

Global Benchmark Complexity Index: International Entity Management

Subsidiary corporate compliance in certain jurisdictions is more challenging than in others – but which ones? This global study examines the complexity of corporate secretarial activities in 81 jurisdictions and provides an insight into why certain jurisdictions are more difficult than others.



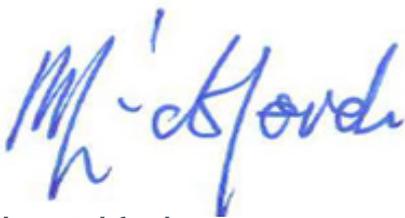
Foreword

Any professional involved in the management of subsidiaries around the world has experienced a challenging jurisdiction or a specific instance when local legislation seemed almost impenetrable or difficult to understand, let alone to comply with.

Managing corporate compliance for numerous subsidiaries around the world is a time-consuming and difficult task, soaking up hundreds of hours of time to monitor deadlines, interpret legislation and to prepare foreign documents. But which jurisdiction in the world is the most - or least - complicated? This study provides insight and commentary on more than 80 jurisdictions and ranks them in order of complexity in a Global Benchmark Complexity Index.

TMF Group has operations in more than 75 countries across Europe, the Middle East, Africa, the Americas and Asia Pacific. Our offices routinely prepare technical papers and publications relating to forthcoming legislative changes in those jurisdictions. This document is different. It sets out the results of an innovative study of the complexity of the jurisdictions in which TMF Group operates and gives an insight into the perceived and actual challenges of operating on an international scale.

The co-operation and assistance of colleagues across the TMF Group with the study is appreciated and gratefully acknowledged. For further information, please contact Matthew Eckford or Thorold Youngman-Sullivan; our contact details are on page 18.



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Introduction and background

All multinational organisations have an obligation to comply with the laws of the jurisdictions in which they operate. By and large, these obligations apply equally to all types of organisations (global charities, NGOs and corporates) and to the type of legal entity incorporated or registered in any particular jurisdiction.

The establishment of commercial activities in a jurisdiction usually creates a corresponding compliance burden for multinational companies. One aspect of a multinational's total annual administrative burden is global corporate subsidiary compliance. The principles of this are broadly the same around the world, although the approach adopted by governments to implement the laws regulating legal entities varies significantly between jurisdictions.

Often a number of internal departments within a multinational company share responsibility for global subsidiary compliance, and usually the Group Legal team and Group Corporate Secretariat bear the brunt of the responsibility for legal compliance: having to manage internal expectations and external third party professional

providers, and to navigate the idiosyncrasies of numerous foreign jurisdictions. These nuances cause multinational companies considerable difficulties in terms of reporting and compliance. Arguably, these issues have their genesis in the lack of homogenous regulations governing legal entities around the world as a result of the diversity of national regulations and their incremental and independent development.

As a result, zero-tolerance subsidiary compliance is often a challenging task, fraught with inconsistencies and risk. This study has been undertaken to examine the jurisdictional differences that affect the complexity of global subsidiary compliance and to comment on the subsequent burden in 81 jurisdictions.

The role of the company secretary

A number of factors affect the burden of compliance. For example, the annual burden may be onerous in a heavily regulated jurisdiction which is paper-based and with no capability to file or submit documents to the government electronically. However, compliance would be significantly easier to manage if the concept of the corporate secretary was recognised in law and that this officer could execute documents on behalf of the local subsidiary. Hence, one of the questions for the study: "Is the position of company secretary (or similar) a legal officer of a local private limited company?"

Study methodology

The study used data collected from TMF Group corporate secretarial experts based in more than 100 offices around the world.

The degree of complexity attributed to a corporate secretarial task can be highly subjective and there is a natural tendency for experts in most professions to extol the complexity and skill required to perform their work. To mitigate any unintentional bias, the study asked each TMF Group contact both objective and subjective questions.

The questions suitable for the study were carefully scrutinised and only the most relevant questions – providing insight into the level of difficulty of local corporate secretarial compliance – were selected. These ‘objective’ questions were designed to elicit a ‘yes’ or ‘no’ response, to further strengthen the objectivity of the data.

In relation to the subjective questions, the study also made a number of statements relating to subsidiary compliance and asked our local

experts to assign a ranking between one and five reflecting their agreement or disagreement with the statement.

The responses to these questions have been collated and the results are outlined in the following pages. It is acknowledged that the specific questions chosen for the study inherently affect the benchmark ranking of any particular jurisdiction and that a different set of questions may have resulted in a slightly different ranking on the Global Benchmark Complexity Index set out on page 6.

The quantitative amount of annual compliance has been excluded from the study, with almost all of the questions deliberately discounting this factor. This approach has been adopted because the amount of annual compliance does not affect the complexity of a particular jurisdiction. It is also inherently difficult to compare the different types of annual compliance activities. For example, a 30-page annual submission in one jurisdiction carries an entirely different compliance burden to a three-page submission made to seven different governance authorities in another.

The significance of time

The study considered soliciting responses from the local corporate secretarial experts on the basis of the time that would be incurred to undertake annual subsidiary compliance. However, it was felt that the compliance activity in each jurisdiction, and the level and technical ability of the person undertaking the activity, together with jurisdictional nuances, would elicit a plethora of misleading information.

