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Managing global regulatory compliance:

Horizon scanning in a post-pandemic world

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Foreword

"The world is getting so complicated in terms of regulation - it can tie leadership up in knots"

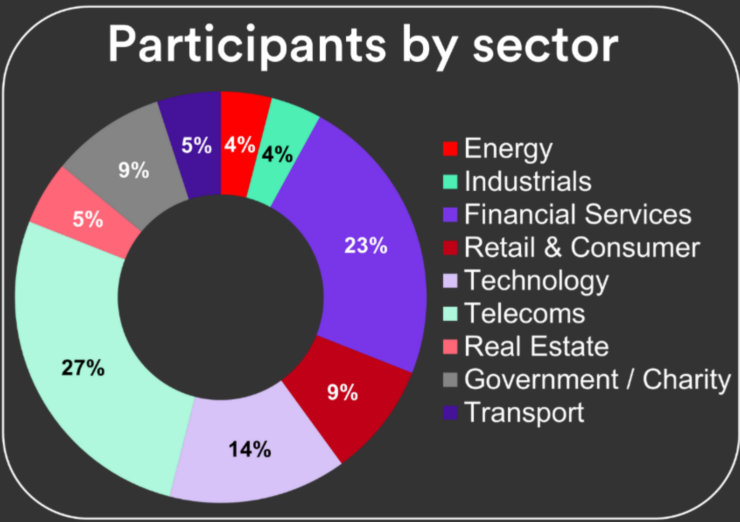
General Counsel, multinational food & beverage business

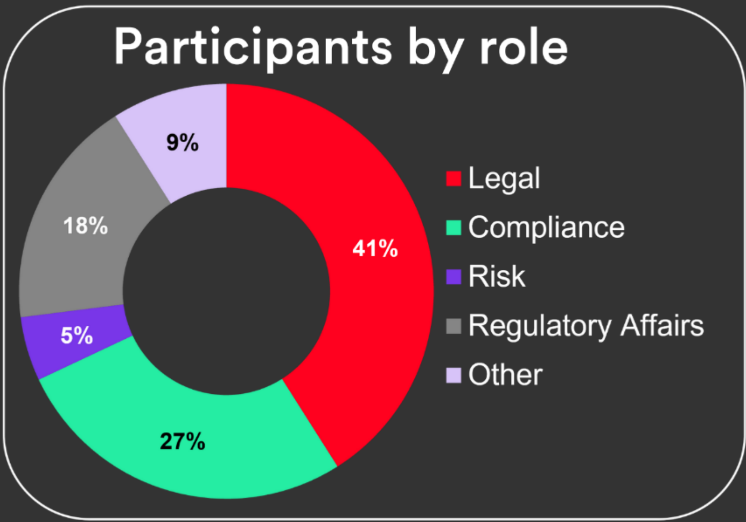
In 2019 OMC Partners delivered its whitepaper 'Mission Impossible? Managing Global Regulatory Compliance and Evolving Best Practice', which examined the measures organisations had in place to horizon scan and monitor the exponential growth in regulations impacting their operations.

Much has changed since 2019: a global pandemic with disrupted travel and supply chains, war in Europe and the increased prevalence of sanctions, in addition to Trump-era populism evolving into widespread anti-globalisation sentiment. The list goes on.

With this in mind, we decided to refresh our view of the regulatory monitoring landscape to understand how organisations' approaches have changed since 2019, what new priorities compliance leaders are grappling with, and what solutions have evolved during the pandemic.

We posed these questions to compliance, risk and legal professionals responsible for regulatory monitoring, across a range of sectors. Their responses make interesting reading for anyone tasked with keeping on top of the ever-changing regulatory environment.





Key findings in depth

Summary findings

- Business priorities and horizon scanning are increasingly politicised
- Regulatory monitoring approaches are evolving… slowly
- Organisations look to others for inspiration
- Leaders go further with accountability and responsibility
- Budgets, resource and investment are largely static
- Requirements for monitoring solutions are taking shape

Introduction

Business priorities continue to focus on monitoring regulatory developments in key operating territories, new markets and – for organisations looking at new forms of funding and ownership – ensuring businesses are IPO-ready.

