

Facing the future

Developing a response to regulatory change

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Survey report & white paper

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Developing a response to regulatory change

Organisations in the Asia-Pacific region face new rules and regulations on multiple fronts, but many remain unprepared for or unsure of how to address these requirements. **TMF Group** discusses the steps to enabling full compliance with current regulations and establishing a robust framework to respond to future regulatory change

Introduction

Compliance responsibilities have increased enormously for Asia-Pacific (APAC) organisations in the past five years. In an attempt to improve global financial transparency, many countries have adopted new rules and requirements in this area. In addition to dealing with regulations from other jurisdictions, such as the US Foreign Account Tax Compliance Act (Fatca) and the European General Data Protection Regulation (GDPR), more APAC countries are signing up to global initiatives such as the Organisation for Economic Co-operation and Development-led Common Reporting Standard (CRS) and the Base Erosion and Profit Shifting Project.

While an influx of requirements from various oversight bodies has increased regulatory complexity in the region, it has also created a certain level of momentum, as firms establish systems and processes that can also support responses to other regulations. "Fatca very much established the groundwork for later regulations," says Leila Szwarc, global head of compliance and strategic regulatory services at TMF Group. "Although it was very US-driven and US-focused, it triggered a global response, and those organisations already aware of it could add other regulations such as CRS to their package of requirements," she explains. "There is no one-size-fits-all solution for complying with these regimes as they have differences, but much of the data they require is similar."

Leon Mao, APAC head of family business and wealth solutions at TMF Group, adds that the "thick and fast" introduction of new regulations in the APAC region in recent years has added to the compliance and implementation challenges for financial services organisations. "Ultimately, these new regulations are all about transparency," he says. "And certainly, in the last three to five years, every organisation has had to adapt and apply resources to meet the needs of a more regulated and demanding environment – all in the name of transparency. That's been very challenging and even baffling at times, and the

reason many need to reach out to organisations such as TMF Group, which can assist with understanding local requirements and compliance. It's on the operational and implementation side that we have seen our service offering being most popular at this point in time."

However, while APAC organisations are generally aware of growing regulatory requirements, a survey conducted in October 2018 by *Asia Risk* in collaboration with TMF Group concluded that many are struggling to keep up with the new rules. Almost 40% of more than 100 respondents to the survey – which polled senior legal and compliance professionals at financial services and other corporates in the APAC region – see changing local and global regulatory requirements as a major challenge. And, while some organisations have already implemented strategies in response – including conducting internal reviews, hiring new staff and outsourcing to experts – a worrying majority have not taken any action in 2018 (57%) and do not currently have any action planned for 2019 (62%). This is potentially down to resource allocation conflicts or strategies that fail to integrate compliance, says Szwarc.

"We do not know of any companies that are unaware of the compliance and regulation requirements, but some are slow to adopt them due to the level of change they bring," adds Robin Yoo, director and deputy head corporate secretarial at TMF Group's Singapore office.

Organisations in the APAC region must embrace this issue, not least because failure to comply may result in penalties including heavy fines and prison sentences. And, while a top-down approach is optimal, it is also the responsibility of legal and compliance professionals to properly communicate this message throughout the company and provide the necessary road map towards full compliance. It may be a tough line to deliver, but it cannot be ignored if companies wish to remain competitive.

Compliance outlook

Compliance teams are broadly positive about the impact of new global regulation in bringing greater financial transparency to the APAC region, with nearly three-quarters (74%) of survey respondents giving a rating of 5 or more out of 10 for effectiveness. The average score of 5.5 could reflect that many market participants have not yet experienced the full impact of these rules. Organisations in many APAC countries are still grappling with the roll-out of global regulations such as Fatca and CRS, and developing internal measures to comply with these and the newer rules.

