

Cambridge Centre for Risk Studies

The 10th Anniversary Risk Summit

GOVERNANCE AND REGULATORY RISKS – CRS RISK OUTLOOK

Jennifer Copic

Regulatory and Liability Risk Research Lead

20 June 2019

Cambridge Judge Business School

Centre for
Risk Studies



UNIVERSITY OF
CAMBRIDGE
Judge Business School



Corporate Governance

- *“The systems, structures and processes by which organisations are directed and controlled.”*
(Simon Learmount, 2018; Hopt, 2011)



Source: CCRS

Corporate Governance

- “The systems, structures and processes by which organisations are directed and controlled.”
(Simon Learmount, 2018; Hopt, 2011)



Organisations Face Risk over Governance Concerns

REUTERS BUSINESS NEWS MARCH 18, 2019 / 2:59 PM / 3 MONTHS AGO

Tech giants will have to be regulated in future - EU's Timmermans

Zuckerberg backs stronger Internet privacy and election laws: 'We need a more active role for governments'

PUBLISHED SAT, MAR 30 2019 - 5:07 PM EDT | UPDATED SUN, MAR 31 2019 - 3:09 AM EDT

Spencer Kimball @SPENCEKIMBALL

SHARE f t in e ... CNBC

Asda shopworkers win landmark ruling in equal pay dispute

Caroline Davies

Thu 31 Jan 2019 12.45 GMT
Big or small, all businesses can be affected by the equal pay claim

Tesco faces £4bn equal pay bill as claimant numbers swell to 1,000

Sarah Butler

@whatbutlersaw
Wed 11 Jul 2018 17:19 BST



The New York Times: How Google Protected Andy Rubin, the 'Father of Android'

The internet giant paid Mr. Rubin \$90 million and praised him, while keeping silent about a misconduct claim.
By Daisuke Wakabayashi and Katie Benner

Oct. 25, 2018

Google staff walk out over women's treatment

Dave Lee
North America technology reporter

1 November 2018



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Bloomberg: Climate Change Warriors' Latest Weapon of Choice Is Litigation

By Jeremy Hodges, Lauren Leatherby and Kartikay Mehrotra
May 24, 2018

The rise in event-driven securities litigation — Why it matters to directors and officers

November 12, 2018 | United States

Tesla's Elon Musk reaches deal with SEC over Twitter use

Fri 26 Apr 2019 23.49 BST

The SEC sued Musk last year after he tweeted that he would take Tesla private,

Uber drivers in Denmark must pay fine for every ride, supreme court rules

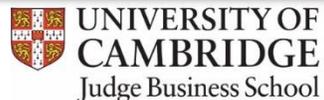
f t e

By SANJANA VARGHESE
Wednesday 19 December 2018



The regulatory 'dark matter' slowing down business

By Eryk Bagshaw
June 10, 2019 - 3:38pm
Businesses are being swamped by up to eight pages of regulations and guidelines for every page of related legislation, a report has found, lending weight to the Morrison government's call for "consention busting" in the bureaucracy.



Centre for Risk Studies

PRA adds climate risk to UK insurers' stress tests

17 April 2019

FINANCIAL TIMES: Uber's long list of legal woes ahead of its stock market listing

has serious unresolved legal and regulatory challenges
San Francisco APRIL 9, 2019

70



Cambridge Taxonomy of Business Risks

Financial & Economic	Geopolitical & Security	Technological	Environmental	Social & Humanitarian	Governance & Liability
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- Macroeconomic**
- Market Crash
 - Asset Bubble
 - Financial Irregularities
 - Economic Recession
 - Economic Restriction
 - Trade Sanctions
 - Tariff War
 - Commodity Price Fluctuation
 - Sovereign Crisis Default
 - Investor Sentiment
 - Negative Market Outlook
 - Low Carbon Transition
- Competition**
- Disruptive Competitor
 - Aggressive Competitor
 - Price War
 - Counterfeit Products
- Counterparty**
- Creditor Failure
 - Customer/Client Failure
 - Government Failure
 - Supplier Failure
 - Supply chain disruptions
 - Bargaining power against suppliers

- Political & Democratic**
- Ideological Shift
 - Nationalism
 - Populism
 - Protectionism
 - Political Shock
 - Sudden Leadership Change
 - Regime Change
 - Political Corruption
 - Nationalisation
- Political Violence**
- Assassination
 - Terrorism
 - Coup d'État
 - Social Unrest
 - Civil Conflict/Separatism
- International Conflict**
- Interstate Conflict
 - Conventional War
 - Asymmetric War
 - Nuclear War
- Criminal**
- Cartel Pressure
 - Organised Crime

- Disruptive Technology**
- E-Commerce
 - Clicks & Mortar
 - Gig Economy
 - Robotics & Automation
 - Artificial Intelligence
 - 5G Technology
 - Augmented/Virtual Reality
 - Blockchain
- Cyber Attack**
- Data Exfiltration
 - Intellectual Property Loss
 - Contagious Malware
 - Cloud Service Provider Failure
 - Distributed Denial of Service Attack
 - Financial Transaction Theft
 - Industrial Control System Compromise
 - Internet Service Provider Failure
- Infrastructure/System Failure**
- Network Disruption
 - Power Outage
 - Satellite System Failure
 - Internet Outage
- Industrial Accident**
- Explosion
 - Fire
 - Nuclear
 - Pollution

