Gartner for Legal & Compliance Leaders

2020-2021 Legal Compliance and Privacy Risk Hot Spots

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Context for the Report

Objective

Our Legal, Compliance and Privacy Risk Hot Spots identifies emerging risk areas that legal leaders should anticipate during the next 24 months.* Our research enables legal leaders to improve the following:

- **Board and Executive Education –** Educate the audit committee or full board on trends affecting your business with material legal, compliance and privacy implications that will impact oversight responsibilities and company performance.
- **Risk Identification and Assessment –** Use the Hot Spots report to uncover areas of increasing risk exposure and as an input into legal, compliance and privacy risk assessments.
- **Legal, Compliance and Privacy Strategic Plans –** Guide team discussions, develop 2020 and 2021 plans and allocate resources against the most significant risks.

*In this report we will use the term “legal leaders” to refer collectively to legal, compliance and privacy executives.

Methodology

Based on member and expert interviews, member surveys, social media analytics and secondary research, we’ve identified the 15 hot spots featured in this year’s report as areas of increasing risk exposure for your organizations over the next two years. These hot spots reflect trends in the business environment that create or exacerbate the legal, compliance and privacy risks your functions are tasked with managing.

To help you manage your response, our report includes:

- An overview of each hot spot outlining the emerging trend
- Key implications for legal, compliance and privacy functions
- Impacted risk categories to inform your risk assessments
- Concrete action steps to help you proactively manage risks
- Conversation partners and starters to help you and your team engage with key partners in understanding and managing these emerging risk hot spots

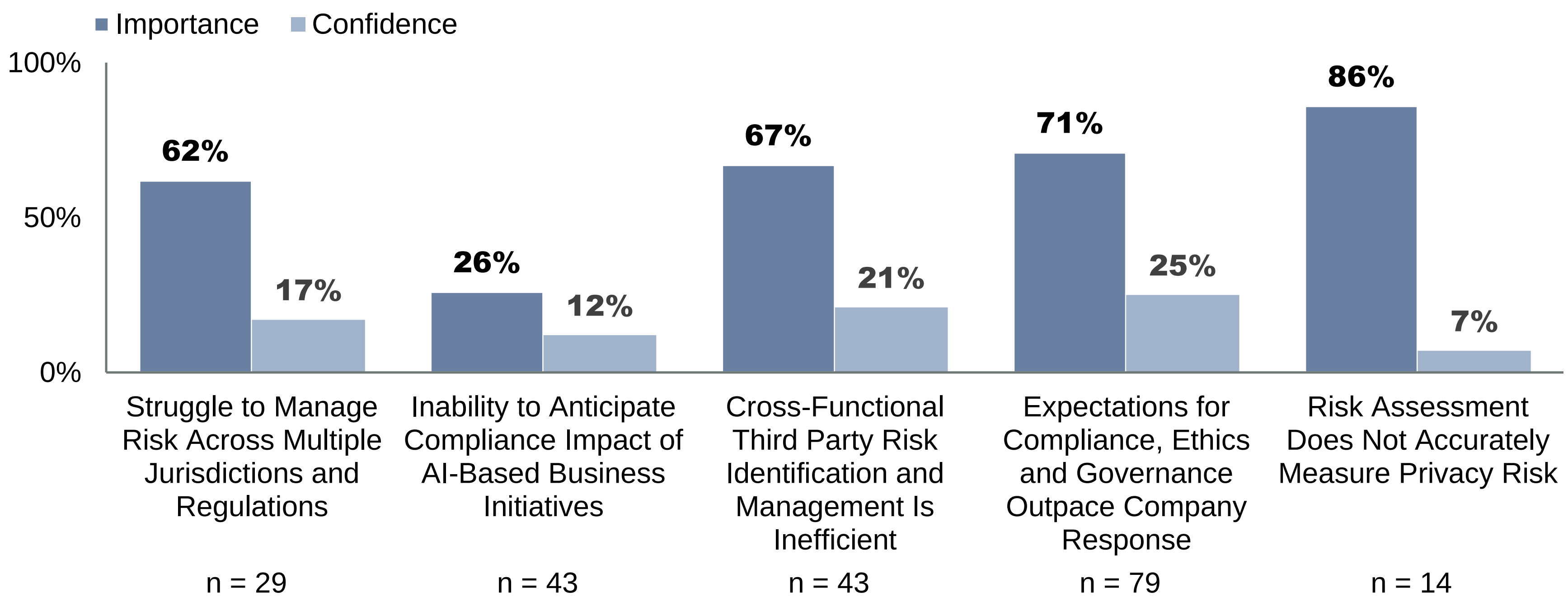
Hot Spots Reflect Concern About Ability to Manage Key Risks

Importance-Confidence Gap in Legal Leaders' Priorities

Percentage of Respondents

Hot Spot Themes

Heightened regulatory, trade and recession uncertainties complicate risk analysis.	New tech applications prompt clash of efficiency and ethics.	External change escalates complexity of compliance.	Rising social consciousness leads to new stakeholder demands.	Advances in data processing heighten risk to businesses and consumers.



