

Crisis-Proofing Your Compliance Program—Five Key Questions

以危机检验你的合规体系——五个关键问题

April 27, 2020
2020年4月27日

Anti-corruption/FCPA
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Companies should ask themselves five key questions about their compliance programs to ensure they are ready to face any crises—including the coronavirus pandemic—and be ready for current and future business disruptions.¹

就合规体系而言，企业应当自问五个关键问题以确保其体系已准备好应对任何危机（包括新冠病毒全球疫情，下称“新冠疫情”）以及当前及未来的业务中断。²

The Covid-19 pandemic and responses, including social distancing and stay-at-home orders, bring to the forefront numerous challenges for compliance programs that rely on face-to-face contact and getting compliance professionals on the ground in business operations.

新冠疫情及响应，包括保持社交距离和居家命令，凸显了依赖面对面交流、需要合规专业人员深入业务运营的合规体系面临的诸多挑战。

Companies facing these challenges should consider how effectively their programs function during crises.

面临这些挑战的公司应当考虑在危机期间其合规体系的有效性如何。

Below are five questions companies should ask to help “crisis-proof” compliance programs for Covid-19, natural disasters, and other significant business disruptions.

为了在面临新冠疫情、自然灾害及其他重大业务中断事件时建立“抗危机”的合规体系，公司应当提出以下五个问题。

Have You Assessed Compliance Risks Posed by Crises?

贵司是否评估了危机构成的合规风险？

Covid-19 has placed immense financial and operational pressures on businesses. Meanwhile, governments face unprecedented challenges managing their responses, supply chains are disrupted, and companies have rapidly transitioned to remote working. These pressures and challenges can increase compliance risks on numerous fronts.

¹ The English version of this [alert](#) was first published in *Bloomberg Law* on April 27, 2020. The alert was originally authored by [Jennifer Saperstein](#), [Benjamin Haley](#), and [Sarah Crowder](#).

² 本文的英文版本最初在 2020 年 4 月 27 日刊登于《彭博法律》。本文的原作者是 [Jennifer Saperstein](#)、[Benjamin Haley](#) 和 [Sarah Crowder](#)。

新冠疫情给企业造成了极大的财务和运营压力。同时，政府在管理其响应方面面临前所未有的挑战，供应链中断，企业快速过渡到远程办公。这些压力和挑战可能在诸多方面增加合规风险。

For example:

例如：

- Government processes (e.g., licenses and permits, customs clearances)—which present compliance risks in the best of times—are subject to increased strain, or worse, not functioning at all. This increases administrative bottlenecks, leading to operational pressures and increased corruption risks. Uncertainty about the application and scope of stay-at-home or lockdown regulations leaves government officials with increased discretion and may present temptations to seek improper benefits.

在最好情况下也会存在合规风险的政府流程（如执照和许可、清关）面临的压力增大，甚至完全无法运作。这增加了行政瓶颈，导致运营压力和更大的腐败风险。居家或封锁法规的不确定性让政府官员有更大的裁量权，以及面临寻求不当利益的诱惑。

- Significant supply chain disruptions may cause companies to consider new business partners or restructure existing arrangements. At the same time, companies may explore more frequent or larger donations of goods or services. Compliance personnel may find themselves under pressure to deviate from or significantly expedite existing due diligence and other compliance procedures.

大规模供应链中断可能导致企业考虑新的业务伙伴或重构现有安排。同时，企业可能会寻求更频繁或更大的商品或服务捐赠。合规人员可能会发现自己面临偏离或大大加快现有尽职调查及其他合规流程的压力。

- Personnel operating under increased pressures may be more inclined to make questionable ethical decisions to generate business or simply “get things done.”

在更大压力下工作的人员可能会更愿意为了获得业务或仅仅是“完成任务”做出有违道德规范的决定。

Assessing the immediate compliance risks posed by Covid-19 and business recovery efforts, and taking appropriate mitigation steps, is critical. This type of risk assessment need not be as formal and structured as periodic risk assessments undertaken in the normal course of business.

