

## Regulation's multilingual morass

### Global regulation: A multilingual morass

by [Robert Boyd](#).

Trains running late? Blame a company. Prices creeping upward? Blame a company. Hotel wifi crashing? Blame a company. Populism isn't just a force at the ballot box. What's more, it's not just coming from voters. For 2017 and beyond, a wrathful combination of public outcry and regulatory zeal has the business world in its sights. Hiding behind excuses about the complexities of globalisation will no longer work.

Regulation is part of the global conversation at an increasing level of intensity and strategic significance. Unfortunately for businesses, the conversations in the US, Europe and in Asia - where the regulatory question stands most acutely – are all different. Not only are they in different languages, but they are also saying different things – loosening in one part of the world, tightening in others, increasingly politicised still elsewhere. Perhaps their only common feature is a distinct lack of clarity and specifics. Navigating the regulatory landscape has never been easy for multinational companies, but in 2017 it is going to be more challenging than ever. No wonder global CEOs need a strong spine these days.

### US: bonfire of regulation?

In the US, talk is of de-regulation and unwinding a decade of increasingly stiff financial services and environmental regulations. In the days following his election, US President Donald Trump signed an executive order stipulating that for every new regulation put on the books, two regulations must die. Since Inauguration Day, President Trump has signed more than 70 different executive actions. Many of them are aimed at relieving the regulatory load in the financial services and environmental spheres. They have gone some way toward turning campaign rhetoric into policy, or at least reflecting a drive toward that goal.

That said, many of these executive actions – orders, memorandums and proclamations – for the time being attempt only to review and evaluate regulatory programs. Their execution is meant to come later. Beyond executive orders, the President's ability to obliterate certain types of legislation in US commercial spheres will require cooperation with Congress. Based on the White House's interaction with Capitol Hill so far, ending in a withdrawn attempt to repeal the Affordable Care Act, prospects there are shakier.

This in itself is a source of risk. As ever, one of the most important aspects of regulation – and regulatory risk – is the speed with which new rules are adopted (or dismissed) and the transparency of the process. This far we have easing – and the intent to ease – regulation, rather than the wholesale erasure of regulatory text. At this point, the incoming administration looks more poised to ease regulation, rather than apply the hatchet full force. Elements of Texas

Representative Jeb Hensarling's recently proposed Financial CHOICE Act look of interest to the incoming administration, including changes to the structure of the Consumer Financial Protection Bureau and the repeal of the Volcker Rule (restricting banks' ability to invest their own money in risky assets) Watch this space.

Other regulation seems likely to survive major surgery. The FCPA is a case in point. Anti-corruption campaigners and FCPA commentators would be forgiven for having concerns about the fate of the FCPA. Trump has in the past described it as a 'horrible law' and said that it should be changed because it puts US businesses at a 'huge disadvantage'. But these comments came many years before Trump became President and were made in connection with facilitation payments – which are explicitly permitted by the FCPA. Dismantling that law would not address the underlying issue that appears to chafe.

There are other reasons to believe that the FCPA will survive intact. First and foremost, newly appointed US Attorney General Jeff Sessions says he likes the FCPA, calling it a "critical" piece of legislation in support of companies that want to operate within the law. There are added bonuses: the FCPA targets white-collar crime and, in many cases, wrongdoing by foreign companies. Seven of the top ten FCPA fines of all time were levied against foreign firms. And here, perhaps, we see another sort of trade-off: the balance between the desire to deregulate and the forces of economic nationalism. The potentially capricious application of regulatory enforcement is the most potent weapon of the economic nationalist.

Finally, two more issues. First, the OECD and similar organisations rely on the US to be the cornerstone of the global fight against corruption, and a softening of anti-corruption laws could trigger concerns and even trade friction. Second, the FCPA generates billions of dollars in income, a source of funding that will be difficult to give up. However, there is a danger that FCPA enforcement will become much more politicised.

### **Asia: ever unpredictable**

The politicisation of regulation will be familiar to companies operating in Asia. In China and other complex Asian markets, the challenge to business is exacerbated by the opaque regulatory environment. The investigative and prosecutorial powers of the regulators are broad, and enforcement can have political drivers. Companies looking east for a calmer, more predictable regulatory environment – particularly in light of relaxed formal investment restrictions – will be disappointed.

The reality is that China is imposing ever-tougher restrictions on foreign companies, particularly around antitrust, the environment and product quality. Regulation in China used to be spotty, province-based and piecemeal, which meant that it was inconsistent, but at least not overwhelming. Increasingly, it is becoming national, cohesive and comprehensive. Moreover, the Made in China 2025 policy sends a strong signal that the regulatory environment will continue to favour domestic over foreign companies, though that does not mean China will be soft on its own companies.

What is happening in China also fits squarely within the global trend of regulation as a weapon of economic nationalism. Bear in mind that even while the US relaxes certain domestic regulations, it may become increasingly difficult for US companies to do business overseas because of retaliatory regulation and the rapidly changing optics of exporting jobs abroad. To further complicate matters, some of Trump's national economic agenda may not come via regulation per se, but rather through a social media campaign of naming and shaming potential transgressors and exposing them to reputational – rather than strictly regulatory – risk.

India, Russia and Brazil, too, provide ring-side seats to the regulatory offensive. In Russia, the focus right now is on the internet. Brazil may not be using regulation as a political tool, but its anti-corruption campaign shows that regulatory enforcement is interwoven with – and indistinguishable from – political turmoil.

In India, the widely expected rollout in 2017 of the national Goods and Services Tax - the country's biggest indirect tax reform since independence - will in theory centralise the web of federal- and state-level levies. In reality, it is likely to be accompanied by teething problems during implementation, which will raise compliance costs for businesses in the short term. Limited moves to address structural issues related to land, labour, privatisation and subsidies, coupled with disparities between individual states in the context of India's federal set-up, will mean that the country's regulatory environment will remain complex through 2017.

Elsewhere in Asia, Indonesia, the Philippines and Thailand have initiated regulatory reforms to attract foreign investment. However, the net effect of these reforms will be to (sometimes deliberately) create opaque and complex regulation that leaves companies subject to aggressive and capricious enforcement, often prompted by populist, political motives. In these countries, regulation will sometimes feel like extortion. 2017 will, if anything, see an increase in regulatory risk in these Asian markets, with actual or perceived infractions by foreign firms bringing ever more aggressive enforcement under often vague laws.

### **Europe: tightening up**

In contrast to the US, the regulatory environment in Europe is becoming increasingly punitive as Brussels homes in on anti-trust issues and tax legislation. In May, the European Commission reached an agreement with Amazon, marking the closure of a two-year investigation into what the Commission called anti-competitive practises in the market for e-books. The Commission extracted a series of concessions from Amazon that will change the way the company does business in the European Union.

In the meantime, the staples of the old economy (automotive, extractives and others) will come under ever-increasing pressure from anti-trust regulation. 2017 will also see the introduction of more robust anti-corruption legislation in France (Sapin II) and financial crime regulation in the UK (The Criminal Finances Bill). Watch the UK Serious Fraud Office move up a gear with major UK Bribery Act prosecutions.

### **2017: Regulatory roller-coaster**

With US deregulation, EU hyper-regulation and China's twin-track regulation, the regulatory world is in danger of giving companies whiplash in 2017. In developed markets, anti-globalisation governments are changing rafts of regulation at a macro level, intending to replace one set of binding rules with another. Developing markets are less clear – they seem keen to continue to globalise, but at the same time act as if they are beholden to local elites. Global companies will have to navigate these contrasting environments – neck brace not included.

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