

Addressing Ethics And Compliance Risks In Uncertain Times

By **Audrey Harris, Matthew Alexander and Juliet Gunev**

In this time of health and safety crisis management, stretched supply chains, business uncertainties, closures and remote work, integrity standards are of utmost importance. Ethics and compliance functions can be indispensable guides, problem-solvers and value-add partners in helping companies effectively and securely navigate a new risk environment.

The COVID-19 response presents an opportunity for dynamic ethics and compliance teams to engage in new ways, and highlight the value case for compliance by applying:

- Strategic issue-spotting to highlight changes in a company's risk profile;
- Tailored approaches to support the business through the emergency period;
- Partnering in problem-solving to mitigate pressure and promote conduct accountability;
- Transparent and credible communication to bring perspective on consistent values and recognized challenges; and
- Often-untapped sources of team knowledge, systems and vantage points that can advance both business and compliance objectives.



Audrey Harris



Matthew Alexander



Juliet Gunev

Pressure and Perspective During COVID-19: Supply Chain and Sales Force

The current environment of pressure and loss of perspective can act to exacerbate ethics and compliance risks throughout a company's business model, from supply chain to sales and distribution. Ethics and compliance teams can best respond to these rapid changes by acknowledging that it is far from business as usual, spotting changes to risk profile, and finding ways to relieve pressure while promoting conduct accountability.

Supply Chain: Recognizing Risk — COVID-19 Is Not Business as Usual

Throughout the supply chain, companies dealing with COVID-19 disruptions may see normal supplier due diligence being suspended and emergency protocols put in place, raising concerns of exposing companies to potential increased legal and reputational risk for supplier acts of corruption, human rights conduct or restricted party dealings.

While these shifts in supply chain bring with them additional risk touch points, risk is also created by ignoring the changes in the business and global industry environment (which make up the company's risk landscape), and responding with status quo packages, timelines and expectations. This includes the risk of circumvention and exile (loss of

visibility) of critical ethics, compliance and legal second-line functions.

To avoid this, ethics and compliance functions need to partner with the business in strategic issue spotting of changes to risk profile, allowing compliance personnel to:

- Understand which parts of the supply chain are impacted, and to what degree (i.e., standard protocols may continue to work in some if not most areas for some industries);
- Effectively prioritize preexisting risks against new emerging areas in an evolving environment — as now more than ever, if everything is top priority, conversely nothing is;
- Address what standard protocols may have already been forgone and where, and put look-backs and appropriate monitoring in place; and
- Make efficient decisions on risk-based tailored protocols or emergency procedures (or look to leverage what's already being used in complementary areas like quality and safety controls) that take into account the new risk landscape.

In this context, tailored approaches may be required to support a business through the emergency period. But it is important that steps are also taken to avoid the urgent becoming the new normal. When considering interim protocols, focus on making supported and documented decisions about:

- Risk-based application;
- How long those protocols will be in place (even if only up to an initial review point);
- What initial mitigation measures are required (e.g. limiting the term of new supplier contracts under exigent procedures); and
- Post-emergency retrospective steps, or look-backs, needed to bring emergency period decisions appropriately into line once the business and risk profile stabilizes.

Sales and Distribution: Finding Ways to Relieve Pressure and Promote Conduct Accountability

Mounting uncertainties and financial pressure on sales forces (and agents) dealing with the global impacts of COVID-19 can skew perspective and ethical decision-making. Improper payments, creative accounting, self-dealing and inappropriate business conduct are some of the risks that can seep through the cracks created by the pressure of unforeseen emergency conditions.

Compliance can focus on helping the company to build leadership and process pillars to relieve the pressure, and detect areas vulnerable to cracking, including via:

- Active leadership tone-at-the-top messaging reinforcing company values, leadership's support for team members to escalate issues, and making it very clear

that any calls to get it done or make it work in times of crisis do not amount to a waiver of health, safety and integrity requirements;

- Institutional measures to relieve pressure (or spread it more evenly) by clear communication of realistic priorities and timelines for key employees in danger of being overwhelmed with workload, and recognizing that individual performance score cards and bonus targets precrisis will be adjusted or reset, including emphasizing performance consistent with values; and
- Scheduling short-term, milestone-based feedback loops, and reassessing monitoring, review and audit plans in light of the new risk environment to assist in maintaining both risk relevance and continuity amid radically changed conditions.