Unsurprisingly, organisations continue to place the greatest emphasis on regulation in their sector, particularly highly regulated operators in the telecoms, financial services, pharma and utilities industries.

Highest	High	Moderate
Sector focus	**Global concerns**	**Operational concerns**
Regulation that goes to the heart of what the business does – such as telecoms, online marketing, licensing etc.	Pervasive regulation where companies are under increasing global scrutiny. For example, data protection, cyber security, anti-bribery and corruption, competition and procurement, trade control, governance, investor requirements.	More localised day-to-day regulation, such as health and safety, ESG (environmental, social and governance), employment including equal pay, discrimination more generally, pensions etc.

Figure 1: prioritising horizon scanning effort

Thereafter, regulatory priorities are largely sector agnostic with areas such as data protection, anti-bribery and corruption, and money laundering being of similar prominence as in 2019, but with areas such as sanctions, ESG and consumer duties moving up the compliance agenda.

ESG

Supply Chain Provenance

Anti-money laundering

Whistleblowing

Data Privacy

Sanctions

Digital Marketing

Cost of Living

Health and Wellbeing

Anti-bribery and Corruption

Consumer Duties

Internet of Things

1. Business priorities and horizon scanning are increasingly politicised

In 2019 participants reported increased levels of populism influencing the regulatory landscape, particularly in western economies. With the impact of war and a global pandemic, anti-globalisation now weighs heavily on organisations' regulatory agendas. Regulatory priorities increasingly reflect fast-moving populist political sentiment.

The cost-of-living crisis was cited frequently by participants with organisations - both B2C and B2B - feeling the need to respond proactively and sympathetically to the hardships being experienced by many.

> **"Society is more distracted with the cost of living than how their data is handled."**
>
> **Head of Legal, FS**

> **"There's a lag between what society expects and legislation being published. As a business we can't wait for legislation and need to use our gut feel for what's right."**
>
> **General Counsel, Multinational Food and Beverage**

As such, from a monitoring perspective, forward thinking organisations, seeing the writing on the wall, are evolving their operations to embrace 'rules' that regulators haven't even thought about (but will once their electorate's views are heard and acted upon).

2. Regulatory monitoring approaches are evolving…slowly

Broadly participants report that their approaches to horizon-scanning and monitoring remain unchanged from 2019. This includes the use and availability of technology and third-party solutions.

> **“The pandemic changed almost nothing for us. However more business and more territories means more complexity.”**
>
> **Vice President, Regulatory and Government Affairs**

Many participants continue to take a ‘boots on the ground’ approach to monitoring, leaning on subject matter experts and external lawyers for key territories and languages. This physical proximity is particularly sought after in Africa and South America where the position of regulators - and the content of proposed regulations - shifts quickly with very limited communication with stakeholders.

However, organisations have yet to land on an optimal blend of internal and external resource, although internal resource is typically focused on territories where operators have direct relationships with supervisory regulators, such as where organisations are regulated entities.

Participants continue to cite frustrations with managing multiple and inconsistent sources of data, although notifications that are tailored to specific sectors receive positive feedback.

> **“I receive so many notifications from law firms they become almost meaningless.”**
>
> **Head of Compliance, FTSE 250**

Participants report adopting a siloed approach to regulatory horizon scanning with different teams responsible for monitoring different types of regulation.

Highly regulated organisations, such as telecoms operators, invest heavily in professional, dedicated teams of subject matter experts who focus on monitoring sector-specific, business critical regulation. Thereafter, other operational functions take responsibility for their own area of expertise - competition, data, finance, tax, HR, intellectual property etc - with cross-team collaboration encouraged.

This same approach is found within highly specialist organisations without a specific supervisory regulator, such as businesses in the food industry, with expert teams focused on, for example, salt and fat.