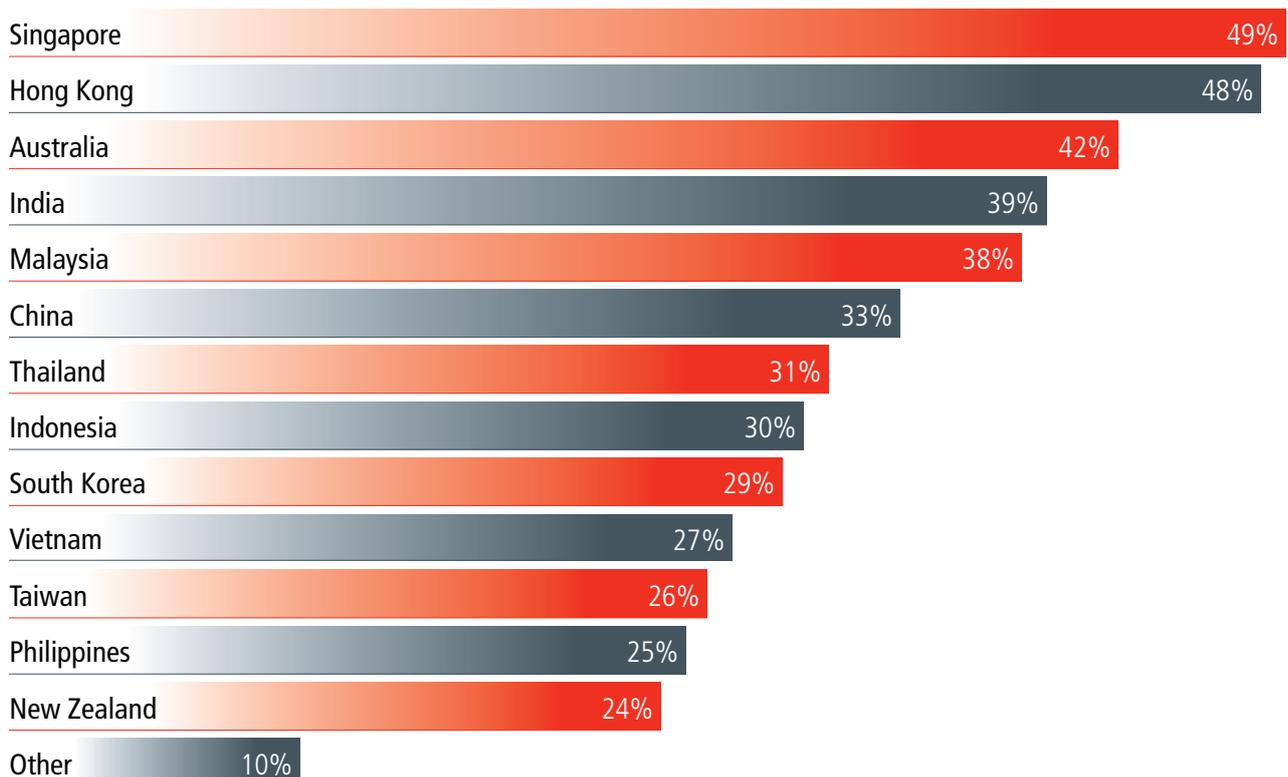
The geographical reach of respondents' business operations (figure 1) shows that, while some have already directly experienced the impact of the new rules, others are active in jurisdictions yet to sign up, or have agreed in principle, but are yet to implement the necessary country-specific laws, regulations and data collection frameworks. As Mao points out, 12 of the 13 territories listed in figure 1 – the exception being the Philippines – have already signed up to CRS, for example. "While we think that most APAC countries are now in

CRS compliance mode, other countries in the region are still playing catch-up," he says. "But they are all working in the direction of greater transparency."

Szwarc adds that implementing these regulations takes time because it involves amending local laws and creating guidance, procedures and other supporting tools to enable success. "I think this is the reason for the average score of 5.5," she says. "Many of these countries are experiencing the first reporting period and will only be able to look back after a couple of years to understand how prepared they were at that moment. I can foresee this score changing next year and continuing to evolve."

Taking Fatca as an example, Szwarc notes that market participants have only recently been given a clear view of how authorities are enforcing the scheme. "We are only seeing, a couple of years after implementation, the types of behaviour the authorities are going after, as well as their modus operandi," she says. As such, gaining a full understanding of new regulations remains an ongoing process in APAC.

Figure 1 In which of the following APAC countries does your organisation operate?



Gauging readiness

The growing mosaic of local, regional and international regulations has left many compliance professionals in the APAC region concerned about regulatory complexity and the speed of change. The survey shows that many legal and compliance departments struggle to deal with the complex features of new regulations. Respondents gave an average score of 6.6 out of 10 when asked to consider the increasing volume and complexity of global and local regulations and rate their level of confidence in their organisation’s ability to remain compliant in 2019. More than one-fifth said their confidence level was 5 out of 10 or less (figure 2).

Such results are unsurprising when compared with the large majority that feel their organisations are well prepared for the 2019 regulatory environment. Even though respondents rated an average of 6.3 out of 10 in terms of readiness to address new global regulations, 62% admit their organisation has not planned any specific actions to ensure compliance with local and global requirements in 2019.

Szwarc points out that, for a fast-paced, rapidly evolving market such as financial services, such figures reveal a very high level of ‘stagnation’. “We wonder how the thought of

being well prepared as an organisation marries with the lack of readiness shown in the results, which would enable them to succeed with their compliance requirements,” she says.

