Business for the Rule of Law

CONSULTATION WORKSHOP REPORT

LOCATION:
Singapore, Singapore

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HOST/FACILITATOR:
Linklaters and Unilever
Business for the Rule of Law
Executive Summary and Workshop Report

Part I: Executive Summary

1. Business Case for Supporting the Rule of Law
   - The discussion centred around:
     - What does rule of law mean in Singapore?
     - What is the impact of strong rule of law on business in Singapore?

2. Business Actions and Business Examples in Support of the Rule of Law
   - Key points discussed were:
     - Forgoing Economic Opportunity.
     - Liability and “Shame” and the distinction between these two consequences.
     - Top Down Approach.

3. Call to Action (to Business and by Business) to Support the Rule of Law
   - In addition to specific examples, participants discussed supporting rule of law in the following manner:
     - through strong CSR programs;
     - lobbying and participating in the drafting and promulgation of local laws; and
     - liaising with local chambers of commerce, local embassies/high commissions and aid organisations to achieve positive outcomes.

4. Mobilizing Business to Support the Rule of Law
   - In relation to obstacles, the key points participants discussed related to:
     - Long/Medium Term vs. Short Term Goals.
     - Government Restrictions on Freedom of Speech.
     - Local Laws in Certain Respects.
     - Competitive Advantage.
     - Lack of Resources.
Part II: Workshop Report

1. UN Global Compact and Business for the Rule of Law Overview
   • Participants discussed the meaning of “respect” versus “support” in the context of rule of law and how these differed.

2. Business Support for the Rule of Law in Practice
   • Participants discussed various examples around what rule of law means for business on a day to day basis (discussed further under Section 4 below) and the feasibility of a support-based approach.

3. Business Case for Supporting the Rule of Law
   a. What does the rule of law mean in Singapore?
      The following views emerged:
      o **Legal Certainty**: Participants broadly saw rule of law in Singapore as meaning legal certainty, but specifically in the context of business, it meant ease of enforceability. In particular participants agreed that Singapore has a strong rule of law culture, which stands out in the region. Singapore’s strong reputation as to legal enforcement means that it is used as a hub for dispute resolution; it thus facilitates transactions around the region, regardless of whether there is a connection to Singapore.

      o **Impact on the Region**: One consequence of Singapore’s attractiveness to international business arising from its relatively strong rule of law infrastructure is that surrounding countries ‘miss out’ on the investment in and development of their rule of law which comes from international engagement, for example, the development of judicial experience in dealing with more complex financial disputes. Participants considered whether there is some responsibility to export the rule of law to the region; however, it is likely that the need to be financially competitive will result in other countries in the region inevitably seeking to emulate Singapore’s success. For example, Malaysia has invested considerable resources in developing the Kuala Lumpur Regional Centre for Arbitration.

      o **Thin vs. Thick**: However, Singapore should not unequivocally be seen as the epitome of rule of law. It satisfies the “thin” definition of the rule of law in that it has strong state institutions which provide legal certainty. The “thick” definition of rule of law also includes respect for human rights and international norms and standards in the traditional Western sense and Singapore falls behind in this respect. However,
participants did feel that this has the potential to gradually change in Singapore (and may indeed do so, given international pressure).

b. How does business benefit when there is a strong rule of law? Alternatively, what challenges exist for business when the rule of law is weak?

- **Economic Asset**: Rule of law has been described as an “economic asset” to Singapore. In practical terms, this means that management time (and cost) is not spent on dealing with what might be called “rule of law issues”, such as bribery, money laundering, enforcement risk and the like. In conducting business in countries like Indonesia, management is often distracted by this. In Singapore, it can focus on its core business. In short, strong rule of law makes a business more efficient and thus profitable in that jurisdiction. An indirect aspect of strong rule of law in Singapore is also low crime and a high level of personal physical safety, which compares very favourably to countries like India and ensures that everyone is able to participate in the work force (for example, crimes against women are not a problem).

- **Business Certainty**: Multinational organisations prefer operating in jurisdictions with strong rule of law. For example, investment banks would like to operate in a wider range of jurisdictions, but are limited by what are essentially rule of law concerns.

4. Business Action and Business Examples in Support of the Rule of Law

a. Explore the meaning of the business action and how it relates to business.

- **Foregoing Economic Opportunity**: Participants considered the difference between (i) business supporting rule of law through broad CSR activities, and (ii) actually foregoing tangible economic opportunities out of respect for the rule of law. The latter is much more difficult to encourage.

- **Liability and “Shame”**: Two aspects that encourage and motivate business to support rule of law is (i) calculable enforcement liability such as high fines and criminal penalties, and (ii) shame, which can result in a loss of business and damage to reputation. Transparency initiatives can play a great role, for example websites such as ipaidabribe.com in India. Moreover, business could play a better role in providing data to organisations like Transparency International.

