Rules and regulations: Managing the evolving compliance landscape facing multinationals

Global Business Complexity Index 2020

Global reach
Local knowledge

INTRODUCTION

Expanding upon the survey findings from the Global Business Complexity Index (GBCI) 2020, this new report explores the issues and penalties arising as jurisdictions step up standardisation and transparency.

Legislation, regulations, rules and the penalties they prescribe, set out the framework within which commercial entities operate. But frameworks vary wildly from country to country. Jurisdictions dictate the legal structures available to companies, the ongoing conditions they must adhere to, and the sanctions they face if they do not comply. They also regulate business activities to foster ethical operation and discourage non-beneficial practices to the state, employees or other enterprises. Businesses need to have a strong understanding of the location in which they are operating in order to be successful. This report aims to provide decision-makers with the knowledge needed to navigate complexity.

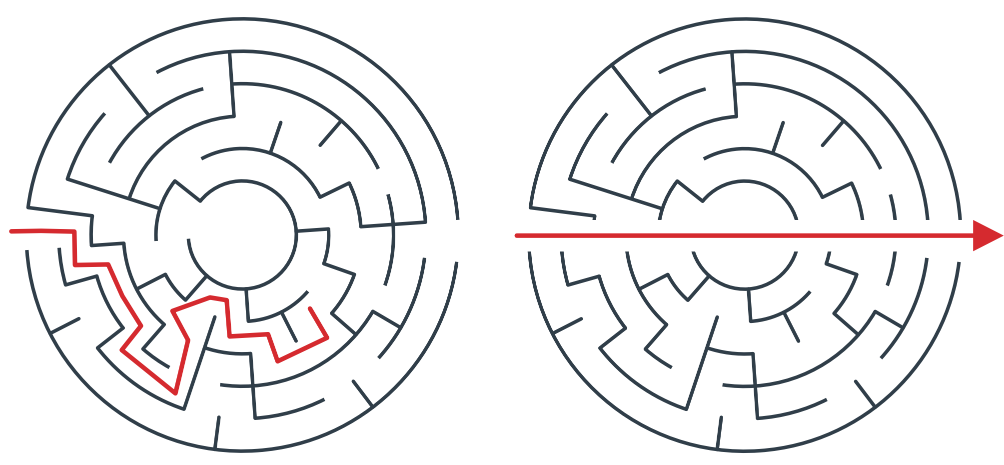
However, all jurisdictions need to ensure they make understanding and complying with these processes as simple as possible to help attract international investment. If legislation and procedures are cumbersome, companies will likely incur unnecessary costs during both setup and ongoing management of an entity – as a simple example, a jurisdiction where incorporating a business takes a week, and can be done online, is going to be much more attractive than a jurisdiction where the process takes months.

Given the impact of the COVID-19 crisis, attracting foreign investment will become more important than ever to re-stimulate and repair economies. Our rules, regulations and penalties ranking shows that jurisdictions such as Curaçao, Israel and the USA are among the simplest in terms of their legislative environment.

This report explores the findings from the Global Business Complexity Index (GBCI) 2020 report in more detail, delving into the issues arising from particular rules, regulations and penalties. As we saw in the global report, key topic areas reflect recent trends in legislation and provide pointers to the future, including:

- how international trends are driving global standardisation while local practices persist and are even increasing in some jurisdictions, creating localised complexities for businesses
- how global trends are based around a drive towards modern practices which should aid companies, whereas local considerations often reflect traditional modes of operation
- how technology fosters a globalised business environment and how this is being used around the world to streamline processes for multinationals
- how requirements to report company ownership and other transparency rules affect companies' decisions about setting up and operating.

In 2020, jurisdictions are attempting to become more aligned with international legislation to minimise the impact of their own local laws on complexity and to demonstrate an open and welcoming attitude. Ownership and transparency rules are key to being seen as 'open for business', and some jurisdictions, such as the Netherlands, have successfully maintained a simple environment while having a strong transparency framework. At the same time, governments are removing and discouraging some traditional processes which often add complexity and may be difficult for foreign companies to understand. Technology is a key tool in simplifying complexity, while digital communication is revolutionising the way in which companies communicate with the authorities.