Source: 2019 Gartner Legal and Compliance Agenda Poll

Executive Summary

To help legal leaders understand the current risk environment, we've identified the fifteen trends featured in this report as risk hot spots that will create or exacerbate legal, compliance and privacy risk. We believe these hot spots will warrant your attention in the coming two years.

Our report focuses on the implications of these trends in 2020 and the action items leaders will need to take to better prepare legal, compliance and privacy functions to respond. While individual hot spots may affect some industries or markets more or less significantly, all apply broadly across industries, geographies and corporate operating models. Five major themes underlie these hot spots:

1. Heightened Regulatory, Trade and Recession Uncertainties Complicate Risk Analysis
Organizations today are operating in an environment of unprecedented uncertainty. Regulatory uncertainty, geopolitical volatility, and macroeconomic uncertainty combine to make it more difficult for legal leaders to assess and manage risks of the organization at the same time that fast, proactive responses to emerging risks are becoming more crucial to success.

Hot Spots Include: Trade Barriers as a Policy Tool, Patchwork Regulation in Key Areas, Heightened Recession Chatter

2. New Tech Applications Prompt Clash of Efficiency and Ethics
Organizations are increasingly able to create new capabilities and value through technological advancements using big data and analytics. Yet growth in these technologies continues to outpace clear regulatory and ethical consensus, leaving organizations struggling to balance current value against the potential for crossing an as yet undefined line.

Hot Spots Include: AI Implementation Without Clear Guidelines, Employee Monitoring Reducing Trust, Growing Consumer Demands for Data Privacy

3. External Change Escalates Complexity of Compliance
As organizations have increasingly adapted their business models to rely on the capabilities of third-party partners and contingent workers, the business ecosystem has become more complex. Recent regulatory developments are creating increased vulnerabilities through these relationships, leaving organizations open to more risk.

Hot Spots Include: Shifting Classifications for Gig Workers, Increased Complexity of Nth-Party Ecosystem, Unpredictable FCPA Enforcement Patterns

4. Rising Social Consciousness Leads to New Stakeholder Demands
Gone are the days when stakeholder demands on organizations focused primarily on increasing shareholder value. Today organizations are being pushed to do more, creating great opportunities for those who can navigate these new demands successfully. But this is difficult, and the consequences of getting it wrong are steep as stakeholders, from employees to investors, feel more empowered to demand change.

Hot Spots Include: Rising Employee Activism at Work, ESG as a Corporate Expectation

5. Advances in Data Processing Heighten Risk to Businesses and Consumers
As privacy risk gained increasing prominence, regulatory frameworks and customer attention drove organizations to focus largely on data collection to manage risk and protect information. As both regulators and customers increase their attention on how organizations combine, analyze and otherwise use this information, data processing is on pace to surpass data collection as the primary source of privacy risk for organizations.

Hot Spots Include: Increasing Use of Biometrics as Identifiers, Rising Threat of De-anonymization, Emergence of Data Lakes, Expanding Definition of Personal Data