A note on corruption

The study does not consider the impact of jurisdictional corruption and bribery on the complexity of a jurisdiction. This topic warrants a separate study and numerous reports have already been published addressing the subject (see: Transparency International – Global Corruption Barometer 2013 at www.transparency.org/gcb2013)

List of objective questions

1. Is the position of corporate secretary (or similar) a legal officer of a local private limited company?
2. Are legal entity records maintained in the local language (other than English)?
3. Does local legislation state that the director and the shareholder minutes are created and maintained in the local language (other than English)?
4. Are official documents for submission to the local government authorities prepared and submitted in the local language (other than English)?
5. Does local legislation state that legal entity records (minute book, constitutional documents) have to be located in-country?
6. Do any of the directors of a local private company have to be locally resident?
7. Do the directors legally have to own shares in the company?
8. Do any of the shareholders have to be locally resident?
9. May a private company have a single shareholder?
10. Is the payment of a dividend to foreign shareholders subject to cross-border control restrictions?
11. Subject to the constitutional documents/ governing laws/ articles, can shares in a company be freely transferred from one entity to another?
12. Do provinces within your jurisdiction have different compliance requirements?
13. Is a qualification required to prepare company secretarial submissions on behalf of the legal entity to the local authorities?
14. Is private company information centrally held by the government and available to the public?
15. Is the failure to comply with company secretarial obligations subject to severe penalties (including fines of more than USD 5,000 and prison sentences for the officers for non-compliance)?
16. Do official legal entity documents require an official stamp, chop or seal to be legally effective?
17. Are official submissions to the authorities done electronically/via the internet?
18. Does the registration of a private company with the authorities take longer than two months?
19. Does the dissolution of a private company take more than six months?
20. Is the legal registered address of a private company always a physical office owned or leased by the company?

The global jurisdictional ranking on the following page is derived from the answers provided to the objective questions above, and is listed in descending order.

Global Benchmark Complexity Index (“Benchmark Index”)

Ranking	Country	Ranking	Country	Ranking	Country
1	Argentina	28	Colombia	55	Spain
2	Bolivia	29	Russia	56	Norway
3	Peru	30	Mexico	57	Luxembourg
4	United Arab Emirates	31	Taiwan	58	Australia
5	Indonesia	32	Hungary	59	Singapore
6	Thailand	33	Croatia	60	Cyprus
7	Poland	34	Egypt	61	South Africa
8	China	35	Paraguay	62	Slovenia
9	Nicaragua	36	India	63	Puerto Rico
10	Kazakhstan	37	Uruguay	64	Germany
11	Japan	38	Czech Republic	65	Israel
12	Turkey	39	Costa Rica	66	Sweden
13	Philippines	40	Malaysia	67	Jamaica
14	Korea	41	Austria	68	Hong Kong
15	Ecuador	42	Slovakia	69	Curaçao
16	Romania	43	Panama	70	Malta
17	Brazil	44	USA	71	Cayman Islands
18	Venezuela	45	Italy	72	Bonaire
19	Chile	46	Kenya	73	Barbados
20	Dominican Republic	47	Belgium	74	United Kingdom
21	Guatemala	48	Labuan	75	Guernsey
22	Ukraine	49	Serbia	76	The Netherlands
23	Honduras	50	Aruba	77	Jersey
24	Vietnam	51	Bulgaria	78	Denmark
25	Switzerland	52	Mauritius	79	British Virgin Islands
26	El Salvador	53	Finland	80	Ireland
27	France	54	Bermuda	81	New Zealand

General comment

A commonly held generalisation is that global subsidiary compliance is significantly more difficult in the Americas and certain jurisdictions in Asia Pacific (i.e. China, Indonesia). The results of the study partially support this view but a conclusive trend towards complexity in any single region is not immediately discernible.

As one might expect, modern and industrialised jurisdictions tend to be less complex, with notable exceptions of Japan (ranked #11) and South Korea (ranked #14). Additionally, off-shore jurisdictions also gravitate towards the latter

third of the ranking table, being less complex, as do predominantly English-speaking jurisdictions.

Civil or common law jurisdictions

A general distinction can be made between jurisdictions using civil law and those using common law as a basis for their local legal system. This separation is reflected in the Benchmark Index, as almost all of the common law jurisdictions are found in the latter third of the Benchmark Index. Arguably, common law jurisdictions fare better in the study as the concept of corporate secretarial practice is better established than in civil law jurisdictions.

Geographic location of the eight most complicated jurisdictions



The top three spots all go to jurisdictions in the Americas. The high ranking of these jurisdictions is not unexpected considering the isolated development of their legal systems and arguably the limited investment by the respective governments to modernise.

Argentina was clearly out in first place, with Bolivia and Peru in close contention for the second spot. The complexity of a particular jurisdiction depends upon a number of factors, although the adoption of a civil law-based legal system is a mutual characteristic of both jurisdictions.