We make a complex world simple

RULES, REGULATIONS AND PENALTIES COMPLEXITY RANKING

FIVE MOST COMPLEX MARKETS

Rank	Country
1	Indonesia
2	Nicaragua
3	UAE
4	Brazil
5	Qatar
6	Ecuador
7	Mexico
8	Panama
9	Turkey
10	Costa Rica
11	Kazakhstan
12	Taiwan
13	Paraguay
13	France
15	Guatemala
16	Honduras
17	Colombia
18	Japan
19	Greece
20	Argentina
21	Germany
21	Peru
23	Guernsey
23	Switzerland
25	Russia
26	Poland
27	Bolivia
28	Luxembourg
29	Uruguay
29	South Korea
31	Croatia
31	Malaysia
33	Spain
33	China
33	South Africa
33	India
37	Slovakia
37	Finland
37	Portugal
40	Jersey
40	Belgium
42	Singapore
43	Thailand
44	Czech Republic
45	Italy
45	Serbia
47	Malta
48	Canada
48	Hungary
48	Romania
51	New Zealand
52	Philippines

52	Slovenia
52	BVI
55	Cyprus
56	Sweden
57	Cayman Islands
58	Venezuela
58	Chile
60	Austria
60	Bulgaria
62	UK
63	Vietnam
63	Australia
65	Mauritius
65	Dominican Republic
67	Hong Kong
68	Norway
69	Denmark
70	Ireland
71	Ukraine
72	Netherlands
73	Jamaica
74	El Salvador
75	USA
76	Israel
77	Curaçao

FIVE LEAST COMPLEX MARKETS

THE FIVE MOST COMPLEX MARKETS

The most complex jurisdictions in terms of rules, regulations and penalties are characterised by frequent changes in legislation and uncertainty surrounding the interpretation of laws. Incorporation is often slow, involving numerous steps, with businesses having to follow and comply with processes set by different authorities across multiple levels.

THE FIVE LEAST COMPLEX MARKETS

The least complex jurisdictions are characterised by an openness to businesses, with a legislative environment that encourages foreign direct investment – such as favourable subsidies for new multinational firms looking to set up there. Requirements surrounding foreign ownership are also often less strict than in other places.

THE GROWING POWER OF INTERNATIONAL LEGISLATION

Compliance legislation stems from national governments but is influenced by global organisations. The Foreign Account Tax Compliance Act (FATCA), ushered in 10 years ago, is a US government initiative but is profoundly international in scope. FATCA requires participating jurisdictions to report financial data about US citizens conducting transactions within their territory to the American authorities.

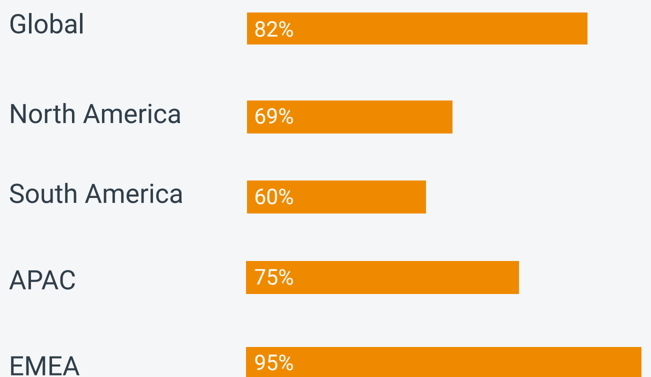
While the US has become a global flagbearer of ownership data, the OECD's Common Reporting Standard (CRS), which started operation in 2017, requires cross-sharing of financial transaction data *between* all participating jurisdictions. The standard equips participating jurisdictions with greater visibility over international transactions that their citizens and tax residents are involved in.

Our survey demonstrates that CRS has been taken up rapidly. It has been adopted by 82% of jurisdictions, and is now more prominent than FATCA, which 79% of jurisdictions have adopted at a global level.

However, it is worth considering that international legislation is rarely adopted uniformly across the globe. EMEA is at the forefront of CRS adoption, with 95% of jurisdictions taking up the standard. In contrast, 60% of South American jurisdictions have committed to CRS.

