

# Navigating the Compliance Information Landscape

How businesses can get smarter managing their compliance requirements



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I am delighted to introduce this compliance White Paper from LexisNexis. With the increasingly global remit of regulatory bodies, it is essential that businesses have access to the information, tools and services that help them avoid costly fines and prosecution whilst minimising disruption to effective business activities.

LexisNexis has a history of pioneering the delivery of authoritative, comprehensive and up-to-date information all in one place. From the ground-breaking Halsbury's Laws of one hundred years ago, which today enters its Fifth Edition, to the latest integrated online anti-money laundering solutions, LexisNexis has always used its expertise to help clients navigate a changing legal environment.

Today, as compliance is split into silos covering specialist areas like health and safety, data protection, and the environment, keeping track of and responding to the numerous sources of regulation is an increasing burden. Furthermore, many organisations use different 'solutions' to address their compliance needs including IT systems, consulting/advisory services and traditional publishing offerings.

The good news, as this White Paper points out, is that there is a new breed of innovative applications that combine content and technology to help companies get smarter at managing compliance and, in some cases, gain competitive advantage.

LexisNexis is playing a key role in catalysing these innovative offerings. Our combined understanding of professional services, publishing and technology puts us in a unique position to identify and develop the services that can help practitioners address their 21<sup>st</sup> century compliance needs.

Yours sincerely,



Josh Bottomley  
Managing Director

**Navigating the Compliance Information Landscape**  
**A white paper produced by LexisNexis and Outsell, Inc**

### **Executive Summary**

The last twenty years have seen an enormous growth in the complexity of the compliance landscape - as the number of governmental regulations increased and enforcement efforts gained strength, as industry and professional roles matured, and as the nature of business has changed with increased participation in trans-national operations. Further, the growing recognition of corporate and social responsibility stemming from a rise in environmentalism and humans rights considerations added a new layer of ethical and moral dimensions to the legal and economic aspects of compliance.

In parallel, the costs associated with the failure to comply have grown significantly, both in terms of immediate outlay for information, assistive technologies, training, and outsourced services, as well as the potential cost of bad press, civil and criminal penalties, insurance liability, impacts on shareholder value, and the expense and consequences of litigation.

With so much at stake, corporate compliance is garnering more and more attention with investors, in the media, in the courts, and in company boardrooms. Compliance is becoming a near-constant factor in business planning: a prohibitively burdensome expenditure of resources at its worst, an operational strength and a competitive advantage at its best.

Navigating the bumpy topography of the national and international compliance landscape requires the development of new awareness and business skills across three primary areas:

- Regulatory compliance: actions required by law, as well as the detection, reporting, and remedy of non-compliance;
- Risk management: the proactive identification and programming to address current and future obstacles that jeopardize compliance.
- Corporate governance: a heightened standard for the processes, customs, and rules defining how a corporation manages its business in the best interest of its owners and shareholders.

### **Included in This Report:**

- An Introduction to the Compliance Landscape
- Current Local and Global Dynamics Impacting Compliance
- Participants in the Compliance Landscape
- Compliance Services
- Future Trends
- Conclusion

**AN INTRODUCTION TO THE COMPLIANCE LANDSCAPE:  
*Compliance is more than meeting requirements imposed by government***

In its simplest sense, compliance is the need to follow the rules:

- Foremost are the rules of law – regulations imposed directly by governments or quasi-governmental bodies. The regulatory frameworks underlying this compliance landscape rest on two levels:
  - **General business regulations:** A series of rules that apply to eligible companies in different disciplines, such as taxation, corporate governance, employment, and environmental concerns.
  - **Sector-specific regulations:** Rules applying to specific industries, most notably financial services (including banking and insurance), manufacturing, food and beverage, and telecommunications.
- Following on the heels of these conventions are a host of professional and industry sector rules, often considered “self-regulation”, meant to facilitate professional observance of legal standards as well as encompassing codes of ethics and business practice. From broad codes of conduct, to guidelines for specific transactions (e.g. Code of Practice for Face-to-Face Marketing of Energy Supply), to standards for specific chartered practice (Institute of Chartered Accountants in England and Wales), the number of authorities creating standards or attempting to define and control behaviour is substantial.
- Finally, there are individual business-specific rules and policies developed to require and/or encourage employees to meet the specific requirements of their positions and responsibilities.

The scope and complexity of compliance burdens generally increase as key determining factors increase: size of company (number of employees or annual turnover), number of locations within the UK, number of trans-border operations, type and number of self-regulated professional staff employed, type and number of industries in which an organisation participates, and status of company as private or public.

At one end of the spectrum, the smaller companies will find certain rules waived: e.g. audit requirements waived for companies with annual turnover of less than £5.6 million, or VAT registration threshold at £6 million. At the other end of the spectrum, global corporations will need to decipher general and sector-specific regulatory schemes and requirements on international, national, and local levels. In the middle, most firms will face a variety of local and national rules governing business operations and practices, some number of industry or professional rules, as well as one or more national schemes regarding cross-border trade and/or participation in international markets.

## **CURRENT DYNAMICS IN THE COMPLIANCE LANDSCAPE:**

***The scope and type of compliance issues continues to grow apace, driven by technology, globalisation, changing business strategies, and concerns about growing rates of financial crimes.***

Several drivers have come together to impact the current compliance environment. These individual and aggregated forces add to a complex web of rules and programmes which require on-going monitoring and fine-tuning of corporate compliance efforts:

### Technology advancements

In particular, the ubiquitous use of technology to create, manage, and store the wealth of business data, as well as to communicate and coordinate internally and externally, raised a host of new concerns as the old adage came to life: "With great power comes great responsibility." Related to the management of and access to customer/client/employee data repositories, core issues revolve around identity validation and authentication, privacy rights, and data security and protection. On a more functional level, the increased use of technologies in internal processes such as managing and reporting financial records is creating new standards of business performance. In case of investigation or prosecution, compliance or non-compliance with these new operational benchmarks may serve as evidence of intent.

### Globalisation

Given the deep and intricate linkages between the world financial centres and the multi-national corporations listed there, regulations in key geographies (such as the US) can impact businesses in the UK, especially those listed on US exchanges. Media coverage often focuses on the implications of the US Sarbanes-Oxley Act, especially the impact of Section 404 requirements which went into effect for listed UK companies in July 2006, with an estimated cost to UK companies as a whole of \$350 million.<sup>1</sup> Equally important, albeit less discussed in the press, are the numerous laws and regulations facing both public and private companies conducting significant business overseas or across borders in areas across import/export, taxation, environmental, wage and pension, business competition, and more.