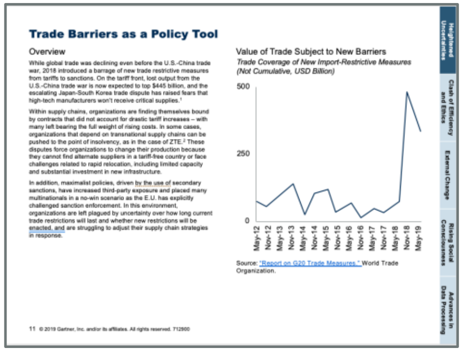
Hot Spots Summary

Category	Hot Spot	Implications
Heightened Regulatory, Trade and Recession Uncertainties Complicate Risk Analysis	Trade Barriers as a Policy Tool	• Legal leaders must advise in uncertain terrain. • Diminished viability of total compliance. • Increased need to support organizational agility.
	Patchwork Regulation in Key Areas	• The cost and complexity of compliance will increase. • Relationships with local regulators matter more. • Growing importance of legal as a strategic consideration.
	Heightened Recession Chatter	• Scenario planning is critical for success. • Downward pressure on department resources. • Vendor solvency and management concerns. • Increased likelihood of noncompliance during a downturn.
New Tech Applications Prompt Clash of Efficiency and Ethics	AI Implementation Without Clear Guidelines	• Need for better governance of AI-driven decision making. • Managing AI risk requires new strategies. • Legal leaders need new skills to manage risk effectively.
	Employee Monitoring Reducing Trust	• Greater necessity for legal review of monitoring projects. • Appropriate communication with employees is vital. • Increased third-party access to sensitive employee data.
	Growing Consumer Demands for Data Privacy	• Need for increased transparency about data use. • Need for increased monitoring of third parties. • Create mechanisms to surface and respond to consumer feedback.
External Change Escalates Complexity of Compliance	Shifting Classifications for Gig Workers	• Increased complexity of regulatory tracking and compliance. • Managing a larger audience for compliance training and communication. • Organizations are more exposed to collective action.
	Increased Complexity of Nth-Party Ecosystem	• Liability is extended across the nth party network. • Third-party relationship managers need better training and tools to surface new risks. • Urgent need to strengthen controls related to data sharing.
	Unpredictable FCPA Enforcement Patterns	• Organizations must continuously analyze enforcement actions. • Increased scrutiny of due diligence for third-party accounting standards. • Closer partnership with audit and finance is needed.

Hot Spots Summary (Continued)

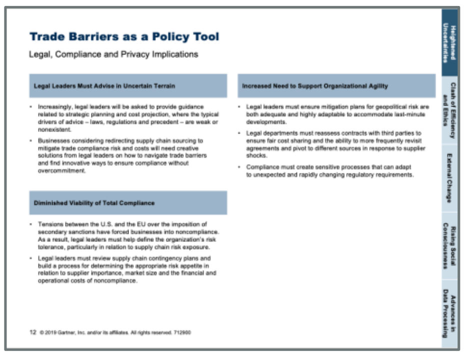
Category	Hot Spot	Implications
Rising Social Consciousness Leads to New Stakeholder Demands	Rising Employee Activism at Work	• Higher stakes for managing polarized stakeholders. • Foster meaningful communications channels. • Changing norms guide new policies and behaviors.
	ESG as a Corporate Expectation	• Onus is on organizations to determine what sustainability means. • New strategies needed to engage activists and stakeholders. • Legal leaders must identify and prepare for ESG risks.
Advances in Data Processing Heighten Risk to Businesses and Consumers	Increasing Use of Biometrics as Identifiers	• Thresholds for using biometrics. • Need for improved crisis response plans. • Higher stakes for data breaches.
	Rising Threat of De-anonymization	• Current risk strategies are coming under pressure. • Growing risk in public-private data sharing. • Increased need for data analytics skills and expertise. • Prioritization of legacy data protection.
	Emergence of Data Lakes	• Better governance of data lakes to reduce low-quality data. • Data processing black holes require new strategies.
	Expanding Definition of Personal Data	• Focus data strategy on high-risk, high-value data. • Increased risk from third-party use of personal data. • Increased collection of consent for broader range of data.

Anatomy of a Risk Hot Spot



The overview includes necessary definitions and outlines the emerging risk hot spot, including business impact.

- Use the overview for board and executive education on emerging and material trends likely to impact your business.



The implications describe the most important impacts of the risk hot spot for legal leaders and their functional responsibilities.

- Use implications to understand the way the hot spot will affect oversight responsibilities and planning for legal, compliance and privacy functions.

Impacted risk categories list the categories of risk from Gartner’s Legal, Compliance and Privacy Risk catalogues that will be most affected by the hot spot.

Action steps provide concrete first steps for legal leaders to begin proactively addressing the implications of the risk hot spot.

Conversation partners and starters point legal leaders to the key partners in the organization who will be necessary for understanding and managing the risk hot spot and offer suggestions of important questions to ask.

Heightened Regulatory, Trade and Recession Uncertainties Complicate Risk Analysis

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Trade Barriers as a Policy Tool