The **United Arab Emirates (UAE)** enjoys a high ranking at number four for different factors, many of which originate from the influence of religion. The federal judicial system in the UAE is based upon Sharia law, and although the emirates have a modern persona primarily driven by the cosmopolitan metropolis of Dubai, the

administrative nature of corporate compliance is exceptionally challenging, requiring local knowledge and an acute awareness of local custom.

The global ranking positions five and six are taken by the highest ranking Asia Pacific jurisdictions. Both Indonesia and Thailand have experienced significant economic and political turbulence during modern times and this may explain some of their complexity.

The attempted coups of 1965 in **Indonesia** led to the establishment of the military's New Order Administration which was supported by the US Government and encouraged foreign direct investment. However, political and economic instability, social unrest, corruption and terrorism have slowed reform, resulting in a bureaucratic system of administration.

Geographic location of the eight most complicated jurisdictions

Continued

Even though **Thailand** recently relaxed a number of its foreign ownership laws pertaining to the ownership of share capital, the jurisdiction has fallen behind its regional competitors in terms of reducing bureaucracy on the one hand and encouraging business development on the other. These factors, in conjunction with economic and political instability, have created a challenging environment for corporate compliance.

Poland ranks at number seven and owes much of its ranking to the systems and laws inherited from the Soviet Union. Since the revolutions of 1989 and the subsequent re-establishment of democratic rule, the jurisdiction has undertaken significant reform. However, from a corporate secretarial perspective, much of the complexity still remains.

China is also rapidly changing and in so doing is taking its place on the world stage. Its multi-provincial legal landscape is one aspect contributing to the challenging environment for multinational companies. Local knowledge and expertise is essential, as is the ability to navigate the provincial patchwork of different local government procedures and legislation.

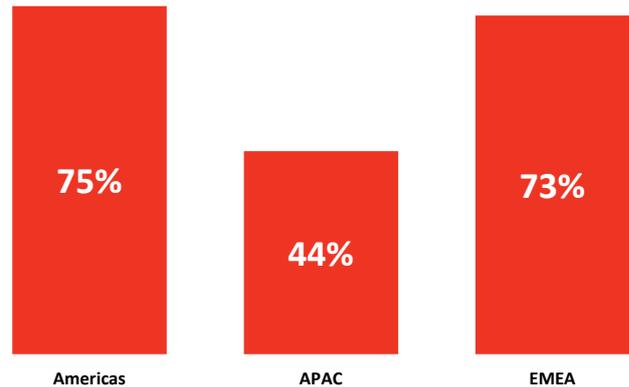
Commentary on objective questions

The study is based on responses received for the TMF Group offices across the world in relation to 20 objective questions. The following pages comment on the responses received to a cross section of the questions and provide an insight into the responses and how they affect complexity. The questions are equally weighed and drawing them out below is random and has no bearing on the results.

Question 1: Is the position of corporate secretary (or similar) a legal officer of a local private limited company?

The assumption made in relation to this question is that the existence and recognition of the role of the corporate secretary reduces the complexity of compliance in a jurisdiction as, firstly, there is a specific person responsible for these activities, and secondly, that the existence of the role encourages the growth of supporting legislative infrastructure to facilitate its operation.

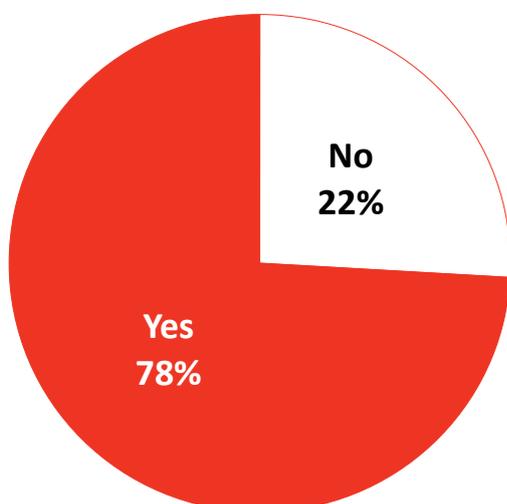
It is interesting that the Americas and EMEA returned almost-equal results. In general terms, the concept of the traditional company secretary is not recognised in civil law jurisdictions, and these are predominant in the Americas. This could be because numerous jurisdictions in the region recognise an officer of the legal entity and that this formal position fulfils the traditional



Note: Results reflect positive answers received and the percentages are calculated using the number of jurisdictions in that region.

role of corporate secretary. Although the role is recognised in the Americas, jurisdictions in the region rank higher on the Benchmark Index, suggesting other factors are responsible for a jurisdictions' complexity.

Question 4: Are official documents for submission to the local government authorities prepared and submitted in the local language (other than English)?



Multinational companies generally adopt the English language as their common business language. Therefore, jurisdictions that demand corporate secretarial submissions to the authorities to be made in a language other than English are more complex.

78% of the study population confirmed that submissions need to be made in the official local language. This isolates one of the main factors contributing to the burden of global corporate subsidiary compliance: the multitude of languages, and the resultant need to prepare, translate and generally interpret foreign documentation.

Commentary on objective questions

Question 12: Do provinces within your jurisdiction have different compliance requirements?