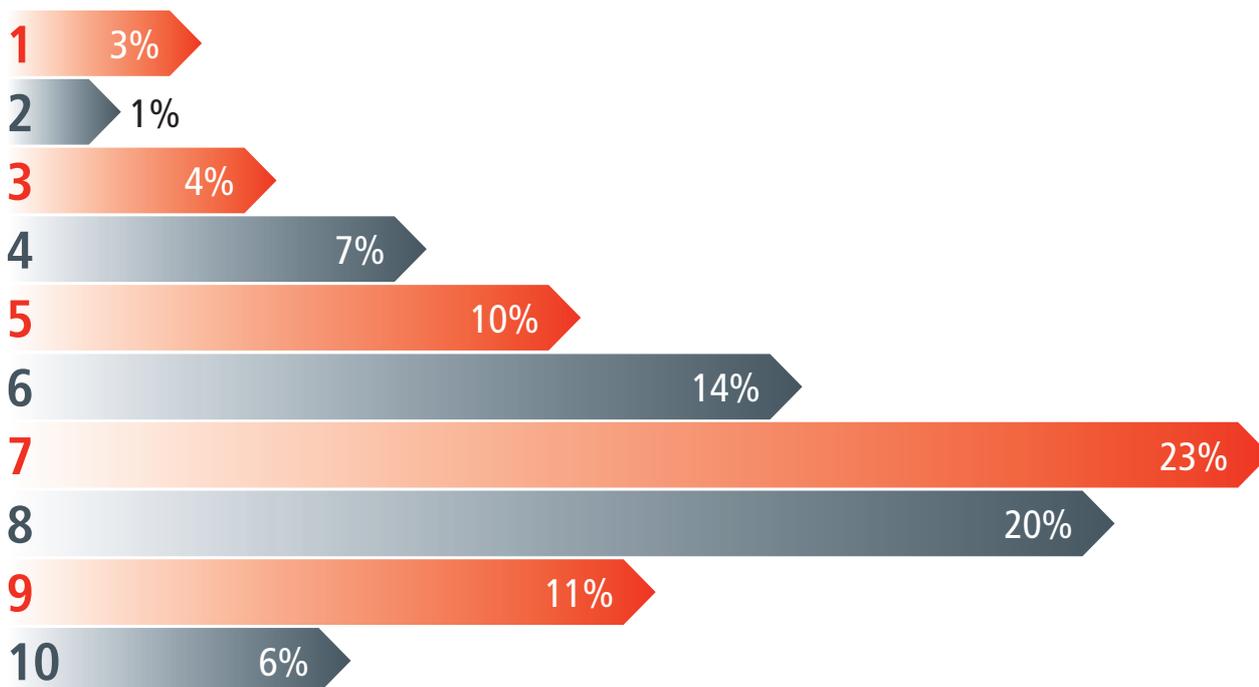
Mao considers it “a wake-up call”, requiring swift action. “Organisations should have a game plan ready to address what’s coming in the years ahead,” he adds.

Preparation strategies

What strategies can organisations put in place to address new regulations in the region, both now and in the future?

APAC organisations are in the middle of an evolution playing out across a range of countries and in jurisdictions that use multiple languages and are overseen by different authorities. “This makes compliance a very complex and potentially expensive initiative,” Szwarc says. “As such, readiness implies proper understanding of the necessary procedures and processes to comply, as well as resources with the right level of knowledge to be dedicated to the tasks. Organisations must go through their records, conduct client communications, gather feedback based on their data and information, generate reports, update their systems, update the regulators with their activities, and so on.”

Figure 2 How confident are you in your organisation’s ability to remain fully compliant with requirements in 2019?



Respondents were asked to rate their confidence level on a scale of 1–10, where 10 denotes the most confident and 1 denotes least

In this respect, readiness means more than just having the necessary information to report, but also having the right people in place at all levels of the organisation who are fully aware of their corporate and managerial responsibilities.

However, Szwarc admits this is often one of the biggest problems for organisations facing regulatory change. "Some firms have no idea what sort of data they have in-house, what is needed to comply and how big the gap is between those two," she says. "To be prepared, organisations must know what they have, what they miss, what they need to start building and when data needs to be collected and properly converted to create any kind of meaningful compliance reports."

Finally, Yoo notes that to be truly ready to comply with new regulatory regimes, organisations must also keep the compliance timeline front and centre of any implementation strategy. "Is it a short-term or a long-term horizon?" he asks. "It is better to be ready sooner rather than later, of course, because there may be penalties for non-compliance."

KEY TRANSPARENCY-RELATED REGULATIONS AFFECTING APAC ORGANISATIONS

March 2010

The Foreign Account Tax Compliance Act (Fatca)

Enacted by the US Congress, this cross-border tax compliance regulation requires foreign financial institutions in countries that have signed up to the agreement to share information with the US Department of the Treasury on customers with US-person status.

