



Here today and gone tomorrow? Integrity and anti-corruption in the private sector post covid-19



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Governments are already contemplating life after lockdown and are keen to permit as many businesses as possible to resume operations, ramp up global trade once more, and to galvanize their economies as best they can - even as forecasts about global recession get bleaker by the day.

As economic activity resumes, what will be the effects of the pandemic on the health and well-being of corporate integrity standards and anti-corruption compliance? What support will companies need or want in the post-covid economic reality?

Does Horrid History Help?

Looking forward makes it tempting for policy makers to look back to similar periods of economic misery such as the fallout following the Spanish Flu, the

Great Depression, or the long shadow of the economic downturn after the financial crisis in 2008. Whatever these new or re-cycled economic recovery programmes entail, there are bound to be implications for anti-corruption compliance. Laws introducing new compliance standards followed the 2008 financial crisis, but the changes experienced by companies in the last 10 years or so that have influenced anti-corruption compliance are profound and exceed the scope of the policy making that has followed these historical examples.

These changes were not only the result of new laws around the globe criminalising corporate bribery inspired by the OECD Bribery Convention and the ensuing explosion of interest in anti-corruption compliance. They were also more comprehensive and included:

- digital developments in all aspects of business conduct, such as interacting with customers, suppliers and other third parties;
- broader questions of the company's role in society;
- corporate governance;
- behavioural science.

These are just some of the transformations that have influenced anti-corruption compliance, ethics and the notion of acting with integrity over the last decade.

Default positions

Some of these developments might be ditched, diluted or extended in the coming years, with implications for corporate standards on ethics and integrity. It's not likely to be all bad news. It may be a rather mixed bag of opportunities and potential pitfalls and backtracking. Here are some thoughts on some possible scenarios from that mixed bag:

The law will remain the law

If it turns out that an organisation paid bribes, perpetrated fraud or tried to shore up its finances through improper practices allegedly as a result of the hardships caused by the pandemic, covid-19 will not provide a justification. Enforcement of laws addressing corruption and other forms of corporate crime will continue. Companies should not therefore neglect their anti-corruption implementation efforts. It might in fact be a time to consider more collaborative approaches like Collective Action – see below.

Prosecution authorities might be keen to get back to work, but some governments may inflict financial cuts that could affect the capacity of law enforcement to pursue investigations. Government cuts to stymie effective enforcement or weak political will to support anti-corruption laws are nothing new, as OECD reviews on enforcement of anti-bribery laws indicate, but may be more evident in a post-covid world. Increased corporate pressure on home governments to support efforts to re-establish business in foreign markets could see backtracking by some governments when it comes to pursuing corporate corruption cases.

Survivors due to sustainable principles

Corporate leaders who are genuinely convinced that integrity in business is essential to success are well placed to weather the effects of the economic downturn and get ahead in the post-covid economic environment. This is because such companies are more likely to have a culture that welcomes employees “speaking up” and actively listens when they do. Being open to receiving new ideas and engaging with employees to find solutions and suggestions encourages innovation.

In other words, companies that can adapt, are agile and are known to have ethical and sustainable approaches to business, including strong anti-corruption compliance principles, have a competitive advantage. They may even have undergone similar challenges in the past and learned from their experiences and learned from their experiences when developing enhancements to their ethics and compliance programme.

Robust principles aren’t always enough to keep a company alive. Some industry sectors are more vulnerable than others, and companies with financial or other problems might also struggle however good their compliance programme is. Flexibility and continuity planning based on a robust business continuity plan that envisages a wide variety of serious risk scenarios may also give some companies the edge to bounce back more quickly than their competitors.

From an anti-corruption perspective, companies that have well-designed and mature compliance programmes are potential mentors for their supply chains and business partners: they represent the good examples and offer inspiration to others. They can help others to meet the same high standards and create a level playing field by sharing and collaborating in Collective Action.

More state-owned companies

As governments promise ever larger sums of money and rescue packages to shore up their economies, there will be a surge in state support and bail-outs of some industries. This will lead to an increase in government influence in company ownership. The high levels of corruption risks in SOEs are well documented by the OECD and others. Increased due diligence and a critical eye on governance will be crucial for any organisation entering into business with an SOE. This is essential in any case to properly identify and mitigate bribery risks, but especially important with new SOEs that emerge from the covid-19 crisis. Message to CEOs: don’t assume that an SOE that was previously privately held still has the same ethical standards in government hands – you may be in for a rude and costly awakening.

SMEs will need support to attract investment and enter new markets

There can be little doubt that many micro or small and medium-sized enterprises (SMEs) will not survive either the lockdown or the resulting

economic meltdown. SMEs that do manage to stay in business may not have anti-corruption compliance at the top of their “to do” lists, but business survival mode should not be at the expense of good practices.

