

FSR CONFERENCE

Compliance tales

Compliance is necessary, but public trust is vital says *Souichirou Kozuka*.

In the last few years, cheating by manufacturers has been a major concern among Japanese consumers. In January 2008, 17 out of 24 paper manufacturers in Japan admitted they had made false representations about the percentage of recycled paper used in their products. Then, six months after admitting it had advertised broiler chickens as natural ones, the famous Japanese restaurant in Osaka, Semba Kiccho confessed to repeatedly offering food left untouched by one customer to the next customer. More recently, packages of eel from China were found to have been passed off as Japanese eel.

It is no wonder compliance has attracted public attention. And there is no doubt that these kinds of fraud will be eradicated. However, if compliance means merely abiding by laws and regulations, it is nothing more than another name for the enforcement of regulations. In addressing this problem, the best mixture of public and private initiatives, civil and penal sanctions, as well as the hard-law and soft-law schemes may be the major issue.

Sometimes, however, compliance means more than merely complying with the law as was the case in Japan's so-called 'unjust' non-payment in the insurance industry. Some insurance claims went unpaid because often the insured and the insurer didn't even realise that a payable claim existed as it was not easy to read the complicated policies accurately. Initially reported in February 2005, most of the providers of insurance services were ordered by the Financial Services Agency to improve their operations.

If compliance means merely abiding by laws and regulations, it is nothing more than another name for the enforcement of regulations.

As a result, the public became distrustful about insurance and this was reflected in the decline in sales of insurance products in both life and non-life insurance sectors.

THE PERCEPTION OF FAIRNESS

The regulation of insider trading has long been an issue. While some commentators argue that allow-

CORPORATE RESPONSIBILITY

Expanding the limits

Efforts to create an international system for corporate responsibility should now be concentrated not on the drafting of yet more rules and standards, but on the strengthening of existing international institutions.

Alice de Jonge's paper (of which this is a brief summary) first outlines the problems with

using standards that are generally not enforceable within national courts to make global corporations accountable. It is argued that at least some of these obstacles could be overcome by strengthening already existing international institutions. Four such institutional structures are examined: the existing regional human rights bodies; the International Criminal

Court (ICC); International Labor Organisation (ILO) institutions and an expanded International Court of Justice (ICJ).

It is increasingly apparent that there is a need for greater clarity at the international level on the extent to which transnational corporations (TNCs) should be held responsible for protecting, respecting and promoting human rights.

If corporate responsibility is to be given meaning, then a common

ing insider trading will make the capital market more efficient, regulators in major economies are not convinced and enforcement appears more stringent than before. This may better be understood when we take the element of 'trust in the market' into consideration. Insider trading, especially when the insider acquires a huge profit as a result, breeds distrust among investors. Recently in Japan, three employees of public broadcaster NHK were reported to have accessed news ahead of its broadcast and traded the stocks of the relevant company. It is more than certain that this harmed the public's trust in the capital market, not only discrediting the reputation of the media corporation.

Regulation is not a panacea for all problems. Take, for example, the issue of sub-prime loans and the overly generous rating of security products. Even without such improper practices the problem could still have taken place, as strict rating does not remove risks but only makes them visible. If the major investment banks did not purchase sub-prime-related products, they might have been acquired by other investors.

In order for the market to function satisfactorily, the proper regulation is a necessary, but not sufficient, condition. It is necessary in the sense that it ensures, among others, the trust of the public in the market. This is the bottom line that we have to bear in mind when we discuss regulatory issues.

Souichirou Kozuka is Professor of Law, Sophia University, Tokyo, Japan.

This article is an excerpt from a paper presented at the Monash Macquarie Financial Services conference held on 18 July 2008.

To view this paper in full, see www.mbr.monash.edu.au.

FROM PREVIOUS PAGE

The lowest-rated motivation was choosing teaching as a 'fallback' career, followed by social influences of others' encouragement.

Participants perceived teaching as a highly demanding career and one that provided for low return in terms of salary and social status. Simultaneously they reported high levels of satisfaction with their choice of teaching as a career. The fact that these pre-service teachers rated highly the intrinsic value of teaching suggests that a teaching career may afford different types of rewards that are not always inherent in other occupations.

For example, teaching may provide a domain where individuals feel they can readily derive a sense of existential significance from their work. Because perceptions were assessed near the beginning of the participants' first year of teacher education, clearly they had chosen teaching as a career despite perceptions of teaching as high in demand and low in return, and despite experiences of others attempting to dissuade them from their choice.

Dr Paul W. Richardson and **Dr Helen M. G. Watt** are both senior lecturers in the Faculty of Education at Monash University.

This is an excerpt from a chapter written by Richardson, Watt, & Tysvaer from research funded by an ARC Discovery Grant awarded to Richardson and Watt (equal co-chief investigators) and Jacquelynne S. Eccles (partner investigator) and by a Monash University Faculty of Education Small Grant awarded to Watt and Richardson.

framework that identifies the rights relevant to business and the limits of a company's responsibility to implement them is required.

In this essay, Dr de Jonge argues that by building on and strengthening existing institutions of international law jurisprudence, mechanisms for defining and clarifying the boundaries of international law when applied to TNCs can also be created.

Some proposals, such as expanding the work of

international human rights tribunals to include scrutinising the activities of TNCs, may be somewhat idealistic in the face of political and resource constraints, but that does not mean they should not be tried.

What might be more immediately feasible is to expand the jurisdiction of the ICC in cases of grievous abuses of human rights to cover not just natural persons, but legal (corporate) persons as well.

Similarly hopeful are proposals for strengthening the supervisory powers of the ILO, and for continuing the gradual reform of ICJ procedural rules to allow increased access to the court by civil society organisations.

Dr Alice de Jonge is a lecturer in the Department of Business Law and Taxation, Monash University.

This is a summary from a paper published in *The International Financial Review*, Volume 9.