

ABC – beyond the horizon

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Getting to grips with the "new normal" needn't be guess work or a pursuit of the clairvoyant. While much remains uncertain, understanding how anti-bribery and corruption (ABC) issues will develop in 2021 need not be. We have surveyed our internal practitioners – from Singapore to Washington, D.C., and everywhere in between – and include here their forecasts on the key ABC trends.

One of the most difficult aspects of the COVID-19 pandemic, indeed, any sort of crisis, is the fog of uncertainty that surrounds what happens next. Without some sense of the direction in which events are travelling, we struggle to make the right decisions.

Given that uncertainty, our clients are desirous of future visibility. Understanding that, we have tried to look "over the horizon" on ABC issues. By way of example, see our [Global Bribery and Corruption Outlook](#) and [High Seas: Steering the Course II](#) publications that reflect our ongoing commitment to preparing clients for ABC trends to come.

In particular, *High Seas: Steering the Course II* draws from the perspective of leading global companies to explain how they achieve growth amid complex regulatory and compliance environments. The detailed study examined the views of 700 chief compliance officers, heads of legal, or equivalent from multinationals across Europe, the United States, and Asia, and is the sequel to a research exercise we conducted in 2016.

In Southeast Asia we wanted to develop this research given that we are now in the throes of the pandemic. Circumstances have arisen that our respondents did not have to tackle when they originally responded to us. So, we conducted a mini-survey of our own.

We asked our ABC specialists across Hogan Lovells in Asia and the Pacific to opine on what the next 12 months will bring. The responses we received suggest we should expect the "new normal" to feature:

1. **More profiteering, employment action, and fraud.** In jurisdictions such as Vietnam, lawyers observe a "wild west vibe" to compliance and ethical business practices. For example, since the advent of COVID-19, there has been a large increase in individuals and entities with questionable credentials acting as brokers of personal protective equipment, a sizeable proportion of which is finding its way into foreign markets.

Businesses have also sought to use government-declared force majeure events to terminate employees and reduce costs. Some of these actions will inevitably come under scrutiny in the months to come, emphasizing the importance of ethical termination and thorough due diligence today.

2. **Heightened government risk and review.** Interactions with public officials will be a source of increased risk, especially in jurisdictions where official misconduct was already frequent. Lawyers in Indonesia notice several companies giving grants to the government, sometimes via third parties, ostensibly to help it contain the spread of COVID-19. The difficulty, however, is that these transactions could provide cover for bribery, corruption, or other forms of improperly influencing officials.

At the same time, regulators will continue to take action to enforce laws. Asia-focused practitioners in the United States highlighted that the Department of Justice and Security and Exchange Commission released [a new edition of their guidance on the Foreign Corrupt Practices Act in July 2020](#). The guidance hints at more "long arm jurisdiction" on the part of these authorities when dealing with suspected or actual breaches of the all-important ABC law. [Former federal prosecutors and current Hogan Lovells partners Peter Spivack and Ann Kim covered this topic at length in the August edition of this publication](#), particularly foreseeing more individuals in the crosshairs of regulators.

Moreover, as lawyers in our Singapore and Vietnam offices point out, governments have had to hastily draft and just as hastily update or replace laws, regulations, and guidance on how to conduct business during the pandemic. Coming to terms with "uneven enforcement" and "gray zones" will remain a challenge as local, regional, and international situations evolve.

3. **Technological governance.** All surveyed expressed concerns about the dismantling of corporate governance mechanisms. Our teams in Australia and Vietnam witness a "weakening of internal controls in businesses due to staff cutbacks or remote working," resulting in new opportunities for fraud.

The adoption of new technologies has been at the heart of most businesses' responses, but that is not to say the process has been easy – or successful. Attorneys based in Singapore, Washington, D.C., and other commercial hubs, who regularly address clients' ABC issues from afar, have remarked that "pivoting to compliance programs that are implemented, monitored, and evaluated remotely" can be challenging.

We are unlikely to see any quick fixes anytime soon. Software that tracks employee behavior and other personal data may seem attractive at first. However, they bring "cybersecurity and privacy risks," not to mention changes in workplace cultures. These competing concerns [have led practitioners to advocate a mixed approach](#), involving both a refresh of old-fashioned internal controls and the gradual implementation of new technologies.

4. **Crisis and crises.** Most of the lawyers we surveyed predicted that "crisis response and management services" are likely to experience the most growth over the next year compared to other ABC offerings (investigations and regulatory and compliance advisory services garnered the second and third most votes, respectively). This result reflects the complexity of the current crisis or, more accurately, crises.

Far from being "just" a public health issue, the pandemic has triggered massive political, economic, and social disruption that will affect companies differently depending on their context. In this regard, our Singapore team has in just over six months assisted clients on matters ranging from government-imposed closures of operations to the departure of key

legal and compliance personnel, and from the management of employees affected personally by COVID-19 to heightened regulatory inquiry.

The fallout from COVID-19 has, and will continue to be, messy. What we can do is counsel you on what to expect and assist you to prepare accordingly. A compliance forecast, then.

Hogan Lovells, reporting live. Stay tuned, and stay well.

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SEA View

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