Legislation can also originate regionally, with some policy-making bodies being based in regions. The European Union is perhaps the most notable, producing a mixture of regulations (eg GDPR), which must be transposed exactly into the national law of member states, and directives (eg AML), which offer a greater degree of flexibility.

The EU is continuing to flex regulatory power, publishing its latest version of anti-money laundering laws this year – AML5. The organisation also introduced DAC6, a new transparency initiative. These regulations will require tax-aggressive cross-border arrangements to be reported for any organisation doing business in Europe, regardless of the location of its head office. The UK has indicated that fines for failing to comply with DAC6 could reach



up to £1 million, demonstrating the force of these new regulations, and the potential threat they pose to organisations who fail to meet them.

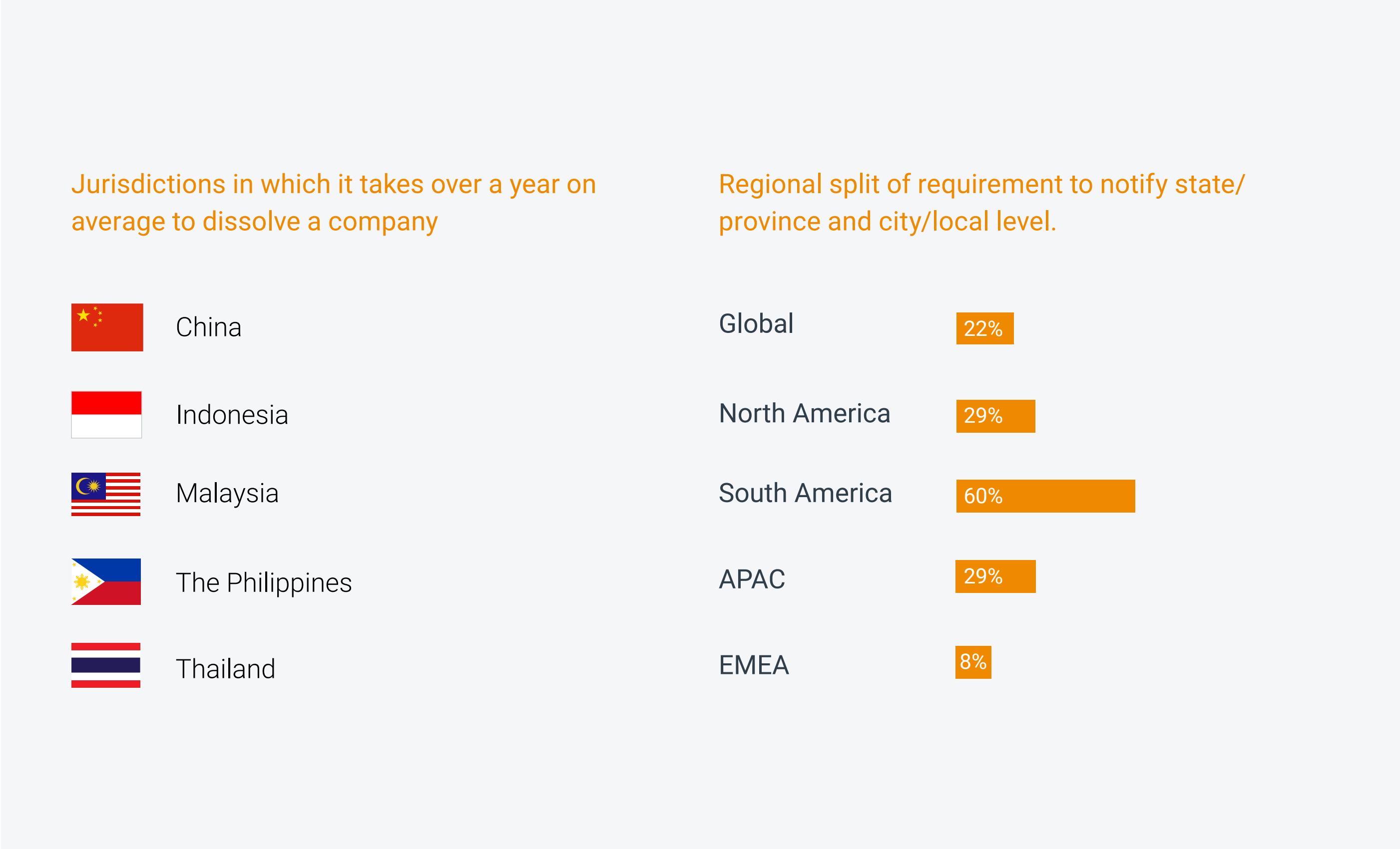
DAC6 was originally supposed to be operational from July this year. However, due to the COVID-19 pandemic, the European Commission and European Council have agreed that the implementation should be postponed. Member states are now allowed to defer the reporting of cross-border tax arrangements by up to six months, meaning that 1 January 2021 is the new deadline. So far, Germany and Finland are the only member states who have not made use of their ability to defer DAC6 reporting.