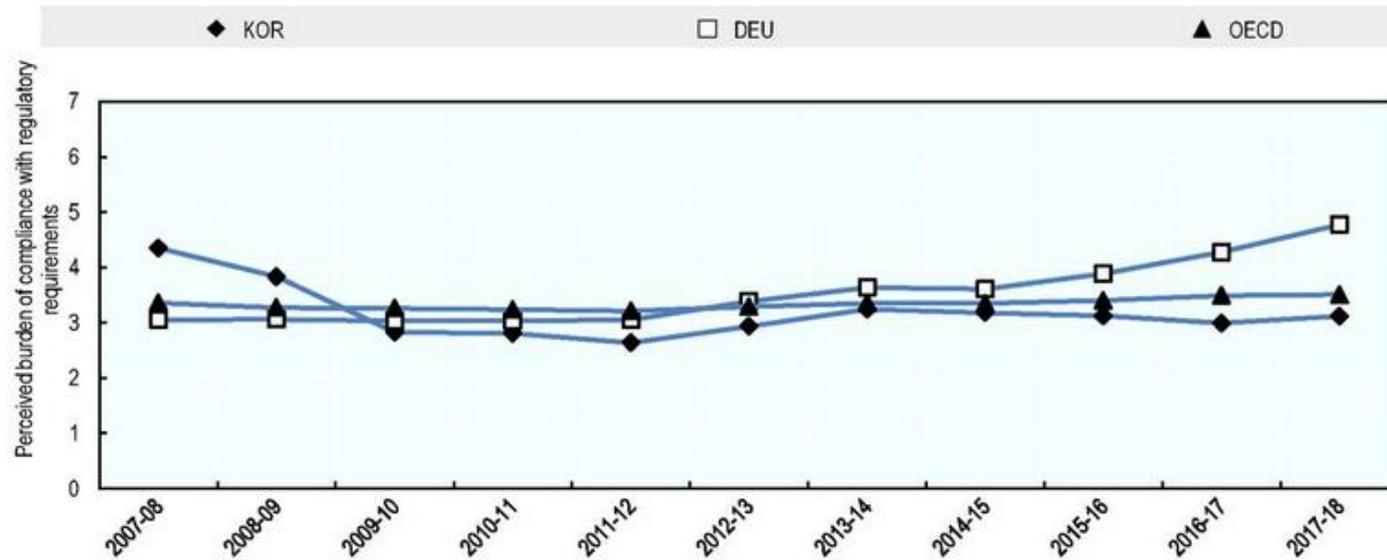
- Climate Change**
- Climate Change
 - Extreme Event Exacerbation
 - Ocean System Change
 - Sea Level Rise
- Hydrometeorological**
- Drought
 - Electrical Storm
 - Flood
 - Freeze
 - Hail
 - Heatwave
 - Temperate Windstorm
 - Tornado
 - Tropical Cyclone
 - Wildfire
- Geophysical**
- Earthquake
 - Tsunami
 - Volcanic Eruption
- Sustainability**
- Natural Resource Deficiency
 - Water
 - Fossil Fuels
 - Raw Materials
 - Biogeochemicals
 - Food Insecurity
 - Land/ Ocean System Change
 - Biodiversity Loss
 - Ecosystem Collapse
 - Waste and Pollution
- Space**
- Solar Storm (CME)
 - Astronomical Impact Event

- Consumer Power**
- Shift in Consumer Demand
 - Sustainable Purchasing
 - Transparency of Information
 - Supply Chain Provenance
 - Consumer Activism
 - Commodity Boycott
 - Brand Name Boycott
 - Single Firm Boycott
 - Brand Management
 - Negative Customer Experience
 - Key Influencer Disruption
 - Negative Media Coverage
- Human Resources**
- Labour Disputes & Strikes
 - Loss of Key Personnel
 - Failure to Attract Talent
 - Employment Practices
 - Gender & Diversity
 - Communication Failure
- Human Capital**
- Ageing Population
 - Labour Shortages
- Humanitarian**
- Poverty
 - Hunger or Famine
 - Inequality
 - Welfare System Failure
 - Mass Migration
 - Refugee Crisis
- Infectious Disease**
- Plant Epidemic
 - Animal Epidemic
 - Human Epidemic/Pandemic

- Regulation & Liability**
- Tightening Fiscal Policy
 - Taxation
 - Non-Compliance
 - Violations of Existing Regulation
 - Internal Corruption & Fraud
 - Negligence
 - Emerging Regulation
 - Occupational Health & Safety
 - Revised Accounting Standards
 - Licence Revocation
- Contingent Liabilities**
- Private Lawsuit
 - Mass Tort
 - Class Action
- Strategic**
- Strategy Failure
 - Divestitures
 - Joint Ventures
 - Mergers & Acquisitions
 - Restructuring
 - Asymmetric Board
 - Rogue CEO
 - Hostile Takeover
 - Model Failure
 - Failure to Forecast Business Future
- Products & Services**
- Product Defect/Failure
 - Innovation (R&D) Failure

