



"If you think compliance is expensive - try non-compliance"

Paul McNulty, Former U.S. Deputy Attorney General

Exiger recently hosted its first virtual Anti-Bribery and Corruption (ABC) Roundtable under Chatham House Rules bringing together senior-level ABC Practitioners from a range of global banks to discuss the current risks and challenges faced by their ABC teams. Key discussion topics included an overview of recent regulatory and industry developments, emerging trends across the globe and the current challenges in implementing an effective ABC programme.

Exiger provided an overview of regulatory developments in the ABC space across the globe and highlighted the increased focus in the following areas:



Despite the pandemic, regulators and law enforcement authorities have been actively updating their guidance providing additional clarity around their expectations. Some noteworthy updates in the past year included:

- The U.S Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) released the second edition of its Foreign Corrupt Practices Act (FCPA) resource guide and the Biden administration announced a comprehensive national security strategy to combat corruption.
- U.K introduced the Global Anti-Corruption Sanctions Regulations and continued its pursuits around Unexplained Wealth Orders (UWOs), corporate transparency and register reforms.
- Germany introduced the Corporate Sanctions Act with plans to roll out its Supply Chain Act in 2023.
- China introduced additional cross border data restrictions further increasing the complexity for multi-jurisdictional organisations operating in China.

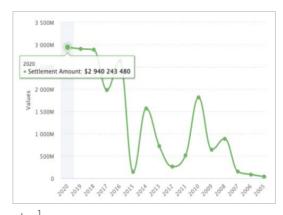


Key Takeaways

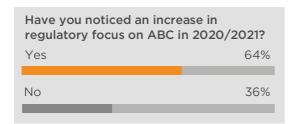
Regulatory Focus

Although 2020 saw a slowdown in enforcement, mainly due to the pandemic, it was also the largest year ever for FCPA settlements driven by an increase in number of record-breaking financial penalties. 2020 also saw the highest number of whistle-blower tips since the start of the program in 2011.

As regulatory and enforcement bodies continue to remain focussed on increasing their resources, staffing and budgets, it logically indicates that more enforcement can be expected as the countries ease out of the pandemic.



Whilst the US Government collected a record-breaking US\$2.94 billion in fines, penalties, disgorgement and interest, an additional US\$6.31 billion was collected by non-US authorities. Combined this made the worldwide total arising from coordinated FCPA resolutions of approx. USD\$9.1 billion.



64% of the participants concurred that there has been an increase in regulatory focus on ABC in recent years, with several firms having experienced more ABC-focussed regulatory visits, reviews or enforcement action. Although there is a sense that ABC is potentially secondary to other Financial Crime Compliance (FCC) topics, the rising trend in

Deferred Prosecution Agreements (DPAs) and the magnitude of recent enforcement actions may change this order of prioritisation.

The main area of focus for regulators was most often perceived by firms to be third-party risk management (73%), closely followed by ownership of ABC risks by the first line of defence (1LOD) (64%) and engagement from senior management and 1LOD (64%). This is a shift in a historical focus away from Gifts and Entertainment as ABC programmes have matured over time with policies now in place to prevent lavish and excessive gifts and entertainment.

55% of the participants also noted that risk assessments and reporting (including management information, key risk indicators and key performance indicators) continue to be an area of interest primarily driven by the ongoing focus on supervision and senior management accountability.



Firms and to an extent regulators drive using the rear view mirror – solving problems of the past. Attention is therefore shifting towards ABC especially for firms who have fixed or are fixing their AML issues.

¹ FCPA Blog - https://fcpablog.com/2020/10/19/with-jf-2020-becomes-the-biggest-year-in-fcpa-history/



Third Party Risk Management

A key misconception of third party risk is an assumption that it relates only to ABC risk instead of the wider range of risks associated with supply chain risk. The roundtable agreed that whilst the 1LOD appreciates and understands that increased exposure from third party and supply chain risk, more education around oversight of invoice payments and monitoring third parties is still required given third parties by nature transfer their risks and liability to the firm. Moreover, as the 1LOD is not accustomed to dealing with third parties directly, there is a need for a cultural shift in mindset as well.

