

A brief guide to improving compliance implementation in the MENA region

Mar 11 2010 [Sharon Ditchburn](#)



Sharon Ditchburn

2010 will certainly be a busy year for financial "compliance" as the law-makers ramp up their legislative processes and consider the fallout from the recent global financial crisis. It seems clear that failure to implement compliance measures remains one of the most significant issues for both industry and regulators. Recognising this weakness, however, is quite different from determining how to improve the situation. While the focus has definitely been on the Western economies, changes through the Middle East and North Africa region and other areas should not be ignored. This is particularly so for financial centres such as the Dubai International Financial Centre and Qatar Financial Centre, which follow the UK Financial Services Authority model quite closely.

MENA issues

The MENA region represents a good case study for issues and possible improvements to compliance implementation. There are some special issues with regard to MENA:

1. Multiple regulators and regulatory regimes which are not unified. Rather than focus on a harmonised GCC or MENA approach, regulators have reacted to local issues in the interests of economic protection or international pressure. This has had particular consequences due to the close proximity of the MENA countries and the inter-relatedness which is common in the region.
2. The preference of financial free zones to apply common over civil law has created "bubble" effects whereby skilled practitioners in one type of law often do not appreciate some of the interlinking issues from other jurisdictions, particularly when "carve outs" such as anti-money laundering and counter-terrorist financing apply under onshore Central Bank requirements.
3. Slow development of laws, guidance and precedent. Most of the common law jurisdictions such as the financial free zones are still relatively young and working with an introductory legal framework. Additionally, issues of sustainability and maturity of the markets are pressing against the boundaries of what is allowed and how the regulators will enable companies to self-determine product development. These laws are now due for revision to reflect lessons learned and to enable more sophisticated corporate activities. As precedents are starting to be established in the courts, the regulators will become more inclined to revise the laws and issue guidance notes.
4. Regulatory responses and punishment. Regulators are gradually becoming more inclined to investigate and punish wrongdoings, particularly in a public forum. Companies are increasingly aware that compliance requirements will not diminish, and that defaults may have serious consequences both commercially and personally.