While EU directives such as AML5 and DAC6 are aimed only at member states, they are often used as a model for other jurisdictions around the world. Mexico and Australia are two examples of jurisdictions that are already in the process of implementing DAC6.

CRS is vital for tracking international flows of capital but certainly causes tangible complexity for businesses. 'Financial institutions' are required to report name, address, date and place of birth of each account holder and all financial transactions involving them (jurisdictions define 'financial institution' differently, although it is often a much broader definition than that of traditional banks).

The number of jurisdictions adopting CRS has remained fairly stable since last year. Time will tell whether the remaining countries will commit to it. There is often a time lag between them formally committing to international agreements and their implementation. Israel, the Dominican Republic and Turkey have all committed to CRS, although the process has not yet passed into national law.

Despite the international regulatory environment gradually synchronising over the past few years, there



are still significant jurisdictional variations in rules, regulations and penalties. Incorporation incentives for certain types of business are a common way of stimulating foreign direct investment (FDI). Some incentives are aimed both at attracting talent and FDI. In Taiwan, 50% of income above three million New Taiwan dollars (US$100,000) is exempt from tax for qualifying individuals. The adoption of such practices and measures reflect governmental openness to international trade and workers. It will be interesting to see whether similar incentives will become more commonplace in order to stimulate FDI and rebuild the global economy following the COVID-19 crisis.

The most complex jurisdiction in the GBCI, Indonesia, has denied foreign investors access to industries on its Negative Investment List. However, Indonesia is changing its stance, renaming the above as the Positive List of Investments, while 16 of the 20 sectors which are currently closed to foreign ownership are due to be opened.

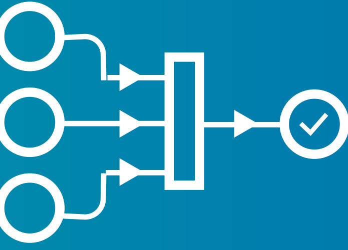
The process of dissolving a business is often overlooked. This takes more than six months on average at a global level, compared with less than a month for incorporation. Dissolution in APAC is particularly complex, taking around nine months on average and over a year in five jurisdictions within the region. The prospective difficulty of pulling out of a market may influence a company's decision to set up in any given location in the first place. The prospect of becoming 'stuck' in a jurisdiction demonstrates how important it is for managers to fully understand the intricacies of any city, country or region before investing.

There can be significant variations in processes *within* nation states. In particular, jurisdictions divided into regions or states are likely to have layered compliance requirements. To incorporate entities, companies must contact a province or state government in 22% of jurisdictions, while the city/ local government must be notified in 39%. South America has a much more regionalised structure than other parts of the world, with state notification required in 60% of jurisdictions, and city/local government requiring notification in 90%. Some require national, state and city government to be notified concurrently, such as Brazil, which ranks second in our GBCI 2020.

However, regionalised governmental structures do not always cause more complexity. Some national jurisdictions may use a federal model to encourage states to compete for international business, thereby pushing them to improve incorporation processes. China and India operate a 'Special Economic Zone' model, allowing those to offer preferential incorporating arrangements to encourage investment. The UK government is looking at 'free ports', localised areas with preferential trading arrangements to develop international trade after Brexit. Jurisdictions split into regionalised structures may well adopt competitive federalism as a strategy to simplification. In South America particularly, individual municipalities may prove highly attractive areas for economic investment.

MODERNISATION VS TRADITION

Modernisation involves disrupting traditional processes and practices to make a jurisdiction more attractive in terms of ease of doing business, supplemented by streamlining processes for incorporation and continued operation.



