn from the following sectors: Industrial, Consumer Goods, Energy & Infrastructure, Financial Services, Healthcare & Life Sciences, and Technology, Media & Telecoms (TMT).



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FOREWORD

Redefining compliance in modern business

"Good compliance is not incompatible with growth. In fact, connected compliance should enable more sustainable growth."

Jo Ludlam

Compliance is a corporate wallflower. Its typical function has been to get the right policies, procedures and due diligence in place – working largely out of sight to protect companies from risk, regulatory violations and investigations. When it is working well there is little need for business leaders to consider the compliance function. As a result, the contribution of compliance is counted in cost rather than value, and compliance teams are often defined as barriers to growth. This belies the huge responsibility shouldered by compliance in today's increasingly complex and punitive regulatory environment, and fails to acknowledge its critical dual role in modern organisations. We need a new definition that captures compliance as protector and driver of commercial value.

Protecting value is a natural role for the compliance team. Its core capability is to safeguard the company's reputation by ensuring the organisation and its partners are good corporate citizens. That means complying with regulation to avoid costly investigations and fines, while defending IP and protecting customer information. But today's regulatory

landscape demands a greater strategic contribution from compliance – taking an active role in growth decisions, planning and implementation to support sustainable growth.

This may sound expensive, but asking compliance to step into strategy does not require bigger compliance budgets and teams, and it need not create barriers to growth or cumbersome red tape – quite the contrary. By integrating compliance, organisations can build a more effective function and find stronger routes to achieve their commercial goals.

Our research explores this dual facet of modern compliance – protecting and creating value for organisations. The data presented in this report proves that connecting compliance has a positive impact on the top line as well as the bottom line, indicating that good compliance is good business and connected compliance supports growth.

Connected compliance is the antithesis of typical siloed organisational structures with detached compliance teams. It is about spending and working smarter – saving money,

making better growth decisions and improving compliance coverage by weeding out duplication, weakness and confusion. Four dimensions – collaboration, agility, strategy and effectiveness – work together to ensure compliance is connected to the business and its growth plans. Reorganising policies and creating new procedures is not enough. To connect compliance, organisations need to reshape teams, reform cultures and open new lines of communication. It will take time and collective effort, but the business case is clear. Our research suggests that, in connected organisations, compliance is better able to protect value and support growth. Growing organisations consistently outperform those in negative growth in the four dimensions of connected compliance. That means adopting best practice to align plans with compliance, broadening accountability for compliance, responding fast to shifting regulatory requirements, and eliminating duplication to maximise compliance effectiveness.

Jo Ludlam, Luis Gomez & Tristan Grimmer
Baker McKenzie



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OUT OF THE LOOP

LESS THAN
1 IN 5
RESPONDENTS INVOLVE COMPLIANCE
'SUBSTANTIVELY' IN PLANNING AND
IMPLEMENTING MULTI-BILLION POUND
M&A DEALS



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STRATEGIC COMPLIANCE

Making commercial connections

Strategy is a critical component of connected compliance. It means finding the right balance between strategic growth and compliance practice to increase business value. It also connects compliance and strategy leaders, aligning compliance and commercial goals.

Compliance as an enabler

Nearly one third of companies are currently targeting 'aggressive' growth, with the overwhelming majority seeking some form of revenue growth, operating profit growth or a combination of the two. To meet these ambitious targets, more than two thirds of organisations are taking calculated risks in pursuit of growth, according to our research. M&A is at the heart of this growth strategy for 17% of respondents – significantly more than offshoring (1%), expansion into new sectors (6%) and international markets (7%), or joint ventures (8%).

Few activities are as significant for organisations as largescale M&A, which enables firms to make rapid seismic changes to their business. Amidst the huge cost, cultural upheaval and regulatory scrutiny of large-scale M&A, risk is high, so compliance involvement in planning and implementing deals is essential.

But our research uncovers serious and systemic misalignment between compliance and commercial strategy.

Compliance teams are not consistently included in planning and implementing deals. Fewer than one in five companies involve compliance 'substantively' in planning and implementing multi-billion pound M&A deals, compared to almost half that bring in compliance when selecting new business partners. By failing to align compliance and growth, organisations are dramatically increasing their risk exposure. On average, 40% of organisations admitted to uncovering a compliance issue with a new acquisition only after the fact. Furthermore, this approach is highly inconsistent, given that large M&A will typically lead to a company acquiring new business partners who have not been through the firm's compliance procedures.