July 2014

Common Reporting Standard (CRS)

Approved by the Organisation for Economic Co-operation and Development (OECD), this global reporting standard aims to facilitate the automatic exchange of information gathered by financial institutions between countries to provide tax authorities with visibility of the overseas assets and income of residents.

October 2015

Base Erosion and Profit Shifting (BEPS) Action Plan

Another OECD-led initiative, BEPS also aims to enhance transparency for tax authorities. It focuses on tax avoidance strategies that help entities artificially move profits to low or no-tax jurisdictions. According to the OECD, more than 115 countries are currently participating in the plan.

May 2018

General Data Protection Regulation (GDPR)

GDPR dictates how people, companies or organisations must handle personal data belonging to European Union individuals. It also covers data handled outside of the EU region, so APAC organisations with EU customers are affected.

Accepting the challenge

In addition to the increased complexity of the new regulatory environment in the APAC region, what other challenges do firms face when it comes to the specific regulations being put in place?

According to the survey, APAC organisations see data privacy as the main regulatory compliance challenge, with more than half of respondents ranking this first out of the top three challenges their organisation faces (figure 3). The concern around data privacy can almost certainly be linked to the European Union GDPR rules implemented in 2018. However, Szwarc notes that data privacy is also a local concern, as many countries already have legislation in place relating to the issue. "Data privacy is not new to these countries," she says, adding that concerns probably relate to the fact that "APAC countries generally have been very protective with their laws around data privacy". Media exposure is a fear factor driving change.

Mao also believes GDPR could set a precedent for regional action on data privacy, which would keep this issue at the top of many organisations' priority lists. "Twenty-eight countries in Europe decided on a commonly held set of beliefs relating to data privacy, which is probably going to lead other countries or other regions around the world to do something similar," he says.

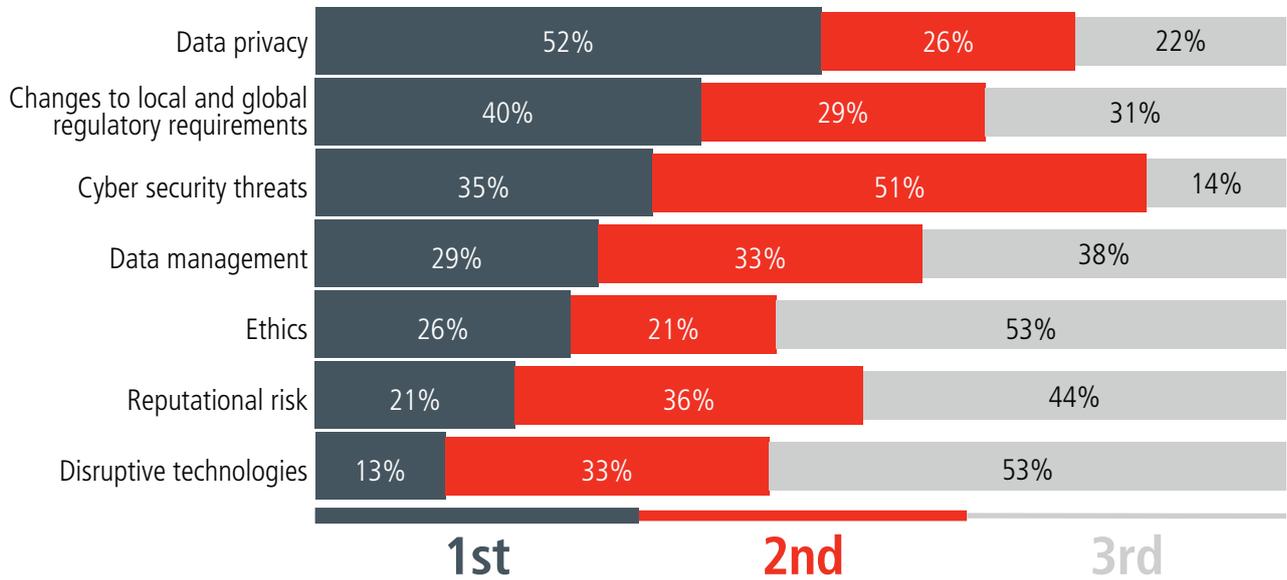
Aside from data privacy, around four in 10 respondents currently see "changes to local and global regulatory requirements" as a key challenge. This was reinforced in the answers to a subsequent question, in which they were asked to rank the factors that create "the highest level of compliance complexity when doing business in APAC". Figure 4 illustrates that understanding local regulations (64%), and local implementation of global standards (39%) were both priority items.

These concerns echo those TMF Group sees within the market, according to Szwarc. "Organisations sometimes have as little as three months to understand how the requirements will affect the business and bring the message to the board, while also creating and implementing a strategy to address them and move on to complying with almost immediate effect," she explains.