### Corporate Accountability

Two intersecting dynamics come together in new waves of regulation and governance standards that aim to increase the accountability of companies and their directors to a wide audience. From one side, the lessons of past corporate fraud and scandals have led regulating authorities to require greater transparency and reporting of financial information and controls to investors and authorities, while also increasing the scope of penalties. At the same time, the growing awareness and acceptance of company social responsibility<sup>2</sup> as an operational mandate and competitive advantage<sup>3</sup> has influenced changes in both governmental regulations and self-regulatory practices.

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<sup>1</sup> *SOX puts UK firms on back foot*, IT Week, 18 Jul 2006

<sup>2</sup> From Euro Parliament: "CSR represents business taking more direct responsibility for managing its social and environmental impact, becoming more openly accountable to a wider group of 'stakeholders, including investors, employees, trade unions, consumers, local communities, environmental and other interest groups." Included in this "new" corporate behavior are commitments to minimising social, ethical and environmental risks, capitalising on the benefits of good corporate responsibilities (long-term cost savings from green initiatives, improved brand image, etc)

<sup>3</sup> - The growth of the FTSE4Good Index Series, the rise of the Business in the Community's CR Index & correlated Companies that Count supplement in The Sunday times, the growth of associations and organisations dedicated to CSR, and the "Corporate Responsibility" narratives now regularly included in company reports are all indicative of the growing understanding that corporate responsibility is "at the core of a company's programmes and strategies, not a bolt-on to operations... These companies implement initiatives and programmes to improve their positive impact, not just minimise their negative impact." Business in the Community, [www.Bitc.org.uk](http://www.Bitc.org.uk).

The new Companies Act 2006 incorporates elements of both dynamics with greater individual penalties for company directors who fail to meet regulatory responsibilities, and the newly imposed mandate that directors act in the best interest of shareholders while also paying “regard to” the interests of staff, customers, the local community and the environment.

#### Focus on outcomes over procedures

Businesses have long complained about the tangible and intangible burdens of compliance: additional costs, the redundancy amongst requirements or overseeing authorities, legalese requiring guidance and interpretation, and the overall obstacles to new business development. Over the years, government groups also joined the chorus, noting the budgetary cost multiples of redundancy and over-regulation, the need to enhance constituent services to businesses and society, and the impact on small business development. The impact of European harmonisation lent additional impetus to the calls to streamline or eliminate burdensome and/or non-productive compliance measures, as the rules of the European Union joined the UK regulatory frameworks.

Unfortunately, governmental groups have not yet successfully followed through on commitments to “better regulation” in either the UK<sup>4</sup> or Europe overall<sup>5</sup>. However, the drive for better regulation has created an off-shoot in the form of “principles-based regulation” which strives to reduce the number of specific rules (“micro-regulations”) while putting a greater onus on company directors and senior managers to strategise and implement compliance measures in accordance with broader “principles-based” requirements.

The plan by the Financial Services Authority (FSA) to re-design its compliance systems illustrates this new paradigm, recognising “[there are] many different ways in which firms could reach [desired] outcomes, and some of our rules may prevent firms from utilising methods that produce good outcomes. If so, it may make sense to remove the rule.”<sup>6</sup>

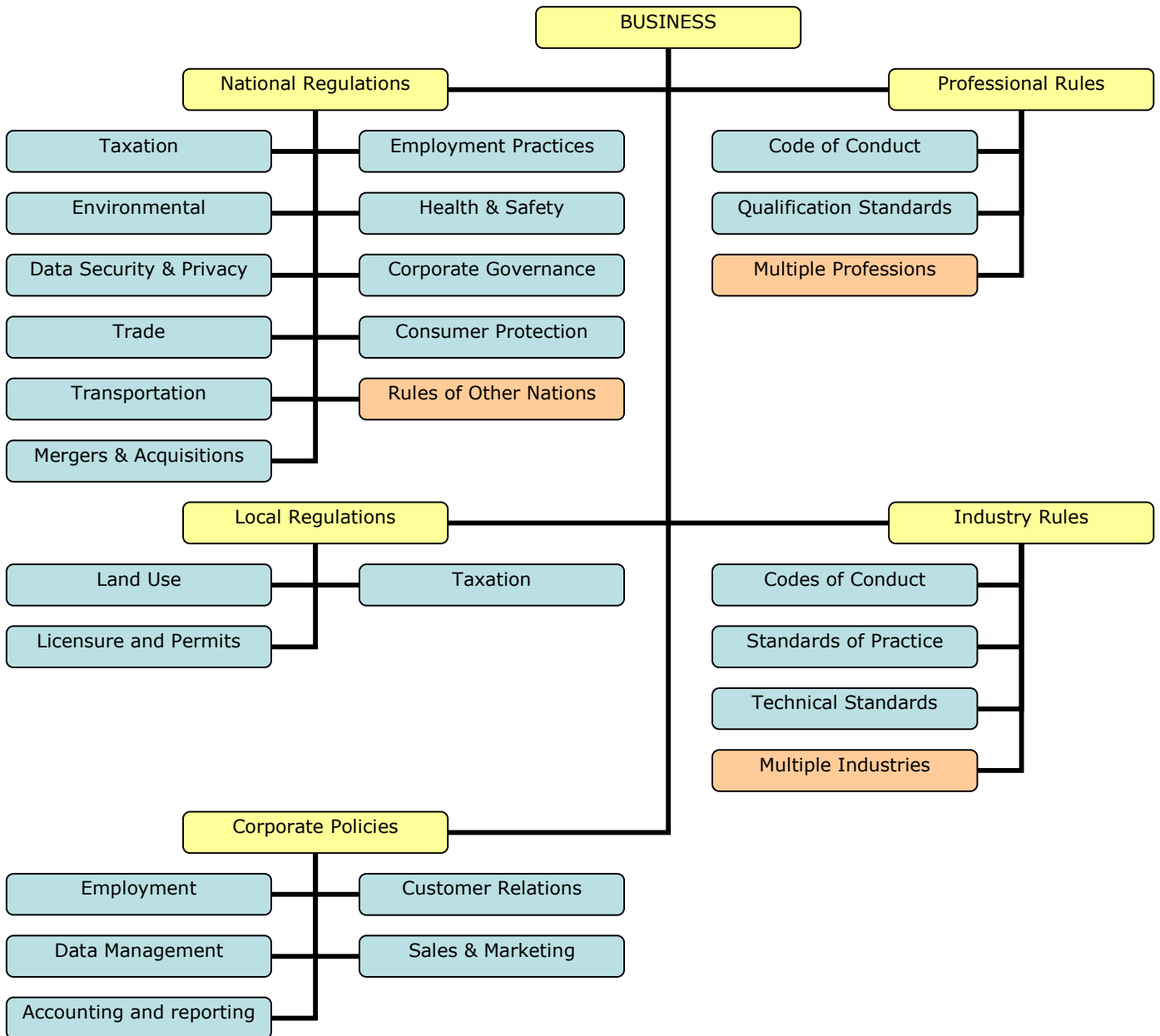
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<sup>4</sup> In the so-called Hampton Report (“Reducing Administrative Burdens: effective inspection and enforcement”, 2005), the UK Government articulated its intentions and committed itself to objectives related to the need to reduce the administrative burden on business; and to transform (i.e., improve) relationships between business, the citizenry and government. A new Legislative and Regulatory Reform Bill was proposed to enhance the ability of department ministers to amend legislation, carrying the bulk of the Hampton Report’s recommendations. Despite widespread objection, from academic and political interests claiming that the net effect would be to give ministers almost total power to amend, create or eliminate legislation with no debate or input, the Legislative and Regulatory Reform Act 2006 (LRA) came into force in January 2007.