Given the increased focus on international compliance legislation and ownership and transparency requirements, the burden of managing it all is set to continue rising. The responsibility falls traditionally to the Company Secretary. However, our research shows that only around a quarter of jurisdictions worldwide require a Company Secretary as a legal position within the corporate structure – unchanged since 2019. The Company Secretary's role is likely to evolve from an administrative one to a more strategic position as compliance duties grow. Some parts of the job may be outsourced to other roles. For example, data compliance has heightened the responsibilities the Data Protection Officer (DPO).

There is an increased requirement for companies to notify multiple bodies during the process of incorporation through to full entity activation – where a company is operationally ready to contract, trade, invoice and hire personnel compliantly. Such processes involve multiple sub-steps, including obtaining operating permits/ licences, registering premises, notifying social and tax authorities, and opening bank accounts, which may require reporting to various bodies. In South America, for example, becoming a legally recognised entity requires notifying at least four bodies, while in North American jurisdictions it is a requirement to deal with an average of three bodies to obtain operating permits.

Automatic notification of bodies is helping to combat this complexity. In 71% of jurisdictions worldwide, when a company contacts the authorities to incorporate, at least some are notified automatically as part of that process. However, in only five jurisdictions are *all* the necessary bodies informed: Bolivia, Brazil, Bulgaria, Portugal and Ukraine. Encouragingly, two of those are in South America, a region that frequently requires registration with provinces and cities, as well as other authorities that handle incorporation. The process was accelerated in Bolivia because of the COVID-19 crisis and the inability to visit each of the relevant bodies individually as a result. Automatic notification has the potential to have a huge impact in reducing complexity in this part of the world.

Traditional processes can be updated quickly if there is enough drive and support. COVID-19 is likely to intensify the need for modern practices as business processes risk grinding to a halt if not updated. In some jurisdictions, when incorporating or registering a change in company structure, an apostille is needed – a kind of official stamp to legitimise the documents. In Luxembourg, authorities have altered the rules making it still a requirement but only at a later date, reducing the short-term barriers to setting up.

SIMPLIFYING PROCESSES THROUGH TECHNOLOGY

Governments are increasingly using digital means to communicate with companies. Technology facilitates internationalisation and modernisation, helping firms to meet mandatory requirements such as submitting documents electronically. However, this kind of legislation demonstrates that a jurisdiction is open for digital business and willing to change the way it communicates with entities. Our survey suggests that official submissions to the authorities are now done electronically in 71% of places – unchanged since 2019.

While technological changes can be difficult and slow to implement, the COVID-19 crisis has shown that adoption can be made quickly when under pressure. On 1 February, the Chinese government brought in an online visa renewal system, allowing employers to keep staff working without having to visit the authorities in person. This process has benefited many foreign employees living in cities under lockdown rules.

It seems certain that lockdown rules are here to stay for a while, especially as we are seeing states re-impose restrictions after local viral flare-ups. Given this uncertain path forward, jurisdictions will need to follow China's example in ensuring that processes can go ahead digitally when physical interactions are not possible.

Technology allows processes to be streamlined by connecting multiple facets of operational compliance into a reduced number of online contact points. Denmark has recently consolidated many aspects of the registration process into just two portals, available in both Danish and English. Information requests from relevant authorities are streamlined through the portals' mailbox system, enabling companies to more easily communicate with relevant bodies.

The increasing amount of technology behind these systems means that incorporation involves more intensive and accurate data entry than before. Singapore's system is held up as the gold standard for straightforward online incorporation. The Singapore Standard Industrial Classification (SSIC) code categorises businesses according to their activities – and then points to which industry-specific bodies or licensing agencies should be contacted within a total entity activation process. If the SSIC is entered incorrectly, the relevant authorities won't be notified.

Technology is crucial to communication between different bodies. Automatic notification exemplifies 'behind the scenes' alignment within particular jurisdictions to provide a quality service to budding entities. This culture of 'customer service' helps them to stand out from an increasingly uniform international landscape. The ten least complex markets in the GBCI 2020 share this approach.

"While technological changes can be difficult and slow to implement, the COVID-19 crisis has shown that changes can be made quickly when jurisdictions are under pressure."

