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PERSPECTIVES

# REASSESSING YOUR COMPLIANCE PROGRAMME POST-COVID-19

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> TRACE

With the global economy creeping back to some version of normal as many countries vaccinate significant segments of their populations, many compliance officers are welcoming the return of more predictable budgets. Some companies are clawing back to pre-pandemic bottom lines, while others have recovered more quickly than they planned to, testing compliance departments' agility. Wherever your company falls on this spectrum, it is a good time to re-evaluate your compliance programme and determine where to allocate current and future resources.

## Current enforcement environment

Government agencies show no signs of slowing the pace of anti-bribery enforcement, with 2020 emerging as a record year for the US Foreign Corrupt Practices Act (FCPA), based on the number of fines and penalties issued, and coordination between international authorities at an all-time high. Officials from the US Department of Justice (DOJ) and US Securities and Exchange Commission (SEC) have repeatedly stated that their pipeline of FCPA cases has "never been stronger". US authorities have also maintained that the pandemic is not a valid excuse for lapses in anti-bribery compliance and that their expectations remain unchanged. Their intentions are already palpable. The DOJ and other agencies are actively prosecuting companies in financial crime cases related to the pandemic, including fraud and money laundering.

## Conducting a transitional risk assessment

To meet the expectations of legal authorities and keep pace with evolving business objectives, compliance officers should consider conducting a transitional risk assessment, even in abbreviated form, to identify inefficiencies and inform decisions about resources and budget.

As a starting point, use an index such as our Bribery Risk Matrix to evaluate the business bribery risk associated with the geographic markets in which your company operates, especially noting any recent changes. In conjunction with geographic risk, consider recent enforcement actions, investigations and media reports in your company's industries.

Gather additional information from your company's employees and select third-party intermediaries through surveys and interviews. Consider the risks your company faces specific to the pandemic, such as supply chain changes or the need for new permits and licences that could present opportunities for bad actors to demand bribes.

Internal data can also provide important insight. Review any compliance incidents and hotline reports within the company and among third-party intermediaries from the last 12 to 24 months, and coordinate with other departments and governance functions to leverage existing data.

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## Allocating resources with a tailored approach

To make your compliance programme more efficient, consider how you can allocate existing and future resources to the most salient risks identified by the transitional risk assessment. For example, the level of due diligence your company conducts on a third-party intermediary might depend on the day-to-day risks it faces, how frequently it operates on behalf of your company, its geographic location, the red flags discovered during initial assessment,

the number of government touchpoints it faces and other factors.

Also consider industry, competitor and regional trends, compliance incidents and hotline reports, information obtained from employee and third-party surveys and discussions, and changes in suppliers, agents and distributors. Using this data from your transitional risk assessment, try to identify where gaps in risk mitigation might exist, and be sure to reserve budget and resources to address those gaps. You can also apply qualitative or quantitative methods to systematically rank and prioritise risks.

## Invest in training

Legal enforcement authorities have consistently emphasised that a comprehensive training programme is one of the hallmarks of an effective anti-bribery compliance programme. At a time when compliance officers may not have had frequent contact with international teams or third-party intermediaries, training is particularly important to fortify supply, operational and marketing chains. Continuing to regularly administer virtual training programmes to ensure that your employees and third-party intermediaries share the same baseline knowledge when it comes to anti-bribery, sanctions, anti-money laundering and other issues is a smart investment that may prevent compliance issues from arising in the first place.

The pandemic has demonstrated the need to be able to quickly get new employees and intermediaries up to speed on your company's compliance policies, expectations and responsibilities. Compliance officers should have a plan in place to efficiently train personnel to keep pace with operational changes and provide supplementary training and follow-up where necessary. Some multinational companies attach training requirements for third-party intermediaries to gaps in compliance policies or procedures uncovered during the due diligence process.

## Rethinking third-party risk management

A one-size-fits-all approach to third-party risk management can inefficiently expend budget, slow down business operations and overlook red flags that warrant more scrutiny and monitoring, especially if your company conducts due diligence on a large number of third parties. To make your compliance programme more efficient, standardise internal workflows for different levels of third-party risk, and possibly even for specific risks. Ensure that the workflow and responsibilities at each stage are clear across departments.

Many companies customise due diligence questionnaires to fit specific risk profiles. A questionnaire for an intermediary operating in a high-risk geographic area, for example, might vary slightly from a questionnaire for an intermediary in a low-risk geographic area. Additionally, standardising internal workflows to determine next steps for third-party intermediaries with different levels of associated risk, and even specific risks, can make risk mitigation more successful. Make sure there is a clear delineation of responsibilities at each stage across departments.

## Empowering the compliance function

Legal enforcement authorities have repeatedly stated that compliance teams cannot operate effectively if they are siloed off from the rest of the company. To truly be useful, the compliance function should have a seat at the decision-making table and be integrated with other functions across the company. Compliance responsibilities should be led by a senior-level employee who contributes to the C-suite level decision-making process. Compliance personnel should have awareness of operations across the company, communicate regularly with other teams and have access to data from other departments.

## Remaining agile

As you make decisions about resource allocation, be sure you can justify any changes in budget, personnel or prioritisation. For example, it would be difficult to defend a decision to reduce compliance staff by 50 percent if the company's overall staff were only reduced by 10 percent. Conversely, as the economy recovers and your company hires more staff, ensure that your compliance team is reinstated proportionately.

Additionally, as a best practice generally but especially when your team has limited resources or is making decisions quickly, keep detailed records of compliance decisions and their justifications in case your company needs to defend its actions later.

## Looking ahead

With environmental, social and corporate governance (ESG) regulatory requirements under development in several countries, many compliance officers find themselves in uncharted territory as they try to prepare for uncertain reporting standards and appeal to investors, consumers and other stakeholders. As you rethink your compliance programme post-pandemic, get creative and use existing internal resources to address compliance risks beyond anti-bribery without significantly increasing spend.

Much of the framework for ESG data collection already exists within anti-corruption compliance programmes, and companies should identify points of overlap to address ESG risks such as human rights and sustainability. For example, some companies can modify existing third-party due diligence questionnaires to include other ESG topics and solicit responses from one point of contact. These questionnaires can help identify gaps in ESG policies and procedures that may warrant training, monitoring or increased scrutiny.

Consider also mapping out your company's internal workflow for ESG due diligence, data and risk management, and reporting. As with anti-corruption, delineate clear responsibilities across departments or advocate for hiring personnel, such as a chief sustainability officer, where necessary.

While the regulatory future may be uncertain, your company will be in a better place if you are prepared and already have an efficient, effective anti-bribery compliance programme. Conducting a transitional risk assessment and rethinking budget, staffing and other resources is an excellent place to start as compliance evolves with the global economic recovery. R&C

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