评估新冠疫情和业务恢复努力构成的直接合规风险以及采取适当的减轻风险措施十分重要。此类风险评估无需像正常业务过程中进行的定期风险评估那么正式和有序。

For example, one way to proceed is to conduct regular check-ins with key business leaders involved in the company’s crisis management efforts, exploring the types of government interactions and challenges they are facing, and associated compliance risks.

例如，一种方法是与参与公司危机管理的主要业务负责人定期联络，探讨与政府互动的类型及其面临的挑战，以及相关的合规风险。

Do You Have the Right Resourcing and Structure?

贵司是否有正确的资源和结构布局？

In times of crisis, important decisions are made quickly and under stress. A heightened emphasis on critical business priorities risks pushing compliance down the priority list, and it may prove more difficult for compliance personnel to engage management and employees. Ideally, compliance professionals will have a seat at the table with business leaders so they can spot and address compliance risks as new business strategies and solutions are

discussed.

在危机期间，重要的决定往往是在短时间内和有压力的情况下做出的。对重要业务优先事项的进一步强调使合规退居次要地位，合规人员与管理人员和员工的沟通可能会更加困难。理想的情况下，合规专业人员有机会与业务负责人面对面沟通，从而在讨论新业务策略和解决方案时发现和解决合规风险。

While crisis situations may not be the optimal time to realign reporting lines or increase headcount, companies should assess whether compliance personnel are represented on crisis management teams, compliance resources can easily and immediately be deployed across the organization, and employees outside of the compliance function can be “deputized” to carry out compliance responsibilities.

虽然危机情形不是重新调整报告线或增加人手的最佳时机，但企业应当评估危机管理团队中是否有合规人员的代表，合规资源是否能方便迅速地在整个企业内部得到部署，以及合规部门之外的员工是否能“代理”执行合规职责。

Do You Have a Crisis Management Plan?

贵司是否有危机管理计划？

Companies should be prepared for the reality that crises like Covid-19 will disrupt normal compliance program operations, particularly those relying on in-person interaction. Compliance functions should consider developing crisis management plans to ensure program continuity, looking to best practices from other company functions more experienced with such plans, such as corporate security.

企业应当准备好面对以下现实：诸如新冠疫情的危机会扰乱正常的合规体系运作，尤其是那些依赖当面交流的运作。合规部门应当考虑制订危机管理计划以确保体系持续运行，并借鉴较熟悉此类计划的其他公司部门（如企业安保部门）的最佳实践。

While the substance of a crisis management plan should emerge through an assessment of how compliance processes might be disrupted and the steps necessary to mitigate disruptions, in all circumstances such a plan should address communication protocols. For example, it may address issues such as how compliance functions can remain visible, ensuring that employees are aware of compliance resources and reinforcing the company’s commitment to compliance. There may be pressure to cancel or delay certain proactive compliance activities such as risk assessments, trainings, or audits so that the business can focus on responding to a crisis. A crisis management plan can help compliance teams make risk-based decisions on which activities reasonably can be delayed while ensuring that pressing risks are addressed. Crisis management plans may also address ways to expedite or adjust key compliance processes — such as third party due diligence — to the extent necessary, without raising unacceptable risks.

虽然危机管理计划的内容应当基于合规流程可能如何被扰乱以及对减小扰乱的措施的评估，但在各种情形下，此类计划都应当涉及沟通方案。例如，计划可涉及的问题有合规部门如何能发挥有效作用，确保员工了解合规资源以及巩固公司对合规的承诺。合规部门可能会面临要求取消或延迟某些积极合规活动（如风险评估、培训或审计）以便企业集中精力应对危机的压力。危机管理计划可帮助合规团队在确保紧急风险得到处理的前提下就哪些活动可以合理延迟做出基于风险的决定。危机管理计划还可包括在必要时且在不引起不可接受风险的前提下加快或调整关键合规流程（如第三方尽职调查）的方法。

Are You Effectively Leveraging Technology? 贵司是否有效地利用了科技？

With businesses transitioning to remote working, many compliance professionals have quickly adjusted to conducting work that is typically done in person (e.g., witness interviews) by video or audio conference. This poses challenges, particularly with document-intensive interviews, and companies should consider technology investments that enable high-quality interactions and secure content sharing.