Implementing compliance issues in the real world

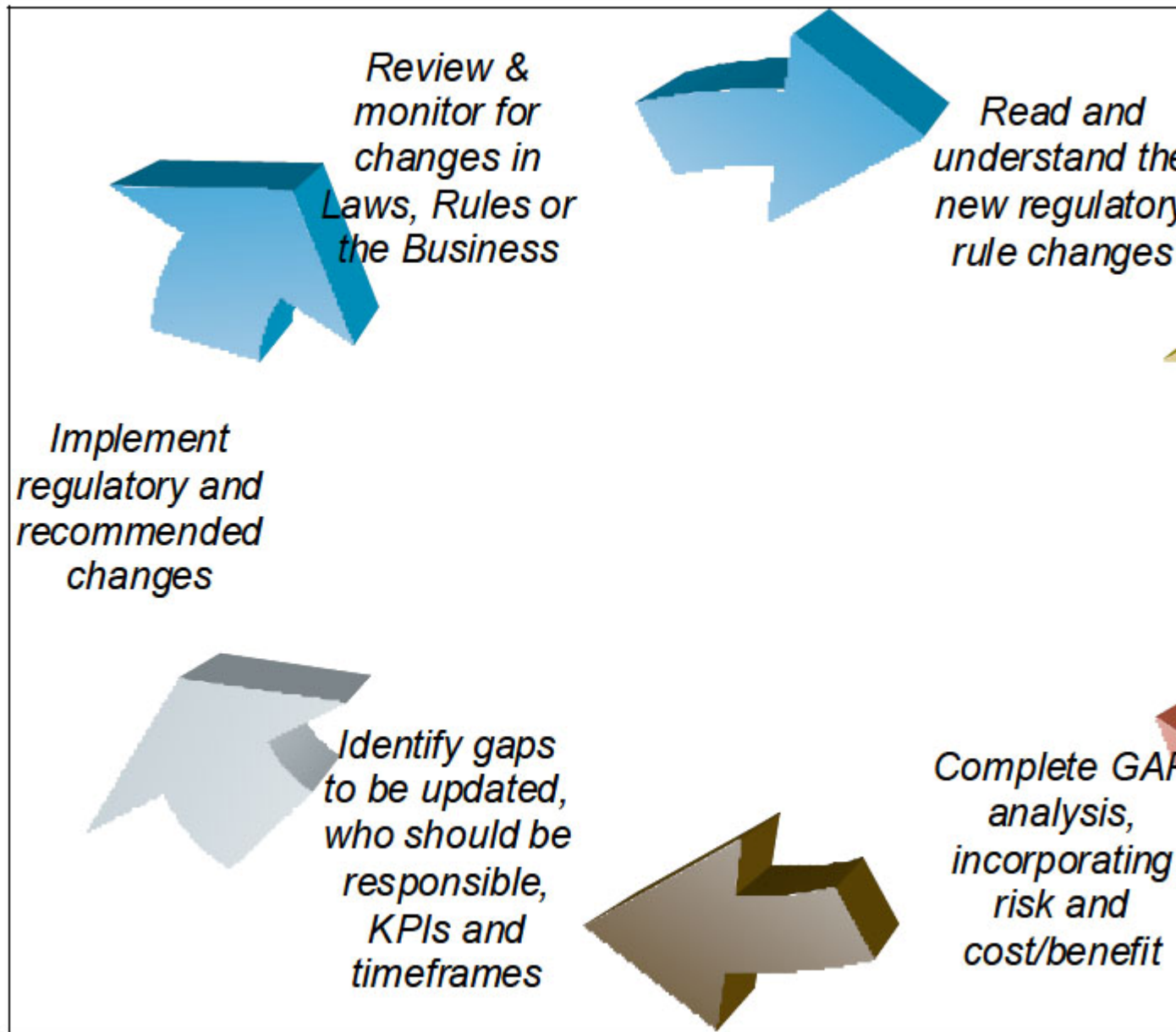
Compliance is definitely more than just writing manuals and policies; if that was all that needed to be done, corporate scandals would be a thing of the past and our lives would be considerably more controlled and monitored. Human nature being what it is, however, people generally dislike change and seek to improve personal status. These can often be the main issues which compliance officers face when seeking to implement a framework. There are a number of areas on which compliance professionals can focus if they wish to improve their interaction and success in their business:

- **Ethical decision making** Human motivation and natural irrationality need to be considered when determining how exactly to implement rules. Given the manner in which people make decisions, their motivational forces, values and norms, compliance officers will be more successful in implementing reform if they consider the driving forces of human behaviour when designing frameworks. At the same time, appropriate controls need to be introduced as both motivators and punishers in a proportionate and relevant manner.
- **Being invited to the table** Compliance officers are usually more successful internally when they are included at an earlier stage in the design phases of products, marketing plans, remuneration frameworks, etc. Being involved in the whole product lifecycle ensures that decisions about proper form design, client management, staff training, control points, information collection, transaction and risk monitoring, and reporting are made significantly more seamlessly and with greater immediate effect.
- **Increased awareness of business risk** Compliance frameworks need to include more transparent and regular risk awareness tools, such as heat mapping and quarterly reviews of top risks by management and the board. International risk standards, such as COSO or AS/NZS ISO 31000:2009, could also prove useful. It must be clear how the risks will be measured and mitigated, as well as who will be responsible for the risk decision making. Compliance professionals may oversee this process, but risk should be considered an integral component of business and hence should be considered an operational aspect. Compliance professionals should not therefore be responsible for implementing risk measures, although they may monitor them.
- **Technology lag** As regulations change rapidly and widely, technological solutions for compliance tend to fall behind. Additionally, compliance tends to take a multi-skilled approach, which is difficult to contain fully within a checklist/tickbox environment. To this end, the design of compliance systems needs to have a system integration focus, as often the valuable information for compliance is spread over various sources. An excellent example is electronic anti-money laundering testing which utilises parameters, sequences, trends, patterns and variances to issue alerts, which will then require the inevitable human interface to determine the risk and ultimately a "smell test".
- **Increase pace of change/broadening of scope** It can often be interesting to ask how people became compliance practitioners. There is no need for a university degree, it is not exactly a career day topic at schools, and there is a tendency for people to go glassy-eyed at social events when compliance officers tell them what they do for a living. Yet, effective compliance practitioners should be among the broadest-skilled and most adaptable people in their business. Ideally, compliance officers do need to continue their education in both directly and indirectly related matters, such as corporate governance, enterprise risk management, quality, legal, finance, strategy and change management. It is unlikely that the pace of change will diminish, so compliance officers must demonstrate attributes such as flexibility, emotional intelligence, professionalism, discretion and confidence in order to be successful.
- **Information and training quality** Compliance officers should have reasonable access to online and other resources, such as online subscriptions, working groups and professional libraries. They should also be members of one of the national, if not international, compliance institutes, as well as their own professional association, should they have one. This will ensure that they maximise their exposure to international developments, education/CPD and, most importantly, will mean that they have to abide by a professional standard of ethics.