The complexity of managing legal entities in numerous jurisdictions is further exacerbated in jurisdictions where separate provinces within a jurisdiction have different legal requirements, processes and procedures.

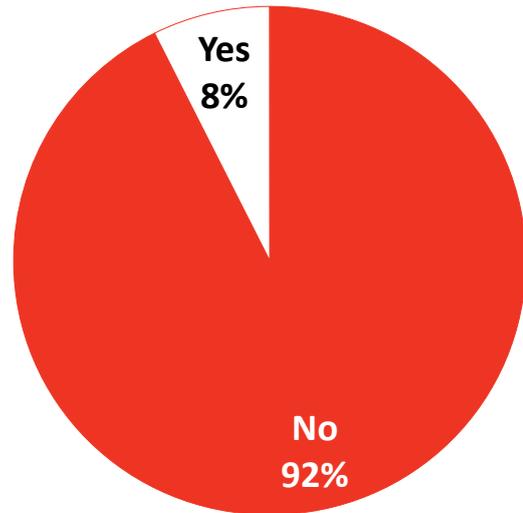
A relatively small proportion of the study population suffers from this additional layer of complexity; three of these are in the top eight of the Benchmark Index, namely Argentina (ranking #1), the UAE (#4) and China (#8).

Argentina

Argentina is organised as a republic and is comprised of 23 provinces and the Autonomous City of Buenos Aires. Each province enacts its own constitution and elects its own governor, legislators and judges to the provincial courts.

UAE

With seven emirates and more than 40 “free zones”- areas within individual emirates set up for general or industry-specific activities - across the UAE, it can be a challenge for international businesses to decide the most appropriate jurisdiction in which to set up. There are more than 20 free zones in Dubai alone, each with its own laws and regulations, making business in the UAE a complex journey. Deciding on the right

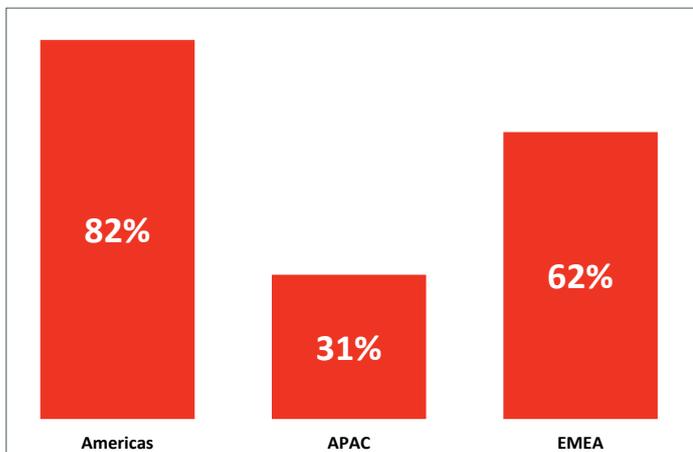


zone for a business and navigating the federal (onshore) and offshore jurisdictions must be the essential first step in any UAE strategy.

China

China has 23 different provinces, each exhibiting a slightly different interpretation of the law and its procedural implementation. The situation is further complicated by the numerous dialects spoken across this vast country.

The ability to correctly interpret the law and the manner of its implementation in any particular province is important, as is the ability to monitor and adapt to the rapidly changing legislative announcements affecting all aspects of administration and compliance.



Note: Results reflect positive answers received and the percentages are calculated using the number of jurisdictions in that region.

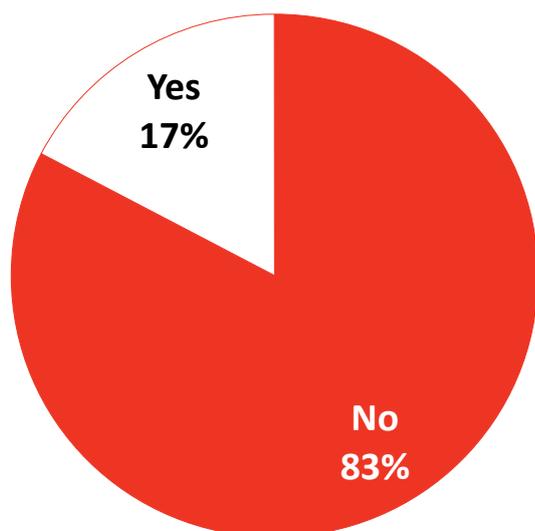
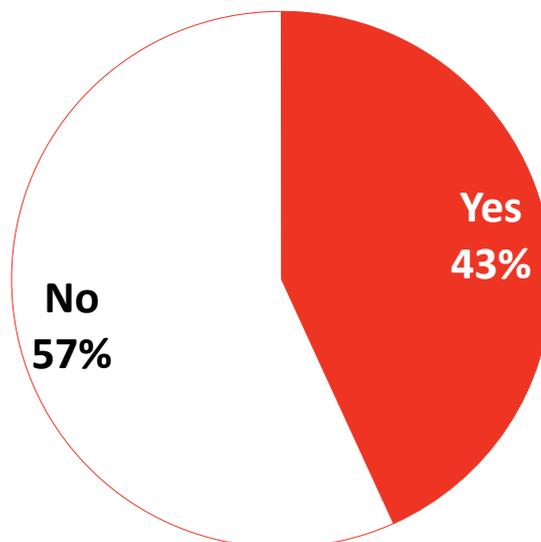
Question 15: Is the failure to comply with company secretarial obligations subject to severe penalties (including fines of more than USD 5,000 and prison sentences for the officers for non-compliance)?