As a result, 70% of compliance leaders state that the team is being stretched by their company's growth plans.

David Lashway, Partner & Head of the Global Cybersecurity Practice, Baker McKenzie: "Compliance heads and strategy leaders need to work together and speak a common language based on a shared desire to manage risk and drive value. Such interdisciplinary teams can effectively develop a compliance approach that is incorporated into the company's strategy and that is consistent with its risk appetite and growth ambitions."

The lack of compliance involvement is apparent across many commercial activities. Our research finds that compliance is deliberately kept out of the loop for fear of issues being uncovered and plans derailed, with more than a quarter of respondents reluctant to speak openly about plans in case they uncover compliance challenges.



William Devaney, Partner and Co-Chair of the Global Compliance & Investigations Group, Baker McKenzie: "If compliance operates as a completely separate function, they become the people you have to 'get around'. They can be seen as blockers who are viewed as not really understanding what the business is trying to do. You can have a huge compliance department but they won't necessarily stop bad behaviour."

When competitive advantage is slim and growth hard won, companies can't afford to overpay on a deal or underestimate the cost of integration post-acquisition. With a fuller picture from compliance, heads of strategy are in a stronger position to negotiate more attractive terms on new acquisitions and maximise value for their organisation.

Keeping compliance at arm's length is damaging. Not only are organisations undermining compliance's ability to protect value by minimising risk, they are also missing an opportunity to drive valuable business outcomes.

Mini vandePol, Partner and Chair of the Asia Compliance & Investigations Group, Baker McKenzie: "Compliance can start to shake its reputation as a commercial killjoy by becoming a real business partner – thinking beyond M&A due diligence to long term commercial value."

OUR INSIGHT

Tim Gee, Partner and Head of the Consumer & Retail Sector in London, Baker McKenzie



Strategic functions of compliance in M&A

At a time when much of corporate strategy is driven by the need for innovation, businesses may carry disproportionately high levels of risk. For example, acquiring new technology or IP can drastically increase exposure. Compliance must monitor how M&A prospects expand the risk base of their firm and reassign resources to meet these risks.

Compliance leaders also have a critical role to play in every stage of a significant acquisition – protecting the value in the business and maximising the value of the investment.

In growing companies, compliance teams are involved to a greater extent in decision-making – including M&A decisions. In fact, growing companies are twice as likely to involve their compliance leaders in planning and implementing multi-billion pound deals, compared to firms in negative growth. Furthermore, 75% of compliance heads in growing organisations say their firm has a good growth-compliance balance.

The M&A compliance cycle

Before: Understanding apparent and hidden risks in acquisitions will give your firm the strongest possible hand to negotiate the terms of the deal. To leverage compliance weaknesses and risks, bring in the Chief Compliance Officer as soon as possible to start risk-based compliance

due diligence, but also provide a comprehensive view of potential value drains.

During: Integrating compliance functions and rationalising policies is key to ensuring the newly combined firms remain compliant. Much of this can happen while the deal is moving. Consider the risk base of the company being acquired, how their compliance team is structured, what tools and specialist skills can be brought into the new firm and begin to make an integration plan.

After: Protecting the value of the investment following the deal relies on speedy execution of the integration plan. Guard against confusion and duplication by matching compliance resources with newly reorganised functions, bringing in senior leadership as advocates, and creating and communicating clear compliance guidance with all employees in the merger's first month. These steps are key if the company is to secure credit from agencies or if it needs to engage with prosecutors in respect of any legacy issues that may be identified and self-reported. Consideration should also be given to targeted compliance checks in identified high-risk areas, especially where pre-existing compliance processes have been found wanting or weak.



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COLLABORATIVE COMPLIANCE

Connect to comply

Collaboration is the second core tenet of connected compliance. It relies on the ability of the whole organisation to build relationships, understanding and accountability for compliance across functions – from the boardroom to the frontline.

