Emerging markets – a risky business?

As more and more businesses look to expand globally, a key factor to consider when establishing themselves in other jurisdictions is the issue of regulatory risk and compliance. Ever-increasing and changing legislation means it is something that cannot be ignored.

Global law firm Eversheds recently hosted a roundtable event with senior legal professionals and business leaders to discuss this topic. Graham Richardson, head of Eversheds Consulting, led the roundtable event, and here discusses some of the key themes and expert opinions that emerged.

When expanding into other markets, there are many things a business should consider, not least the issues of governance, risk and compliance. With many businesses now focusing their growth strategy on emerging markets, Eversheds recently held a roundtable event that provided the ideal opportunity to delve deeper into the key risk and compliance issues affecting businesses operating in these markets. The event offered the chance for business leaders and legal professionals to discuss and debate the challenges businesses face when operating around the world.

A number of key themes emerged during the debate, including an acknowledgement that regulation does play an essential part when doing business in emerging markets, moving into the wider subject of how a business can ensure governance and regulatory compliance throughout its workforce, regardless of where it is operating.

Regulation in emerging markets

There was consensus around the table that for many multinationals, the issue of operating in emerging markets is not complying with regulation in that market, as many have fewer regulations, but ensuring that they are complying with the global regulations of their parent company whilst still being able to operate competitively in a new jurisdiction, whilst complying with necessary local regulations.

Many organisations are left in a Catch-22 situation, where the disconnect between regulations around the world often means that complying with regulations in one jurisdiction will mean that the business is not able to comply with regulations in another. Even within Europe there are opposing regulations that can prove challenging for many e.g. differences in Employment law, sale of goods guarantees and product liability requirements.

Participants agreed that, most often, organisations have to look to the regulations of the country they or their parent company is based in and comply with those first and foremost in order to be able to manage regulatory risks and maintain their reputation effectively.

Having to comply with home regulations, especially when businesses already based in the emerging market can operate without these restrictions, was felt by some to create an uneven playing field that leaves those coming in from an outside country at a disadvantage. The idea of delisting from the US stock exchange was discussed as a possible solution to this problem, so that a business could choose to base itself in a country with the least restrictions.

Regulation is essential

The participants acknowledged that regulation is essential to ensure that rogue operators are not allowed to proceed with undesirable or illegal activities. However, many attendees supported the notion that regulation, especially in the US and the UK, has gone too far. Many believed it was a case that regulators who lack experience in the actual markets they are regulating are imposing regulations that are both irrelevant and unnecessary. The wider question of whether businesses should comply with regulations solely because they exist, or because the regulation is morally or ethically the right thing was also raised.

Participants also discussed how regulation is constantly changing, but that the difference between coping with this change in your home market versus an emerging market is that it is easier to spot the precursors of change in a home market. Reading the signs of change in an emerging market, where a business is not attuned with public and political sentiment, can make the direction of regulation in other markets difficult to predict.

Do codes of ethics work?

For some companies, compliance is about setting and sticking to a code of ethics and set of rules. Participants discussed that a policy is only words and to ensure a culture of compliance that people believe in throughout a business you must incentivise people to do the right thing and have the right support mechanisms.

It was discussed how, for example, complicated financial services products should be incentivised by quality and suitability, not purely quantity, as the customer can't tell outright whether what they have been sold is good. Participants suggested that in the future, firms will need to provide empirical evidence of this and show that products have been marketed to the right people and developed with consumers in mind.

What solutions are there?

To conclude the evening, participants discussed what can be done to better deal with issues of governance and compliance.

They suggested that organisations need to realise that compliance is not just an occasional cost, but that ever-increasing and changing regulations, coupled with a desire to operate in more markets mean that it is something that should be invested in and factored into budgets as a daily expenditure.

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Overall, attendees concluded that they realise that regulation is not something that will go away. Therefore, streamlined methods of dealing with it need to be found. This is particularly the case when multinational companies are competing with businesses in emerging markets. These companies have the home advantage of being totally familiar with the nuances of the market, and are not restricted by the additional responsibility of having to simultaneously comply with regulations from a different jurisdiction. ■