Growth Varies in Regulatory Burden and Cost

Perceived Burden of Compliance with Regulatory Requirements



Notes: Results are based on the question: "In your country, how burdensome is it for businesses to comply with governmental administrative requirements (e.g., permits, regulations, reporting)? [1 = extremely burdensome; 7 = not burdensome at all]"

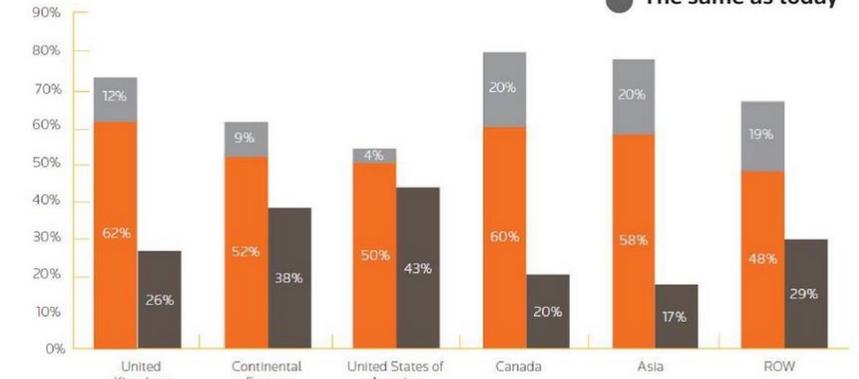
Source: (Browne et al., 2016^[7]), "The Executive Opinion Survey: The Voice of the Business Community", The Global Competitiveness Report 2016–2017, World Economic Forum, Geneva, <http://reports.weforum.org/global-competitiveness-index-2017-2018/appendix-c-the-executive-opinion-survey-the-voice-of-the-business-community/>.

Source: OECD.org

Projected Compliance Cost Trends by Country

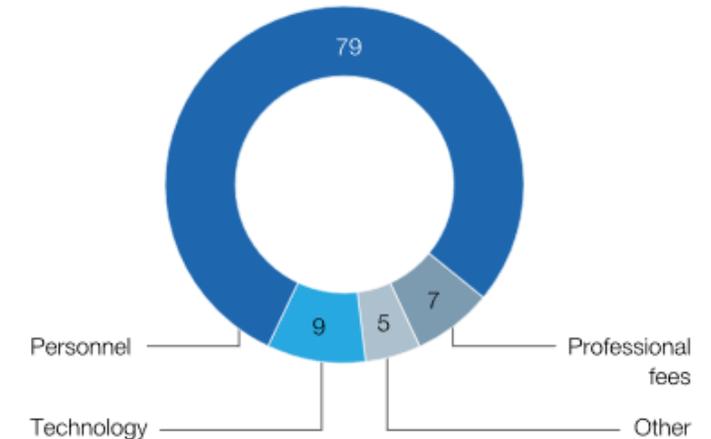
Over the next 12 months, I expect the cost of senior compliance staff to be...