The chart shows the percentage of jurisdictions in a region with significant sanctions for non-compliance. The results reflect the existence of sanctions in a region, not the likelihood of them being imposed. It is interesting to note that the Americas have almost three times as many jurisdictions with significant sanctions than Asia Pacific, highlighting the different regional attitudes to compliance and corporate legal entity governance.

Commentary on objective questions Continued

Question 17: Are official submissions to the authorities done electronically/via the internet?

Many of the leading corporate secretarial pieces of software on the market provide an ability to file documents electronically with the authorities; this improves the speed and efficiency of annual compliance. However, the ability to interact with the in-country governing authority depends upon both the state of readiness of the local authority, and the ability of software to support this interaction. A surprisingly high number of jurisdictions (43%) currently have some form of annual electronic submission infrastructure, and it is evident that governments will continue to embrace technology and the benefits offered.



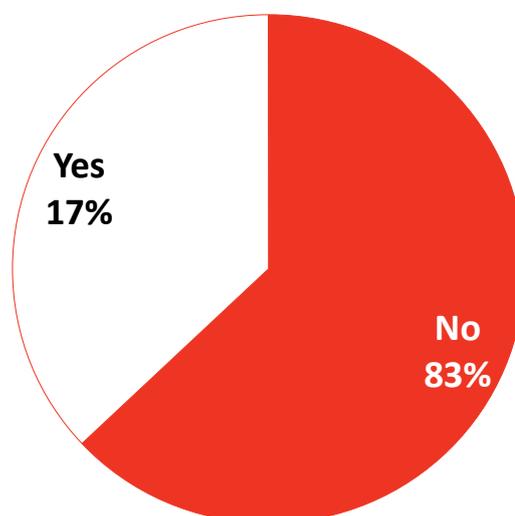
Question 18: Does the registration of a private company with the authorities take longer than two months?

This question provides an indirect indication of the level of complexity in a particular jurisdiction. It is reasonable to assume that a positive response correlates to a jurisdiction which exhibits a high degree of bureaucracy.

The responses received are to some extent generalised and will in practise be affected by a number of factors specific to the incorporation.

Question 20: Is the legal registered address of the private limited company always a physical office owned or leased by the company?

This question relates to the ease with which multinationals can initially incorporate an entity. One of the most challenging aspects of incorporating a new subsidiary is the requirement in certain jurisdictions to have a physical office address, often supported by a lease agreement. New subsidiaries invariably do not have the scale of operation to warrant a physical office. Therefore, an elevated level of complexity is assumed for jurisdictions with this requirement.



Subjective ranking results

The majority of the study and the summary of its results have focused on the objective responses received.

In addition, TMF Group's local corporate secretarial experts were asked their opinion in relation to the subjective questions set out on

the following page. These questions deliberately sought the personal opinion of the experts and their self-perception of the complexity of corporate secretarial activities in their jurisdiction.

The following ranking of the jurisdictions has been derived from the answers received in relation to the subjective questions.

Ranking	Country
1 (71)	Cayman Islands
2 (59)	Singapore
3 (24)	Vietnam
4 (52)	Mauritius
5 (47)	Belgium
6 (13)	Philippines
7 (54)	Bermuda
8 (3)	Peru
9	Malaysia
10	Thailand
11	Argentina
12	British Virgin Islands
13	United Arab Emirates
14	El Salvador
15	Kazakhstan
16	France
17	Hong Kong
18	Spain
19	Poland
20	Japan
21	Malta
22	Ukraine
23	Dominican Republic
24	Hungary
25	Finland
26	Bolivia
27	Austria

Ranking	Country
28	United Kingdom
29	Labuan
30	China
31	The Netherlands
32	Paraguay
33	Denmark
34	Honduras
35	Colombia
36	Turkey
37	Panama
38	Venezuela
39	Norway
40	Australia
41	Kenya
42	Sweden
43	Chile
44	India
45	Bonaire
46	Slovakia
47	Brazil
48	Croatia
49	Slovenia
50	Indonesia
51	Bulgaria
52	Jamaica
53	Guatemala
54	Aruba

Ranking	Country
55	Luxembourg
56	Germany
57	Mexico
58	South Africa
59	Ecuador
60	Serbia
61	Curaçao
62	Egypt
63	Israel
64	Guernsey
65	Uruguay
66	Jersey
67	New Zealand
68	Nicaragua
69	Cyprus
70	Korea
71	Russia
72	Puerto Rico
73	Barbados
74	Italy
75	USA
76	Czech Republic
77	Switzerland
78	Romania
79	Taiwan
80	Ireland
81	Costa Rica

Note: Where relevant the bracketed numbers included in the ranking above correlate to each jurisdiction's position on the Benchmark Index objective ranking. Jurisdictions are ranked from most to least difficult.