Mao adds that local language barriers – the top concern among more than one-fifth of respondents – also cause issues for organisations operating in multiple countries within APAC. "In some jurisdictions where clients are dealing with CRS – Japan, for example – the regulator's website, the implementation guidelines and the regulations are all in the local language. Also, the CRS filing can only be completed by a local Japanese accountancy firm," he says. "Many organisations need help from specialists that can cope with this kind of environment and within tight implementation timelines to ensure the organisation is compliant."

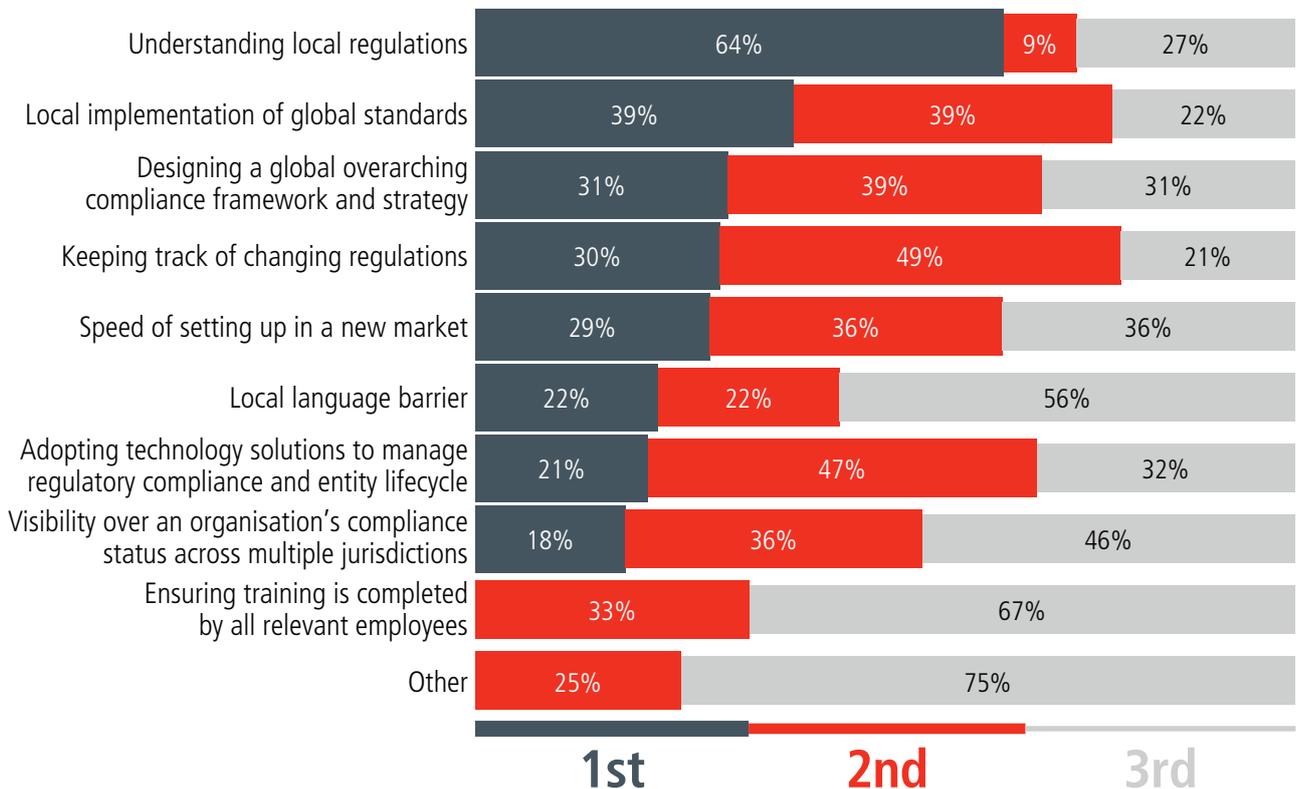
For a head of compliance or chief legal officer at an APAC organisation, this story may well be repeated many times over at various offices across the region. This requires taking an overarching view of all jurisdictions to ensure regulations are addressed and implementation happens within the correct timelines. "The starting point for anything like this is to develop a global protocol," Mao says. Such a framework helps an organisation create and implement an enterprise-wide compliance response in line with multiple national deadlines, and establish internal best practice by adopting the highest regulatory standards from across the APAC region.

Figure 3 The main regulatory compliance challenges when doing business in the APAC region



Votes were cast using a scale of 1st–3rd, where 1st is the greatest perceived regulatory compliance challenge

Figure 4 What creates the most compliance complexity when doing business in the APAC region?



Votes were cast using a scale of 1st–3rd, where 1st is perceived as creating the most compliance complexity

Taking action

While many organisations have identified the challenges associated with new regulations, what are they doing to address these challenges?