- Significantly more than today
- Slightly more than today
- The same as today



the answer company
THOMSON REUTERS

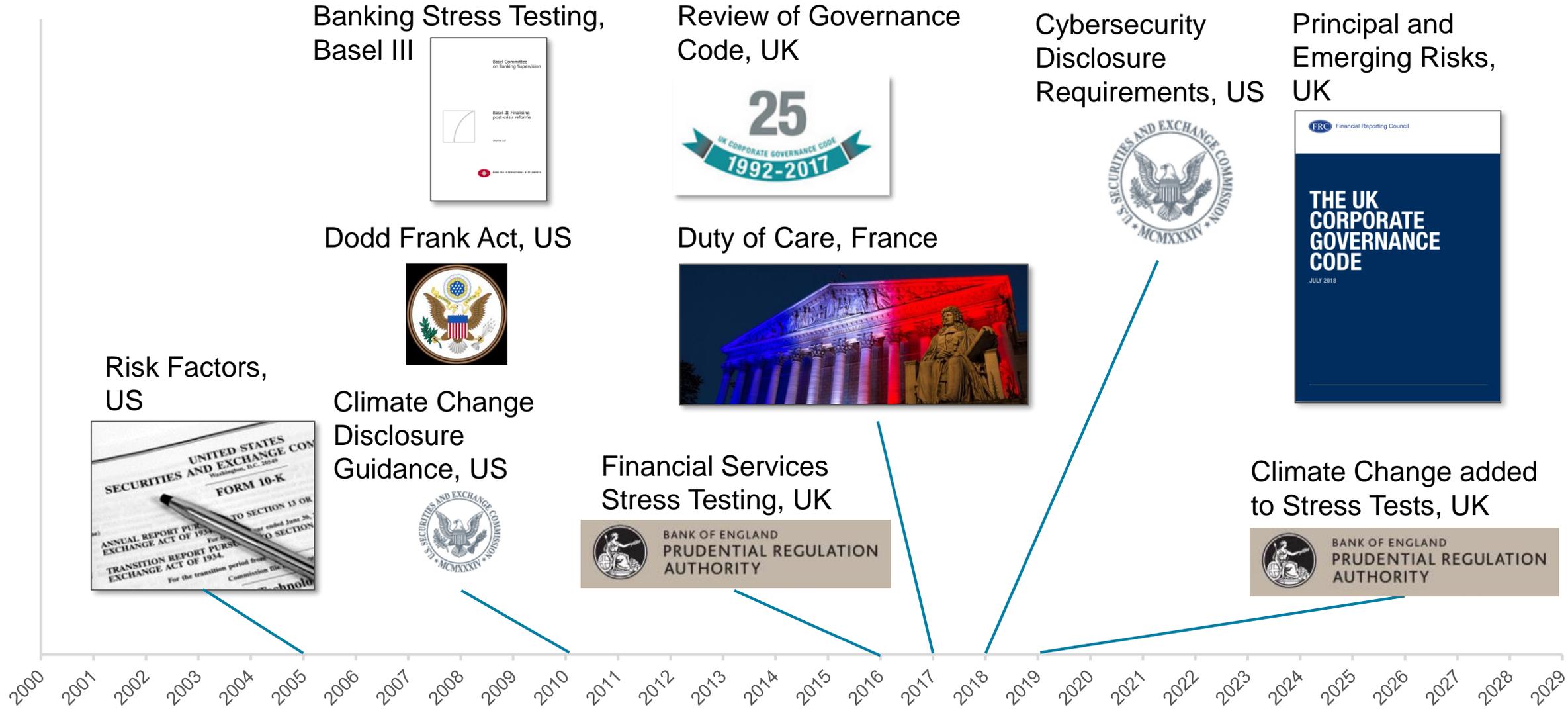
Compliance Costs, Banking Sector



Source: McKinsey Compliance 360 Benchmarking Survey 2018

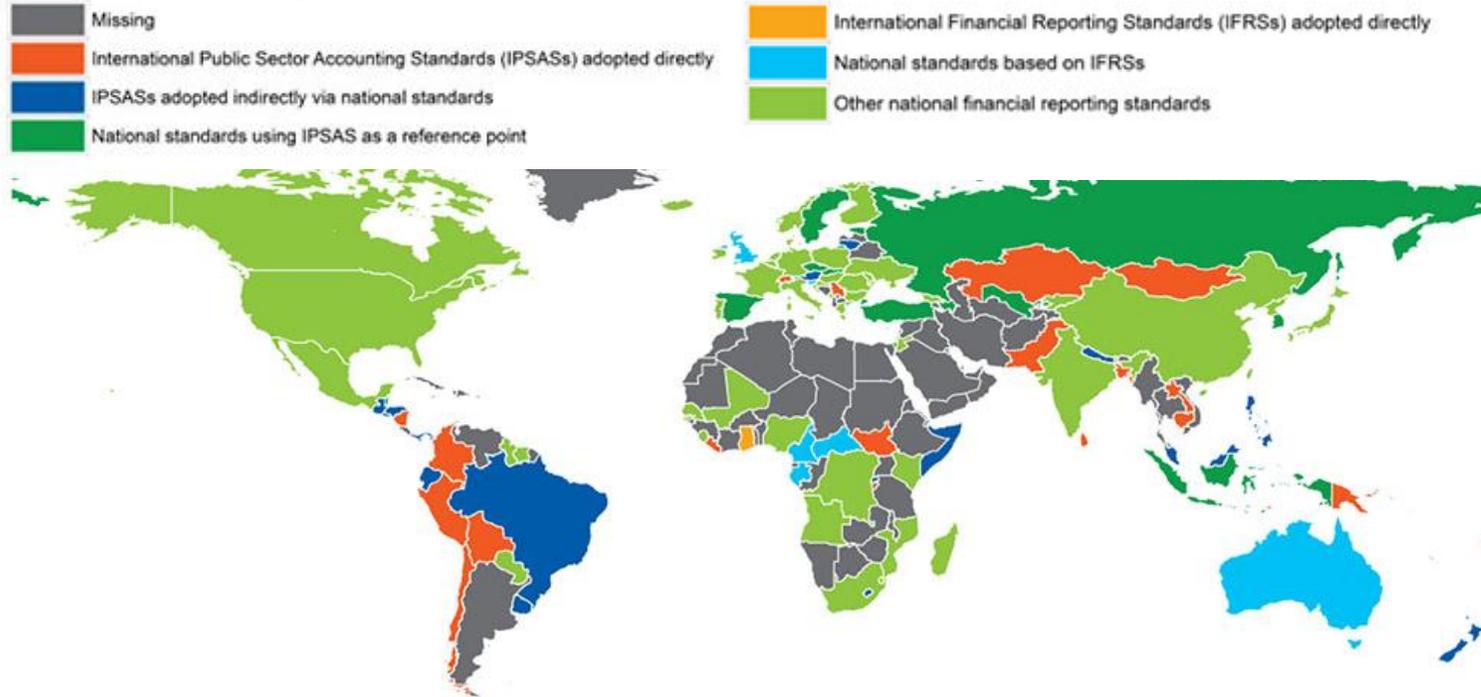
McKinsey&Company

The Changing Risk Reporting Landscape



Increasing Risk Driven by Financial Reporting

Accounting Standards Differ Globally



Source: IFAC.org

Auditing Crisis

- “Faithful representation” challenging given growth in goodwill on corporate balance sheets
 - The total goodwill value of S&P 500 companies rocketed by \$700 billion from 2007 to 2016, the majority of increase being utilised to pledge acquisition debt

FINANCIAL TIMES

HOME WORLD UK COMPANIES TECH MARKETS GRAPHICS OPINION WORK & CAREERS LIFE & ARTS HOW TO SPEND IT

FT Collections **Carillion's collapse: risk and failure**

Opinion **Instant Insight**

Carillion's board: misguided or incompetent?