<sup>5</sup> “Better regulation” in the form of a simple and high quality regulatory environment was a centrepiece of the European Commission’s “Partnership for Growth and Jobs” - the renewed “Lisbon Strategy” which was launched in Spring 2005. With visions of cutting unnecessary red tape and over-regulation, tackling the administrative burdens for small businesses, and streamlining cumbersome statistics and form-filling, the commission launched a three-year programme to repeal, codify, or modify more than 200 basic legislations and over 1000 related legal acts. Unfortunately, a recent November 2006 review of the better regulation efforts indicates limited results to date, and a near doubling in the estimated administrative cost to businesses of EU legislation to more than 600 billion Euro. Proposed plans now include a new strategy to reduce the administrative costs, utilisation of a new and independent board of experts to assess legislative impacts, addition of 40-plus initiatives to the simplification plan, and finalising a programme to reduce the volume of current legislation through codification.

<sup>6</sup> Speech by Dr. Thomas F. Huertas, Director Wholesale Firms Division and Banking Sector Leader, FSA 31 January 2007

**Typical Compliance Concerns**



Source: EPS, an Outsell company.

## PARTICIPANTS IN THE COMPLIANCE LANDSCAPE

**Government, business, professional advisors, and service providers play out interconnected roles at all stages of compliance.**

BLURRING LINES BETWEEN PARTICIPANT ROLES IN THE COMPLIANCE LANDSCAPE

	Rules / Regulations Imposed	Compliance Programmes Defined	Compliance Programmes Implemented	Input into New/Existing Regulations
<b>Business</b>		Strategic decisions including risk assessment and budget/resource allocation	Operational decisions including investments in tools/svcs and on-going success monitoring	Direct and indirect lobbying and feedback
<b>Government</b>	Schemes established via legislative processes.	Provides information, direct assistance, and issue guidance. Courts play <i>post facto</i> role in interpretation.	Investigatory and enforcement powers establish 'oversight' of company efforts	Constituent feedback and changes in political agenda drive new thinking
<b>Industry &amp; Professional Orgs.</b>	Self-regulatory codes created via working groups, etc.	Provides information and direct assistance with both governmental and voluntary schemes.		Direct and indirect lobbying and feedback
<b>Lawyers</b>		Assist with legal interpretation and strategising.	Advise on company policies and practices. Proactive and defensive assistance on enforcement.	"Expert" commentary in media; advisory to government; professional organizations.
<b>Tax/Accting Specialists</b>		Assist with legal interpretation and strategising.	Advise on company policies and practices. Proactive and defensive assistance on enforcement. Active participation in key areas, including report, audit, and monitor.	"Expert" commentary in media; advisory to government; professional organizations.
<b>Mgmt Consultants</b>		Assist with risk assessment and strategising.	Advise on company policies and practices. Create and implement programmes: business processes, technological, etc.	"Expert" commentary in media; advisory to government; professional organizations.
<b>Publishers</b>		Provide regulation text, analysis, and guidance manuals.	Workflow applications which facilitate or drive compliance efforts	
<b>Technology Cos</b>			Applications which facilitate or drive compliance efforts	
<b>Training Groups</b>		High-level training for general counsel and senior management	Overview and practical training on compliance issues and practices	

Source: EPS, an Outsell company.

**While government is often viewed as dictatorial and/or bureaucratic rule-makers, the truth is more nuanced. Government and other authorities are at the heart of critical compliance programmes in a multi-faceted role encompassing partnership, regulation, guidance, enforcement, and revision.**

With a stake in national economic interests, government can serve as a *de facto* partner of business interests, although not always with the same perspective. Thus, prior to making regulations, government can look to impact on businesses and will seek and accept feedback from business players, with an eye toward avoiding undue burdens, creating significant competitive disadvantages, or creating volatility in the marketplace. In the long run, however, government can be more willing to trade-off short-term pains for long-term gain if the perceived public good merits.

At the same time, government serves double roles in the administration of regulations. On the one side, some resources are focused on assistance to business constituents with the provision of information and interpretative guidance on how to comply with regulatory requirements. On the other side, other resources are focused on investigation and enforcement and prosecution.

Lastly, in the ultimate dichotomy, the government that created the regulatory rules is also the same body that can amend or eliminate the rules, due to changes in the make-up of the government itself, changing business and/or economic interests, new areas of concern, and other factors. As the regulatory environment has grown more complex, pressures to relieve these burdens, particularly for small and mid-sized firms, have grown. Governments are under pressure to enhance services to citizens, to simplify, to communicate more effectively, and to reduce their own costs of regulation.

The necessarily complex relationship between business and government players helps explain the persistent view of government as an obstacle to good business. At the same time, government is also often seen as a hindrance to “good compliance” by overwhelming a respected goal with unnecessary rules and bureaucracy. From a business perspective, government has the power to make the rules, interpret the rules, and enforce the rules. Thus, the argument goes, government could make regulatory compliance easier – if it so desired; if compliance is not easier, it’s because government chooses to keep it difficult.

***While traditional organisational hierarchies are still most prevalent, more companies are moving to centralise compliance responsibilities, often under the leadership of a senior compliance manager or officer. While businesses structure compliance efforts differently, the corporate players involved in compliance usually share common characteristics.***

Most companies are organised to have compliance efforts report up to in-house legal teams under the leadership of corporate/general counsel. Others structure compliance efforts to report into the CEO (or other senior board member) or an executive committee. For the most part, organisations structure compliance efforts on a per business unit basis, followed by functional role.<sup>7</sup>

On that per business unit basis, employees responsible for compliance fall across the spectrum from a staffer charged with certain compliance responsibilities in addition to standard responsibilities to a senior level manager or executive focused on nothing but compliance. Regardless of titles, corporate personnel with responsibility and accountability for business compliance typically fall into one of three roles:

- Corporate Governance: charged with the beneficial and fiduciary administration of company business and activities. Typically senior level executives, corporate governance practitioners are predominantly business-savvy strategists and decision-makers.
- Compliance: practice-area managers tasked with the completion of compliance efforts within the scope of regular duties. In other words, HR professionals comply with employment rules, facilities managers comply with health and safety rules, tax professionals comply with tax regulations, and so on. Thus, compliance managers are, more often than not, practice-

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<sup>7</sup> Corporate Regulatory Compliance Practices, Ernst & Young (Nov. 2005). 2005 survey of 95 Fortune 1000 companies, primarily U.S., but providing directional perspective on global practices.

area specialists. If compliance in a particular area requires competencies not available in-house, or if the cost of developing in-house efforts is prohibitive, compliance programmes can often be outsourced to professional services firms and others.