This siloed approach, however, presents challenges in terms of accountability, consistency of approach to monitoring, and poses a risk of regulatory change falling between the cracks i.e., is it absolutely clear who is responsible for monitoring what?

Despite having an evolved but siloed monitoring capability, one General Counsel recounted that it was purely through a chance reading of a press article that a major change to their operations was spotted having slipped through the net. Fewer than 10% of participants possess centralised oversight of regulatory monitoring – a clear opportunity for organisations looking to implement a short term ‘win’.

3. Organisations look to others for inspiration

Those responsible for horizon scanning report that organisations are developing a greater awareness of the value of regulatory monitoring and look to others for ideas and best practice.

Examples include:

- benchmarking operations against peer organisations, but also against other businesses with a similar risk appetite
- engaging with trade associations to formulate common responses to regulatory changes - needless to say not collaborating too closely which could fall foul of competition/anti-trust laws)
- adopting the 'Three Lines of Defence' approach to risk management and control, which is prevalent in the financial services sector and used by many other leading organisations

Since 2019 more organisations report implementing risk and compliance frameworks for key types of regulation to balance broad global consistency with country-specific requirements.

An example given was of data privacy monitoring against a global framework, which largely reflected US and European regulatory practices but with suitable adjustments to reflect Chinese data privacy requirements.

4. Leaders go further with accountability and responsibility

A clear development since 2019 is participants reporting a greater appetite to be more open with investors, regulators, employees and customers on monitoring and wider compliance approaches.

This involves conveying the importance of good regulatory compliance and demonstrating how approaches to horizon scanning are evolving.

Examples mentioned include:

- implementing Codes of Conduct which are made publicly available
- publishing risk tolerances, risk appetites, and measurement frameworks as part of regulatory filings and annual reports
- incorporating regulatory monitoring activities within the oversight of the organisation's audit and risk committees
- publicly appointing named executive-level sponsors for high-risk regulatory compliance implementations

> **"If there's an urgent governance issue, get it into the audit committee for the board."**
>
> **General Counsel, FTSE 100**

> **"Organisations who think strategically, include [regulatory risk and monitoring] in their report. Those who don't, don't."**
>
> **Head of Legal, Global Telco**

Not only do these approaches provide valuable mitigation to organisations should things go wrong, but they also promote organisations' objectives to embed a compliance culture of transparency and accountability.

Participants also report that compliance, legal and risk professionals are moving well beyond simple monitoring into providing high value add advisory support to the business.

However, in terms of who is in charge, over three quarters of participants indicate that the business units set risk appetite and are ultimately responsible for getting things right.

Participants confirm that there is still a relatively even mix between Chief Compliance Officers / 'Heads of' reporting to the General Counsel or direct to the CEO.

Over time, a number of participants predict that CCO's will more likely report directly into the CEO with compliance teams - often joined at the hip with legal teams - operating collaboratively but independently.

5. Budgets, resource and investment are largely static

Monitoring resource remains largely static with a number of 2019 participants reporting that their anticipated growth plans had been paused. Legal, compliance and regulatory affairs teams became increasingly dovetailed during the pandemic, albeit with limited definition around responsibility or rules to support collaboration.

However, more than half of participants suggest that, going forward, legal, compliance and regulatory teams will become progressively more siloed which, as already noted, misses a clear opportunity to centralise oversight and minimise the likelihood of changes slipping through the net.

Some resourcing exceptions appear, predominantly within financial services, where oversight resource continues to grow - a long-standing and favoured response to a raft of regulation such as MIFID2.

In addition, project teams are built to meet tight regulatory timescales, such as the Financial Conduct Authority's new Consumer Duty timetable[1].

