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Compliance

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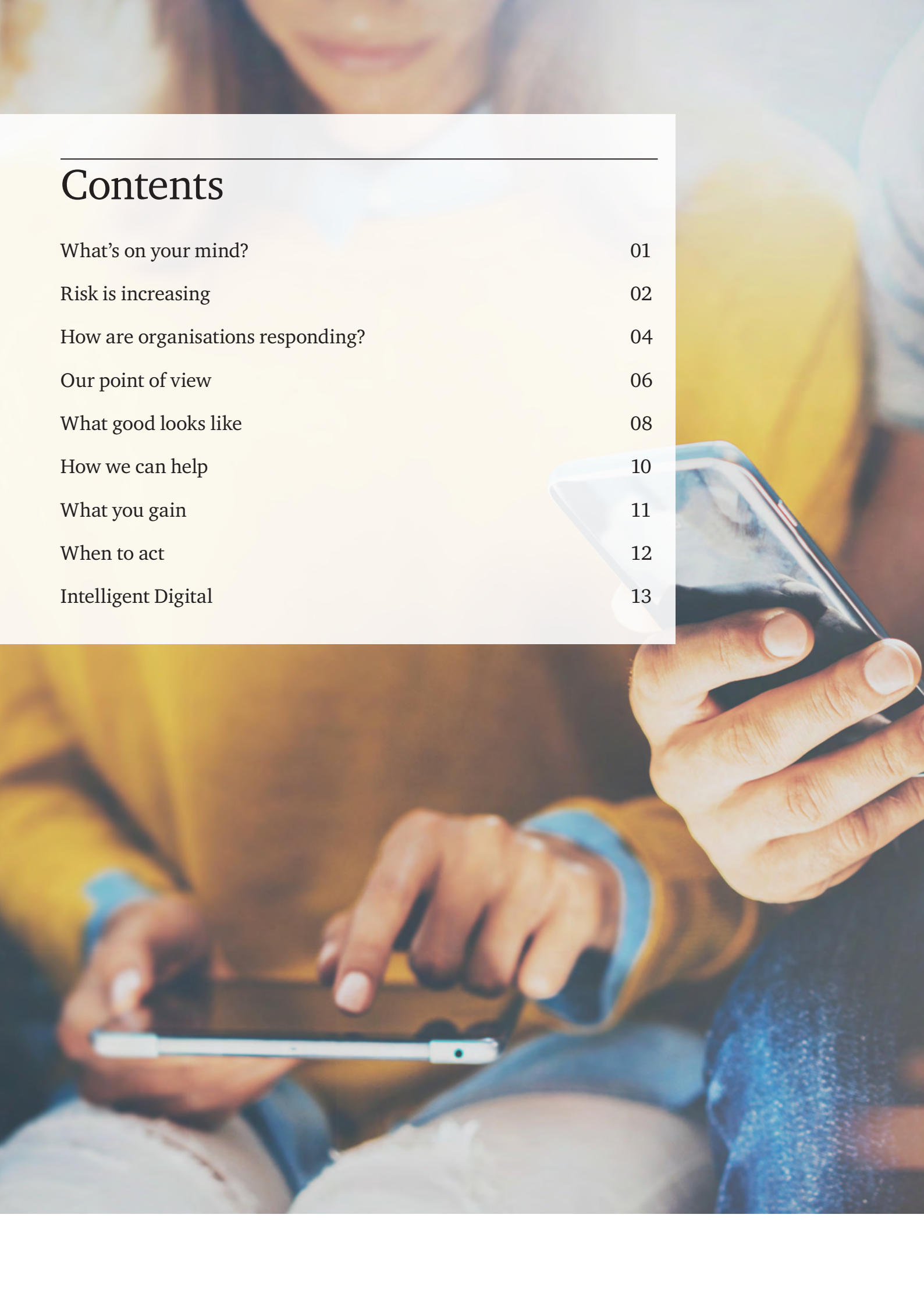
What's on your mind?

Observing the scale and pace of change in the corporate regulatory and legislative landscape over the past few years highlights the size of the challenge many organisations are presented with; whether the introduction of new regulations and legislations, the increase in enforcement actions, the speed by which, thanks to social media, incidents or breaches impact corporate as well as personal reputations or indeed the sustained focus on corporate culture and ethics rather than pure compliance. It has also been fascinating to observe how the corporate world has responded and adapted to such changes.