The directors ticked all the good governance boxes, yet the contractor still collapsed

KATE BURGESS [+ Add to myFT](#)

Alison Horner, head of Carillion's remuneration committee, was formerly operations director at Tesco Bank and a non-executive director of Tesco Bank, while her fellow directors also boasted plenty of experience © Tesco plc

Kate Burgess JANUARY 17, 2018 102

Following the collapse this week of Carillion, with less than £30m in the bank

Research Journal of Finance and Accounting
 ISSN 2222-1697 (Paper) ISSN 2222-2847 (Online)
 Vol.4, No.6, 2013 www.iiste.org

Drivers of Audit Failure in Nigeria- Evidence from Cadbury (Nigeria) PLC.

Cadbury

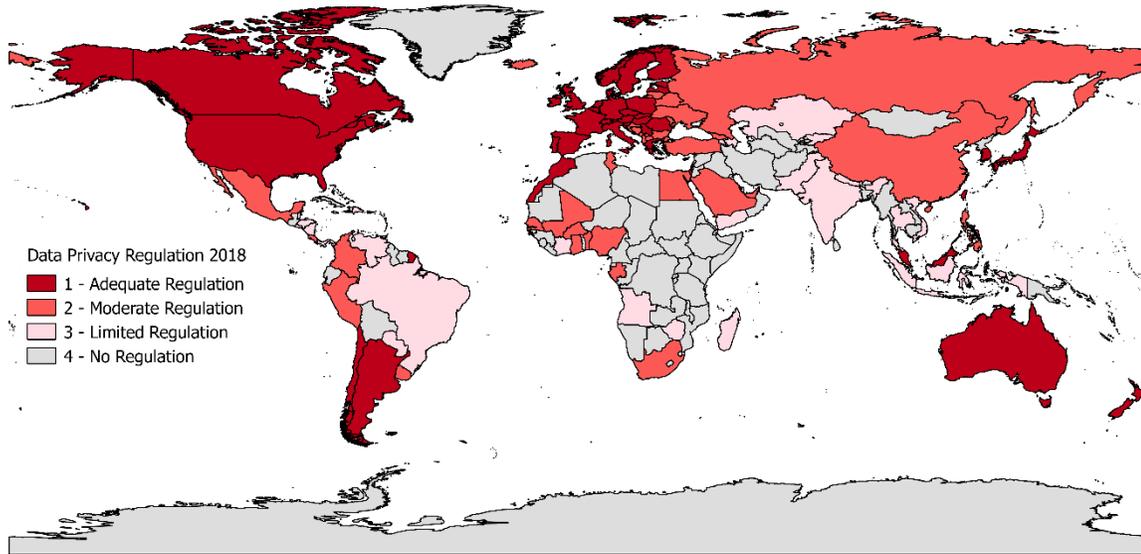
Sunday C. Okaro* Gloria O. Okafor
 Department of Accounting, Nnamdi Azikiwe University, Awka, Nigeria
 *E-Mail of Corresponding Author: sundaychukwunedu@yahoo.com

ABSTRACT

This study is an investigation of audit failure factors in Nigeria's corporate governance firmament. An explanatory case study approach was adopted for the study supplemented by archival data and newspaper reports. An explanation was sought for the findings of the regulatory authority that the auditor in this case was not only negligent and incompetent but also did not demonstrate sufficient Professional skepticism. One of our findings is the fact that the auditors may have stayed for too long on the job and had thus impaired their independence.

Evolving Data Privacy Regulation Landscape

Data Privacy Regulation as of 2018



Source: CCRS Analysis as of Aug 2018 from (DLA Piper n.d.; CNIL 2018; Privacy International n.d.; Hedrich, Wong, and Yeo 2017)

Rapid Growth in Data Privacy Regulation in Asia

Republic of Korea

Revisions to the Act on Promotion of Information and Communications Network Utilization and Information Protection will come into effect in June 2019 and requires information communication providers to take out insurance or hold significant cash reserves in case of a data breach, also imposing up to \$20,000 fines. Korea has an interesting model for loss resolution in that consumers fill complaints with the Personal Information Dispute Mediation Committee, which in turn asks the defendant company to prove the non-existence of negligence or infringement.

China

The Personal Information Security Specification came into effect in May 2018 and lays the groundwork for data protection in China. Still not clear on who the regulatory authority is for data protection; there are some sector specific ones.

Japan

The Act on Protection of Personal Information (APPI) was amended in 2017 and is based on OECD guidelines and EU directives. It sets a maximum fine of ¥300,000. The Personal Information Protection Commission (PPC) acts as the main regulator with a few sector specific regulators involved.

India

India has a patchwork of legislation around data privacy and protection, the latest being the Right to Privacy Law 2014. A key Supreme Court decision and a draft Personal Data Protection Bill show the potential for positive steps forward for consumers. There is currently no central regulator but the draft bill would establish a Data Protection Authority of India (DPA).

