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Cross-cultural Compliance Across Asia: Challenges and opportunities

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Overview

- Key challenges faced by MNCs
- Changing enforcement environment
- Steps that MNCs can take
 - Developing a compliance culture
 - Overcoming conflicting traditions and legal standards to ensure compliance across different geographic regions

Key challenges

- Fundamentally different cultural approaches to compliance
- Facing a competitive disadvantage (“everyone else is doing it”)
- Weak enforcement environment
- Language and cultural barriers
- Lack of control

Increased focus on corporate liability

- Thailand, India, Japan, Singapore, Malaysia, Vietnam and China have all recently introduced (stricter) corporate anti-bribery legislation
- Includes foreign companies doing business/investing in relevant jurisdictions
- Net effect is likely to be an uptick in local enforcement risk for corporates operating in the region
- Increasing requests for more thorough ABC/Sanctions due diligence in context of M&A/investments/loans

Corporate criminal liability: an overview

Country	Legislation	Relevant provisions
Malaysia	Section 17A Anti-Corruption Commission (Amendment) Act 2018	<ul style="list-style-type: none"> • Corporate liability for corrupt acts of “associated” persons subject to reasonable procedures defence • Potentially extends liability to managers and officers
India	Sections 9 and 10 Amended PCA (July 2018)	<ul style="list-style-type: none"> • Corporate liability where any person “associated” with the company bribes a public official • Liability of senior managers if implicated in the bribery
Indonesia	Regulation 13/2016	<ul style="list-style-type: none"> • Corporate liability where a criminal act is committed by a person acting for or on behalf of a company • “Group company” may be held criminally liable if “involved” in the criminal act
Vietnam	New Penal Code (January 2018)	<ul style="list-style-type: none"> • Introduces private sector bribery • Corporate criminal liability for tax evasion and money laundering (not bribery)

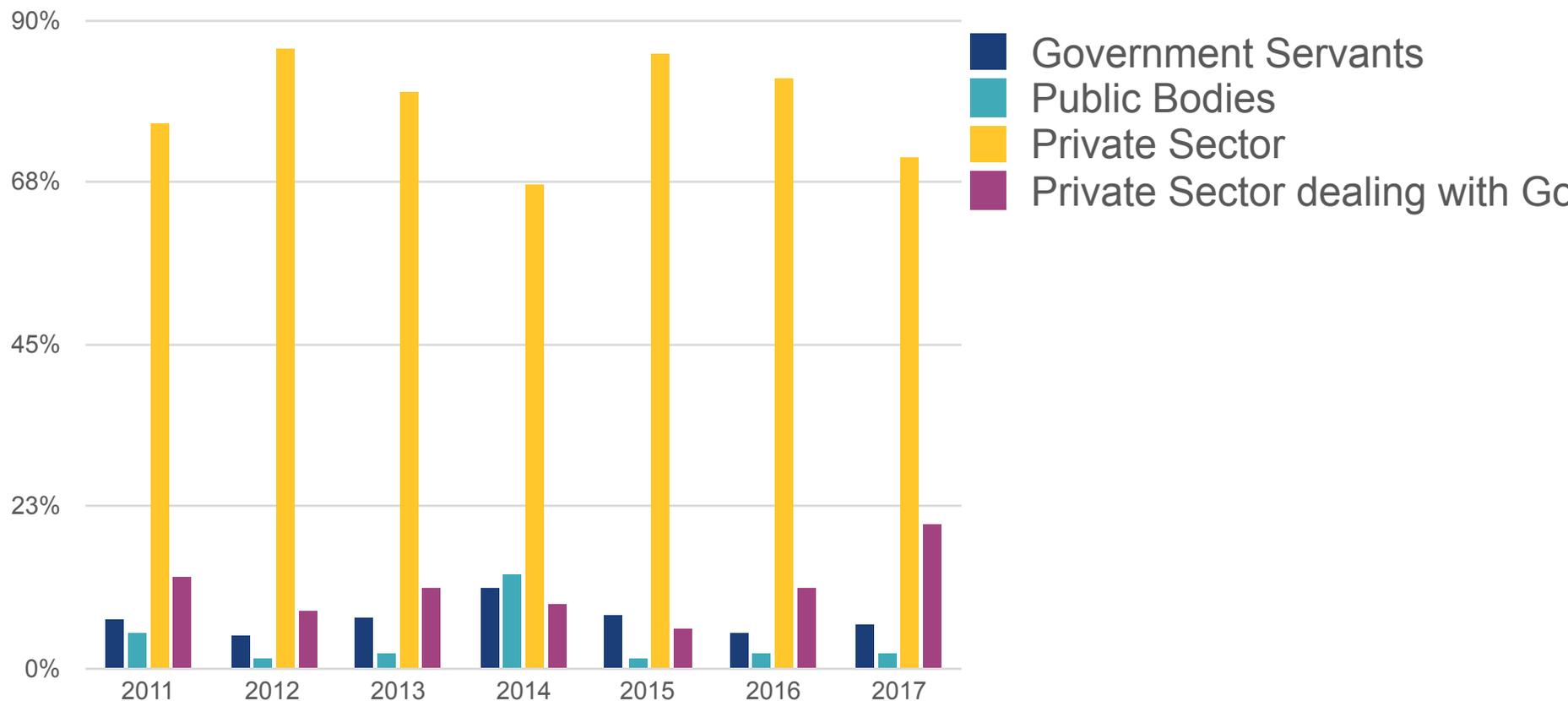
Senior managers becoming more accountable