In this document, we attempt to examine the key drivers behind the rise of ethical compliance as a key agenda item for many organisations and boards, as well as highlighting and examining how organisations are responding to such changes; are they doing enough, are they doing too much?

Here's what some of our clients have told us are their top concerns in the area of compliance at present:

"How can we ensure that compliance means compliance, not just on Day 1 but for years to come?"

"How can we manage our reputational and regulatory risks without tying our commercial operations up in knots?"

"We seem to have an enormous number of compliance policies, but we are still failing to deliver the behavioural change needed."

Risk is increasing

What is driving the increase in ethical compliance risks?

Like never before, ethical and compliance risk is attracting the attention of boards and executives and becoming increasingly a constant on their agendas. This is evidenced by the increasing seniority of compliance officers and the creation of board and executive compliance sub-committees at an increasing number of organisations.

This comes as no surprise, given the increasing number of regulations, legislations and the focus on corporate culture and its role in an increasing number of high-profile breaches and corporate failures. We strongly believe that this trend is likely to continue as both the regulatory and business landscapes continue to evolve, the key drivers for that are as follows.

Changing regulatory landscape

- The increase in scope and geographical reach of legislations, e.g. EU Directives (Competition, Transparency and Privacy), FCPA and UKBA.

- The increase in industry-specific regulations, e.g. Pharmaceuticals, Utilities, Oil & Gas, Telecoms.

- The focus on building, embedding and measuring corporate culture and ethics is

no longer a luxury; it is a requirement as evidenced by the FRC revised code 2014.

- Government interventions through the increased use of economic sanctions as short-term 'weapons of mass discouragement', which companies need to immediately accommodate in their commercial strategies. This is particularly challenging given the fluid global geopolitical situation, which is becoming the norm.

- Increased collaboration between enforcement agencies, potentially leading the multi-jurisdictional prosecution of the same offences.

- The scale of financial penalties is rapidly growing.
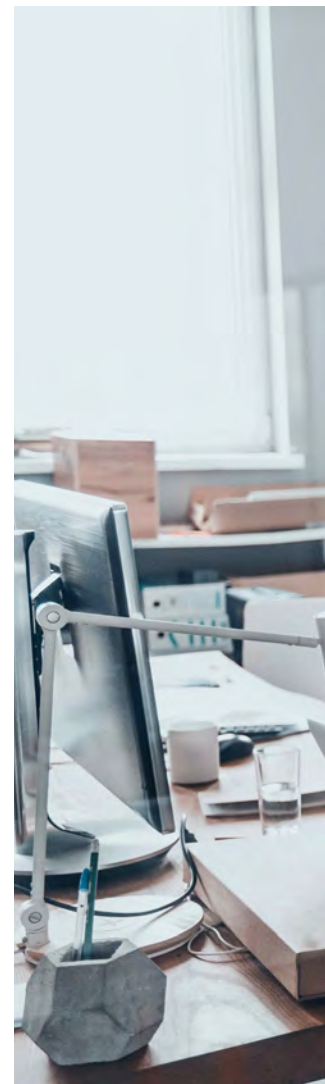
Changing corporate landscape

- Growing scrutiny by stakeholders fuelled by the increased use of social media means that corporate reputations are consistently under the spotlight.

- Organisations are still responsible and accountable for the conduct of their 'extended enterprise', both legally and reputationally.

- Fierce competition for new and developing markets adds pressure on front-line management to hit targets, but are they doing so in line with the ethical values communicated by Global Head Office 'tone at the top'? Compounded by many layers of management and, at times, blurred accountability beyond head office, are those ethical values and messages sustained through a strong 'tone at the middle'?

- During and following the economic crises over the past eight years, there has been a rise in M&A activities and, increasingly, organisations are concerned about the regulatory and ethical legacy of their targets.

- Many organisations are still scarred by the economic crisis and cost efficiency is becoming the norm amid falling global demand. Whilst the importance of ethical and compliance programmes is widely accepted by the majority of organisations, delivering such programmes in an effective and efficient manner has been a challenge given the scale and pace of change in the regulatory landscape.

The increasing focus on ethical and compliance risk does not only apply to global companies. A business with a perceived single geography focus, would have compliance risks extending as far as their products or services are offered and throughout the supply chain.

Senior executives and boards are quickly recognising that failing to keep up with the changes may cause them to fall behind the competition or, even worse, expose them to increased regulatory and reputational scrutiny.

How are organisations responding?

