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Regulatory and Litigation impact

Recovery from COVID-19

The rapid disruption of the global economy has accelerated existing business issues to a crisis point and created problems that were unthinkable. Many companies are grappling with multiple operational, financial, and humanitarian problems from displaced workforces, supply chain disruption, and third-party contractual obligations to business insurance issues and share price declines. Clients will be considering rapidly evaluating various governmental stimulus programs as they relate to their company, industry, and geographic situation.

And all of this is happening at a rapid pace with organizations moving from respond to recover to thrive creating scenarios that have serious financial and reputational repercussions for companies navigating the COVID-19 environment. Issues to consider include contending with bad actors intent on committing fraud, waste, and abuse and other financial crimes; governments bringing regulatory actions related to stimulus funding; complex business disputes; and arbitration actions materializing between companies and class action suits being brought by the trial lawyer’s bar.

What is unique to the COVID-19 situation is the compressed timeframe in which these issues could occur, meaning companies may have to contend with multiple issues at the same time, many interrelated.

The good news is that by considering the risks now and effectively planning, many organizations may be able to avoid or reduce the cost of such events on their reputation and bottom line. More importantly, there is an opportunity to create real future value out of these issues such as contract rationalization, streamlined/strengthened supply chains, enhanced fraud prevention and risk management, and litigation mitigation protocols.

The first step is to understand what issues companies are most likely to face within their respective industry sectors. Deloitte tapped into its global network of professionals and industry leaders to gather input from the field on the type of COVID-19 legal and regulatory issues in six industry channels. All industries are expected to experience some degree of fraud, waste and abuse; financial crime regulatory enforcement actions; complex business disputes against other companies and the state; employment disputes; and state/aid competition issues. The chart below outlines other expected industry specific issues.



While the specific areas of concern will be varied and nuanced for each organization and industry sector, the following provides direction in the type of issues companies may likely face. Within those issues fall several broad considerations:

Disputes and Litigation

There are myriad actions resulting from the impacts of COVID-19, but key themes include:

- Operational issues such as contractual obligations, business and supply side disruptions and insurance claims
- Government stimulus program funding policies that may set up contentious situations between commercial and governmental entities
- Class actions may be brought around issues of securities fraud, employee health and welfare and product safety
- Troubled M&A transactions may generate issues such as purchase price disputes, valuations and insolvency
- There may be an increase in alternative dispute resolution and mediation activity
- Online disputes and remote hearings may increase

Fraud, Waste, and Abuse

Perhaps the greatest threat to companies in the COVID-19 world is bad actors going undetected -- because undetected, they can cause great harm.

Pre-COVID-19, emphasis was typically on reactive investigations that respond to specific allegations and focused on mitigating past malfeasance. Proactive prevention of future issues did not receive the same level of attention in many cases.

Today, that has changed. Establishing effective misconduct monitoring is critical considering the shifting regulatory and economic environment in a data-driven world. Good intentions are often impeded by data quality and volumes, diversity of sources, scarce domain and analytical skills, and perceived expense of technology and training.

We know from three decades of experience working on some of the largest engagements in history that companies should consider embracing advanced analytics and artificial intelligence to identify adverse events coming out of COVID-19. This early intervention can enable them to mitigate the impact of fraud, waste, corruption, and abuse - reducing losses and reputational damage.

Investigations

To enable a quick response to COVID-19, many legal and regulatory frameworks were relaxed or shifted, requiring a careful assessment by companies on how those laws and regulations should be interpreted working with legal counsel.

Since social distancing and work at home protocols will likely remain in place, companies will need to continue to remotely conduct investigations, depositions and other witness information gathering. Technology-driven solutions are available to help perform data and information collection and analysis, as well as provide virtual connectivity for interviews and collaboration needs. Companies should weigh the advantages and disadvantages of the tools used.

Data Analytics and Technology

Sophisticated data analytics capabilities are central to every company's response to legal and regulatory scrutiny; litigation; and internal fraud, waste, and abuse situations. Using tools such as intelligent automation, machine learning, and artificial intelligence to understand the flow of data across the organization can help improve situational awareness of COVID-19's impacts to improve decision making and reduce the burden on staff. Some important technology and analytics applications to consider are:

- Asset tracing of misappropriated funds, where a quick data informed response can reduce the impact of lost assets
- Claims administration systems that enables affected companies to react quickly and scale up and down depending on the requirements
- Contract extraction and analytics to identify contractual clauses that provide valuable insights to mitigate operational and economic risks
- Proactive and reactive eDiscovery system to perform local, remote, or covert data collections to identify, preserve, collect, process, analyze, and produce electronic and paper data in discovery

Action steps to consider



Understand current state of regulatory and legal frameworks that may have been adjusted as a result of COVID-19



Conduct an early risk assessment around litigation and fraud, waste and abuse exposure

- Be sure to assess in the context of global, regional and local business practices and legal/regulatory framework



Assess whether current operations and strategies are adequate to address that risk. This should include scenario and business continuity planning and risk sensing



Take steps to fill gaps in the event an action is brought against the company and develop appropriate reporting and metrics to track effectiveness of programs



Consider scaling of state-of-the-art data analytics and data capture technologies to detect and mitigate fraud schemes, and create ecosystems designed to promptly identify and respond to fraud risks



Institute proactive anti-fraud programs, risk assessments, policies and procedures, training and awareness campaigns and internal controls and testing



Consider analytic technology tools and integral administrative management of mass litigation



Understand how the financial impact of the disruption caused by COVID-19 could have potential to disrupt a merger, acquisition, or disposal



Assess whether COVID-19 had created issues with contractual obligations between two parties



Consider analytic technology tools and integral administrative management of mass litigation

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