Additionally, industry guidance around the extent of due diligence and screening required on third parties and supply chains recommends taking a risk-based approach. The roundtable discussion highlighted that firms have implemented this approach inconsistently in that there are a limited number of firms performing due diligence on Ultimate Beneficial Owners (UBOs) of their third parties similarly to UBOs of their customers, despite the differing levels of likelihood and impact of ABC risks materialising. That said, given the increased availability of quality UBO data today, regulators may well start to push for this enhanced level of third party due diligence for high-risk third parties. The roundtable discussed how a key control to reduce the impact of ABC risks transferred from third parties is to incorporate adequate ABC clauses in contractual agreements in addition to risk assessing the third party itself. It is yet to be seen if the practices of some firms, driven by their risk profiles, appetite or regulatory commitments, will impact regulatory expectations placed on the industry as a whole.

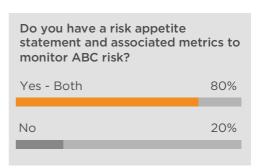
Given the common challenges around resourcing faced by all firms, it is crucial to take a risk-based approach and ensure that the proportionality of resources diverted to screening third parties and UBOs on an ongoing basis for adverse media, sanctions and Politically Exposed Persons (PEPs) is aligned to the firm's risk profile. It is equally important to clearly document the firm's risk-based approach in order to demonstrate that it is applied consistently.

Risk Assessments and reporting

80% of the participants stated that their firms had both an ABC Risk Appetite Statement (RAS) and related management information (MI) in place. As regulators are generally interested in assessing whether MI is sufficiently granular and specific to each business unit, meaningful MI is a key mechanism to demonstrate senior management's awareness of their key risks at a business unit, functional or geographical location level.

The level of granularity provides confidence that key risk metrics are not diluted or aggregated across multiple business units with varying levels of risk exposure.

Firms should also consider reputational risk in addition to their ABC risks. Regardless of whether there is a legal risk, the reputational risk may be the trigger to push 1LOD to realise that further investment is required to proactively manage ABC



It is critical to have a meaningful Risk Appetite Framework including a RAS. Regulators are now becoming increasingly conscious of alignment between MI and a firm's risk appetite.

risks proactively. The roundtable discussed how it was important for the intent of an ABC programme to be geared towards avoiding allegations rather than avoidance of fines.

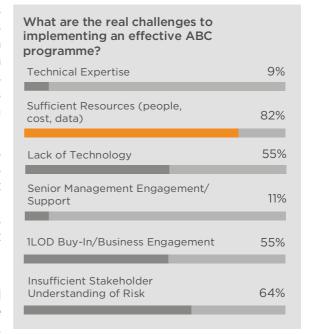


Co-relation between Senior management support and Resourcing

Unsurprisingly, **82**% of the participants highlighted that having sufficient resources was their biggest challenge when implementing the ABC programme which leads to a knock-on impact on other aspects of programme implementation such as stakeholder buy-in and investment in technology.

Some firms have started to tackle this problem through consolidation of resources across teams such as Fraud and Conduct given the similarities in expertise required and transferring additional responsibilities to the 1LOD (i.e., the true risk owners) whilst also building capability in these teams.

In reality, the key controls relating to an effective ABC programme are dispersed amongst various Second Line of Defence (2LOD), 1LOD and corporate functions.



These include procurement, finance or accounts payable teams, human resources, marketing, legal and technology teams. Hence, maintaining adequate levels of governance and oversight across all the distributed ABC related controls is fundamental to implementation of an effective ABC programme.

Functions that have sufficient senior management support usually correlates with those that have sufficient resources. However, whilst 82% of participants felt that resourcing was their biggest challenge, only 9% felt that senior management support was lacking.



Despite the resourcing challenges and lengthy budget approval processes, 40% of the participants expect an increase in their ABC related resources. Although a key driver for this increase may be attributed to ongoing regulatory engagement or remediation commitments, it is still a move in the right direction.

In summary, Exiger's inaugural ABC Roundtable gave participants an

opportunity to open discussions around some key areas that are being considered in the establishment of an effective ABC programme. All participants concluded that there remain many more topics to investigate such as use of technology, the integration of a data driven approach to third party risk management, the trend towards Environmental, Social, and Governance (ESG) and the culture of compliance – topics that will be explored at Exiger's future Roundtable events.

If you would like more information on any aspect of these discussions or you are interested in attending the next ABC Roundtable, please contact us.



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