Viewing compliance in its wider definitions, many organisations have created multiple compliance strands across their business – operational, financial, regulatory, ethical and legal. The myriad of activities include risk assessments, policy and procedure development, communication and training programmes, running monitoring and assurance activities and providing MI and reports to a wide range of stakeholders. This is understandable given the significant changes to the regulatory and ethical compliance landscape, starting with the Sarbanes-Oxley Act, all the way to the Sunshine Acts on both sides of the Atlantic.

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The accumulation of such compliance teams all performing similar compliance activities and processes has often resulted in bureaucracy, inconsistencies and, more importantly, strong signs of compliance fatigue by front-line management.

This is taking place while shareholders continue to demand a competitive business structure to generate commercial value and financial returns. Meanwhile, execs and non-execs are seeking more assurance over ethical conduct, rather than just compliance.

On the other hand, many organisations are now reassessing the effectiveness of their compliance capabilities. This is mainly driven by:

1. Executives and non-executives are overwhelmed by compliance information from multiple sources.

2. The business' 'front line' is overwhelmed by the compliance tasks, risk assessments, audits and reporting requirements placed upon them by the different compliance teams.

3. Sustained focus on cost efficiency is putting pressure on the ethical and regulatory compliance teams to find synergies and to adopt a more consistent approach.

So, are organisations doing too much or too little? We believe the question is not the volume of compliance activities, instead it's the efficacy of such activities. How they are structured, organised, deployed and, more importantly, how integrated into 'business as usual' they are.

Our point of view

The broader source of ethical compliance risk is embedded throughout business activities where customer, sales, products and processes meet. The scope and nature of compliance have evolved from a series of rules-based regulations to a much broader, greyer area that now includes operational, customer and supplier risks, which have become more complex and entwined – areas that are more difficult for companies to monitor and control.

As a result, responding to compliance risk through programmes that are bolted on to businesses is no longer viable. Instead, integrated compliance capabilities spanning multiple business units and territories is becoming the objective 'future state' for organisations looking to act with integrity, consistent ethical values and effectively manage compliance risks.

This is evident by organisations' varying degrees of success in addressing their compliance requirements, with the key differentiator being their plan of attack:

- A **reactive and silo'ed** approach to each compliance risk thus accumulating, and in many cases duplicating, compliance capabilities and approaches. More importantly, developing tactical compliance capabilities which, whilst effective in managing a single compliance risk or its symptoms, fail to address the ethical and cultural root cause; or

- A **proactive and holistic** approach establishing a consistent and proportionate compliance framework that is effective, efficient and sustainable in addressing the compliance risks both today and tomorrow.

We believe that a large number of organisations continue to deploy the more reactive approach to compliance. This comes as no surprise, as organisations were forced to adopt a 'firefighting mode' due to the **exponential increase in regulations and enforcement actions.** Being reactive to the most pressing issue meant that stepping back to **assess the bigger picture** and adopt a proactive approach was not an option. Albeit, forward-thinking organisations recognised the need to manage both the short and long-term compliance challenges.

However, **the tide is changing**, mainly driven by Boards and Non-Executives, we are seeing an
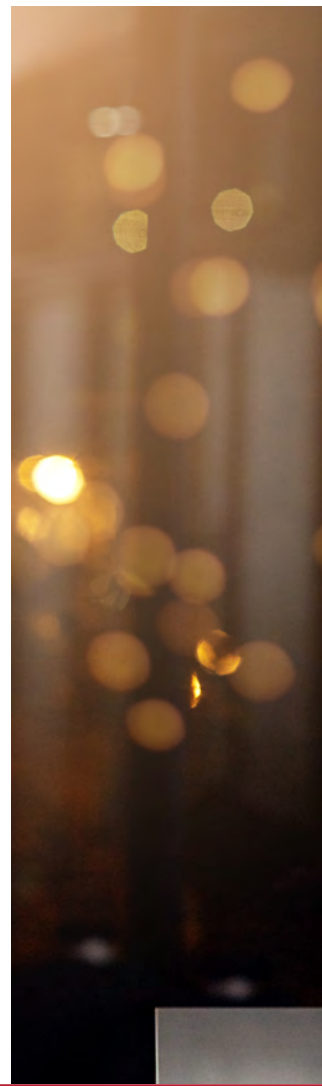
increasing number of organisations striving and investing to **develop and integrate their compliance capabilities** to manage **'business as usual'** compliance risk, while identifying and improving the more **overarching and fundamental ethical levers** that goes far beyond a single piece of legislation or regulation, such as **culture and behaviour.**