- Senior Managers Regime in Hong Kong and Singapore in the finance sectors
- Anti-bribery provisions in Malaysian, Indian and Indonesian laws potentially extend criminal liability to senior management
- Increasing queries from clients holding investments with respect to liability of (nominee) directors

Demand to supply

- Enforcement of not just those who receive bribes in the public sector, but those who give or receive bribes in the private sector; e.g. HK:

Percentage Breakdown of Number of ICAC Prosecutions from 2011 to 2017



Developing a compliance culture

Hallmarks of Effective Compliance Programs (“FCPA Resource Guide”)

- Commitment from senior management and a clearly articulated anti-corruption policy
- Code of Conduct and compliance policies and procedures
- Oversight, autonomy and resources
- Risk assessment
- Training and continuing advice
- Incentives and disciplinary measures
- Third-Party Due Diligence and payments
- Confidential reporting and internal investigations
- Continuous improvement through periodic testing and reviews
- Mergers and Acquisitions: pre-acquisition due diligence and post-acquisition integration

Fostering an ethical culture within the organisation

Establishing a strong tone from “The Top”

- To be successful a compliance program should begin with the Board and senior management.
- The “Tone from The Top” will determine the ultimate effectiveness of the compliance program regardless of its strength on paper.
- Active management support must translate into resources and ensuring that compliance is a priority.
- A Code of Ethics that serves as the “Hallmark of Effective Compliance Programs” and includes:
 - Signature of the CEO
 - Board statements
 - Policy statements

Fostering an ethical culture within the organisation (cont')

Training

- Training on “Day One” followed by regular reinforcement and certification.
- Accessible information – this could be a combination of web-based and “face to face” training reinforced by further reminders at regular intervals.
- Relevance – include real-life scenarios and case studies.
- Training must be customised for different business functions.
- Provide access to ethics and compliance personnel on an ongoing basis.
- Mitigate risk by requesting employees’ certification to ensure they have received training.