Hong Kong

The Personal Data Ordinance was updated in 2012 following the Octopus investigation to strengthen the consent process and increase the maximum fine of \$1 million along with assigning the Office of the Privacy Commissioner for Personal Data as the lead regulatory body.

Thailand

The Thai cabinet have approved the Personal Data Protection Bill in May 2018 that was initially introduced in 2014. The bill is now undergoing review by the Council of State. If enacted, this law features several data protections similar to GDPR. There is no standard regulatory body, but fines can be imposed by the data controller.

Philippines

Privacy is explicitly protected in the constitution and the Data Privacy Act of 2012. The National Privacy Commission acts as a regulatory body. The Data Privacy Act of 2012 set a maximum penalty at \$100,000 but included imprisonment provisions.

Indonesia

The Operation of Electronic Systems and Transactions, 2012 ensures the protection of personal data and obtaining consent, but there is no regulatory authority or fine structure in place.

Singapore

The Personal Data Protection Act 2012 (PDPA) protects consumers personal data but allows the companies to determine the level of protection. Amendments to the PDPA coming into effect in 2019 will limit the collection of National Registration Identity cards. Further, the new Cybersecurity Bill enacted in March 2018 requires critical national infrastructure organisations such as energy, telecoms, utilities, transportation, etc. to report data breaches. These are drivers that are expected to result in cyber insurance take-up rates in Singapore jumping from 10% to 40% by 2020.

Australia

The Privacy Amendment (Notifiable Data Breaches) Bill 2017 requiring mandatory data breach notification started in February 2018 with strict fines ranging from \$360,000 to \$1.8 million with the Office of the Australian Information Commissioner (OAIC) as the central regulatory body.

New Zealand

A new Privacy Bill was proposed in March 2018 to replace the 25-year-old Privacy Act. Although requiring an update, the Privacy Act of 1993 was advanced for its time, regulating how companies use, disclose, and retain personal data. The new bill would require mandatory data breach reporting with fines up to \$10,000 and the ability of the commissioner to issue compliance notices.

Source: CCRS Analysis as of Dec 2018 from (numerous sources)

Pay equality

Employee Compensation

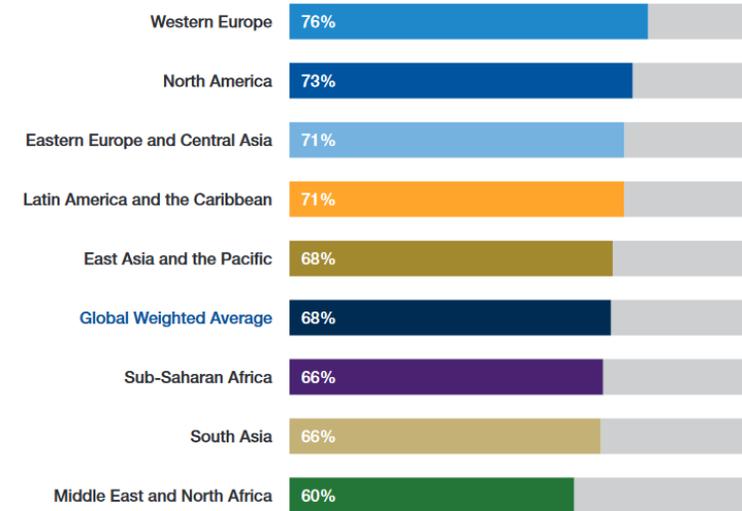
United States

- *Lilly Ledbetter Fair Pay Act of 2009*
- *Paycheck Fairness Act (proposed)*

United Kingdom

- *Equality Act 2010*
- As of April 2017, UK government requires corporates over 250 employees to report on gender pay gap statistics

Global Gender Pay Gap Reporting, 2018



Source: WEF 2018

Asda shopworkers win landmark ruling in equal pay dispute

Caroline Davies

Thu 31 Jan 2019 12:45 GMT

Big or small, all businesses can be affected by the equal pay claim

Guide 7 MAR 2018

Small Business.co.uk

Tesco faces £4bn equal pay bill as claimant numbers swell to 1,000

Sarah Butler

@whatbutlersaw

Wed 11 Jul 2018 17:19 BST

Swiss women strike for more money, time and respect

By Imogen Foulkes
BBC News, Bern

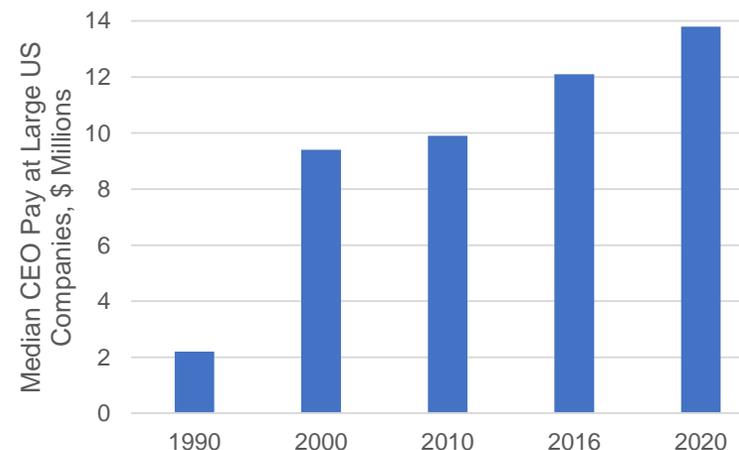
14 June 2019

Share

Executive compensation

- Reporting on CEO and other top executive remuneration and bonus levels is becoming mainstream
- 514% growth in CEO pay since 1990 in US