- Risk Management: managers charged with identifying current and potential company exposure to legal and financial liability, and controlling those exposures through proactive and/or defensive means. Operating as either mid- or senior-level specialists, risk managers often bring together the business area expertise of compliance practitioners with the strategic planning capabilities of governance practitioners. Company risk management functions are also often supplemented by external consultants and advisors.

However, trends also indicate the growing practice of aligning compliance issues with risk management and broader business strategies. With an increased pace of trans-border and global business operations, more companies face greater exposure. Mid-market enterprises, as well as the large/global organisations, are more likely to be fielding various operations and offices over diverse vertical communities and several geographies. In these situations, multipliers can directly impact operational costs and operational effectiveness.

To leverage potential economies of scale, many companies are centralising most or all compliance efforts under a corporate leader who is also positioned to view the balancing of cost and effort as part of a larger corporate drive to grow business or derive competitive advantages. Often, this is still the general counsel of an organisation, now perhaps with broader scope of responsibility over the integration of risk management and business strategy, and perhaps with the new “Chief Compliance Officer” or “Chief Risk Officer” job title. Most commonly, this corporate leader will be charged with the integration of all of these concerns into a comprehensive plan to:

- Work with management and staff to identify and manage regulatory risk;
- Ensure that an organisation has systems of internal control that adequately measure and manage the risks that it faces;
- Provide an in-house compliance service that supports business areas in their duty to comply with relevant laws and regulations and internal procedures.

Compliance as a discipline in its own right is still relatively new within the UK context outside of specific financial services contexts, and is not currently chartered as a specific profession – although most practitioners stem from the chartered legal or accountancy sectors. Whether the drive exists to create a parallel certification system for compliance remains to be seen.

***External advisors and consultants are often brought in to supplement, or to lead, corporate compliance efforts, depending on a company’s needs. Across the spectrum of focused perspectives to more broad-based responsibilities, these advisors serve a bridge role – both participating in compliance efforts as an agent or contractor of the business, while also acting as a vendor of assistive services to the businesses.***

Tax/Accounting Specialists are among the most commonly used professional services providers, among all sizes of companies, due to the financial reporting requirements imposed on companies, the technical standards of financial account-keeping, and the complexity of national or multi-national tax impacts.

As a rule, tax and accounting professionals can:

- Serve as a strategic and tactical counsel at executive and staff levels of an organisation;
- Provide deep, technical knowledge and/or action on the implementation and management of existing and new financial reporting standards and regulations;

- Perform independent audit of companies' financial reports, as well as assessment of internal reporting controls;
- Perform assessments and recommendations on areas related to financial reporting: internal and outsourced business process control, information security, information technology usage, performance measurements, and more;
- Define strategies for minimising tax liability while managing the risk of penalty.

Lawyers are most likely to be involved at all stages of compliance efforts, from initial lobbying before regulations are issued to defence services in the event of investigation or prosecution, and everything in between.

While practices differ from firm to firm, legal participation can include:

- Decipher regulatory language at all stages and help business decision-makers 'translate' into corporate strategy and policy;
- Develop implementation plans for compliance programmes, including development of company manuals and training materials. [NB: the foray into training may seem ancillary to legal practice, but since documentation can be used as evidence in court or other legal proceeding, it is often vetted by the legal experts];
- Assist in monitoring of compliance efforts, as well as identification and implementation of any required remediation;
- Provide advice and defence in civil and criminal investigations, prosecutions, and litigation.

While in-house or corporate counsel often provide some similar direction, many companies still opt to bring on outside experts, even at higher costs. The justifications for this 'out-sourcing' rest on the typically specialised nature of legal practice which means hired firms can bring both deep and current knowledge, while also leveraging the benefit of broad experience through dealings with multiple business clients.

Representing the broadest cadre of professional services providers, management (or strategy) consultants can be anything from generalists to practitioners of a matrixed specialty by industry and discipline. Generally, management consultants fall into one of three categories: large diversified organisations offering consultation in a number of specialised areas; organisations focused purely on management consultation across industries; and niche organisations focused by both industry and area of expertise. Areas of business focus can range from resource allocations and operations management, process management, information technology, training and professional development, performance measurement and management, and overall business strategy.

Almost universally, management consultants will assert their value in:

- identifying and implementing business strategies that minimise costs;
- encouraging best practices; and
- yielding operational efficiencies and/or strategic advantages.

In the realm of compliance, management consultants can often act in tandem with company directors, leading the decision-making process while at the same time confirming existing director perspectives. One key difference, however, is the limited liability exposure shouldered by consultants as compared to the greater liabilities faced by directors and company staff.

***Rounding out the compliance landscape are the service providers, vendor businesses offering products and services to help businesses implement and manage compliance efforts. The portfolio of available services stretches from straight news and information to sophisticated technology solutions impacting business processes.***

Publishers of regulations and laws, news, analytic materials, guidance manuals, and other information sources, are leading players in the vendor side of compliance. With information as their key offering, publishers are at the fore-front of helping businesses and their advisors understand what compliance requirements apply, how to meet those requirements, and to gauge the penalties of non-compliance.

As technology applications became more pertinent to compliance, publishers often sought marketing and product partnerships with technology companies, hoping to leverage combined skills and appeal. Increasingly, partnerships are giving way to acquisition, as publishers seek to broaden their in-house portfolio to offer more comprehensive solutions, incorporating reporting services, training / professional development, workflow applications, e-learning, and other technology tools under one brand.

Many IT service providers entered the compliance landscape after having established *bona fides* in other areas. Leveraging existing capabilities and product lines, such as data management or workflow automation, often led to opportunistic growth campaigns under the compliance banner. While this worked in the short run to gain entry into the compliance market, more companies are making a retreat of sorts, re-focusing their sales and marketing efforts around best practices in business process management, document management, and other areas, that a company should emphasise as a matter of course. This new positioning allows IT providers to make a broader claim of value, and also helps them move the discussion from cost to ROI (Return on Investment).

At the same time, the greater experience with compliance matters and with this new aspect of business markets, has also led to the creation of niche applications and other product developments specifically designed for compliance.

The other critical group in the compliance landscape is training providers, offering syndicated or customised education on compliance requirements and processes across diverse areas, from employment discrimination to the nuances of financial reporting. In recent years, many of these trainers began to shift from in-person courses and conferences to e-learning and blended options for businesses. This evolution allows clients to save on travel costs and time out of office, while also letting business users train on their own schedule and at their own pace. Most recently, these providers have also adopted new technologies to broaden their product portfolio, utilising hotline assistance via phone or web, customised corporate manuals tying compliance standards with company-specific policies, and other enhancements.