According to the survey, an internal review to ensure compliance with local and global requirements was one of the top activities undertaken in the past 12 months, with 60% of respondents rating this as a first priority (figure 5). This step is crucial when it comes to enabling the organisation to address the readiness of the previously discussed elements: assessing the data needed to comply with new regulations, the gap and the internal availability of the necessary information and expertise. It can also form the core of a robust global compliance framework.

Confirming the organisation has the right personnel with the right skills – or hiring such talent – was also among the top-ranked resourcing issues for legal and compliance leaders over the past year. Hiring new talent was ranked first by 62%, while 63% placed training existing staff in the second spot. As figure 5 illustrates, outsourcing to professionals is considered a lesser priority, but Szwarc believes this can be a particularly valuable – and not necessarily permanent – choice for organisations dealing with a new regulation for the first time. During the first cycle of implementation, outsourcing to an expert can help organisations develop a deeper understanding of new rules from the outset. They can learn by observing an expert before taking on these responsibilities directly. More generally, there can also be a cost- and time-saving element to outsourcing – particularly when faced with a short timeline to comply and limited internal resources.

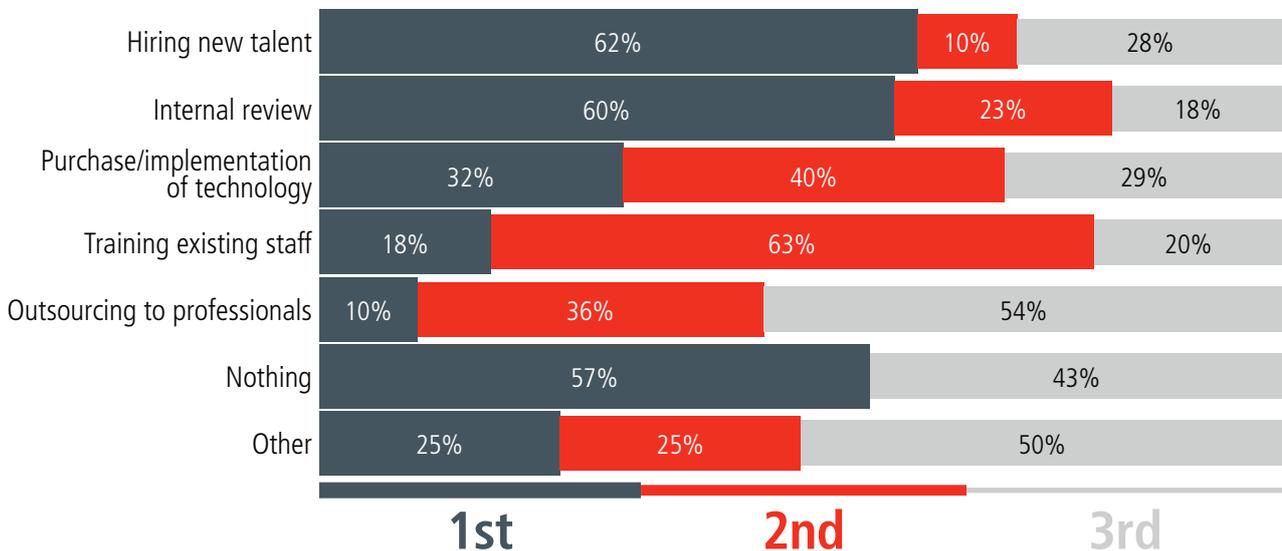
Many organisations have already recognised such benefits, with 37% currently outsourcing functions including the “creation of/advice on compliance framework”, according to the survey.

However, as figure 5 also shows, more than half of respondents (57%) say no action has been taken to ensure compliance with local and global regulation over the past 12 months. This alarming response can perhaps be traced to the modest level of senior management awareness of the importance and consequences of regulatory non-compliance – for which respondents rated their organisations an average of 7.4 out of 10 in the survey, with nearly one-fifth assigning a rating of 5 or less out of 10. “This does seem linked to the fact that 60% say ‘no action taken’,” Szwarc comments. “If your senior management doesn’t have an understanding [of new rules], they won’t take any action.”

To make matters worse, addressing regulatory change necessitates investment, but the return on that investment may not happen immediately, according to Szwarc: “An organisation might only have a short timeframe to comply, and face a big risk if they fail to act, so there is no choice – and that means extra time, money and resources.

“It is unsurprising that compliance can sometimes be pushed to one side, because companies have other things to prioritise day by day that are focused on revenue generation. The irony here is that investment in this area can not only save money in the short and long run but also generate profit for these organisations. It’s a balancing act that boards need to carefully understand, engage with and support.”

Figure 5 What organisations have done in the past 12 months to ensure compliance



Future plans

Looking ahead

Is the outlook for the next 12 months any more positive?