US CEO Pay Growth



Source: Harvard Law School Forum, 2018

HOME > BIZ > NEWS

JUNE 12, 2019 2:38PM PT

Netflix Shareholders Say No to Executive Salaries, Stock Options

By JANKO ROETTIGERS

Share

Elon Musk got 'paid' \$2.3 billion last year but actually earned \$0, and this shows how complicated CEO compensation has become

Andy Kierze Jun 11, 2019, 10:46 AM

Employee Driven Governance

- Employee relations
 - Fortune 100 Best Companies to Work For
- Google equality saga
 - 2015: Investigated by US Labor Department
 - Found systemic pay disparities against women at Google
 - Labor Department sued Google to hand over salary records in 2017, but dropped the case in early 2019
 - 2017: 3 former employees file lawsuit alleging pay bias
 - Class action that Dismissed in December stating that the claims were too board
 - Jan 2018: Lawsuit is refiled with 4 former employees
 - Claiming that pay bias was done for these positions: engineering, management, sales, and teaching roles
 - Still in courts
 - 1 Nov 2018: Employees also organised a mass walkout to protest sexual misconduct
 - Protestors wanted an end to Forced Arbitration in cases of harassment and discrimination



Antitrust Issues

Recent events

June 27, 2018

U.S. Supreme Court Tackles Two-Sided Markets: Ohio v. American Express

Home » News Updates » Miller: States' Challenge to Sprint/T-Mobile Merger Sets Up Slippery Slope

Miller: States' Challenge to Sprint/T-Mobile Merger Sets Up Slippery Slope

Posted by Alan Miller | Jun 12, 2019 | News

Appeals court backs AT&T acquisition of Time Warner



By Hadas Gold, CNN Business

Updated 2202 GMT (0602 HKT) February 27, 2019



Sainsbury's-Asda merger blocked by competition watchdog

Zoe Wood

@zoewoodguardian

Thu 25 Apr 2019 07.20 BST

Competition and Markets Authority says UK shoppers and motorists would be worse off

'Titans' of Antitrust Policy Clash Over No-Poach Agreements

Skadden Arps Slate Meagher & Flom LLP

USA | June 7 2019

2,665 views | Feb 25, 2019, 03:15pm

Uber Under The Antitrust Microscope: Is There A 'Firm Exemption' To Antitrust?



Hal Singer Contributor
Washington Bytes Contributor Group
Enterprise & Cloud

Potential future changes

- Search Engine Keywords
- Pricing Algorithms
- Data Scraping
- "Killer Acquisitions"
- Vertical Merger Challenges
- Demands for Aggressive Enforcement

Bloomberg



Politics

FTC Official Says Century-Old Antitrust Laws Can Target Big Tech

By Naomi Nix

June 10, 2019, 7:01 PM GMT+1

EC Expert Group calls for changes to antitrust enforcement in digital markets

By Francine Cunningham, Baptist Vleeshouwers

04-2019

Supply Chain Transparency

- Following the Bangladesh factory collapse in 2013 the UK developed reporting requirements around slavery in supply chains
 - The Modern Slavery Act of 2015 has a provision titled *'Transparency in Supply Chains'* that requires corporates in the UK to report on the actions taken to eliminate slavery and human trafficking from their global supply chains
- Not just fashion retail where transparency in supply chains can prevent a scandal
- Consumers asking for supply chain provenance information

ASIA APRIL 24, 2019 / 12:07 PM / 2 MONTHS AGO

Six years after Bangladesh's Rana Plaza disaster, fashion brands urged to pay more

Naimul Karim

5 MIN READ



Major tuna brands failing to tackle slavery in Pacific supply chains - report

Research shows only four of biggest companies in £17bn industry said they conducted due diligence specifically to uncover abuses

Kate Hodal

@katehodal

Mon 3 Jun 2019 14:43 BST

Primark criticised in Germany over poor conditions of Sri Lankan suppliers

Fast-fashion giant's 50th anniversary to be marked by store pickets

Wed, Jun 12, 2019, 02:00

Updated: Wed, Jun 12, 2019, 07:09

Derek Scally Berlin

GOVERNANCE, ROUNDTABLES

Modern slavery campaigners turn to financial services

Elizabeth Fry
June 3, 2019

2013 Horsemeat Scandal Supply Chain



Source: Adapted from The Guardian.com, February 15, 2013, <http://www.theguardian.com/uk/graphic/2013/feb/15/horsemeat-scandal-food-safety?guni=Article:in%20body%20link#>, accessed April 8, 2014.