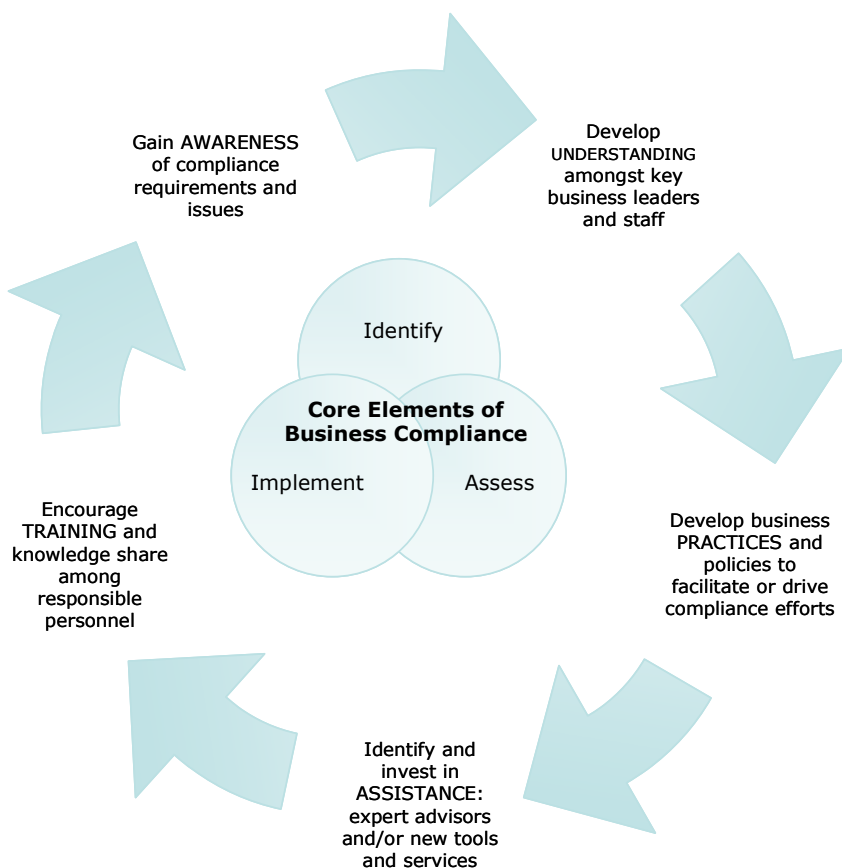
**AN INTRODUCTION TO COMPLIANCE SERVICES:**

***Most companies follow a similar cycle of compliance encompassing a spectrum of core activities from awareness to training. The portfolio of assistive services available from service providers follows this cycle, even as product solutions themselves evolve from basic to advanced paradigms.***

For almost all businesses, understanding how to address relevant compliance needs successfully will be a series of on-going challenges, along core inter-related tracks:

- Identifying the relevant compliance framework or frameworks in which a company operates, based on international, national, and local requirements, as well as industry and professional standards;
- Assessing the costs and benefits of individual and aggregated compliance efforts, and the resulting impact on business plans and corporate strategies;
- Implementing effective and scalable compliance programmes, often in conjunction with governmental and business partners, including technology vendors, professional services providers, suppliers, distributors, and others.

**Compliance Services Bolster Company Efforts Across the Full Activity Cycle**



Source: EPS, an Outsell company.

Basic compliance services, available to businesses, centre on a similarly iterative, functional cycle encompassing:

- Awareness – current information on the language and policy of regulations throughout the lifecycle, from draft through royal assent;
- Understanding – ability to interpret and apply rules correctly;
- Practice – application of aggregate rules/policies to actual workflow and production;
- Assistance – use of external resources to provide additional and/or expert guidance, resources, logistical support, and more;
- Training – knowledge share and development for responsible managers and hands-on staff.

Traditional use of commercial compliance services focus most on information, guidance, and expertise – i.e., general counsel and business leaders relying on information services from publishers (news, analysis, how-to guides), as well as on the counsel of paid advisors who themselves used the publisher information as a means of staying informed.

For many smaller companies, these traditional methods will still suffice. As company size and interests increase, however, the increased pace of technological innovations coupled with changes in business perspectives can add new paradigms to the compliance context. These technology-powered services step beyond “comment and counsel” features of basic offerings by actually directing and/or controlling critical business processes and employee behaviour.

SUMMARY OF NEED-SOLUTION PARADIGMS FROM BASIC TO ADVANCED				
Compliance Element	BASIC SERVICES		ADVANCED SERVICES	
	Offering	Key Service Providers	Offering	Key Service Providers
<b>Awareness</b>	The actual documents published by the regulatory authority or The Stationery Office (TSO) and/or the documents and news about the requirements.	- Publishers - Government agencies - Professional associations	Web-based tools facilitate access, and also leverage e-tools to push “need to know” information and services out to relevant parties.	- Publishers - Government agencies - Professional associations
<b>Understanding</b>	Commentary and guidance from published materials.	- Publishers - Professional associations	E-tools allow use enhancements to published information, while also facilitating company knowledge management efforts.	- Publishers - Professional associations
<b>Practice</b>	Presentation of informal and formal corporate rules and practices via a variety of methods including the handing down of “customary practices”, on-the-job learning, written policy documentation and handbooks, and manual processes for review and audit.	-Publishers (manuals and guides on implementing policy, best practices, legal requirements, etc.) - Professional advisors - Professional associations - Corporate training services	Automation of key controls and processes to limit liability, preserve audit trails, generate red flags on non-compliance and risk areas.	- Publishers, offering workflow applications or other technology solutions - Software / IT firms
<b>Assistance</b>	Use of contracted “out-of-house” professionals, on an as-needed basis.	- Tax & Accounting Specialists - Lawyers - Management Consultants	Communications across formal and informal advisory networks. Intranet/extranet access points for trusted partners.	- Professional services advisors - Peer groups (business associations; professional organizations, etc.)
<b>Training</b>	Extra-curricular training or continuing professional development, helping practitioners to improve knowledge and skill-sets.	- Corporate training services - professional organizations	Distance learning and e-learning control costs and increase training opportunities.	- Publishers, offering training programs and/or conferences - Corporate training services

Source: EPS, an Outsell company.

While each of these new paradigms may seem a discrete, natural 'next step' from the basic compliance elements, the cumulative effect can be significant. Companies now have a much broader menu of tools and services from which to select. At the same time, companies can leverage web and network technologies either to limit information access and applications to a select few, or to broaden distribution of the services (and the related accountability) to the front-line user level. This combination of focused attention on individual users and broader application is one of the reasons behind growing interest in a comprehensive compliance solution, offering targeted content and functionality to business users throughout an organisation.