Siloed organisational structures are the scourge of connected compliance, giving rise to multiple compliance issues. According to our research, 32% of respondents believe compliance blind spots exist as a result of siloes, where there is no collaboration between departments. The compliance team was most pessimistic about the lack of collaboration and alignment between their function and other business units. These silos can also exist within compliance and legal teams, with subject matter and regional teams failing to communicate effectively and viewing issues through a narrow lens.

In fact, 68% of respondents agree or strongly agree that their company could be more compliant with better cross-functional collaboration. Despite this, respondents appear to resist closer collaboration. While personal liability for compliance breaches is a concern, relatively few are willing to accept any accountability for compliance matters. Two thirds of leaders take more interest in compliance now that leaders can be held criminally responsible for poor practice. However, almost as many people say that the compliance team takes sole responsibility for good governance.

Whose job is it anyway?

Reluctance to accept responsibility for compliance is apparent across organisations, with employees more likely to be held accountable for compliance than senior leaders or most board members. Employees are also more likely to be assessed and rewarded based on compliance effectiveness.

Placing a high degree of responsibility on employees to self-manage compliance is highly problematic, given that our research uncovers glitches in chains of command and highlights that not all frontline staff fully understand compliance rules or have the tools to identify risk indicators. Half of the respondents we interviewed said it can be confusing to understand compliance practice because the company has multiple policies across functions. Almost half also bemoan a bottleneck in escalation times between employees and leaders when it comes to compliance issues.

William Devaney, Partner and Co-Chair of the Global Compliance & Investigations Group, Baker McKenzie: "Embedding functional compliance into business teams fosters collaboration and understanding between compliance and the business. Some financial services companies have done this particularly effectively, appointing go-to compliance contacts who sit within strategic business lines."

Certainly, compliance doesn't end at the water's edge. Failures and breaches rarely fall neatly in a single department or with one individual – they permeate artificial organisational lines. Regulators are increasingly able to join the dots, so organisations must collaborate, share responsibility and empower every business division to identify compliance issues that fall between the siloes. Compliance is now everyone's job. But even with strong compliance strategies, it is difficult to predict whether employees will follow the rules when faced with a real world issue.

Ensuring employees comply is a key concern, according to our research. Over half the respondents worry about whether compliant decisions taken at the top are properly implemented down the chain of command.



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Mini vandePol, Partner and Chair of the Asia Compliance & Investigations Group, Baker McKenzie: "Corporate compliance issues rarely stand alone. They permeate different functions and cross compliance disciplines – from tax to fraud and bribery to data protection. A connected approach to compliance is therefore our best tool for mitigating risk."

At the same time, there is little desire and huge difficulty in policing

employee action. Organisations are increasingly adopting a values-led approach to compliance – asking employees to 'do the right thing'. In fact, 59% of MDs encourage employees to use their own moral compass when it comes to compliance issues. Creating a simple, common language for compliance issues – one which is centred around values and ethics – can be a powerful tool for improving behaviours across large organisations.

Jo Ludlam, Partner and Co-Chair of the Global Compliance & Investigations Group, Baker McKenzie: "Hiring according to your culture, sharing compliance best practice regularly and using predictive analytics to preempt non-compliant behaviour are just a few measures you can take to strengthen your employees' ability to make the right decisions, and build your confidence in the logic of those choices."

A UNIVERSAL RESPONSIBILITY

OVER
60% BELIEVE THAT THE
COMPLIANCE
TEAM TAKES SOLE
RESPONSIBILITY
FOR GOOD GOVERNANCE



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Criminal liability

Recent legislation has moved the UK closer to the US model of personal liability, introducing regulations to make individuals accountable for company compliance failings. Under the Bribery Act, individuals found guilty of an offence may face an unlimited fine or even imprisonment for up to 10 years. Individuals who are found to have committed a cartel offence under the Enterprise Act may

similarly find themselves facing hefty fines or jail time. The Senior Managers Regime, meanwhile, imposes an obligation on senior financial services executives to ensure good governance. It is likely this trend will permeate other sectors.

Governments believe that holding senior executives personally responsible for corporate wrongdoing will encourage greater compliance company-wide. But our research shows

that leaders may be underestimating the risk associated with criminal liability. One third of respondents take no more interest in compliance now that executives can be held criminally responsible for poor practice – indicating perhaps that they were already engaged with compliance or, more worryingly, that the Government's efforts to make the case for greater compliance accountability have not been successful.

