

NEW COMPLIANCE IMPLICATIONS ARISE AS PANDEMIC RESTRICTIONS EASE



Just as the COVID-19 pandemic brought many anticorruption compliance challenges, so too will the recovery from it. Workplaces have been altered by the events of 2020, giving corporate compliance departments much to adapt to, and there is still more to come.

Some organizations have suffered economic damage, with cutbacks and downsizing, and everyone is adjusting after so much working from home, possibly with degradation to their culture of compliance. Add to that the deep backlog of government permits and other approvals still lingering from months of shutdowns, and the conditions are ripe for trouble.

As projects that were deferred during the shutdowns come back online, managers and officials will feel pressure to make up for lost time, creating incentives to cut corners, and opening doors to unscrupulous third parties and corrupt government actors.

CULTURAL AND ECONOMIC DAMAGE MAY DEGRADE COMPLIANCE

The adaptations everyone has had to make throughout the pandemic have now expanded as organizations are negotiating returning to their workplaces or implementing hybrid work indefinitely. Remote work complicates leaders' ability to maintain a strong tone at the top, and with the focus on health and safety over the last year and a half, the culture of anticorruption compliance will need to be refreshed.

In the past, in-person interactions and face-to-face meetings with managers helped communicate a company's commitment to compliance and ethics, but this avenue can no longer be relied on. Even with increasing vaccination rates, business travel is unlikely to return to its former level, given the savings companies saw from border closings and reduced air travel.

Also, depending on the industry, many companies face these new risks with smaller compliance staff and budgets that contracted during the economic downturn the pandemic brought.

DOWNSIZING, LAYOFFS, AND TURNOVER HAVE HURT COMPLIANCE AND INTERNAL AUDIT DEPARTMENTS

Many companies were forced to lay off or furlough employees during the economic slowdown that accompanied the pandemic, affecting compliance departments and contractors at some organizations. At the same time, employee turnover has increased, as furloughed workers found other opportunities, or sought fully remote positions.

Post-pandemic activity is ramping up quickly, and the lack of key people to execute compliance programs heightens the risk of corruption. Companies will need experienced compliance staff to onboard the new wave of third parties who will have to be hired or rehired as business resumes. Employees must do this work expeditiously, without sacrificing due diligence or other third-party processes.

GOVERNMENT BACKLOGS AND PRESSURE TO MEET DEADLINES

After so many months of shutdowns and health restrictions, the backlog of permitting and other approval processes will create new corruption risks. The construction and development field illustrates this well. Many companies have had to pause international projects during the

lockdowns and border closings, and governments may have stopped public works initiatives to devote resources to their COVID-19 response. A sudden increase in these construction and development projects will drive a frenzied bid process, sharpening a familiar corruption risk.

Similarly, as construction restarts, the desire to move quickly must consider likely delays from overwhelmed foreign government agencies. These offices have been closed for months, then partially reopened to deal with COVID-19 issues, and are only now returning to the regular work of licensing, permitting, and inspections. Government backlogs coupled with employees under pressure to seek long-delayed approvals will create the risk of improper payments from parties seeking to expedite their projects.

For example, projects that have been on hold for the last 15 months will pick back up again. As managers and officials seek to make up for lost time, they will shrink timelines and expect more progress sooner. This urgency will create opportunities for unethical third parties and corrupt government actors. It can also incentivize employees to cut corners, and increase the risk of some parties requesting improper payments. To address these risks, compliance professionals should tighten fundamental controls over items such as third-party management and petty cash. They will also need to make larger changes aimed at how their department will need to operate in a post-pandemic environment.

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HOW COMPLIANCE LEADERS CAN RESPOND

These new challenges do not alter regulators' expectations, however. As the US Department of Justice detailed in its June 2020 revised guidance on evaluating corporate compliance programs, compliance functions must be "adequately resourced and empowered," and companies should have a "staff sufficient to audit, document, analyze, and utilize the results of the corporation's compliance efforts."

Build remote work into compliance program

As countries emerge from the peak pandemic and enter the "new normal," COVID-19 restrictions can no longer be used to explain low completion rates for compliance training or delays in regular compliance audits. This "new normal" will mean an increase in remote work for the near future for at least two reasons. First, companies seeing financial windfalls from the recent travel freezes may be more hesitant to approve foreign trips for investigators and internal auditors, since many organizations have performed these functions effectively with people working from home. Second, anticorruption compliance work related to countries where the virus continues to surge will continue to be remote for safety reasons.

Programs must adapt to the ongoing use of hybrid working environments and where local authorities have not lifted travel restrictions in foreign locations. Internal investigation policies, training methodologies, and audit testing procedures may need to change to accommodate remote work on a more permanent basis. For example, large instructor-led training seminars held annually may give way to more frequent small-group videoconference sessions. Similarly, with fewer on-site visits, internal investigators from headquarters will need dedicated resources in foreign markets who report directly to corporate and can keep sensitive inquiries independent from local leadership.

Rehire or restructure

In addition to filling open positions or restructuring departments to adjust to any reduced headcount, companies need to ensure that compliance leaders stay involved with business decisions. Having compliance staff on the payroll means nothing if those employees are not in constant communication with senior management and empowered to veto decisions that pose too great a risk to the company.

Improve communications

Senior management must set expectations for ethical behavior worldwide, regardless of the way a company operates. A strong tone at the top will be no less important, but may require more effort in remote or hybrid work models. Corporate culture can become diluted in a virtual environment when employees and managers have fewer face-to-face interactions.

In-person compliance training will also be more difficult. To adjust, companies must redesign communication and awareness campaigns to maximize their effectiveness in the future. More emphasis should also be placed on employees' duty to report compliance failures and other misconduct via corporate hotlines because companies will receive fewer such reports through conversations at the office or during compliance site visits. And especially as the urgency continues to restart projects and catch up on backlogs, compliance leaders and top executives must clearly communicate that meeting deadlines cannot interfere with compliance obligations, and stress that corrupt behavior will not be tolerated.

AN INFORMED APPROACH LEADS TO BETTER OUTCOMES

Anticorruption compliance programs will need to work hard to manage these changes. Compliance departments that take the time to think through how they will revise and redesign the necessary elements of their programs stand the best odds of emerging from the post-pandemic transition more agile and effective than before.

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