Among the newer types of assistive services, companies can leverage:

	COMPANY CAN USE TOOL/SERVICE TO:	
	Basic Use	Advanced Use
Web based Information Services	Easy access to news and analysis rather than routing reports or complicated online systems	RSS feeds from government sites or other source placing new information about regulatory compliance onto company website or user browser.
Electronic Document Management System	Enable monitoring of email communications to ensure activities are in accordance with business policies and the law	Map applicable regulatory requirements against business processes, and monitor progress on compliance efforts
Automation and Rules-Based Engines	Online templates for key documents and forms, walking users through specific allowed/not allowed terms.	Monitor content and data access against customised filters to monitor usage, data loss, and fraud or misbehavior.

Source: EPS, an Outsell company

### WEB-BASED INFORMATION SERVICES FOR AWARENESS

**Businesses can spend less time searching for news and information and distributing it across the company to relevant employees. Instead, the new services push information to employees via email and RSS, keeping them informed on a timely basis, and provide a connected string of "tell, teach, advise" content in one place.**

Early attempts by regulatory authorities to leverage internet technology for information distribution were largely unimpressive. Sites were designed from the perspective of regulators, trying to push information out to businesses and citizens. Information from individual regulatory bodies was compartmentalised. Government funding priorities often negatively impacted site maintenance. Web-based information services from publishers offered more feature enhancements and greater reliability, but many providers were also stuck in the "delivering print electronically" mind-set and were unable to fully leverage the opportunities to create new user experiences.

As technology expertise matured, however, so have the content and feature offerings. Web products are moving from enhanced data repositories to more robust portals, combining a mix of information and services under one roof: news and alerts, regulatory content, commentary, training, consultancy and outsourcing options through strategic partnerships. Increasingly, even

government sites are designed from a user perspective, providing more holistic access to relevant information, and even cutting across multiple lines of compliance.<sup>8</sup> The use of FAQs and plain-English language cut through the confusion of legal jargon embodied in the verbatim regulations. E-mail options, and use of RSS feeds, can enable practitioners to be fed relevant information from legal and regulatory information providers, news media, and government sources.<sup>9</sup>

## **ELECTRONIC DOCUMENT AND RECORD MANAGEMENT SYSTEMS [EDRMS]**

***With the bulk of business information in electronic format, management systems have long been used to archive data. Now businesses can use new EDRMS services to add more robust functionality which furthers compliance efforts by assisting with monitoring compliance efforts, red-flagging potential problems, creating an audit trail, and more.***

In the current business environment, new accountabilities (business transparency, stricter audit and review processes, risk management, ethical considerations, et al) face up against the potential for increased liabilities in the form of penalties, prosecution, impact on share price, and potential litigation. At the heart of these compliance concerns, then, is the need to establish and prove fulfilment of regulatory and fiduciary responsibilities.

Businesses have moved a long way from handshake deals and closed doors meetings. Most, if not all, corporate policies and activities are codified in a variety of documents: client records, e-mails, internal memos, planning documents, spreadsheets, government filings, employee records, correspondence, published reports, accounts, press releases, et al. Capturing this data, preserving it in an easily accessible archive, providing index and search capabilities, and incorporating knowledge management and workflow components are all elements of the new compliance order. Indeed, without electronic document and record management solutions (EDRMS) capabilities, many affirmative compliance requirements for monitoring and reporting may be unattainable. For example, under the new Companies Act law, the requirements for providing information on material suppliers may be cumbersome for companies with large numbers of vendors; EDRMS could assist in managing supplier information, detailing activities and business participation, and generating appropriate reports.

At the same time, companies must consider the impact of the growth in electronic document discovery in both regulatory investigations and litigation – the inability to demonstrate corporate policies and to present company data can open the way for negative presumptions regarding motivations and behaviours.

From global IT services providers to more regional specialists, technology companies are seeking to re-purpose existing EDRMS products for the fast-growing and high-value compliance arena, through development modifications, marketing language, and partnerships with relevant players. Often, companies also develop bespoke versions of their core offerings with added value compliance-related features.

For most companies, EDRMS adds to the compliance pressures resting on IT directors and departments. In companies with decentralised compliance efforts, IT managers will either need to deal separately with multiple practice area groups or attempt to coordinate across group-specific perspectives, use and educational needs, and budget. Similarly, for those companies with greater centralised programmes, the “lead or follow” conflicts regarding priorities, roles, and budgets so

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<sup>8</sup> See [www.businesslink.gov.uk](http://www.businesslink.gov.uk). Also, Transformational Government - Enabled by Technology (2006 report).

<sup>9</sup> E.g., Businesses can receive updates on broad scope of U.K. legislation and regulations from the Office of Public Sector Information (<http://www.opsi.gov.uk/legislation/whatsnew.htm>), or can receive specific news from specific groups, e.g. all manuals updates from HM Revenue and Customs (<http://www.hmrc.gov.uk/manuals/>).

often seen between business leaders and IT executives are sure to become manifest at the boardroom or department heads level.

Despite, or perhaps because of, the sometimes chaotic beginnings, a growing number of companies are beginning to evolve to a next level of EDRMS - investigating the potential benefits of harnessing these systems to increase operational effectiveness by streamlining or speeding functional tasks, providing internal transparency, and facilitating strategic planning and collaboration. This move is also marked by a lessened focus on compliance as a sunk cost, and a greater emphasis on the ROI to a company's bottom-line resulting from productivity improvements, cost-effectiveness, and automation of key processes.

### **AUTOMATION AND RULES-BASED ENGINES**

***Businesses can work with process mechanisms which direct employee behaviour before it happens through online guides or actual workflow applications, or which automate certain processes according to defined compliance needs.***

Faced with the high cost of non-standardised compliance practices (both in terms of real time/money expenditures and potential liabilities) across multiple business areas, many companies are turning to technology solutions as a means of controlling behaviours while also preserving a record of corporate activity.

In particular, automation of processes within the compliance framework serves a multi-faceted role:

- Identification of patterns and similarities across regulatory requirements to reduce duplication of efforts;
- Rule-based enforcement of corporate practice and policy through the reduction of guesswork and personalisation;
- Maintaining a review and audit trail through the identification, retention, and remediation of corporate activities;
- Parlaying initial investments into a means of creating cost-effective management of high-volume/low-value compliance tasks.

At its simplest, a rules engine is a software system that manages business rules, inferring decisions from different variables and triggering specific actions. While such engines can be embedded into web-based guidance products, companies can also implement rules-based engines to manage certain decision-making flows. As an example, within the financial trading world, complex systems combine information about transactions, workflow and processing, and user interfaces to manage huge volumes of dynamic data within complex rule sets.