Although 63% of organisations still have “no action planned” as the most likely path in 2019, plans are afoot at some firms. According to the survey, 55% of organisations will prioritise the completion of an internal review in 2019 to ensure compliance with local and global requirements (figure 6). In line with this, nearly half (48%) expect to see some kind of increase in their organisation’s compliance budget. This could facilitate the hiring of new talent, which 37% expect to prioritise next year, as well as outsourcing some activities to professionals, as mentioned by 18% of respondents.

Yoo adds that external service providers could also help tackle the inertia where it exists. “Organisations should evaluate whether some of their regulatory and compliance requirements can be outsourced to address the areas in which there is no action planned, especially if there is budgetary constraint to increase headcount within a short time span.”

Taking appropriate action

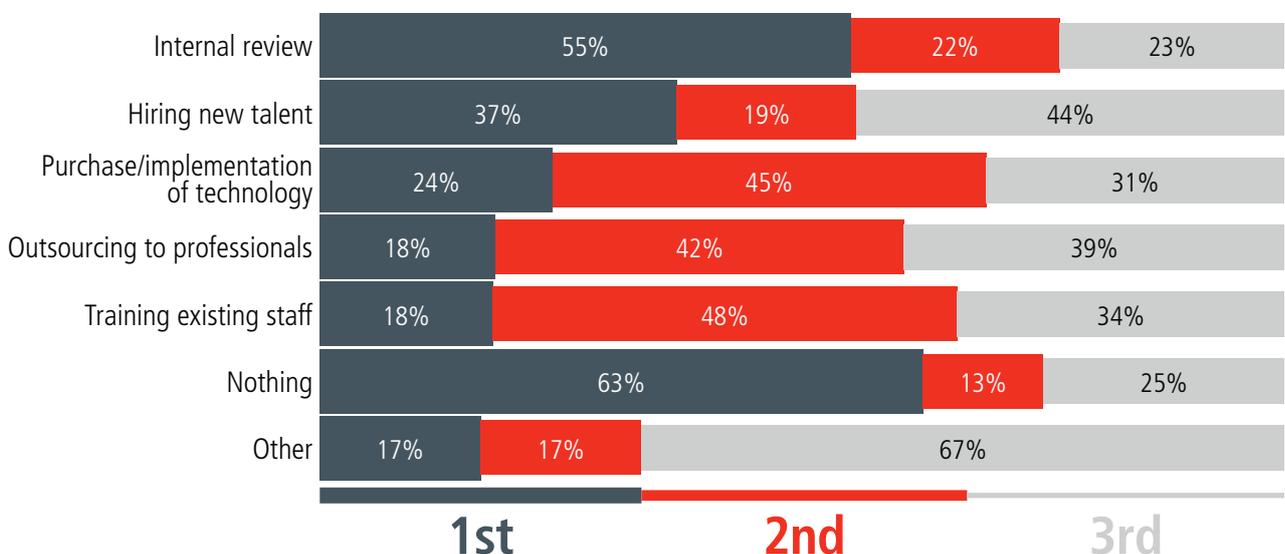
For those with specific actions planned, are they taking the correct route to ensure full understanding of, and compliance with, the regulations that financial firms in the APAC region will face in 2019 and beyond?

Organisations can take a series of steps towards achieving compliance, starting with an internal audit or review – which nearly 60% of respondents’ organisations have already undertaken, according to the survey (figure 5).

To create a robust compliance programme, the audit should cover the following areas:

- **Data** – Organisations must assess all data to ensure accuracy and availability to relevant parties across the business. What information can be used to comply with multiple regulations, boosting efficiency within the business? What infrastructure is in place to collect and manage this data? And how do regulators in each jurisdiction want to receive data – for example, should compliance reports be submitted in the local language?
- **Technology** – It is also important to audit the company’s current technology, including the capability of existing systems, the new technology required and whether further integration is necessary as a result of any new rules.
- **Communication** – Organisations should make two-way communication a key feature throughout the business – particularly so local variations of regulations can be compared and contrasted. Firms should open lines of communication to encourage news about local regulations and feedback on compliance efforts from within the firm.
- **Training** – To keep staff aware of changing rules, it is important to conduct regular training sessions. Whether this is done in person, online or via conference call, completion should be a requirement for all relevant staff.
- **Outsourcing** – Once an organisation is aware of the compliance needs across the business, it will be easier to work out if any elements can or should be outsourced to third-party experts.

Figure 6 What is your organisation most likely to prioritise in 2019 to ensure compliance?



Votes were cast using a scale of 1st–3rd, where 1st was most likely to be prioritised

Tackling compliance complexity

While APAC countries are at different stages of implementation of these new rules, the drive towards greater transparency is in full force across the region. All organisations will benefit from addressing the changing compliance picture, now rather than later.