> **"Although there were some mutterings, [Consumer Duty] just wasn't really on the horizon in 2019."**
>
> **Head of Legal, UK Bank**

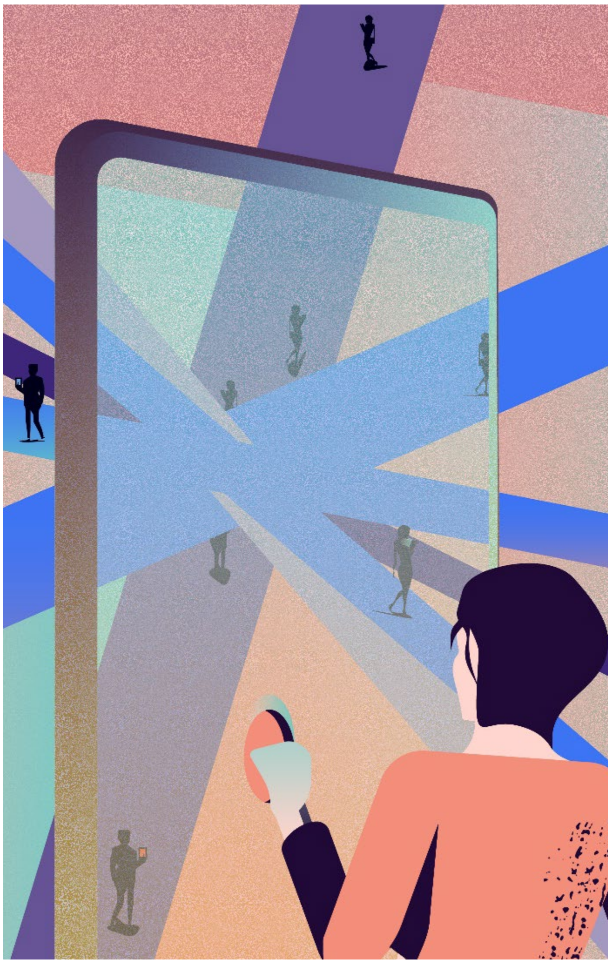
[1] https://www.fca.org.uk/firms/consumer-duty

Budgets have been squeezed in comparative terms, with some participants reporting 30% wage growth driven by the 'Great Resignation' and cost of living crisis. The war for talent, including monitoring resource, rages on with no sign of abating.

Given the current economic climate, investment in regulatory monitoring tends to be reactive and ad hoc, rather than planned strategically.

One exception is where organisations are preparing for IPO and getting on top of regulatory monitoring and compliance to maximise value, so there's a clear business case.

For others, the business case often requires swapping out or refocussing human resource in place of technology, or else outsourcing operations to trusted third-party providers.



6. Requirements for monitoring solutions are taking shape

It's clear that there's no single solution to regulatory monitoring - participants report a mix of approaches, each blending internal and external resource in different proportions. What's equally clear is that there's universal recognition that technology has a leading part to play in monitoring an increasingly complex web of global regulation. One regulatory manager felt that "no one has cracked that nut yet".

"There's a risk that solutions are just a knowledge tool. Any solution needs affirmative action and regulator sentiment analysis."

General Counsel. FTSE 100

It's apparent from the responses that organisations require some user-friendly technology to support horizon scanning, but that human 'curation' is where suppliers can add value by making regulatory digests meaningful to users, actionable, and ensure there's an appropriate regional/jurisdictional focus - albeit with an understanding of how extra-territorial regulations might still impact on those regions, for example in relation to sanctions, supply chain provenance and data processing.

"Analysis needs to be understandable to laypeople with [the business impact of] requirements translated to the business."

Compliance and Regulatory Counsel, Global Telco

Responses indicated that a future-proofed model for horizon scanning would encompass technology and human curation acting as a bridge between the external environment and the organisation.