### **E-LEARNING & E-COMMUNITY**

***Businesses can leverage proven cost-savings and productivity improvements from leveraging training modules and information sharing over the web.***

Training has been a typical element of the product portfolio for many compliance services providers. The opportunity to deliver learning modules over the network, and to complement the ancillary benefits of access to analyses and other information, has led to an explosion in the number of e-learning companies. E-learning also has the added benefit of minimising costs and disruptions to business operations, as trainees can typically benefit from self-paced and self-scheduled teaching, as well as reduced expenses (travel, meals, etc).

Add the growth in demand for compliance support – and the related need to demonstrated and record best practices and to assess and record knowledge and practice among staff – and it is no surprise that compliance e-learning is a growing sector.

At the same time, new technologies have enabled compliance practitioners to leverage informal and formal networks of peers, via e-mail, web groups, wikis and blogs. Business people can now easily share knowledge with similarly situated practitioners as a means of encouraging compliance best practices, acquiring benchmarking data on compliance programmes, and of receiving expert opinion for free or with only nominal charges.

Of particular consequence are industry groups and professional associations, such as the International Compliance Association and the Ethics and Compliance Officers Association, comprised of more than 1,000 member organisations (including BP, British Telecom, Unilever, and Cobham plc).

#### **FUTURE TRENDS IN THE COMPLIANCE LANDSCAPE**

***In the near future, two key dynamics will continue to drive changes in the compliance landscape, with widespread consequences. Growing numbers of companies are***

- 1) seeing compliance first as a driver of good business practices, and only secondly as a reactive requirement***
- 2) turning to technology-enabled solutions which empower employer and business practices while meeting compliance requirements.***

***Each factor is powerful on an individual basis, and together will create a strong impact.***

#### ***Compliance as an Advantage, and the Role of Government as Partner or Problem***

A 2004 survey of global business leaders, conducted by the World Economic Forum, identified reputation as a more important metric of success than financial performance, and second only to quality of products and services. More than 90% of respondents believed that reputation was important to corporate strategy, and almost 60% estimated that corporate reputation and/or brand identify could account for up to 40% of a company's market capitalisation.<sup>10</sup> In 2005, the chairman of Lloyds of London identified loss of reputation as the second greatest threat to an organisation's viability after business interruption, citing Fortune magazine's estimate that a one-point drop on the magazine's "Most Admired" scale made an average difference of more than \$100 million to a company's market value.<sup>11</sup> More recently, a 2006 McKinsey survey of international business executives found that more than 80% agreed that high returns for shareholders should be accompanied with broader contributions to the public good; only 16% thought highest returns alone should be a company's primary concern.<sup>12</sup>

While business adoption of corporate social responsibility may have ulterior motives, the growing recognition of the tangible value of that reputation – and its role in defining overall corporate strategies – is becoming a widely-accepted perspective amongst a broad group of corporate players. Only 8% of respondents to the McKinsey survey believed companies had "genuine

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<sup>10</sup> "Voice of the Leaders" Survey 2004, World Economic Forum (Davos, 34<sup>th</sup> Annual Meeting).

<sup>11</sup> Speech to the Philadelphia Club, Lord Levene, Chairman of Lloyd's (18 April, 2005)

<sup>12</sup> McKinsey's 2006 Global Survey of Business Executives

concern” for the various causes championed, but 90% agreed that CSR’s value-add to public relations efforts and/or profitability were the underlying reason.

This hard-nosed approach to acceptance of corporate social responsibility paradigms emphasises the role of CSR as a significant element in business strategy, and serves as a lesson for the larger role of compliance within an organisation. While far from complete, the evolution of compliance from an add-on burden to an integral role of risk assessment and contingency planning follows similar paths. Companies may not want to comply with regulations and rules, but the tangible impact on reputation and company value is becoming clearer. With this evolution of thinking well underway, compliance will increasingly inform strategies in a multitude of areas: geographic and business line expansion, brand and marketing considerations, account management, financial reporting, technological investment, staffing, and more. As companies continue down this path, the ability to derive competitive advantages from these potentially costly efforts will become increasingly important. Understanding the full scope of requirements, possible solutions, industry benchmarks and exemplar best practices will, similarly, become increasingly important.

At the same time, the increased integration of compliance within business thinking is certain to add to the on-going struggle between business and government, which led to the recognised drives for “better regulation” and “principles-based” compliance. With the focus on simplicity, flexibility, and concepts rather than clearly defined standards, presents the potential for greater confusion as an unintended consequence of the asked-for plain language regulations and subjective perspectives.

The recent revisions to the Companies Act 2006 provide an illustrative example, with its mandate that company director act in the best interest of shareholders while also paying “regard to” the interests of staff, customers, the local community and the environment. As a guideline for behaviour, this nebulous phrase presents a broad standard on which different people could reasonably disagree. While this flexibility is in line with the desired regulatory elasticity, it will also create a series of new debates and complaints. Resolutions are expected to come from a multitude of sources: guidance from learned authorities, enhanced training, corporate or professional group consensus on best practices, revisions to the regulations, and – of course – litigation. Changes will also come from the continued, often heated, discussion between government and business players, with business increasingly calling on government and other regulatory authorities for additional course corrections.

### ***Technology’s Growing Role in Compliance Programmes***

A recent EIU survey of IT executives across the globe identified compliance as the leading challenge facing IT departments, with the majority of respondents expecting and/or striving to accomplish additional business value from compliance-related initiatives.<sup>13</sup>

Efforts to derive ROI often rest on seeking economies of scale by avoiding stand-alone compliance solutions and seeking more integrated tech tools, which work with other key systems to leverage data assts and business processes. Whereas initial compliance efforts were often focused on specific regulatory requirements (e.g. financial reporting), the trend now is to focus on the underlying business processes and implement programs and initiatives on a broader basis, allowing companies to recognise both operational efficiencies and compliance goals.<sup>14</sup>

As more companies work to accomplish ROI from their IT investments, businesses will certainly seek to extend their efforts into true workflow applications, which either automate or assist

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<sup>13</sup> Sustainable Compliance, Economist Intelligence Unit (2005)

<sup>14</sup> *IT as an Enabler of Governance, Risk & Compliance*, Business Trends Quarterly (Oct. 2006).

employees in conducting their work in a compliant fashion without requiring extensive training or knowledge retention. Demand for such applications will come in various forms, according to the specific needs of the diverse participants involved in compliance, and will reflect common themes:

- Increased ability to manage, audit, and remedy employee actions subject to regulatory jurisdiction;
- Context-specific content, providing immediate and relevant guidance, training, and information;
- Greater transparency and communication of compliance efforts and progress, especially amongst directors and board members

### ***Service Providers Will Adapt to the Changing Landscape***

These foundational changes will, in turn, drive changes to the Service Providers Landscape. While the recent past saw providers follow a moderate course, with incremental expansions of product and presence into compliance markets, the near future is likely to see more substantial developments. Common themes will include:

- Tiered solutions for all levels of corporate hierarchy from board members and directors, down to hands-on staff;
- An emphasis on transparency and communication between involved parties, both within the company itself, between the company and the public, and between the company and the regulatory body;
- Product features and functionality built around the positive impacts on operational efficiencies and competitive advantages, rather than the more negative mantra of “comply or explain”;
- Incorporation of ancillary services, charting a trajectory that eventually leads to the rationalised offering of multiple, related services under the “one-stop shop” banner.