OUR INSIGHT

Luis Gomez, Partner and Chair of the EMEA Competition Group, Baker McKenzie



Jo Ludlam, Partner and Co-Chair of the Global Compliance & Investigations Group, Baker McKenzie



Building clarity

Our research underlines an endemic lack of collaboration apparent in all firms, though high-growth organisations do work together more frequently. This may explain why their employees more readily understand and engage with compliance compared to counterparts in lower-performing businesses. In growing companies, 83% report that teams are clear on compliance responsibilities.

Growing firms have also established clearer chains of command, which include the CEO. Almost three quarters have these feedback loops in place compared to only half in declining firms. The communication of compliance and risk from the top down is similarly strong in growing organisations with 73% issuing regular updates.

Creating compliance policies is little use if your workforce doesn't understand how those policies apply. Conducting regular vertical and horizontal risk audits will uncover compliance gaps and focus the whole organisation on the most pressing issues. Vertical assessments tackle misalignment between employees up and down the organisation, and horizontal assessments join the dots between functions and areas of compliance. Regular training sessions, leadership updates on compliance practice, and critical reviews of communication channels will also help uncover issues that could prevent knowledge of a serious compliance issue reaching the right people.

Tackling blind spots in connected supply chains

Legislation empowers authorities to hold companies to account for failing to prevent non-compliant activity in their supply chains. The 'don't ask don't tell' approach often adopted by companies is therefore insufficient in some circumstances. Almost half the organisations we surveyed are choosing to avoid probing the compliance practices of their supply chain, while more than a third rely on self-management of supply chain partners to remain compliant.

This is an increasingly complex issue for compliance; various areas of law approach liability differently and there are substantial contrasts across jurisdictions too. Compliance leaders are aware that they need to take a hands-on approach, but many organisations struggle to determine how far they need to go. Wide-reaching tax and bribery legislation piles on the pressure to implement watertight processes and procedures, and to include explicit clauses in third party contracts to mitigate these offences, but deniable culpability remains a legitimate defence against some supply chain compliance problems.

More than half the participants we interviewed plan to make new investments in supply chain compliance over the next 12 months. But investment alone won't mitigate risk. Organisations should conduct frequent risk assessment and gap analyses and carefully consider where to build closer relationships and adopt shared compliance objectives with suppliers. Our research finds that only 18% of companies currently assess and reward their supply chain partners based on their compliance effectiveness – and this could be a fruitful route to more connected compliance.



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CONNECTED COMPLIANCE

The industry C-A-S-E: Collaborative, Agile, Strategic, Effective

Baker McKenzie conducted opinion research amongst 537 companies with a turnover of £1 billion or more. Study participants were a representative sample of business leaders including compliance leaders, growth leaders and general managers across a range of sectors. Here, we present the findings in each industry we surveyed: Industrial & Automotive; Healthcare & Life Sciences; Consumer Goods; Energy & Infrastructure; Technology, Media & Telecoms; Financial Services.

INDUSTRIAL & AUTOMOTIVE

Compliance strategies set by the leadership team are **not always properly implemented** at the coalface, according to 60% of respondents in this sector.

57% of companies have had **compliance issues uncovered** by a regulator.

56% of Industrial & Automotive leaders are aware of compliance issues in their organisation that are yet to be discovered by the regulator.

56% said that **integrating compliance** across functions would help employees to be more compliant. However, only 28% of companies have put measures in place to do so.



HEALTHCARE & LIFE SCIENCES

As a highly regulated industry, the sector has had **fewer compliance breaches** uncovered by the regulator than any other sector.

This sector manages compliance in a more broadly integrated way. **Companies integrate compliance** in 48% of cases, compared to just 18% integration across all sectors we surveyed.

Nevertheless, 44% of companies in the sector **do not feel well protected** by the compliance policies and procedures in their organisation.

There is a significant **lack of involvement** of the compliance team in **strategic** decision-making. And 38% of companies said their organisation **lacked a clear chain of command** for raising compliance issues.



CONSUMER GOODS

Two-fifths of compliance heads in this sector believe there are 'blind spots' in compliance as a result of **poor alignment** and collaboration between functions.

58% of companies have been **caught out** by a regulator for compliance issues.