- **Top Down Approach**: Participants agreed that the “tone from the top” is of great importance for in-house lawyers trying to promote the rule of law to the business/operations side. A strong management or board that supports lawyers in respecting the rule of law makes a big difference to corporate culture.
b. Explore how the business action can be implemented by business by sharing an actual or hypothetical example.

Set out below are certain points that emerged from the discussion around proposed business actions 2, 3 and 4.

Business action 5 is not so much an issue in the Singapore context, where a very strong legal framework and dispute resolution mechanism around contract and property rights is already in place.

- **Proposed Business Action 2**: Respect and support the accountability of all persons, institutions and entities, public and private, to laws that are publicly promulgated and which are consistent with international norms and standards.
  
  o **Policies and Corporate Culture**: The starting point with respect to implementing rule of law is enacting official corporate values or guidelines and policies (for example, anti bribery policies, sanctions policies, whistle-blower policies, etc.). Several medium and large businesses do put such policies in place. The next step is to ensure that these are incorporated into training for new joiners, with a focus on providing case studies which make it more realistic for those on the business side. Effectively, these policies need to be made a part of “corporate culture”.

  o **“Culturally Normal”**: In practice, difficulties arise when bribery is accepted as culturally normal and when businesses are working with counterparties who accept small acts of bribery as ordinary course. It was noted that this is an important role that multinational organizations can play by educating local partners as to conduct which is internationally condemned and illegal.

  o **Zero Tolerance**: In particular, large companies with market power can set trends; once this is made clear, it actually makes it easier for them; a “zero tolerance” approach lets local officials know that there’s no point in asking for bribes. An example was given of a large corporate in a developing market – everyone at passport control is asked to pay a bribe; but employees of this corporate kept refusing to pay these (and would even leave the country if need be). The “brand” has now developed such that this corporate’s employees are now normally not asked to pay these bribes. This might be called a “compliance brand”. Another example was also provided of a corporate that stopped engaging a local law firm when a lawyer at the firm suggested they pay a small bribe to allow a transaction to proceed smoothly. The law firm was thereafter black listed.

  o **Extending Standards to Counterparties**: However, it was noted that this is easier for larger companies with significant “market power” than for small and medium enterprises (“SMEs”) who might not be able to afford to lose business opportunities. That being said, these standards can be fed down to SMEs through larger companies
insisting on their codes of conduct. Various participants pointed out that they include their code of conduct as part of their contracts with local partners and suppliers (even law firms) and a breach of these codes by them is a breach of contract. Once again, the importance of practical implementation and training was emphasised; rather than simply imposing a code, it’s necessary for foreign corporates to actually conduct training programs with their local partners to ensure that the spirit of the codes are complied with.

- **Proposed Business Action 3: Support and encourage the equal enforcement of the law, and independent adjudication of the law, consistent with international norms and standards.**

  - **Extra-territorial Laws:** A challenge that participants pointed out is complying with the various extra-territorial laws (for example, the FCPA, FATCA and UK Bribery Act) when that could mean breach of other countries’ laws (for example, complying with various disclosure elements of FATCA might mean breaching state secrets regulations in certain countries). It is also not uncommon for local companies to question why they are required to comply with “foreign” laws just because their business counterparties are subject to these laws.

  - **Ambiguous Laws:** One further difficulty that participants pointed out is establishing compliance with local laws when the rules are unclear (possibly in some cases, laws are left intentionally ambiguous). There may be a role for companies to promote clarity as to what the law is and its fair and equal application. This may require dialogue with local regulators and for big corporates to act as aggregators in compiling views and engaging with regulators.

  - **Third Party Disclosure Laws:** Laws that encourage whistle-blowing or disclosure (for example, requiring auditors to publicise such breaches) can, however, be very useful; requiring businesses to have the confidence to be open about these things. If an auditor reports that a breach has occurred, a company with strong compliance may have no objection in acknowledging that the breach occurred, that it was detected and actioned before the auditor even noticed it.

- **Proposed Business Action 4: Support initiatives that make justice accessible to all.**

  A number of organisations are involved in initiatives to support legal access and increasing an understanding of law. Two examples are:

  - a multinational corporation helps to support the Myanmar Centre for Responsible Business MCRB. The MCRB is an initiative to encourage responsible business activities throughout Myanmar. The Centre is a joint initiative of the Institute for Human Rights and Business and the Danish Institute for Human Rights;
o an international law firm supports the Increasing Diversity Through Increasing Access (IDIA) project in India, which targets making legal education more accessible to students from an underprivileged background. IDIA is a nation-wide organisation in India that aims to give underprivileged students real access to quality legal education. In addition to giving these students gainful employment across many sectors, it enables these young people to develop advocacy skills and become effective leaders of, and spokespersons for, their communities — thus helping to bring change not only to the student being trained, supported and mentored but also to the marginalised community that they belong to.

o Other projects that were discussed were “plain English” projects in various jurisdictions to simplify insurance policies and financial products for lay persons.

c. **Are these the correct business actions to include in the Framework?**
   o Yes, we believe so.

d. **Are there business actions that are missing from the Framework that should be included?**
   o **Respect vs. Support:** Participants discussed the differences between “respect” and “support, with the general conclusion being support is a step further and involves actually developing best practices and encouraging them externally as well. It seemed that more clarity was required on the differences between these two concepts to enable a third party to read and understand the full impact of the different business actions.
   o The business actions also needed to be more concise and clearer.