Graphic: Deloitte University Press | DUPress.com

Carrefour launched food blockchain

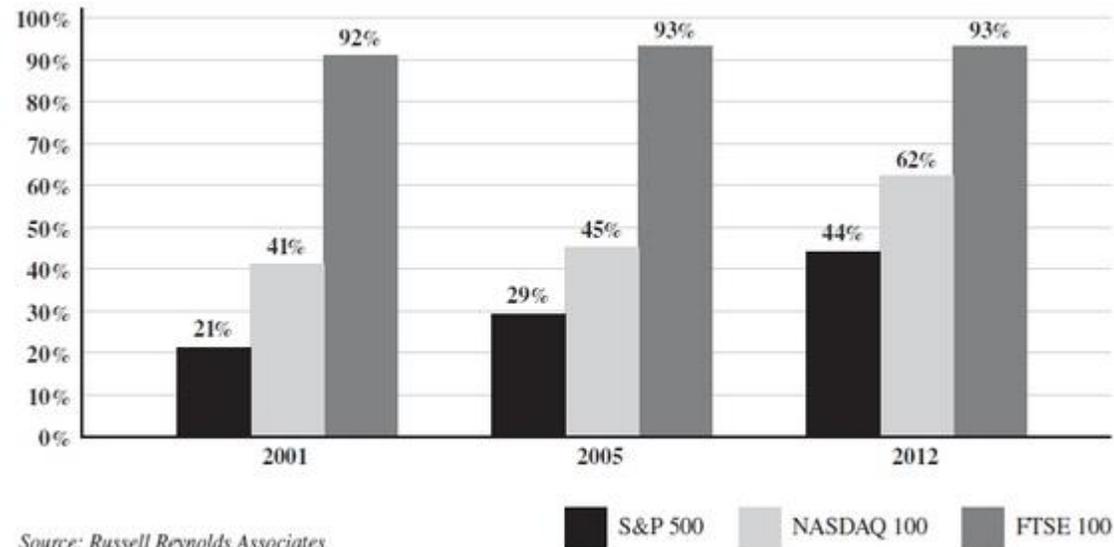


Business and Management Structure

Management Structures

- US companies prefer to have CEO as Chairman of the Board
- While European companies split the roles

% of Companies that Split their CEO and Chairman Roles



Business Structures

- Gig Economy
- Sector Classification

BUSINESS NEWS JANUARY 12, 2018 / 1:05 AM / A YEAR AGO

Facebook, Alphabet shifted in sector classification system

TECHNOLOGY NEWS SEPTEMBER 13, 2018 / 12:00 PM / 9 MONTHS AGO

Uber drivers in Denmark must pay fine for every ride, supreme court rules

FINANCIAL TIMES

Uber's long list of legal woes ahead of its stock market listing

Company still has serious unresolved legal and regulatory challenges
Shannon Bond in San Francisco APRIL 9, 2019

Judges rule against Uber in landmark gig economy lawsuit

The ruling from the Court of Appeals is the latest development in the ongoing legal battle between Uber and its workers

By SANJANA VARGHESE
Wednesday 19 December 2018



Search jobs Dating Sign in Search UK edition

The Guardian

Tesla's Elon Musk reaches deal with SEC over Twitter use

Fri 26 Apr 2019 23:49 BST

The SEC sued Musk last year after he tweeted that he would take Tesla private, which the agency said violated securities laws

Contingent Liabilities

- **Common Lawsuits for Corporates** (Bonner 2018)
 - Employment discrimination and wrongful termination
 - Discrimination suits not based on employment
 - Wage law violation
 - Torts - consider both unintentional torts (i.e. negligence) and intentional torts
 - Breach of contract
- **Areas of Emerging/Evolving Litigation**
 - Employment practices
 - Alleged sexual harassment
 - Cybersecurity
 - Data Security, GDPR, Use of personal information, cyberpsychological behaviour
 - Product liability
 - Climate Change
 - Health
 - Opioid, obesity, salt content, sugar content, clear labelling of risks
 - Product
 - Latent injury, defective products
 - Mental Health
 - Not providing necessary resources, worsening conditions

The rise in event-driven securities litigation — Why it matters to directors and officers

November 12, 2018 | United States

Ohio law creates cybersecurity 'safe harbor' for businesses

By **Michael Kassner**  in **Security**

on January 3, 2019, 10:35 AM PST



CHALLENGE: LIABILITY OVER INDUSTRY 4.0 PRODUCTS' LIFECYCLE IS POORLY DEFINED

Climate Change Lawsuits a Growing Threat: Opinion

By **Sony Kapoor**, Bloomberg View | June 18, 2018

NATIONAL

Attorneys Unveil Plan For National Settlement Of Lawsuits From Opioid Epidemic

June 14, 2019 · 4:27 PM ET
Heard on All Things Considered

BRIAN MANN

J&J ordered to pay \$300 million in punitive damages in talc baby powder case. Vows to appeal

PUBLISHED FRI, MAY 31 2019 · 12:53 PM EDT | UPDATED FRI, MAY 31 2019 · 1:46 PM EDT

Lawsuit: Yale removed depressed student from campus

November 17, 2018

Next Decade of Governance and Regulatory Risks

- Evolving risk reporting requirements
- Continued diversification of accounting standards
- Enhanced data privacy regulation
- Equal pay arguments impacting more and more corporates
- Growing employee engagement in governance issues
- Antitrust laws targeting the Technology sector
- Consumers demanding more supply chain transparency
- US corporates splitting the CEO and Chairman roles
- Advancing litigation risks for corporates



Source: CCRS

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