OWNERSHIP AND TRANSPARENCY

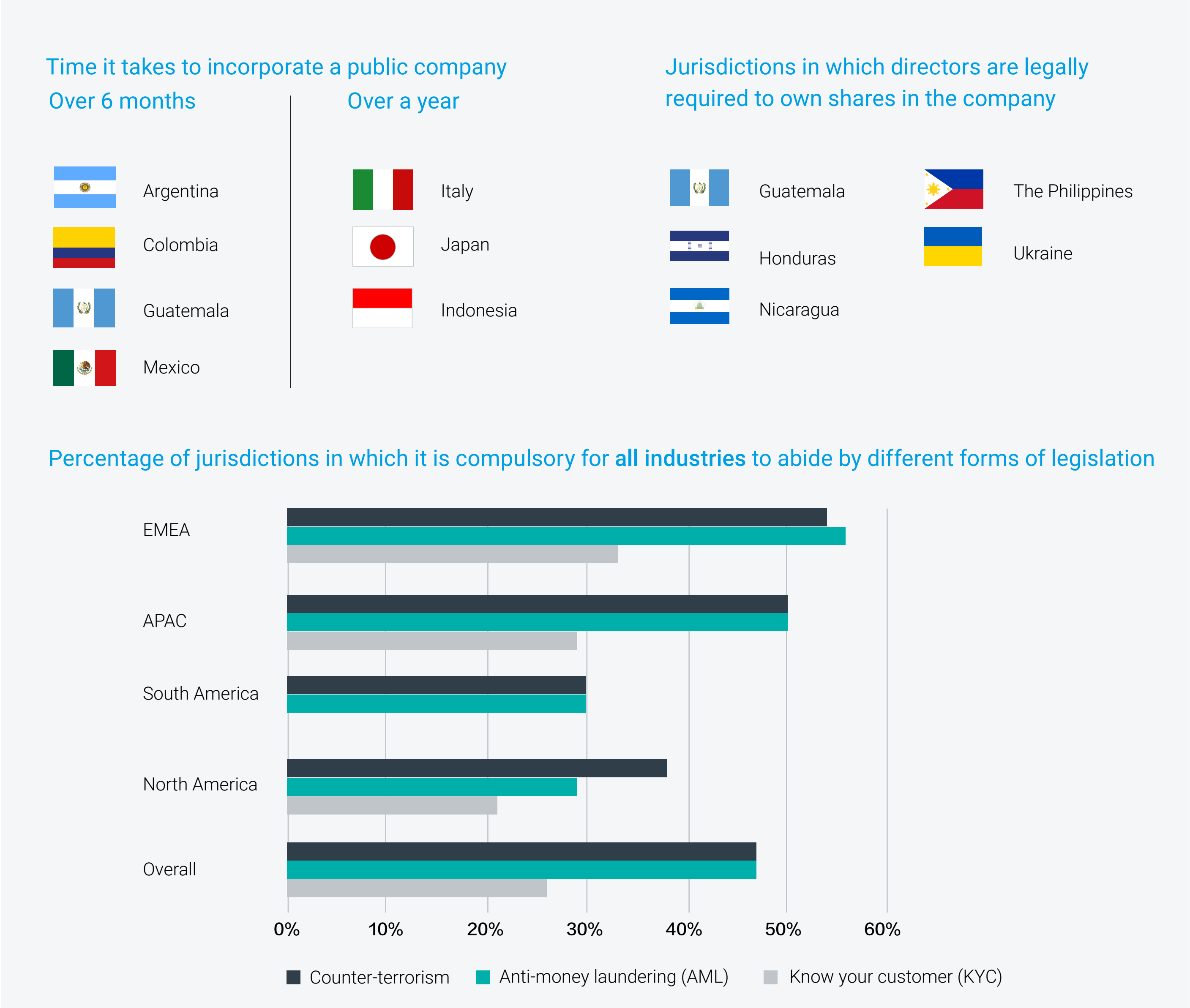
Legislation relating to ownership compliance has been around for a long time, especially any that distinguishes between publicly-owned and privately-operated entities. Publicly-owned companies have usually been under more scrutiny than their private counterparts. Our research shows that while it is possible to incorporate both in less than a week in a quarter of jurisdictions – including Denmark, Hong Kong and the Cayman Islands – it takes much longer for public companies on average, taking more than a year in some cases. This is primarily because of heightened compliance requirements relating to the perceived public good.