We are also seeing a **sustained focus** on the **simplification and enhancement of the existing compliance processes,** enabling businesses to deploy a universal ethical compliance framework across the business – whether risk assessment, policy governance, culture and behavioural training, monitoring and assurance or the use of technology and data analytics – to enable a streamlined, transparent and business friendly process. Those organisational alignment and simplification

initiatives are typically driven by the second line of defence, with a significant buy-in from the first line, who is the ultimate beneficiary of a simple and clear ethical programme that enables the delivery of the business strategy and targets in a sustainable and ethical manner.

We believe that the future for many ethics and compliance functions will be **building simpler, universal and integrated frameworks that span all compliance areas,** supported by **one common tool to capture compliance requirements;** risks, policies, procedures, controls, monitoring and assurance activities. We are also witnessing signs that the recent focus on corporate culture – as evidenced by the updated UK Corporate Governance Code – is here to stay. Therefore, defining, shaping and monitoring the culture and behaviours across organisations is no longer a 'nice to have', but a 'must have'.

Frequently Asked Questions by Boards and Senior Executives

1. Who is responsible for compliance across the business and how are they held responsible?

2. Are our values, ethical and compliance expectations clearly articulated in terms of specific behaviours and are they practiced across the business?

3. How strategically aligned are our compliance activities, are we enabling the business to achieve its objectives?

4. How are we managing compliance risk in the supply chain 'extended enterprise'?

5. Do we have sufficient oversight of what we need to comply with and how are we complying with it?

6. Can we provide our stakeholders with assurances over the state of compliance?

What good looks like

Enlightened leaders are looking for ways to make their organisation embrace compliance as a business enabler.

Competitive advantage

It might seem a paradox, but developing and deploying a proactive approach to compliance, which builds on both the present and future compliance needs, can buy you a lot of freedom, allowing you to invest in your business and exploit new market opportunities with less regulatory scrutiny. Simply put, while others are trying to keep up, you could be confidently exploiting new market opportunities and growing your business.

It also affords the business the status of 'regulatory high performer', cementing an ethical reputation not only with the regulators but also with customers, suppliers and the wider stakeholder groups.

Fit for purpose

An integrated Compliance Framework is built on fundamental components that collectively deliver an effective and efficient compliance organisation and culture. Those components should vary in their complexity and depth to reflect each organisation's requirements and structure; however, they remain integral to effective compliance capabilities.

Holistic

Whilst it's tempting to focus on individual components, such as policy or training, to deal with a certain compliance incident or situation, good compliance programmes don't lose sight of the big picture by fully embracing a holistic and integrated compliance programme. Only then can organisations deliver a true cultural shift – one in which compliance is truly embedded.

Simplicity

With the constant increase in laws and regulations, a lot of businesses fall into the trap of a reactive and silo'ed approach to compliance, resulting in duplication of efforts and 'compliance fatigue' due to the flood of policies, procedures and audits the business have to contend with on top of managing and growing. Sometimes, a leaner and less complicated programme will deliver the desired effects through its simplicity and clarity. More importantly, it will be recognised by the business as an enabler, not a distractor.

Strategically aligned

An effective compliance programme must align its activities and focus to the business objectives and strategy. For example, a more sustained focus on compliance with competition law as the business grows through acquisitions and joint ventures. Equally, focus on data protection as the business grows its offshore data centres. This strategic alignment will earn the compliance programme the status of 'business enabler' and, more importantly, will embed compliance into strategic decision-making as a trusted adviser.

Sustainable

More often than not, the focus is on achieving the compliance targets for a year or two, but what happens thereafter? Sustainability is a key characteristic of a successful compliance programme, as it plays a key role in ensuring that compliance investments continue to benefit the organisation and pay off over the long term.

Don't just assume it is working

Defining a well-balanced assurance structure is critical to the efficacy of any compliance programme. It enables weaknesses to be detected and remediated before they spiral out of control, facilitates the continuous improvement of the programme and, more importantly, it embeds compliance accountability across the business.

Communicate, Communicate and Communicate

Progressive compliance programmes recognise the importance of consistent and clear communication to the success of the programme. Some business have already acquired branding and corporate communication skills, while others seek external support to ensure there is a clear brand and communication strategy around the purpose and objectives of the compliance programme.