### ***CONCLUSION***

Growing numbers of businesses are focusing on the full scope of compliance concerns, both the pitfalls and the potential, as well as learning to address the resource issues involved – from leadership, lines of reporting, to the core skills and knowledge required for key personnel. Due to the complexity of the compliance landscape, most companies will need assistance in their efforts. For many, information will be the cornerstone of compliance efforts – the news/analysis to identify relevant compliance concerns, the written guidance manuals and other materials that help inform efficient and effective compliance efforts, the ongoing information to stay abreast of changes in the regulatory schemes, as well as with evolving benchmarks of corporate behaviour which can impact competitive landscape and shareholder value. As the needs of specific companies increase, other service providers – such as professional advisors and technology partners – can help define and implement policies and programmes.

Knowing that leaders in the development and implementation of compliance programmes can achieve a true competitive advantage in the form of company reputation and operational efficiencies, companies who have largely stood on the sidelines would be well advised to step up their level of effort and determine the scope of their appropriate slate of compliance/non-compliance decisions, identify pertinent available resources, and craft business processes and programmes to achieve compliance and competitive goals.

*Navigating the Compliance Information Landscape White Paper produced by LexisNexis in association with Outsell, Inc*

## **ABOUT LEXISNEXIS**

LexisNexis is the leading provider of information and business solutions to help knowledge-driven professionals achieve excellence. Our 200 year heritage of providing authoritative information through Butterworths and Tolley - in combination with the proven technology expertise of LexisNexis and Visualfiles - will help your organisation to drive business growth, improve productivity and actively manage risk.

In the Risk & Compliance arena LexisNexis offers critical resources to protect and strengthen your business. Our systems help you to establish scrupulous screening and ongoing monitoring processes, and we can increase your firm's efficiency by streamlining your due diligence processes.

### **Protect your reputation.**

Avoid association with the wrong organisations and individuals. Know exactly what prospective clients and collaborators are doing - and have done in the past - and make sure they do not compromise your ethics.

### **Ensure compliance and thorough due diligence.**

Make sure your practice complies with all the regulations, including those on money laundering, and carries out proper due diligence on existing and prospective clients. Keep up to speed with developments and be certain that your employees understand the legal requirements.

### **Increase efficiency and protect revenues.**

Increase your organisation's efficiency by streamlining time and effort spent on due diligence and compliance processes.

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APPENDIX: TABLE OF CONTENTS

Common Regulatory Schemes Impacting Businesses

Individual Regulatory and "Self-Regulatory" Bodies.

<b>INDIVIDUAL REGULATORY and "SELF-REGULATORY" BODIES</b> (for example only; not comprehensive listing)		
Government Bodies	Industry Sector	Professional Organizations
<i>Mandated laws set forth by ministerial and non-ministerial bodies</i>	<i>Standards of conduct and specific business practices within an industry sector</i>	<i>Standards of professional conduct and licensure / certification of qualifications</i>
Commission for Racial Equality	Association of Energy Suppliers - Code of Practice for Face-to-Face Marketing of Energy Supply	Chartered Institute of Environmental Health
Companies House	Association of Medical Insurers Intermediaries	Chartered Institute of Public Finance and Accountancy
Competition Commission	Association of the British Pharmaceutical Industry - ABPI Code of Practice	Chartered Institute of Public Relations
Disability Rights Commission	British Bankers' Association (BBA), the Building Societies Association (BSA) and APACS, the UK payments association - Banking Code	Chartered Institute of Taxation
Environment agency	British Retail Consortium- BRC Global Standards	Direct Marketing Association
Financial Reporting Council	British Security Industry Association	Engineering Council UK
Financial Services Authority	Committee of Advertising Practices [CAP] -British Code of Advertising, Sales Promotion and Direct Marketing	General Council of the Bar
Food Standards Agency	Finance & Leasing Association	Institute of Actuaries in England and Wales; Faculty of Actuaries in Scotland
Gambling Commission	Finance Industry Standards Association - Code of Conduct	Institute of Chartered Accountants in England and Wales
Health & Safety Executive	Telecommunications Industry Association	Institute of Chartered Secretaries and Administrators
Insolvency Service		Institute of Management Consultancy
Licensing Authorities		Law Society
Medicine & Healthcare Regulatory Agency		National Association of Estate Agents
Office of Communications		Royal Institution of Chartered Surveyors
Office of Fair Trading		
Office of Gas and Electricity Markets		
Office of Water Services		
Pesticides Safety Directorate		
Security Industry Authority		
The Pensions Regulator		
Treasury (HM)		

Among the most universally Applicable regulatory schemes are those related to corporate governance, employment, the environment and environmental health & safety, and electronic data considerations.

<b>COMMON REGULATORY SCHEMES IMPACTING BUSINESSES</b>		
<b>Subject Area</b>	<b>Description</b>	<b>Sample Acts and Regulations</b>
Financial reporting	Requirements and standards obliging companies to publish information regarding their financial accounts and other disclosures	- Companies Act 2006; - Combined Code of Governance 2006;
Corporate governance	Affirmative duties imposed on the directors of companies to conduct business in the interest of shareholders and others	- Companies (Audit, Investigation, and Community) Enterprise Bill
Environmental	Controls and monitoring of impact on land, air and water, particularly in areas of waste management, pollution, pesticides use, and hazardous materials	- Environmental Protection Act (1990); - Environmental Impact Assessment (EIA) Regulations; - Environmental Information Regulations (2004); - The List of Wastes Regulations (2005); - Waste and Emissions Trading
Employment practices	Authorisation to work, workplace conditions, wages & hours, and anti-discrimination policies, as well as other issues such as family and/or medical leave, drug-testing, use of lie detectors, and more	- Human Rights Act 2000; - Employment Equality Regulations: Age (2006); Religion or Belief (2003); Sexual Orientation (2003); - Working Time Regulations; - Maternity and Paternity Leave Regulations ; - Transfer of Undertakings (Protection of Employment) Regulations (2006)
Health and safety	Health and safety duties which employers have with employees and the public, and which employees have to themselves and to each other (reasonably practicable)	- Noise at Work Regulations (2005)
Data privacy and protection	Standards governing the collection, storage, and disclosure of personal information, with focus on information heavy sectors, such as health care, financial services, and criminal justice	- Data Protection Act 1998; - Electronic Communication Act 2000; - Electronic Signature Regulations 2002; - Privacy and Electronic Communication (EC Directive) Regulations 2003