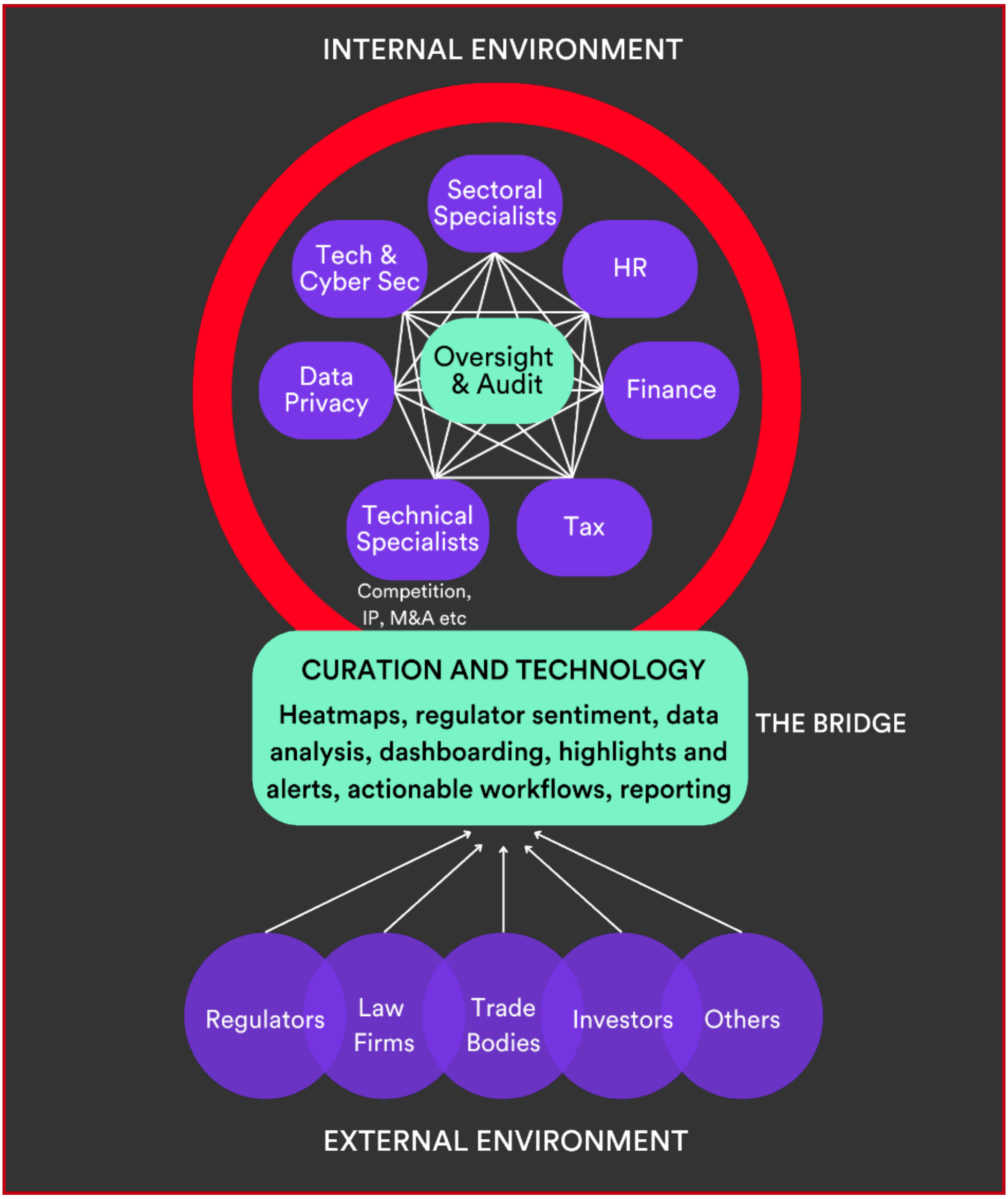


Figure 2: future proofed horizon scanning

Conclusion

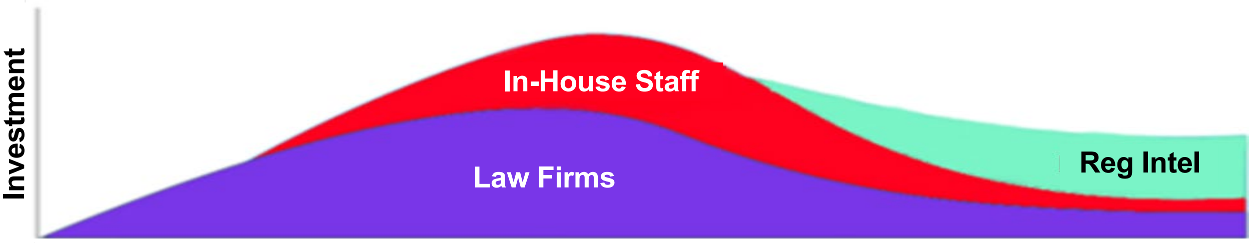
The world has changed significantly since our 2019 whitepaper. With many economies predicting, or already in, recession, coupled with the unrelenting cost-of-living crisis, the pace of change isn't going to slow.

By comparison, whilst it might *feel* that little has changed in terms of how organisations monitor regulations and scan the horizon, participants report a shift in terms of 5 key levers:

1. **Optimising monitoring processes and practices**
2. **Blending internal and external resources - 'right-sourcing'**
3. **Publicly articulating and committing to 'good' regulatory compliance**
4. **Holistically monitoring an operational array of regulations at a central level**
5. **Recognising the role that technology could play - even if the technology is still playing catch up with stakeholder requirements**

Balancing these levers represents good practice but also delivers a sound investment strategy. According to a recent Gartner survey, savvy organisations are maturing their operations by blending resource with technology <u>and</u> reducing their monitoring spend overall (figure 3).

There's a clear opportunity for risk, compliance and legal leaders to think big, learn from others, and be more strategic regarding horizon scanning and allocating resources to regulatory monitoring. Whilst there's no 'one size fits all' solution, organisations learning to balance these five key levers are most likely to meet their monitoring objectives and priorities.



Pandemic-Induced Law Firm Investments

- Law firms take on influx of tracking demands from organizations looking to manage pandemic-induced regulatory volatility.

Human-Capital-Complemented Investments

- Organizations begin looking for less costly regulatory intelligence strategy.
- In-house staff empowered to handle more regulatory intelligence demands while complemented with some regulatory intelligence tools (i.e., content feeds).

Technology-Assisted Regulation Intelligence

- As rate of regulatory change has not diminished, organizations begin investing in more sustainable strategy.