Track record of success

During our extensive years of partnering with businesses around the world, we've seen numerous cases where our support has helped to deliver lasting benefits for our clients. Examples include:

- We were able to set up and perform the quality assurance function for a **major European bank** during a period of regulatory change. We supported the client in new governance, process and controls design and implementation to achieve sustainable compliance.

- Working alongside a **global pharmaceutical company**, we performed a review of the firm's existing regulatory and ethical risks across its commercial and medical affairs activities. This resulted in a number of recommendations designed to support lasting compliance, including a full restructuring of the compliance function, communications and the launch of role-specific training programmes.

- Following an effectiveness review of the current compliance policy portfolio for a **global telecoms business**, we supported the client in the creation of a revised policy hierarchy, governance process for updating and maintaining all control documentation, as well as an updated communications and training programme.

How we can help

At PwC, we offer a range of services that can provide in-depth understanding of your existing compliance framework and help to deliver improved peace of mind for company stakeholders and the wider market.

Our services include:

Programme maturity assessment
Examining existing compliance activities in relation to industry best practice and defining the maturity and effectiveness of present operations. This service helps to clearly define your current compliance setup and can be integral to creating a roadmap for future improvement.

Compliance programme remediation
Once gaps in compliance activities, processes or understanding have been identified, compliance programme remediation services can help to provide advice and recommendations to rectify these failings.

Compliance framework design and implementation
Our services will look at suitable compliance policy governance, learning and behavioural change and recommended solutions to existing compliance policy gaps in order to create a bespoke compliance framework for your organisation. We support our clients with active monitoring and reporting to ensure lasting organisational improvements are achieved.

Compliance risk and control monitoring
Independent advice surrounding compliance monitoring and audit capabilities, supported through the design and delivery of bespoke compliance activities to meet the needs of individual clients.

Culture and behaviour assessment
Undertaking key cultural assessment examining the behaviour and attitudes of employees. These activities can then be aligned to a company's overarching ethos and values, while also providing insight into the root causes of any existing misalignment.

Policy governance
The implementation of activities designed to streamline, simplify and enhance the efficiency of a company's existing compliance policies, procedures and guidelines, with the aim of delivering lasting benefit for clients.

Third-party compliance programme development
Looking at a company's wider third-party risk and compliance, this service helps in the development of a third-party 'extended enterprise' compliance framework.

Regulatory health checks
We can perform a pre or post-implementation review of our financial services client's regulatory change programmes, delivering in-depth analysis against individual regulatory requirements, e.g. EMIR, EU benchmarks, MIFID II, etc. Activities can be undertaken at a programme-wide level or be tailored to meet specific aspects of implementation.

Regulatory deep dives
An in-depth examination of specific regulation in relation to a company's compliance responsibilities in this area.