随着各企业过渡到远程办公，许多合规专业人员也迅速地做出调整，将通常需要当面进行的工作（如证人访谈）改以视频或音频会议的方式进行。这对于涉及大量文件的访谈构成尤其大的挑战，因此企业为了实现高质量的互动及内容安全共享应当考虑科技方面的投资。

Companies should also consider how ordinary course compliance consults and reporting may be affected if employees are not interacting in person. For example, companies may consider increased use of electronic portals or mobile apps through which employees can seek compliance advice.

企业还应当考虑，如果无法与员工当面沟通，则正常情况下的合规咨询和报告可能会受到影响。例如，企业可考虑增加使用电子门户或手机应用程序，以便员工能够寻求合规建议。

If companies experience decreased reporting of compliance incidents, they should consider whether this results from decreased commercial activity or limitations in their reporting channels.

如果企业出现合规事件报告减少的情况，则应当考虑这是否是商业活动减少或其报告渠道受限造成的。

Finally, companies can consider investment in technology solutions (e.g., data analytics platforms) to enable compliance monitoring without being physically present. In addition to enabling companies to better detect and prevent corrupt payments, such systems can help catch fraud and embezzlement, which often increase in times of economic stress.

最后，企业可考虑对技术解决方案（如数据分析平台）进行投资，从而实现无需亲自到场的合规监控。除了让企业能够更好地发现和防止腐败付款外，此类系统还有助于发现欺诈和贪污行为，这些行为在经济压力下往往会增多。

Are You Continually Assessing if Your Program is Crisis-Resilient? 贵司是否持续评估贵司的体系是否能灵活应对危机？

Compliance professionals are intimately familiar with the notion that their programs should not be static, but should evolve with changes in the company's business. With this concept of continuous improvement in mind, it is wise to consider how resilient their programs are to crises.

合规专业人员十分熟悉以下理念：其体系不应当是静态的，而应当随公司业务的变化而调整。鉴于这一持续改良理念，有必要评估其体系应对危机的灵活度如何。

For example, just as companies consider how effective their programs are in meeting the challenges of expansion into new markets or business lines, they can seek to assess how effectively their programs have responded to the challenges of Covid-19 and other crises, and make enhancements in light of lessons learned. This need not be a standalone exercise, but rather can be accomplished through targeted lines of inquiry in a company's ordinary course efforts to assess the effectiveness of its program.

例如，正如企业评估其体系在应对新市场或业务线拓展的挑战时效果如何一样，他们也能设法评估其体系在应对新冠疫情及其他危机时效果如何，并基于所吸取的教训进行改良。这并不需要单独的行动，只需通过公司评估其体系有效性正常流程中的有针对性的调查工作来完成。

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If you have any questions concerning the material discussed in this client alert, please contact the following attorneys:

如果您对本客户期刊中讨论的材料有任何疑问，请联系下列律师：

<u>Jennifer Saperstein</u>	+1 202 662 5682	jsaperstein@cov.com
<u>Ben Haley</u>	+27 (0) 11 944 6914	bhaley@cov.com
<u>Sarah Crowder</u>	+44 20 7067 2393	scrowder@cov.com
<u>Eric Carlson (柯礼晟)</u>	+86 21 6036 2503	ecarlson@cov.com
<u>Helen Hwang (黄玉玲)</u>	+86 21 6036 2520	hhwang@cov.com

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