



What compliance programs can do now to prepare for operations in the new COVID-19 reality

Compliance Alert

5 May 2020

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Across the nation and the world, governments are contemplating loosening restrictions on business operations imposed in response to the coronavirus disease 2019 (COVID-19) pandemic. Some jurisdictions, like the State of Georgia, are moving quickly towards reopening businesses, but in most locations the process will be rolled out in phases and may take months – and if COVID-19 cases surge, some predict that non-essential business closures will be re-imposed. Other experts caution that jurisdictions may continue to periodically ease and tighten restrictions for the foreseeable future.

Although many businesses currently remain shuttered or continue to operate remotely, legal and compliance departments are anticipating changes to the anti-bribery anti-corruption (ABAC) and compliance landscape they will face in the COVID-19 era. To prepare for these inevitable changes, there are steps legal and compliance departments can take now – even while working remotely or in locations that are locked down – to prepare for the lifting of social distancing mandates that have required non-essential businesses to close.

Prepare for changes to supply chains

Orders closing business and industries deemed non-essential and the re-tooling of certain factories to manufacture medical supplies has upended traditional supply chains. The result is that many companies may see dramatic changes in their supply chain as they take steps to continue to operate their businesses, or reopen them, as seamlessly as possible and keep pace with demand.

Legal and compliance departments are urged not to wait for full economic re-opening to identify and anticipate changes in supply chains. Where possible, they can anticipate the need to provide goods and services quickly once lockdowns are lifted and begin engaging with and conducting due diligence on new suppliers or distributors now. If new suppliers or distributors are retained, consider beginning to onboard them with compliance trainings and policies before reopening.

Given the increase in government loans and investments in companies occurring during the economic downturn associated with the pandemic, legal and compliance departments are encouraged to take special care to analyze any increased Foreign Corrupt Practice Act (FCPA) or anti-graft law risks. These growing risks may apply to longstanding partners and business relationships as well as new ones. Companies could consider surveying known business partners for any change in structure or monetary fluidity, increased government ownership, or financial interest.

Enhance technology

As legal and compliance departments anticipate re-opening, they may also consider enhanced technology specific to their roles.

Specifically, legal and compliance departments that conduct internal investigations could consider improving technological capabilities for remote data collection and processing, upgrades to technology that digitalizes due diligence where appropriate, and enhanced video-conferencing or communications platforms for conducting remote interviews or meetings. Companies also could investigate other potential tools, such as data analytics mechanisms to remotely identify suspicious trends and conduct transaction testing.

Reinforce existing compliance programs

A hallmark of a successful compliance program is the ability to “land” the message with employees across markets and jurisdictions. Now is the time for compliance officers to engage with the employees in local markets to reinforce that, while it may not be business as usual, it is imperative that compliance standards are upheld. Consider conducting refresher trainings reinforcing ABAC policies, whistleblower hotlines, duties to report noncompliance and the like. Also consider the practicalities of tightening and loosening restrictions, and whether compliance training and monitoring needs to be done differently than pre-COVID-19.

Consider remote investigations

Rather than tabling upcoming or pending investigations for a later date, legal and compliance departments may want to consider implementing COVID-19-specific policies and Standard Operating Procedures (SOPs) for conducting remote or semi-remote investigations where necessary. Among other items, these policies may wish to address the interview types that are appropriate to conduct by video or telephonically, technological considerations, and privacy considerations. More information on conducting remote investigations is available [here](#).

Anticipate austerity

As certain industries see significant drops in their profits, companies may begin to contemplate budget cuts and terminations. Legal and compliance departments will likely not be exempt from austerity measures. These departments are encouraged to contemplate how to maximize efficiencies, where cuts can be made and where the risks resulting from budget cuts may outweigh the rewards. For example, restrictions on internal investigation capabilities could ultimately lead to steep fines down the road in the event of a government prosecution. In recent years, FCPA settlements have topped \$2 billion and compliance program robustness is a factor taken into account in determining settlements.

Prepare for periods of additional restrictions

As many economies anticipate reopening, some medical experts have predicted further waves of illness potentially resulting in re-implementation of social distancing restrictions. When businesses and economies do begin to reopen, legal and compliance departments are urged to look down the road and anticipate potential re-closure. Companies may need to consider temporary changes to their business model in order to minimize the impact of this vacillation.

To prepare for a new normal that could span months or even years, legal and compliance departments are encouraged to consider specific steps that will better position them to tackle the COVID-19-related obstacles that may lie ahead. For instance, establishing an internal COVID-19 task force, whose scope includes evaluating ABAC/compliance risks and needs resulting from the COVID-19 environment, may be beneficial. Legal and compliance departments may also consider developing SOPs that map out phased and fluid approaches to daily operations which can be scaled up or down, and tailored to specific business needs at any given time.

In conclusion, legal and compliance departments do not need to wait for restrictions to be lifted in part or in full before taking action. Early planning and steps that can be taken now will better prepare companies to tackle the ABAC and compliance challenges posed by the COVID-10 environment.

For more information, please contact the authors, your DLA Piper relationship attorney, or any member of our White Collar Practice group.

Please visit our Coronavirus Resource Center and subscribe to our mailing list to receive alerts, webinar invitations and other publications to help you navigate this challenging time.

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