List of subjective questions

The local TMF Group offices were asked to rank the following questions between one and five depending on whether they strongly disagree, disagree, agree or strongly agree, or to mark the statement as not applicable.

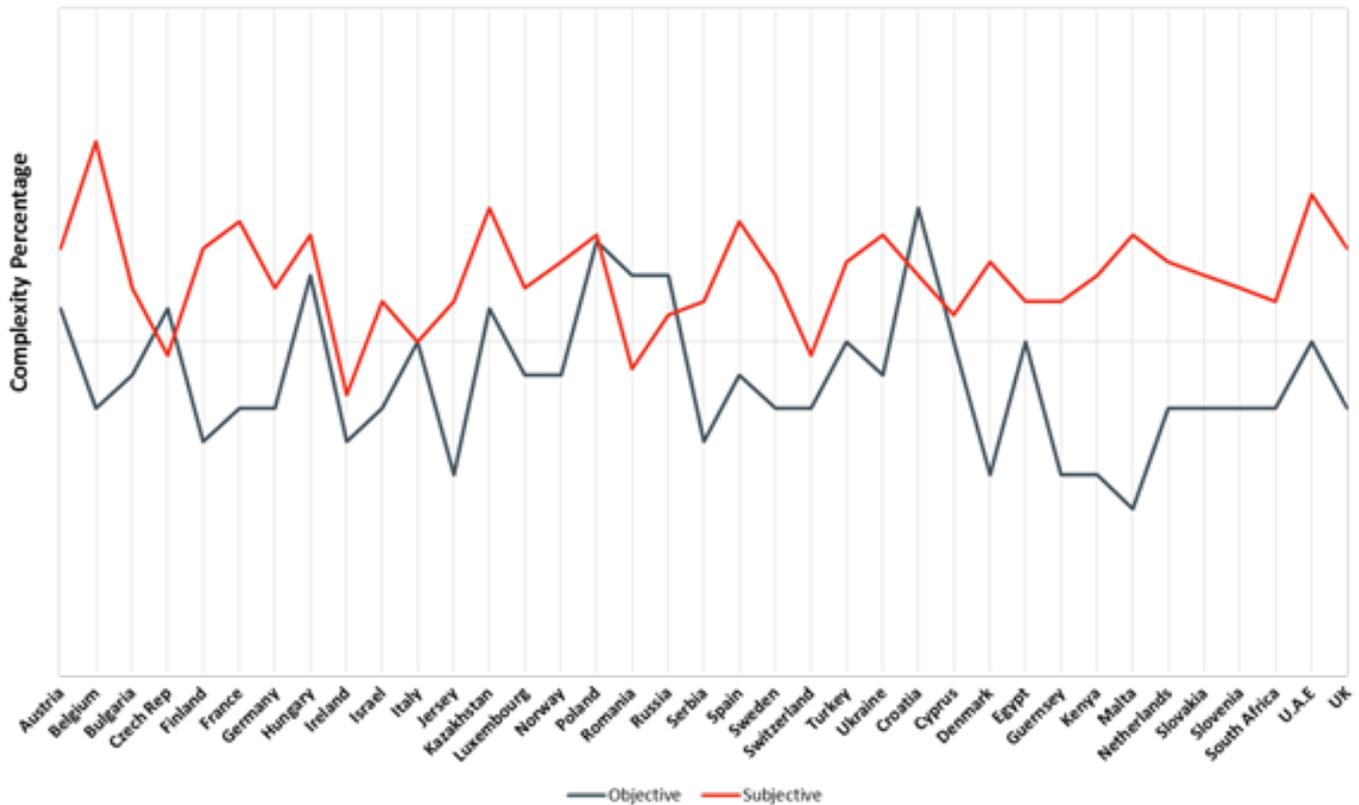
- 1.** The burden of annual corporate secretarial compliance (relative to other jurisdictions) is particularly time consuming.
- 2.** The burden of annual corporate secretarial compliance (relative to other jurisdictions) is particularly complex.
- 3.** The rate of adoption of new legislation affecting corporate secretarial compliance is high.
- 4.** The corporate secretarial compliance environment/ legislation/ the authorities' attitude to compliance is strictly enforced.
- 5.** Fines or penalties incurred for compliance failure are relatively high in relation to the offense.
- 6.** The incorporation/ registration of a company is a simple process.
- 7.** Appointing and resigning a director is a simple process.
- 8.** The registration of a Power of Attorney with the government authorities is a straightforward process.
- 9.** Regulatory burden across all areas of compliance - company secretarial, accounting, tax and legal - is higher than in other jurisdictions.
- 10.** Annual corporate secretarial expenses to maintain a company are relatively high.

Comparison of the objective and subjective responses

In addition to merely ranking the jurisdictions, we have undertaken a comparison by region of each jurisdiction using their subjective and objective scores. The results are outlined in the following charts, and it is interesting to note the varying

degree of correlation between the two scores. It is also worth noting that the similarity - or lack thereof - is affected by region, with Asia Pacific and the Americas showing a stronger correlation than jurisdictions in EMEA.