Only 31% of companies have adopted an integrated approach to compliance and an even smaller proportion (28%) have sought to reduce internal complexity and remove silos.

70% of companies said that **integrating compliance** policies would help all employees to be more compliant.



ENERGY & INFRASTRUCTURE

This is the only sector in which more than half the companies we surveyed have integrated compliance into **strategic decision-making**.

In M&A worth more than £1 billion, **compliance units are consulted in 55%** of cases. The same proportion of E&I companies consult compliance on new supply chain partners.

40% of companies **measure compliance integration** when assessing the effectiveness of their compliance function.

78% of respondents are confident of their company's compliance policies and procedures. However, 38% conceded that there could be **compliance issues with a supply chain partner**, of which the company would not necessarily be aware.



FINANCIAL SERVICES

As a highly regulated industry, companies in this sector demonstrate the **lowest levels of concern** regarding regulatory change.

However, 54% of respondents still expect compliance breaches to increase as a result of **proliferating legislation**.

Companies in this sector are most likely to have **implemented measures to mitigate** compliance risks, making them a useful compliance exemplar for companies in lower performing sectors.

Companies identified competition law, technology/IT and fraud as the areas of **greatest risk** to their organisation.

Companies in this sector had the **highest level of collaboration** between compliance and other business functions.



TECHNOLOGY, MEDIA & TELECOMS

68% of companies in this sector have had compliance breaches uncovered by a regulator – **more than any other industry**.

And yet, there are more respondents in this industry than any other who are aware of compliance **issues yet to be discovered**.

The sector **does not have a culture of disclosure**. 56% of respondents are reluctant to speak openly about compliance challenges for fear of issues being uncovered. This makes them just half as likely to disclose a compliance issue as other sectors.

100% of General Managers and Managing Directors in TMT companies express concern that when compliance issues are discovered, there is a **bottleneck in escalation** times.

72% complain that the **volume of new regulation** has made it incredibly difficult to manage risk and remain compliant.



FIND YOUR CONNECTED COMPLIANCE SCORE

See how you compare to others in your sector and to high-performing companies.

<http://www.connectedcompliance.bakermckenzie.com/>

THE COMPLIANCE TIME BOMB

2/3 OF COMPLIANCE CHIEFS EXPECT
BREACHES TO RISE
AS REGULATION BECOMES
MORE COMPLEX



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AGILE COMPLIANCE

Connecting to change

Agility is the third core principle of connected compliance. It ensures organisations are able to respond to the regulatory environment by taking steps to reduce internal complexity and fast-track guidance.

A daunting task

Organisations are overwhelmed by the volume and complexity of regulation in the market, according to our research. Business interests now reach all corners of the world – we're even mining in space – and disruptive products, systems and delivery models enter the market every minute. Several recent high-profile compliance issues have arisen as previously defined lines between market categories, models and norms have blurred. The parameters of corporate compliance are in flux.

Organisations are unsurprisingly anxious about the complexity of regulation in this environment, and don't feel fully confident in their ability to navigate risk. According to our research, 55% of leaders are overwhelmed by the risk exposure of their business and 60% report that the volume of new regulation has made it incredibly difficult to remain compliant.

As a result, serious compliance breaches are known and expected to rise. More than half our survey respondents are aware of a hidden compliance breach in their organisation that is yet to surface to the regulator or the public. Meanwhile, two thirds of compliance chiefs expect breaches to rise as regulation becomes more complex. In addition to these regulatory developments, well-resourced agencies and prosecutors are also promoting more aggressive enforcement policy.

Companies must keep pace with rapidly changing, sometimes conflicting, laws which may change overnight. Companies having to adopt a wholesale and immediate change in their commercial strategy in particular geographic areas in response to the introduction of trade sanctions by the US and EU has become an increasingly common scenario. The recent Qatar crisis has shown that this phenomenon is spreading.

It is impossible to hold back the tide of changing regulation but it is possible to manage it more effectively – reacting quickly to and preempting developments and changes. To do this, organisations must become more agile: integrating and simplifying compliance policies wherever possible to reduce internal complexity, staying in the know by building trusted relationships with regulators, and embedding compliance representatives within core functions to speed up response and decision-making.