Compliance Value During COVID-19: The Seat at the Table, Even More Valuable When It's Virtual

Ethics and compliance teams will be challenged to maintain line of sight into key business risks in a crisis-driven remote work environment. At the same time, ethics and hotline triage, reporting engagement and matter response — whether human resources issues, initial inquiries or internal investigations — will also be impacted by the COVID-19 crisis, increased reporting and remote work.

Maintaining compliance value is key in these uncertain times and can be achieved by:

Staying Visible

Maintaining line of sight and real-time integration during remote work presents real challenges, with communication plans, proactive reach-outs and business leadership's intentional inclusion of ethics and compliance teams essential for maintaining the visibility for team members to play active roles in a continually evolving dynamic.

External communication should also not be forgotten as to compliance program influencing and presence with joint ventures, subsidiaries and key third parties (like suppliers and distributors) — whether promoting contacts, hotlines or reach-out phone calls to share experiences and information or resources.

Anticipating Changes in Reporting

In-house ethics, reporter response and investigation teams need to be prepared for an escalation in the nature and volume of whistleblower, HR and hotline reports as periods of rapid change are liable to drive new conflicts of interest, business or workplace conduct issues, and behavioural issues.

This means preparing for a potential increase in staffing (including outsourcing to investigators or legal services where needed) to review, triage and implement organizational feedback loops to respond to escalating trends in near real time.

Effective Remote Response and Investigation

Triageing appropriately (including getting highest risks escalated and new trends on short feedback loops), and providing both timely and transparent responses to reporters and employees is critical. This may mean updating automated or category-based responses to

ensure key areas get the timely response required.

As dealing with the immediate crisis and new working structure takes up time and resources, inquiry and investigation response time is also likely to increase. Being flexible in the way internal investigations are done, including prioritizing what can be done remotely and progressing things via local in-house or external legal and investigation resources, will require leader planning and flexibility.

Finally, with increased flexibility and remote work, care should be taken to maintain appropriate standards of confidentiality (and compliance with whistleblower protection and privacy laws).

Cross-Function Coordination

Coordination between staff responsible for ethics and compliance, legal, supply, finance, health and safety, and human resources areas will be key to getting consistent messaging and response and avoiding dropping balls in stretched times, as an increase in incidents and related reporting can be expected across the board. Leaders of these teams have to lead by example, present a united and agreed plan with designated swim lanes of accountability and demonstrated willingness to work cross-function.

Offering Untapped Compliance Resources as a Value Add

When under pressure, previous investments in effective compliance simplification, proactive planning and crisis response can show their worth. Compliance systems, information and people are a great source of leverage in these times that businesses can forget about.

Ethics and compliance often have a view into the various parts of the supply chain and the company, and may be a business strategy resource to help with continuity and response. Be alert to these opportunities as they arise and offer to assist where helpful in the spectrum of emergency protocols and updates being instituted by the business.

Conclusion

Companies across the globe and across industries are currently finding themselves under unprecedented challenge when dealing with the rapidly evolving COVID-19 epidemic. The importance of ethics and compliance in this time of emergency management, business uncertainties and changed working conditions must not be allowed to lose visibility or priority.

By stepping up and highlighting their value, dynamic ethics and compliance teams will assist their companies in better navigating the emergency while ensuring that the impacts are not exacerbated by potential legal or reputational consequences down the road resulting from a disreputable third-party dealing or a drop in internal standards today.

Audrey L. Harris is a partner and co-leader of the global anti-corruption and Foreign Corrupt Practices Act practice at [Mayer Brown LLP](#).

[Matthew J. Alexander](#) is a partner at the firm.

Juliet Gunev is an associate at the firm.

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