

CORONA, COMPLIANCE AND CONTROL – HOW TO PREVENT THAT TODAY’S COVID-19 CRISIS CAUSES TOMORROW’S COMPLIANCE CRISIS

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In the pandemic, many undertakings must focus on survival and need to maintain liquidity, which demands ongoing earnings and control of costs.

Ongoing earnings are hard to achieve in a global economic downturn. No doubt that the ubiquitous and ever-present legal risks associated with being in the business of doing business have significantly risen in all undertakings during the past months.

On the cost side, senior management may now feel tempted to suspend all expenditures which are not immediately contributing to the bottom line. Of all possible cost savings, compliance expenditures would seem a bad choice.

Considering the temporary nature of the pandemic, all undertakings will soon gear-up their operations and try to get back into a “business as usual” mode. This can successfully be achieved, if discipline is maintained during the crisis, including compliance discipline. And this can only be achieved, if the compliance function remains fully operative and effective. Getting compliance wrong during the crisis exposes undertakings to high legal risk during the critical phase of ramping up the business.

In summary, all undertakings should now focus on liquidity, compliance and controls in order to remain viable as businesses during the crisis and there-after.

Here are our key suggestions for all undertakings to control legal risk:

- **Confidential business information must not be shared with competitors** (i.e. information on prices, margins, inventory levels, suppliers, clients, etc.)

- **Undue advantages must not be offered or accepted** to promote sales, secure or release (preferential) payments, push project execution, etc.
- **Undue preferential treatment of creditors** and any and all **payments and asset transactions which lack proper business justification or are decided in conflict of interest situations** must strictly be avoided.
- **Insider transactions** – i.e. exploiting confidential business information for the purchase/sale of publicly traded shares and derivatives – must strictly be avoided.

Compliance professionals should remain in touch with management and employees and continue advising them on the many compliance conflicts and challenges the crisis creates. Discipline during the crisis will pay off.

Effective compliance management is more important now than ever and will make a big difference after the crisis. Not only the fittest but also the most disciplined will survive.

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