As such, organisations must be in a state of readiness to deal with compliance. A base level of understanding is needed, both in relation to the rules themselves, as well as the information and resources that exist internally to support compliance. Therefore, internal resources must be examined alongside data, funding and staffing, while factoring client needs into the mix. And, if such issues cannot be fully addressed internally, organisations should look to outsourced solutions.

Regardless of the method, companies must take a top-down approach and ensure compliance becomes part of the overall business strategy. It is the responsibility of compliance and legal professionals within an organisation to properly communicate this message and create a living road map to reach full compliance on all initiatives that enables speed and flexibility. Regulatory deadlines are approaching quickly – the earlier your organisation can create this road map, the better it will be at navigating the current and future regulatory initiatives and the requirements they carry.

THE ASIA-PACIFIC COMPLIANCE AND COMPLEXITY OUTLOOK SURVEY

As the global push for financial transparency continues, international firms face an increasingly complex landscape, including an influx of new regulations as well as regional variations in their application and interpretation. This *Asia Risk* survey, commissioned and developed in partnership with TMF Group, sets out to understand how firms are coping with these complex compliance challenges in developing business in the Asia-Pacific (APAC) region.

The APAC Compliance and Complexity Outlook survey received 106 valid responses, and was conducted between September and October 2018. Respondents were drawn from individuals working in compliance and legal roles at financial services, manufacturing and technology firms. The results were collated from APAC firms only.

The percentages in some graphs may not total 100 because of rounding.

ABOUT TMF GROUP

TMF Group helps its clients operate internationally and ‘belong’ wherever they are in the world. We do this by making sure they are properly set up to do business in any country and compliant with local and international regulations.

Our work includes helping companies of all sizes with business services such as HR and payroll, accounting and tax, corporate secretarial, global governance and regulatory compliance, administration fiduciary services for capital markets, private equity and real estate investments.

In today’s environment, increasing business complexity means that a one-size approach doesn’t fit all – and

the penalties for getting it wrong are becoming heavier. Operating in more than 80 jurisdictions, we provide our 15,000 clients with on-the-ground compliance and administration services so they can venture further. We keep things running seamlessly, giving them the peace of mind to focus on the bigger picture.

Our people localise the global world to help businesses succeed, which in turn helps communities to prosper. We firmly believe that the only way to be truly ‘global’ is to put local first, which is what our team of 7,000 in-country experts do for businesses of all sizes, every day.

Leila Szwarc, Global Head of Compliance and Strategic Regulatory Services, TMF Group



Leila Szwarc is a lawyer, who qualified in Argentina, and currently global head of compliance and strategic regulatory services at TMF Group.

She has more than 19 years of experience in international fiduciary business, focusing on commercial development, implementation and execution of global legal and regulatory developments affecting major clients segments, from private clients to multinationals.

Prior to joining TMF Group, Leila held various managerial positions within the Citco Group of companies under the Corporate & Trust division. She has lived in South, Central and North America, and is currently based in Europe. Leila is fluent in several languages and is a frequent speaker at international panels ranging from the International Bar Association and IBC Informa, Academy and Finance to the International Tax Review.

Leon Mao, Head of Family Business and Wealth Solutions, TMF Hong Kong



Leon Mao serves as head of family business and wealth solutions, based in TMF's Hong Kong Office. With a focus on servicing leading clients throughout APAC, the office provides solutions that include wealth planning, structured companies, trusts and foundations and regulatory compliance.

Educated in the West, Leon earned undergraduate and master's degrees in international politics and law. Always based in Hong Kong, he has 25 years' experience in providing solutions to private and corporate clients.

In regard to onshore jurisdictions, Leon is admitted in England and Wales, and Australia. Regarding offshore jurisdictions, he has legal admission and/or extensive practical experience in the British Virgin Islands, Cayman Islands and Bermuda.

Robin Yoo, Director, Deputy Head Corporate Secretarial, TMF Singapore



Robin Yoo is director and deputy head of corporate secretarial of TMF Singapore. He has 20 years of experience in the corporate secretarial industry.

Prior to joining TMF Group, Robin was head of corporate services at Aspire CS, a wholly owned subsidiary of BoardRoom Limited. He was also head of Baker and McKenzie, Wong & Leow's corporate secretarial department.

Robin is a chartered secretary and an associate member of the Chartered Secretaries Institute of Singapore, as well as the Singapore Institute of Directors. He holds a practising certificate as a company secretary for listed companies on the Singapore Exchange. He also holds an MBA from Anglia Ruskin University, UK.

In his professional practice, Robin has been involved in industries such as banking, food and beverages, commodities, construction, manufacturing, healthcare, property logistics, armed ballistic training fabrication, mining and power co-generation.

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Global reach
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