OUR INSIGHT

Tristan Grimmer, Competition, Bribery & Trade Compliance Partner, Baker McKenzie



Agility mitigates risk

Growing companies are acutely aware of the overwhelming complexity of regulation. Two thirds report that it is incredibly difficult to remain compliant as a result of new regulation. In shrinking firms, just half the respondents are aware of the risks they face with regards to the exponential expansion in regulation.

What also differs between these two groups is their response to this pressure. Growing companies are 10% more likely to adopt integrated compliance policies. They also seek more actively to reduce internal complexities and siloes in response to emerging risk – doing so in 78% of cases.

As a result of their reduced agility, leaders in negative growth firms are up to 19% more likely to know of hidden compliance issues compared to their counterparts in growing firms.

Tristan Grimmer, Partner, Baker McKenzie: "It is absolutely imperative that companies implement processes that enable them to understand the emerging compliance risks that they are facing across their business on a global basis. Simplified and integrated structures allow senior decision-makers from different functions and regions to consolidate and assess information from inside and outside the compliance unit. Companies must also look to leverage other data points, including through their engagement with international non-governmental organisations."

Predictive capability

The ability to keep abreast of emerging business risks and new regulation is key to compliance agility. Tailored regulatory updates and breaking news briefings can help businesses preempt what is on the horizon and allow them to get ahead of the curve. For example, by examining enforcement trends, companies can understand how to triage issues and prioritise compliance initiatives. Building a bank of insight provides the foresight needed to respond to the most pressing issues at the right time.

Tax

The Criminal Finances Act came into effect in September 2017, and introduced the new Corporate Tax Offence. A business can now be convicted if it fails to prevent an employee, subsidiary or another agent from enabling tax evasion under UK or foreign law. A business can be liable for the actions of an individual acting on its behalf, regardless of whether it stands to gain from the activity. Convicted businesses face an unlimited fine.

Nigel Dolman, Transfer Pricing Partner, Baker McKenzie



This regulatory change coupled with onerous audit responsibilities means the pressure on compliance is rising. It is little wonder that a third of organisations plan to make investments in their tax compliance in the next 12 months. Compliance leaders should direct these resources toward regular risk assessments, bringing in specialist tax expertise and building more collaborative relationships with authorities to help manage this rising risk.

Nigel Dolman, Transfer Pricing Partner, Baker McKenzie: "Regulators have upped the ante on tax, which means compliance in this area faces close scrutiny. Some companies are simply not acting fast enough to get their house in order and may be forced to pull out of markets or face hefty fines if caught in malpractice."



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David Lashway, Partner & Head of the Global Cybersecurity Practice, Baker McKenzie



John Evason, Partner & Head of the Employment Team in London, Baker McKenzie



Cyber security and data protection

Cyber security has similarly emerged as a hotspot for regulation in recent years. It is a moving target as hackers grow more sophisticated and regulators step in to protect systems and information.

A robust compliance programme is the baseline – this will protect the business from regulatory enforcement but not necessarily protect against the hacker. A business could be given a clean bill of health by the regulator and still fall prey to cyber breaches, with the damage to reputation and revenue that go along with it. Prudent compliance leaders – 47% of those we surveyed – are investing in cyber security as a priority.

David Lashway, Partner & Head of the Global Cybersecurity Practice, Baker McKenzie: "Cybersecurity is a key concern for compliance and risk managers, and with good reason. Hackers are finding more sophisticated and damaging inroads into our organisations every day."

At the same time, data protection and privacy issues are rising up the compliance agenda, as interconnectivity increases exponentially and more and more companies are using big data to direct their strategy and operations. The EU General Data Protection Regulation will apply from May 2018, which polices corporate use of individual data while also addressing the export of personal data outside the EU. As such, 36% of respondents to our survey highlighted 'data' as a key compliance threat.

Modern slavery

The Modern Slavery Act requires UK businesses to publish an annual statement on slavery and human trafficking, setting out the steps an organization has taken to ensure this is not taking place in any part of the business or its supply chain.

John Evason, Partner & Head of the Employment Team in London, Baker McKenzie: "The Act requires businesses that supply goods or services in the UK – whether they are UK domiciled or not – to publish a statement if they have a global turnover of £36 million or more. However, a recent survey by the Business and Human Rights Resource Centre found that as many as 50% of the FTSE100 have failed to provide meaningful information on whether their actions were effective in addressing modern slavery risks, highlighting the extent to which even sophisticated companies can lack agility in their compliance programmes."