What you gain
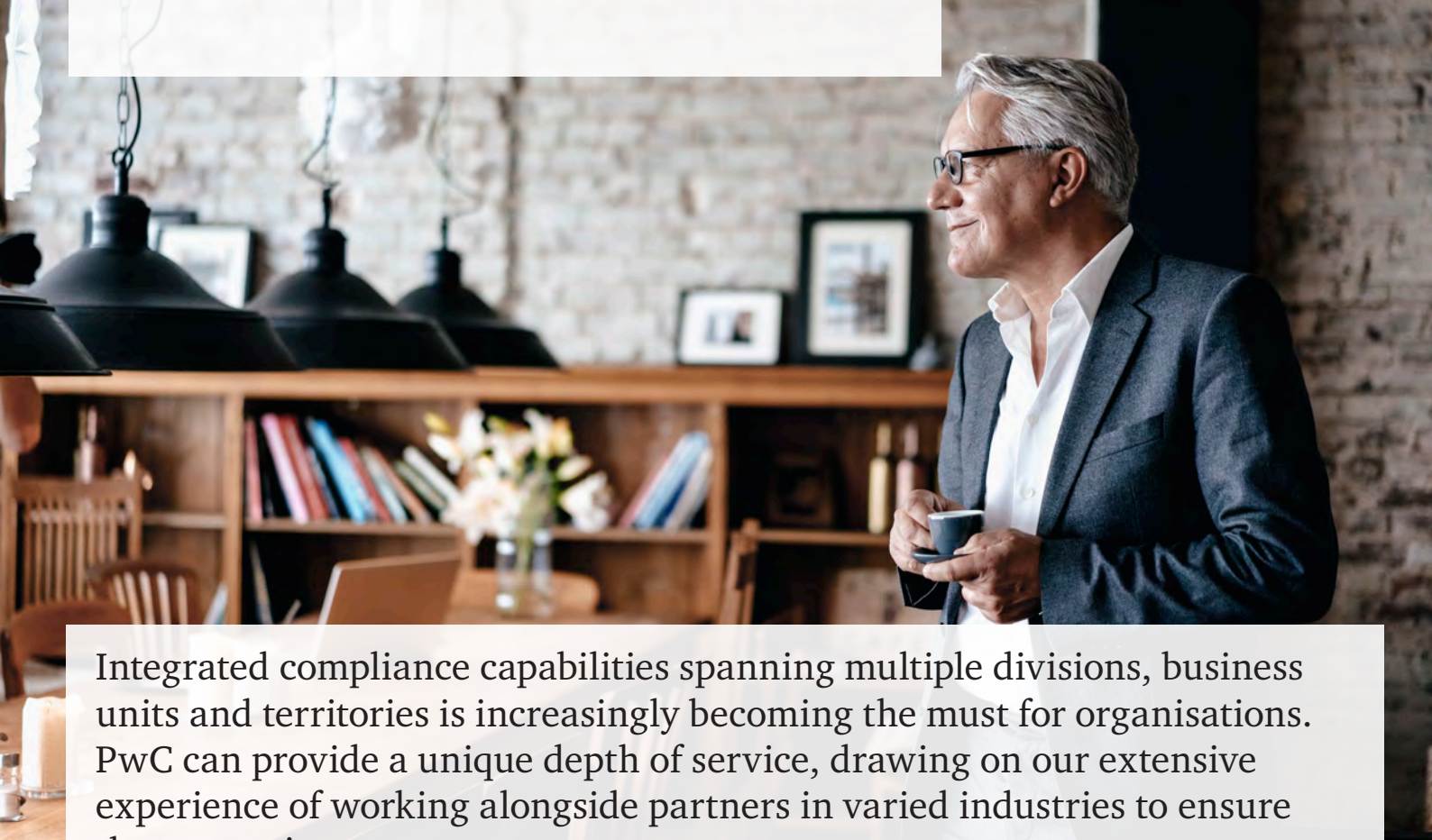
Integrated compliance capabilities spanning multiple divisions, business units and territories is increasingly becoming the must for organisations. PwC can provide a unique depth of service, drawing on our extensive experience of working alongside partners in varied industries to ensure that you gain:

1. Clearly defined compliance culture focused on embedding and influencing core behaviours

2. Compliance programme and activities driven by and focused on organisational values and strategies

3. Clarity on who is accountable for compliance across the business, with clear and established allocation of compliance responsibilities throughout the organisation

4. Proportionate and risk-driven compliance programmes

5. Enhanced oversight across the business through a robust mechanism to provide timely and accurate 'state of compliance'

6. Balanced and risk-focused assurance activities across the business

7. Competitive advantage, affording you to exploit business opportunities with confidence

8. Support from the business through the simplicity of compliance requirements and measures

9. Sustainable and demonstrable compliance activities enabling transparent and effective stakeholder management

When to act

Ultimately, knowing when to seek support in compliance can be crucial to ensuring the long-term viability of your business. As a result, identifying the key drivers that can prompt compliance activities support is important.

Here are some of the common triggers:

Regulatory change or increased oversight within your industry

A sense that your current compliance activities are insufficient

Cases of compliance failures seen among peer companies

A new direction or change of management/ priorities within your company

Regular compliance issues raised among your staff

Confusion or disinterest among staff in your existing compliance setup

Intelligent Digital

At PwC, we are harnessing the power of Intelligent Digital, helping our clients to rethink their futures and reshape their own world. We are using business understanding, innovation in technology and human insight to help solve important problems, meet human needs and make a difference to society.

Helping our clients to understand the bigger picture of where their compliance operations, practices and controls fit into the regulatory landscape, and how they can be streamlined and improved to better safeguard them from risk, lies at the heart of PwC's support in the Compliance function.

Our teams help to build more simple, universal and integrated frameworks that deliver a clear understanding of compliance risk for our partners. Techniques and practices including culture and behavioural assessment, compliance programme remediation and third-party compliance programme development all stem from our commitment to the Intelligent Digital philosophy.

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#IntelligentDigital

Get in touch

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September 2018

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