Requirements related to ownership have expanded hugely in recent years, reflecting international trends. Ultimate Beneficial Owner (UBO) registers, which record who is the major owner or owners of corporate entities in a jurisdiction, are now required in 68% of places, compared to 64% last year. These registers may be mandated increasingly by supranational bodies. As indicated in our 2019 report, the EU's 4th Anti-Money Laundering directive (AML4) required all member states to adopt them. The AML5 directive coming into force in 2020 specifies that companies cannot set up a corporate bank account before all beneficial owners are identified.

Significant local nuances are involved in implementing these registers. Jurisdictions specify varying timeframes in which companies must notify the authorities of changes to the ultimate beneficial owners of an organisation. Some 78% require such information to be submitted within a month. Spain, Ukraine and Colombia are the most lenient, allowing more than six months for authorities to be informed.

There are subtle nuances surrounding the compliance requirements of directors and shareholders within a corporate structure. There are even compliance requirements *between* them, for example where directors are liable to cover damages to shareholders. Often, directors are shareholders themselves. In some cases, it is a legal requirement that directors own shares in a company.

Some authorities require shareholders and directors to be local residents. Such requirements are much stricter for directors than shareholders, with 27% of jurisdictions insisting that is the case for all directors, while only three places state that some of the shareholders must reside locally: Jersey, Guatemala and Nicaragua. APAC and South America are more stringent on director policies, with 50% of jurisdictions requiring at least one director to be locally resident.



In 86%, directors can be held personally liable by the authorities if they fail to fulfil contractual obligations to their company. In APAC and EMEA, 93% and 92% respectively operate personal liability policies. However, 90% require that directors are liable to their own company for damages.

Due to COVID-19, interacting with shareholders, once a routine task, has become much more challenging. Annual General Meetings of Shareholders – a legal requirement for publicly-traded companies in many jurisdictions – are all but impossible under lockdown conditions. The UK government has amended regulations to allow companies to postpone meetings, and also organise them via electronic means of communication.

Ownership and transparency policies have particularly affected the financial sector, with early legislation such as FATCA aimed at combatting large anonymous global flows of capital that could be hiding illicit activities. However, our survey shows that they are used far more widely, not only for financial services. Know Your Customer (KYC) legislation requires companies to conduct due diligence on their customers to stem the flow of non-compliant money. While only 26% of jurisdictions globally require KYC across all industries, just 5% said it was only used in the financial services sector. In 68% of places, it is used in some industries including financial services. And, legislation to counter money laundering and terrorism applies to at least some industries in 98% and 97% respectively of jurisdictions.

The COVID-19 crisis may prove a brief blip for compliance requirements, as governments provide loans quickly to keep businesses afloat. This may speed up existing compliance processes resulting in a simpler interaction with banks after the crisis is over. Nevertheless, the increasing volume of compliance in the financial services sector and beyond is likely to continue on a long-term upward trajectory.

LOOKING FORWARD

The GBCI shows there is significant global variation in the complexity of rules, regulations and penalties – with Indonesia topping the ranking, while Curaçao sits at the opposite end of the spectrum.

Complexity often results from a multiplication of effort as compliance requirements are increasingly layered, often a result of simultaneous international and local legislative demands.

This trend is likely to continue as more places opt into international regulations and as supranational bodies continue to develop their own compliance guidance. Jurisdictions are showing enthusiasm for taking up standards such as FATCA, CRS and UBO registers.

Leading jurisdictions are showing that new rules do not have to result in runaway complexity. The most innovative jurisdictions are refining their processes to accommodate the rising tide of compliance requirements. A key strategy for maintaining a simple environment despite legislative change is to leverage technology in order to make interacting with authorities as simple as possible for companies. One positive outcome of COVID-19 may be that the adoption of these communication technologies is accelerated out of necessity, in times when in-person communication can be very difficult.