Methodology

The methodology for implementing compliance measures is relatively simple, and there is nothing inherently

challenging in agreeing the steps. There are, however, broad implications. It is imperative to remember that the role of compliance officers is with respect to compliance itself, so there must be a marker or standard to which they can refer. This will be regulatory in the first instance, and then proceed to standard and policy based. At all times, professional compliance officers need to respect the spirit, and not just the word, of the requirements. Many regulations require compliance officers to be personally accountable to the regulators, and thus bear an increased liability compared with most other officers within a company.



Technology

Technology is a particularly critical tool for compliance officers, although manual and ad hoc compliance functions still prevail in the MENA region. Technology solutions offer the following benefits to the company and/or its compliance officer:

- Intranet/server

1. Electronic versioning
2. Security and Chinese walls
3. Document retention
4. Including know-your-customer documentation
- Computer-based training
 1. Electronic attendance tracking
 2. Knowledge testing
- Transaction monitoring software
 1. Fraud detection
 2. Identify unusual or suspicious transactions
 3. Reporting functionality to senior management
 4. Phone recording
- Audit trails
 1. Track changes to documentation
 2. Check access to documentation
 3. Confirm order details: best execution, etc.
- Remote access
 1. Checklists
 2. Documentation
 3. Databases: AML
- Workflow controls, limits and messages
 1. Limits, authorisations, warnings
 2. Operational and administrative

Use your compliance officer wisely

The role of compliance practitioners is often an undervalued asset in most companies. They are too often referred to "after the event" to audit, or assist in the correction of, the various negative situations in which companies have found themselves. Compliance professionals are in a unique situation, with their functional authority extending beyond the company's management and board to the regulators and central banks. Improving the implementation of compliance measures and frameworks requires board support, management buy-in and unbiased adherence to agreed standards and policies. Used wisely, compliance professionals can be both an early warning signal for the companies in terms of their operational and regulatory environment, and a safety valve when disaster strikes.



• **Sharon Ditchburn** is qualified in accountancy and law, and founded Capital Advantage Consultants in 2004 to become one of the largest UAE firms offering compliance, AML and corporate governance services. She is an Authorised Individual with various DFSA regulated entities, including investment banks, brokerages, trust companies and wealth managers. She has wide ranging experience at Senior Management Level, including CFO and Company Secretary to several boards on a variety of public and private companies in Australia and the UAE.

This article first appeared on Complanet on www.complanet.com on March 11, 2010. For a free trial of Complanet's services, please contact client support on client.support@complanet.com or +44 (0) 870 042 6400.