

Major ongoing legislative initiatives

Healthcare

As a primary piece of the Obama administration's platform, the reform of the US healthcare system has been headline news throughout 2009. These potential changes—whose full breadth and implications are unknown at the time of this writing—could change the degree of government involvement in healthcare.

Regardless of one's view as to the best solution for the future of healthcare, most agree that healthcare costs are a significant issue for both individuals and the business community. Even recently when the US economy was in recession, medical costs continued to grow and significantly outpace both inflation and wage increases.

Indeed, the employer costs of healthcare are expected to increase by 9 percent in 2010. As a result, many companies are revisiting their health benefit strategies, a trend that began in recent years. To control costs, some are changing plans and exploring options such as high-deductible health plans, wellness initiatives, and disease management programs. Companies will need to continue to explore such options and additional alternatives regardless of whether government programs ultimately are created.

Directors' action

Understand how pending healthcare legislation will impact your company and its cost of employee benefits, and what options management is considering to manage this significant cost.

Energy and climate change

While details are still unclear, both the Environmental Protection Agency and Congress continue to explore ways to curb carbon emissions. Government agencies have already been asked to reduce their energy usage and to track and report their environmental impact and that of their vendors and contractors. Companies should weigh the potential business impacts of such efforts and how they could influence business operations and strategy.

Companies with sustainable strategies to reduce their energy use can realize bottom-line benefits. Companies in renewable energy and other clean technology sectors will see opportunities to help customers reach their

voluntary emissions reduction goals. Tax incentives, government grants, and loans are already available to encourage companies to invest in “green” technology, and these incentives are expected to continue.

If energy reform continues to focus on regulating carbon emissions at the federal level, the cost of carbon will have a measurable impact on a variety of business activities. For example, companies in heavy-emitting industries may need to invest in technology to reduce future emissions. Most other companies, even those that don’t generate large amounts of carbon emissions, will be affected as their suppliers face increased energy or commodity costs. And companies that deal with end consumers could see more demand for information on the carbon footprint of their products, as individuals focus on the impact of their buying decisions.

If enacted, companies may need to track their activity to comply with new reporting requirements and they will need to develop supporting systems and processes to allow for this expanded transparency and accountability. In addition, separate from any legislative or regulatory activity, shareholders increasingly are asking for greater corporate disclosure about carbon emissions and sustainability activities.¹

The nature and size of the potential shift to a lower-carbon economy mean that more companies will want to have a long-term climate change strategy in place to maintain their corporate reputations and brands.

Directors’ actions

- Recognize that while most companies operate under some environmental compliance rules now, management needs to consider how an expansion of these programs and requirements will affect operations.
- Discuss with management how it is working to use energy more efficiently as part of existing cost-reduction programs.
- Given increasing shareholder, media, and employee scrutiny, understand the company’s message, and be comfortable with the level of transparency on environmental issues.

1. See the “Why care about sustainability” section in *Current Developments for Directors 2009*, available at www.pwc.com/uscorporategovernance.

Increased antitrust focus

The past year saw a marked increase in US government activity around antitrust issues in a wide range of industries. These changes, consistent with the new administration's tougher stance on collusion and anti-competitive behavior, have resulted in record fines during 2009.

The United States is not alone in this focus. A growing number of national anti-competition authorities such as those in Brazil, Canada, China, Japan, and Australia are more active and aggressive in identifying and prosecuting anti-competitive behavior. Also, there is a meaningful increase in the number of countries establishing their own competition enforcement authorities. Further, we see a marked expansion of cooperation among these international bodies.

What factors increase the risk of antitrust allegations?

- **Where the company does business:** Vigorous global enforcement today means there are no safe havens. While more countries are introducing their own anti-competitive programs, the standards for what is acceptable behavior may be different. For example, local market business norms may lead to communications between competitors that in the United States would be considered improper.
- **How the company does business:** Considerations such as high market share, discounts and rebates, price announcements, and collaborations with competitors may be red flags to regulators.
- **With whom the company does business:** Selling products to end consumers through third-party distributors or resellers; contracting with agents overseas; or bidding on large projects, tenders, or long-term contracts could pose risks from the company's own behavior or that of its business partners.

Directors' actions

- Understand how susceptible the company is to antitrust issues based on the nature and geographic spread of operations, the current economic landscape in which the company operates, and how management assesses antitrust risk and monitors compliance with the company's standards and policies on antitrust issues.
- Be comfortable that management identifies and addresses antitrust exposures as changes in the business take place—for example, as the company increases its market share or acquires other companies.
- Understand how management has addressed risk without losing profits, possibly through oversight of agents and enforcement of the company's code of ethics.

The buck doesn't stop with antitrust

Although this section focuses on antitrust, directors should be aware that enforcement of anticorruption laws also has increased. Here again, enforcement agencies from various countries are coordinating their investigative efforts. This is another area of emerging risk that could merit discussion with management. For more information, see *Corruption crackdown: how the FCPA is changing the way the world does business*, available at www.pwc.com.

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