As jurisdictions adopt international legislation and similar technologies to simplify operations, we can expect increased international alignment. This will make the process of operating a company more uniform between different jurisdictions – however, this ideal will take many years to be fully realised.

METHODOLOGY

The Global Business Complexity Index was created by TMF Group, the experts on global and local business complexity, and Savanta, a specialist market research agency. Combining subject-specific knowledge with a solid grounding in data and analysis, the GBCI 2020 is built on robust multi-method research.

The index is generated from an in-depth survey of TMF Group's in-market experts in 77 jurisdictions[1] and the data is also compared to the survey results used in last year's GBCI Report. The survey covers three areas of business operations:

- accounting and tax;
- rules, regulations and penalties;
- HR and payroll.

The data for each jurisdiction were statistically weighted and combined to produce an overall complexity score, as well as a score in each of the three areas.

Visuals are based on survey results across 2019 and 2020. Those who answered 'don't know' in the survey have been excluded from the analysis.

To gain a better appreciation of trends and developments, the initial quantitative fieldwork was supplemented by a qualitative stage after the index was created. This consisted of:

- a survey asking each TMF Group office to respond to trends in complexity within their jurisdiction;
- a series of in-depth interviews with TMF Group specialists from the 10 highest and 10 lowest-ranking jurisdictions.

About Savanta Group

Savanta is a fast-growing data, research, and consultancy firm. We inform and inspire change through cutting-edge data collection and analysis across a wide range of sectors.

[1] A jurisdiction is a specific territory governed by a set of laws. A country can consist of several jurisdictions. Curaçao is part of the Kingdom of the Netherlands but it is a separate jurisdiction from the Netherlands. Businesses have to take account of the fact that nation-states will adhere to supranational and international laws and regulations to varying extents, while continuing to promulgate their own laws and regulations and, in some cases, to delegate or allow sub-jurisdictions in their region and localities to impose their own requirements on businesses, particularly those based overseas.

GLOSSARY

AML — Anti-money Laundering: Refers to the suite of laws and regulations that aim to hinder criminals from claiming illicit funds as legitimate income.

Company Secretary — Position within a company that may or may not be legally required within a jurisdiction. Responsibilities vary but typically revolve around the incorporation and ongoing regulatory compliance of their entity.

CRS — Common Reporting Standard: OECD initiative requiring participating jurisdictions to automatically submit information on bank accounts within their territory to combat tax evasion.

DPO — Data Protection Officer: Corporate role with ultimate responsibility over data and related compliance.

Entity activation — In using this term, we are recognising that setting up a business involves more than just 'incorporation' (see definition below). To become fully operational, a business will likely need licensing, a bank account and to notify various relevant bodies beyond the chamber of commerce or equivalent.

FATCA — Foreign Account Tax Compliance Act: Federal law enacted by the US government, requiring financial institutions in cooperating jurisdictions to report on the assets of their customers registered as citizens of the United States.

GDPR — General Data Protection Regulation: European Union initiative setting out rules for the protection and privacy of citizens' data.

Globalisation — Process of convergence, whereby economies and cultures have become increasingly interconnected and aligned around the world.

Incorporation — Process of registering and setting up a new company with the relevant authorities.

OECD — Organisation for Economic Co-operation and Development: the 36 member states aim to promote global trade.

Ownership — Refers to the legislative principle of assigning business transactions to responsible individuals and holding them to account in the case of wrongdoing.

UBO — Ultimate Beneficial Owner: Refers to the person(s) deemed liable for the legal operations of an entity. Definition varies between different bodies.

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ABOUT TMF GROUP

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One world of local service

TMF Group is the leading provider of critical compliance and administrative services, with some 7,800 in-house experts across 120 offices covering 80-plus jurisdictions. Together we deliver a broad portfolio of consistent, integrated but localised services covering the business administrative essentials of accountancy and tax; HR administration, global payroll and employee benefits; and global entity management, corporate secretarial and regulatory compliance.

Rapid response consultancy solutions support cross-border projects large and small, at every stage, across all our disciplines, and in every market.

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Because we know how to unlock access to some of the world's most attractive markets – no matter how complex – swiftly, safely and efficiently, over 60% of the Fortune Global 500 and FTSE 100, and almost half the top 300 private equity firms, use us.

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