5. **Call to Action (to Business and by Business) to Support the Rule of Law**
   a. **What are some concrete steps business can take to respect and support the rule of law?**
      - In addition to the above, other aspects where business can contribute are:
        o through strong CSR programs that include donating to local charities and volunteering; one point that participants made is that mentoring and internal recognition is required to give CSR and pro bono programs the impetus they need;
        o lobbying and participating in the drafting and promulgation of local laws; and
        o liaising with local chambers of commerce, local embassies/high commissions and aid organisations to achieve positive outcomes.
b. What actions can other actors, including Government, academia and civil society take to improve legal institutions, access to justice, equality before the law, capacity building and other such action?

- **Government:** Government is the obvious actor which could provide further support. Specifically, it could play a stronger role in enforcing anti-corruption laws.

- **NGOs:** NGOs can play an important role in “naming and shaming” offenders but also promoting good behaviour and what characterises this.

- **Academia:** Academia could also engage more closely by (i) improving legal education, from an undergraduate level upwards, (ii) contributing to drafting non-ambiguous legislation based on international best practices, and (iii) provide training to market participants. Participants pointed out that contributions such as these must be pitched at the right level — for example, during the course of a project in Myanmar, it was realised that it wasn’t feasible to just focus on judicial education; indeed the training process in relation to ethics and anti-bribery had to start with undergraduate students.

- An important point that was generally discussed was the ability of these other actors to provide mentorship on international norms and standards at all levels in a country from government, to judiciary to students etc. We discussed the role of academia here and also law societies as well. While they could be stronger, we weren’t sure if they (or indeed other actors) could help with training the judiciary, when many of the issues faced are so entrenched. Other groups like Interpol could also play a role in being a facilitator for the training of enforcement bodies and others.

6. Mobilizing Business to Support the Rule of Law

a. What obstacles, if any, does your organization experience that prevents it from supporting the rule of law in this country or in any other country it has an interest in, such as investments, operations, business relationships?

- **Long/Medium Term vs. Short Term:** While multinational organisations prefer operating in jurisdictions with strong rule of law, this is not true of all organisations and industries. Some companies might prefer, at least in the short term, a lack of rule of law (to ensure cheaper wages, for example). One might query whether this approach is short-sighted, but it remains prevalent in some sectors and enables these business to be more competitive as they know enforcement is weak (for example, garment manufacturing, construction and consumer goods (claims)). It is key to identify the benefits of strong rule of law in the long term, in particular in geographies that will be the next frontiers of business, such as Africa and Myanmar. Participants thought that identifying the impact of rule of law on long-term business sustainability is critical.
Government Restrictions on Freedom of Speech: In some jurisdictions, government clamp-downs make it almost impossible to freely engage in discussions around rule of law. An example was offered that it may not have even been possible to host a consultation like this in some parts of the world, where NGOs and international organisations are treated with immense hostility.

Local Laws in Certain Respects: There are certain local law aspects that international corporates must however deal with, even if these are not supported by their global policies and culture — for example, in relation to LGBT rights.

Competition: Business lawyers are constantly questioned as to why business and operations personnel cannot do certain things if competitors are allowed to. This ties into the discussion above on foregoing economic opportunity if you are perceived to be “difficult” or “non-commercial” compared to other market participants.

Lack of Resources: A lack of resources being made available to in-house compliance teams in emerging markets is also an issue. This may be less of a problem for financial institutions in hubs like London, but for corporates in emerging markets, the business may fail to provide sufficient resources.

b. How can the UN Global Compact, and other actors, support business to take action in support of the rule of law (e.g. information sharing via webinars on specific rule of law topics, in-person events, leveraging online resources, strategic partnerships)?

Roadmap: Consultations such as this and principles drafted as a result lay out a roadmap which businesses can use internally as well as externally (for example, when lobbying or consulting with governments).

Engagement with Regulators: It would also be helpful for the UNGC to engage with local regulators; a collaborative approach between regulators and business on these issues, as in Singapore, tends to be the most effective.

7. Additional Comments, Suggestions or Questions
None.

Workshop Report End