New reporting obligations

Certain companies with a December 2017 year-end will be the first to have to adapt to new requirements for reporting non-financial information, including on anti-bribery and corruption matters.

Previous legislation had required certain quoted companies to publish information related to environmental matters, the company's employees, and social, community and human rights issues. Under the new requirements, a broader range of companies will be required to share even more information about these areas, as well as reporting anti-bribery and corruption matters to the same degree. This includes reporting information on their policies, their business relationships and the risks facing the company in relation to these areas – as well as details of how they plan to deal with those risks and the effectiveness of their procedures.

The new regulations, which stem from an EU Directive, also encompass a much broader swathe of organisations than the pre-existing requirements of the Companies Act. The new measures apply to traded companies, banks and insurance companies, wherever the organisation is a parent company with more than 500 employees.

Tristan Grimmer, Partner, Baker McKenzie: "The new regulations are designed to provide an understanding of the company's development and performance – as well as the impact of its activity – in relation to these compliance areas. This exercise requires integration between the compliance function and those responsible for board-level reporting. Companies with more connected approaches will be more agile and as such, will be able to respond more quickly and effectively to new requirements like these."



EFFECTIVE COMPLIANCE

Connected and efficient

Effectiveness is the final facet of connected compliance. Effective compliance is streamlined without sacrificing the ability of the compliance team to fulfil its dual function. Cost cutting is balanced, targeting duplication of efforts rather than reducing the scope of compliance services.

Compliance in the face of cuts

Support functions are a frequent target for cuts and compliance is not immune. Nearly three quarters of all companies are tasked with making efficiencies here, yet compliance teams already struggle to manage threats to their organisations. Cost saving may further jeopardise the effectiveness of the function.

Efficiency itself is no bad thing – finding new ways to optimise compliance is important, especially given that duplication of compliance policies and procedures across functions is an issue for many companies. Two thirds believe there are big efficiencies to be made by addressing compliance more consistently. But compliance is only effective if it remains able to fulfil its dual function – protecting and driving business value – by responding to emerging risks.

At the same time, compliance resources are not always directed at the biggest threats to an organisation. Competition law is one of the top three greatest threats to organisations according to one third of business leaders – followed by IT and Fraud – but compliance effectiveness is rated lowest in the competition area.

Competition compliance: Disparity between perceived risk and effectiveness

The greatest compliance threats, as perceived by business leaders		The most effective areas of compliance, as perceived by business leaders	
1	Competition	1	Technology/IT
=2	Technology/IT	2	Accidental collusion
=2	Fraud	=3	Health & Safety
4	Regulation	=3	Data
5	Data	5	Fraud

It is striking that competition, as a relatively mature and defined area of compliance, is rated the number one threat for leaders. Ongoing and heavy enforcement by the regulators may be driving up the perceived urgency of competition risk. Competition violations are high profile, penalties high, and the level of complexity means it is not only difficult to give practical advice but it is also challenging to police.

Other areas of compliance, such as bribery and tax evasion, have been the subject of recent legislation that includes 'failure to prevent'

measures. This has prompted many companies to focus on introducing 'adequate procedures' as a defence to such accusations. Competition compliance policies, that offer no such defensive guarantees, may have been the 'poor relation' in the constant battle for compliance budgets.

Luis Gomez, Partner and Chair of the EMEA Competition Group, Baker McKenzie: "Antitrust enforcers are constantly developing new and innovative theories of harm. It's a shifting landscape and therefore difficult to keep up and give practical guidance, but easy for individuals to get it wrong and be led astray."



COST VERSUS VALUE

MORE THAN
1/3 OF COMPANIES PLAN TO
REDUCE THE
COMPLIANCE SERVICES
OFFERED TO THE BUSINESS
AS A WAY OF CUTTING COST



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Only half the respondents to our research feel confident in their ability to effectively manage this risk.

Organisations have greatest faith in their compliance capability in relation to data and technology. However, there remains a significant minority with serious questions over compliance effectiveness against every possible threat.