EMEA Jurisdictional Complexity Scale: Objective vs Subjective



The subjective responses are, by and large, higher than the objective responses in EMEA, as clearly illustrated in the above chart.

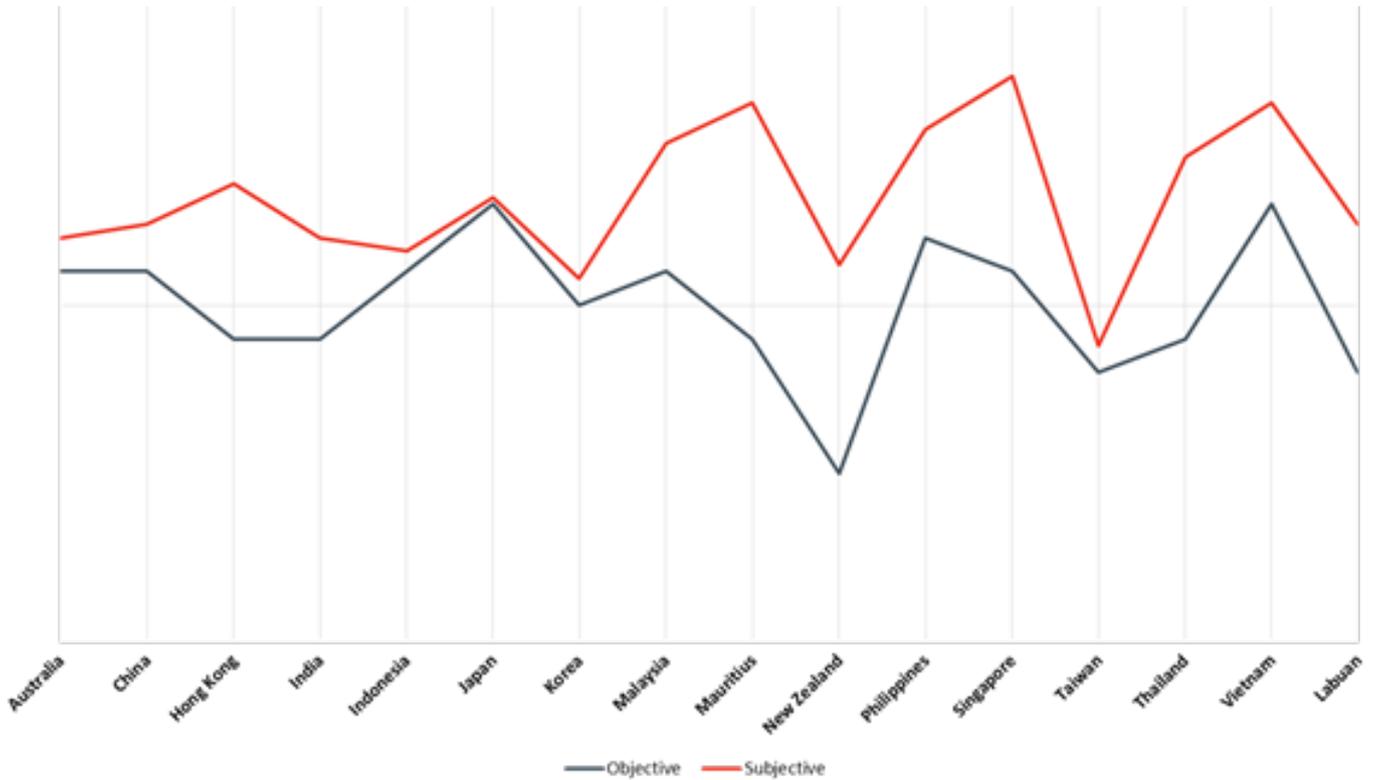
Some degree of correlation is apparent between the objective and subjective questions in EMEA, with clear positive examples being Hungary, Ireland, Kazakhstan and the UAE.

The assumption that the objective responses provide an impartial barometer of complexity leads us to the conclusion that the subjective responses create any deviation. As mentioned, we deliberately sought subjective responses to provide a second measurement of complexity based upon an expert's "feel" for the level of complexity.