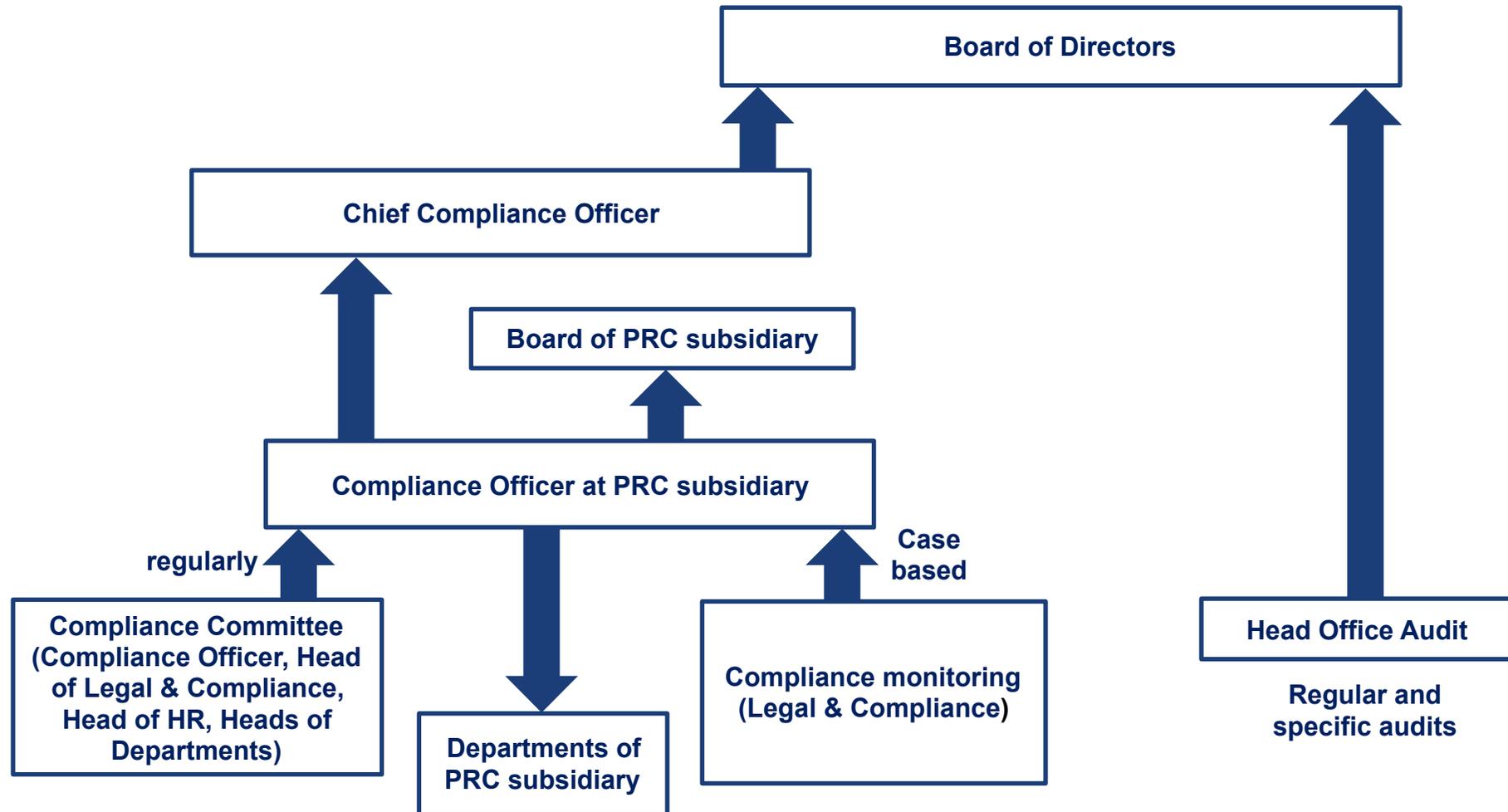
Fostering an ethical culture within the organisation (cont')

Continuous improvement based on regular testing and reviews

- The compliance system should evolve as the company expands.
- Identify any potential compliance weaknesses through regular reviews and actively encouraging employee feedback.
- Tools to review and test the compliance program can include:
 - Employee surveys
 - Regular internal and external audits coupled with random “spot” checks
 - Critical and proactive evaluation
- Direct reporting line to the Board and/or Audit Committee.

Fostering an ethical culture within the organisation (cont')

A typical compliance reporting system for a MNC with a PRC subsidiary



Overcoming conflicting traditions and legal standards to ensure compliance across different geographic regions

- Understand each jurisdiction in which you operate and pay particular attention to:
 - Local laws;
 - Local enforcement environment;
 - Local culture
- Understand the international standards that may apply in each jurisdiction in which you operate, including:
 - US Foreign Corrupt Practices Act (“FCPA”)
 - US Sanctions Regimes
 - UK Bribery Act (“UKBA”)
- Conduct a gap analysis and address any identified issues.

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