In general, organisations are attempting to integrate compliance – seeking to save money and close effectiveness gaps between areas of

compliance by reducing duplication – but with relatively little success. Just 18% currently manage compliance in a broadly integrated way.

Despite these gaps, more than one third of companies plan to reduce the compliance services offered to the business as a way of cutting cost. This presents a significant risk to overall compliance. One slip in a relatively innocuous area could lead to a much bigger issue elsewhere – further strengthening the case for connected compliance.

OUR INSIGHT

Integration as a tool for efficiency

Growing companies are significantly more likely to integrate compliance in an attempt to cut costs. Almost 60% are attempting to integrate policies and procedures. In negative growth companies, that figure stands at just 33%. Conversely, almost half of firms with declining growth are cutting services as their key efficiency initiative, compared to just one third of growing companies.

Growing organisations are more likely to perceive integration as rich ground for savings in general. Nearly three quarters of business leaders believe there are big efficiencies to be made by connecting compliance, compared to just over half of those in declining companies.

Compliance teams in growing companies are also assessed and rewarded on compliance effectiveness far more frequently than their counterparts in negative growth – connecting compliance outcomes and team performance.

Nigel Dolman, Transfer Pricing Partner, Baker McKenzie: “Effective compliance is not about shrinking teams or cutting cost – it means finding connections, eliminating troublesome overlaps and breaking down the siloes that create inefficiency.”

In fact, effective compliance can be a matter of accepting that some risks will invariably exist.

Tim Gee, Partner and Head of the Consumer & Retail Sector in London, Baker McKenzie: “All compliance is risk-based – the company has to live with some risk. It’s a matter of mapping your greatest risks and deploying your compliance resources accordingly.”



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CONCLUSION

Connected compliance breeds sustainable growth

Compliance integration is not a new concept, but the business community has been slow to embrace it. Our research demonstrates that companies have made little progress in improving critical connections between different business functions, nor have they addressed gaps in compliance accountability between employees at all levels of the business.

Businesses understand that adopting an holistic approach to compliance can help them cut costs. But the promise of bottom line savings has not provided a strong enough impetus for organisations to amend their approach to compliance, whether by reviewing policies, reshaping teams or reforming culture. At the same time, there is a false perception that compliance exists to scupper business strategy by unearthing problems.

In reality, rather than circumventing the compliance team, it is imperative for business leaders to understand the much broader commercial role that compliance should be playing within organisations. Far from being a barrier, compliance can enable growth through smart decision-making – particularly in an M&A context – as well as protecting the business from unwittingly taking on risk.

To function as this effective enabler of growth, compliance cannot be kept at arm's length. It must break free from its traditional silo and work collaboratively with the business. That includes taking steps to measure and report on the contribution made by compliance to the wider business. Our research has demonstrated that connecting compliance has a positive impact on the top line as well as the bottom line, so companies would be well advised to adopt quantitative measures to link compliance with business outcomes, in addition to promoting the softer metrics of awareness and understanding currently favoured by many organisations.

Ultimately, effective compliance is good business – and that requires taking a connected approach. Individuals with compliance responsibilities should sit on every board and they should be embedded within all business divisions, helping to build a culture of compliance across the organisation. Collaborating across teams, geographies and areas of responsibility will reduce the risk of gaps and will allow your business to respond and adapt quickly to the ever changing regulatory landscape.

The CASE for connected compliance

COLLABORATIVE

FIND AND CLOSE VERTICAL AND HORIZONTAL COMPLIANCE GAPS – FACILITATING COLLABORATION AND COMMUNICATION UP AND DOWN THE ORGANISATION AND ACROSS FUNCTIONS.

AGILE

BRING COMPLIANCE INTO THE BUSINESS AND ELIMINATE INTERNAL COMPLEXITY – SPEEDING UP RESPONSES TO NEW REGULATION.

STRATEGIC

ALIGN COMMERCIAL GOALS WITH COMPLIANCE PRACTICES AND INCLUDE COMPLIANCE AT ALL DEAL PHASES – DRIVING VALUABLE BUSINESS OUTCOMES.

EFFECTIVE

BALANCE COMPLIANCE EFFICIENCY AND CAPABILITY AND INTEGRATE POLICIES – ENABLING THE ORGANISATION TO MEET EMERGING THREATS HEAD ON.



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