In any case, smart SMEs can use their compliance and anti-corruption credentials to make themselves more attractive to investors, enter into business partnerships and develop their capacity to enter new markets. Schemes like the UK’s Business Integrity Initiative are designed to support SMEs do exactly that.

Increased vertical integration

The pandemic lockdowns soon revealed weaknesses in supply chains and reliance on a single source for essential components and products. Governments, citizens and some companies were taken aback by the deleterious knock-on effects of having outsourced production to suppliers that had to cease production due to the pandemic. This led to unethical behaviour in some cases – including accusations of “piracy” – and possibly involved bribery in others. Substantial increases in cargo costs as shipping options diminished have had severe consequences for many companies around the globe.

Already before covid-19, large companies were increasingly aware of such dilemmas and choke points. So they may well now speed up decisions to own more – or all – of their supply chains to avoid such risks in future. For integrity and anti-corruption compliance this could have various implications:

- Current anti-corruption laws and compliance standards make companies **responsible for third parties** that offer, pay or promise improper advantages to government officials. Having a coherent and comprehensive anti-corruption compliance management system implemented throughout an integrated chain of companies would be a dream come true for a chief compliance officer. Alas, achieving a homogenous, fully implemented set of standards is likely to be as challenging as ever. Streamlining of ownership won’t remove all the factors that determine bribery risks – such as the diversity of the supply chain or its sub-sectors, different business models and the locations where business is conducted.
- The **reputation risks** in vertically integrated structures could be affected in both directions. On the one hand, the company will have more reputation to lose if a scandal breaks, and so might be more motivated to protect it with a decent compliance programme. On the other hand, the capacity to cover it up and manage the disassociation process may be greater in a complex structure.
- The **immense economic power** that these vertical structures are likely to wield could raise corruption risks. This could arise through the leverage that such conglomerates can exert when it comes to local prosperity and employment, enabling them to demand special conditions from local and national governments. These could relate to financial advantages such as tax privileges, or preferential terms for permits or licences that will induce the conglomerate to keep operating in certain cities or regions.

Examples of such behaviours abound in countries where multinationals have already paved the way with such requests. To expect highly powerful conglomerates to act with impeccable ethical standards at all times and throughout their operations would be naïve. **Good governance**, robust anti-bribery laws and effectively implemented anti-corruption compliance standards are therefore essential to hold such organisations to account.

- **Antitrust issues** seem to have been less of a concern to competition authorities compared to horizontal risks - at least so far - but this may change if vertical integration becomes more common and hinders competition.

Special treatment for strategic industries?

Political considerations about what is a key or strategic industry post-covid-19 might change in response to lessons learned from weaknesses in public health systems, supply chains and procuring essential goods. Experience shows that strategic industries often enjoy a proximity to governments that can be unhealthy when it comes to transparency, bribery risks and competition. The use of lobbyists by strategic industries can also raise additional challenges. Due diligence, robust procedures and good advice on how to handle potential risks will be invaluable.

A perfect storm is best weathered together

It almost goes without saying that increased vertical integration with an SOE at the top of the chain in a newly designated strategic sector would be the perfect anti-corruption compliance storm. It may or may not be a realistic scenario. But before compliance goes under and is drowned in such a tempest, there are opportunities for anti-corruption compliance in whatever the new economic reality turns out to be.

One such opportunity is Collective Action. In an economic tight spot, the need for cost-effective solutions to compliance issues is more pressing than ever. Anti-corruption Collective Action not only between the private sector and governments, but also between private sector actors themselves, can offer opportunities to address issues of common interest in a cost-effective and pragmatic way.

Obvious issues that are best tackled together could be identifying and eliminating new risks from new ways of working, or sharing ideas on the best training practices for a weakened supply chain. For examples and advice on this area, the Basel Institute hosts the B20 Collective Action Hub and offers free advice on anti-corruption Collective Action.

After the storm

The covid-19 pandemic has destroyed lives and livelihoods around the world, and will continue to do so in the future. Yet companies can also take the post-covid world as an opportunity not just to start operating at full

power once more but to reconsider how they do business and how their anti-corruption and compliance programmes fit into this new world order. Establishing a strong, ethically based culture to develop business and enter new markets will be an investment worth making.

The Basel Institute has worked with companies and other organisations of all sizes, sectors and from around the world for almost 20 years to help prevent or weather compliance and corruption crises. We know how hard it is for organisations to be under immense pressure, juggling multiple issues while working to stay in business and regain customers in the face of fierce competition. And we know that compliance officers are going to have a challenging time keeping their company's integrity and anti-corruption compliance steady against the wind and waves of the post-covid world. Whatever the future holds – and we're still being told that the only certainty is uncertainty – the need for good compliance officers with pragmatic and solid approaches will remain.

Contact our Head of Compliance, Corporate Governance and Collective Action Gemma Aiolfi at gemma.aiolfi@baselgovernance.org if you feel like you're cast out at sea and would like some advice on compliance needs and opportunities in the post-covid world.

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