- To better support in-house staff, organizations are increasing their investments in advanced regulatory intelligence tools.

Figure 3: Evolution of legal and compliance regulatory intelligence investments: Source Gartner September 2022

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About the author

Matt Peacock is a qualified lawyer with over 20 years' experience in the legal sector, latterly as managing partner of OMC Partners, the UK's leading independent legal management consultancy. Prior to that, he practised as a litigator with an international law firm and completed an MBA – focusing on professional services strategy – with distinction.

Matt is a recognised leader in designing and implementing high impact operating models and has worked with a wide range of general counsel, major international law firms, New Law entrants, and private equity investors. His insight into both the buy and sell side of the legal sector is unique.

Matt specialises in helping lawyers articulate and deliver their visions through a mix of alternative resourcing, technology, process, and the adoption of legal and other best practices.

Matt Peacock

matt.peacock@omc-partners.com

+44 (0) 783 1144450

About Wiggin

Wiggin is a law firm specialising in communications, media, technology and IP. The firm's specialists predict the legal challenges that arise from the wealth of new ideas and technologies that the digital world is constantly creating.

This has led Wiggin to create several spin-off ventures and products that go beyond providing legal expertise. It has built on its specialist sector knowledge to provide focused services that are finely tuned to clients' business needs.

Wiggin's latest solution, Riagla, helps multi-jurisdictional businesses streamline their compliance processes. Riagla works with leading law firms across the globe to capture data on new and emerging regulations – giving you a choice of topics and jurisdictions to provide a flexible compliance platform, built specifically to help your business manage and mitigate risk.

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Contact us

info@wiggin.co.uk

wiggin.co.uk