Comparison of the objective and subjective responses

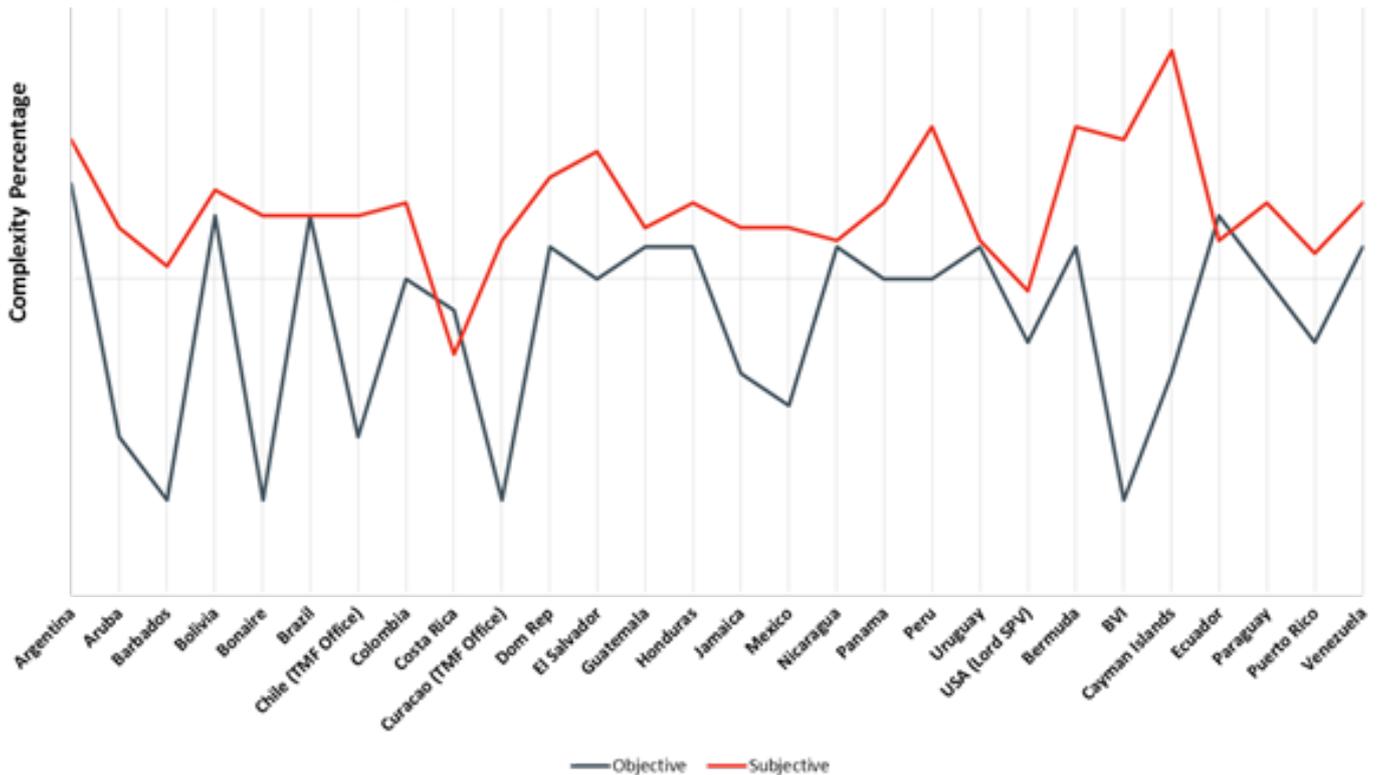
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Asia Pacific Jurisdictional Complexity Scale: Objective vs Subjective



The jurisdictions in Asia Pacific demonstrate a greater degree of correlation than the EMEA jurisdictions. The same observation applies to the chart below relating to the Americas, with the exception of a number of the Caribbean jurisdictions where the perception of complexity deviates significantly from the objective score.

Americas Jurisdictional Complexity Scale: Objective vs Subjective



Conclusion

No single characteristic defines the complexity of a jurisdiction.

Moreover, a number of traits combine and are reviewed to provide a balanced view of corporate secretarial complexity. As a result, the identification of traits which give rise to increased complexity in a given jurisdiction is difficult but we suggest that such broadly defined factors as social and political instability, the nature of the legal system and a perpetually weak economy each play a significant role in the creation of a jurisdiction's compliance framework.

The fact that so many broadly-defined factors affect corporate secretarial complexity explains why global compliance is such a challenging task. If we combine this challenge with differences in time zone, language and culture, it is easy to understand the significant investment of time made by internal teams in relation to their global corporate subsidiary governance.

When planning this study, we were mindful of the difficulty of articulating the concept of complexity and how it often centres on someone's perception of the task at hand, hence the objective and subjective questions. It is apparent that the subjective responses reflect a higher degree of complexity than the objective results, indicating that an individual often has an elevated perception of the complexity of their jurisdiction.

Key findings

- Jurisdictional complexity varies significantly and this fundamentally affects corporate secretarial compliance within a multinational company. As a result, the allocation of internal and external resource must reflect the respective complexity of a particular jurisdiction.

- Be aware of the jurisdictional complexity when undertaking global corporate projects, as they typically involve numerous jurisdictions and are time-critical. The early identification of complex jurisdictions within a global project mitigates issues which typically include: notification of last minute compliance requirements, translation and notarisation delays, and legal registration and bank account setup delays.
- An individual's self-perception of complexity is not always accurate when compared with objective results.
- Geographic location of a jurisdiction is merely one of a number of factors affecting complexity. A multinational company must consider a combination of factors, including jurisdictional nuances that may not be immediately apparent (requirement for resident directors, mandatory government ownership, etc).

Join the conversation

We would like to hear your views. If you would like to comment on the study or suggest questions for the 2014 study, please contact us through Twitter at [@TMFGroup](https://twitter.com/TMFGroup), using hashtag [#globalcomplexity](https://twitter.com/hashtag/globalcomplexity).

Alternatively, if you would like to discuss the findings in general terms or in relation to specific jurisdictions, please contact us at www.tmf-group.com

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Global reach
Local knowledge

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