

Compliance: an ally for crisis management

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Compliance: an ally for the management of the COVID-19 crisis

The COVID-19 health crisis has led us to an unprecedented situation, resulting in great uncertainty, not only for regular citizens, but also for the normal development of business activity. It is clear that these extraordinary circumstances pose a great challenge for society and most companies in every sector.

Therefore, Compliance Programs –understood as that set of internal rules or procedures whose purpose is to prevent, manage and control the legal risks to which companies are exposed while developing their activity– can be important allies when it comes to facing and mitigating the effects of a crisis situation.

It is precisely in times of instability when we must intensify and increase prevention and regulatory compliance in our organization, adapting our systems and compliance programs to the new scenario we face, striving to ensure the highest standards. Compliance is a strategic tool of great value for determining, strengthening and preserving corporate culture; in broad terms, corporate governance, business ethics, corporate social responsibility and reputation risk.

Therefore, the way in which the company manages this unexpected situation internally, from a perspective that is not only preemptive but also proactive, trying to anticipate and minimize the potential impact of the crisis on the brand, the speed with which it implements the appropriate measures, the devise of contingency plans, action plans or business continuity plans, for example, will be decisive factors for business sustainability and continuity.

In the face of the crisis caused by COVID-19, companies must make a real effort to reinforce the evidencing of the due diligence of these compliance programs and identify the new threats and risks they face, carrying out a thorough effort to understand them and the scope of their importance. In this sense, the analysis of the new applicable regulations, the identification of new risks, the categorization of responsibilities, the definition of roles and the planning of new procedures, the implementation of measures aimed at protecting themselves against possible cyber-attacks, the review of data protection policies, the measures for the prevention of occupational risks and the health of employees, the assessment of financial measures, etc. will be key elements to manage the crisis.

Therefore, more than ever before, it is advisable to review compliance programs in order to adapt them to the current circumstances. For example, it would be advisable to:

- Update the regulatory framework and scope applicable to the activity, the sector and the impact of the regulatory framework derived from the State of Alarm on the organization and the business.
- Document and reinforce the evidencing of the adoption of those strategic and business decisions in matters of corporate governance and comply with the general duty of diligence of the directors.
- Review and update the Compliance Program, adapting it to the new situation and the new risks arising from it, and analyze the possible financial impact.
- Reinforce existing controls in the company and adopt new measures to minimize the impact of COVID-19 on the organisation.
- Identify and prioritize those areas of the company that are most vulnerable and have been directly or indirectly affected by the situation arising from the COVID-19 crisis.
- Establish a two-way communication system with our collaborators, employees, customers, suppliers and third parties with whom the company has a relationship in order to report on possible changes, measures and actions taken by the company.
- Update and adapt the hygiene and safety rules in the workplace.

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- Analyze the terms and conditions of commercial and contractual relations with the company's stakeholders, i.e. third parties, suppliers, subcontractors, etc., as well as the contractual risks derived from COVID 19 and the degree of compliance required from these parties.

- Review and adapt the correct implementation of the policies and procedures already adopted in the organization.

As a result, the company will have to face these changes by restructuring its internal management and control procedures, ensuring that the whole organization is aware of the new risks and guidelines for action, through a clear, continuous and two-way internal communication system. It is advisable to establish appropriate communication channels for the dissemination of the new measures adopted by the company, and inform about the regulations issued by the Government.

Likewise, documented procedures should be established for the organization to be able to respond, recover, resume and restore the level of operation of its predefined activity before the crisis through the implementation of alternative work policies such as home working, the reorganization of the production means or the establishment of the necessary guidelines and instructions to guarantee the protection measures for those employees who continue with the activity (either in person or remotely), as well as to analyze and respond to the contractual contingencies that may arise with customers, suppliers and other third parties with whom the company has agreements that may be affected by the crisis situation.

Prevention and timely reaction will significantly reduce the magnitude of the consequences that could arise from the current situation, and a good internal organization capacity can avoid additional risks or damage to reputation that, in many cases, can be significantly more harmful than the possible legal implications -whether administrative, civil or even criminal- that could be imposed on the company.

In brief, the fact that a company adopts measures and reacts, reinforces and adapts its compliance programs -in light of the impact that the COVID-19 crisis may have on its activity- is a good indicator of its corporate compliance culture. It shows its willingness to create a protection framework in the face of certain situations, increasing the confidence of the market, customers and suppliers, as well as the security among its workers, all of which are factors that indicate the existence of a high degree of corporate compliance and commitment for the future.

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Marimón Abogados is a law firm founded in 1931 that offers legal services in all areas of law and has offices in Barcelona, Madrid and Seville.

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