Overview

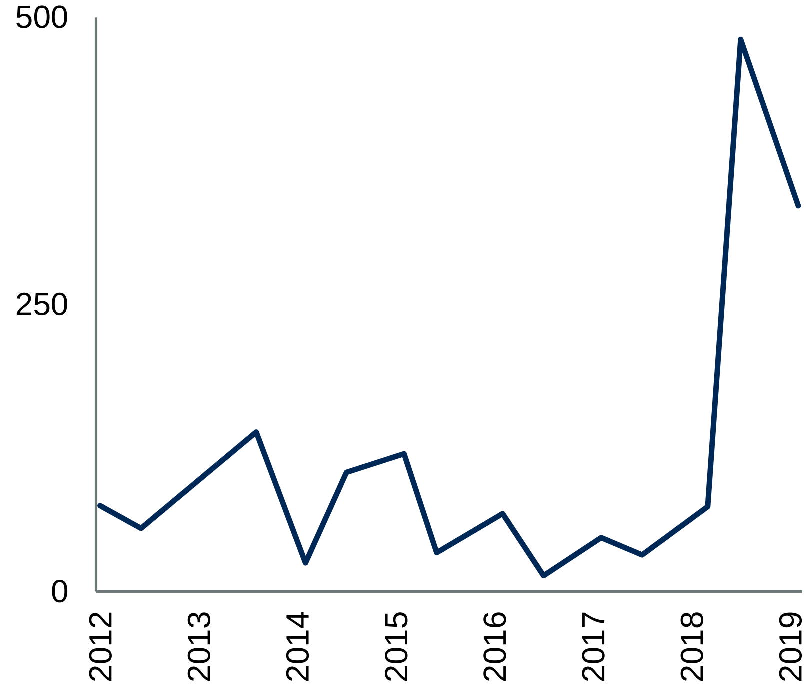
While global trade was declining even before the U.S.-China trade war, 2018 introduced a barrage of new trade restrictive measures from tariffs to sanctions. On the tariff front, lost output from the U.S.-China trade war is now expected to top $445 billion, and the escalating Japan-South Korea trade dispute has raised fears that high-tech manufacturers won't receive critical supplies.[1]

Within supply chains, organizations are finding themselves bound by contracts that did not account for drastic tariff increases – with many left bearing the full weight of rising costs. In some cases, organizations that depend on transnational supply chains can be pushed to the point of insolvency, as in the case of ZTE.[2] These disputes force organizations to change their production because they cannot find alternate suppliers in a tariff-free country or face challenges related to rapid relocation, including limited capacity and substantial investment in new infrastructure.

In addition, maximalist policies, driven by the use of secondary sanctions, have increased third-party exposure and placed many multinationals in a no-win scenario as the E.U. has explicitly challenged sanction enforcement. In this environment, organizations are left plagued by uncertainty over how long current trade restrictions will last and whether new restrictions will be enacted, and are struggling to adjust their supply chain strategies in response.

Value of Trade Subject to New Barriers

Trade Coverage of New Import-Restrictive Measures (Not Cumulative, USD Billion)



Source: [“Report on G20 Trade Measures.”](#) World Trade Organization.

Trade Barriers as a Policy Tool

Legal, Compliance and Privacy Implications

Legal Leaders Must Advise in Uncertain Terrain

- Increasingly, legal leaders will be asked to provide guidance related to strategic planning and cost projection, where the typical drivers of advice – laws, regulations and precedent – are weak or nonexistent.
- Businesses considering redirecting supply chain sourcing to mitigate trade compliance risk and costs will need creative solutions from legal leaders on how to navigate trade barriers and find innovative ways to ensure compliance without overcommitment.

Diminished Viability of Total Compliance

- Tensions between the U.S. and the EU over the imposition of secondary sanctions have forced businesses into noncompliance. As a result, legal leaders must help define the organization’s risk tolerance, particularly in relation to supply chain risk exposure.
- Legal leaders must review supply chain contingency plans and build a process for determining the appropriate risk appetite in relation to supplier importance, market size and the financial and operational costs of noncompliance.

Increased Need to Support Organizational Agility

- Legal leaders must ensure mitigation plans for geopolitical risk are both adequate and highly adaptable to accommodate last-minute developments.
- Legal departments must reassess contracts with third parties to ensure fair cost sharing and the ability to more frequently revisit agreements and pivot to different sources in response to supplier shocks.
- Compliance must create sensitive processes that can adapt to unexpected and rapidly changing regulatory requirements.

Trade Barriers as a Policy Tool

Impacted Legal and Compliance Risk Areas
Corporate Compliance and Culture, Import and Export Practices, Regulatory, Third-Party

Action Items

1. Work with procurement, supply chain and other relevant functions to review current processes for monitoring country of origin regulations.
2. Collaborate with assurance partners and supply chain staff to review the measures the organization uses to enable communication across business units regarding the supply chain and ensure there are no gaps in assurance across these processes.
3. Review the supplier renewal process to determine how the organization decides to renew contracts with suppliers. Assess whether the organization uses standardized criteria or documents, such as supplier assessments, when evaluating whether to revise or renew supplier contracts.
4. Facilitate a conversation with the board and senior business and functional executives to understand sanctions risk in the supply chain and determine the organization's risk appetite with respect to sanctions compliance.

Conversations

Ask distribution, logistics, purchasing and procurement:

- Are there any particular vulnerabilities or dependencies in our supply chain?
- Can you identify alternate sources and partners in more hospitable markets? How flexible are our current supply chains?

Ask finance:

- What is our cost exposure to increased tariffs?
- Are our current costs sustainable? How long can we continue to operate under these conditions and maintain profitability?

Ask internal audit:

- How can we update our monitoring processes to be more responsive to rapid changes?

Patchwork Regulation in Key Areas

Overview

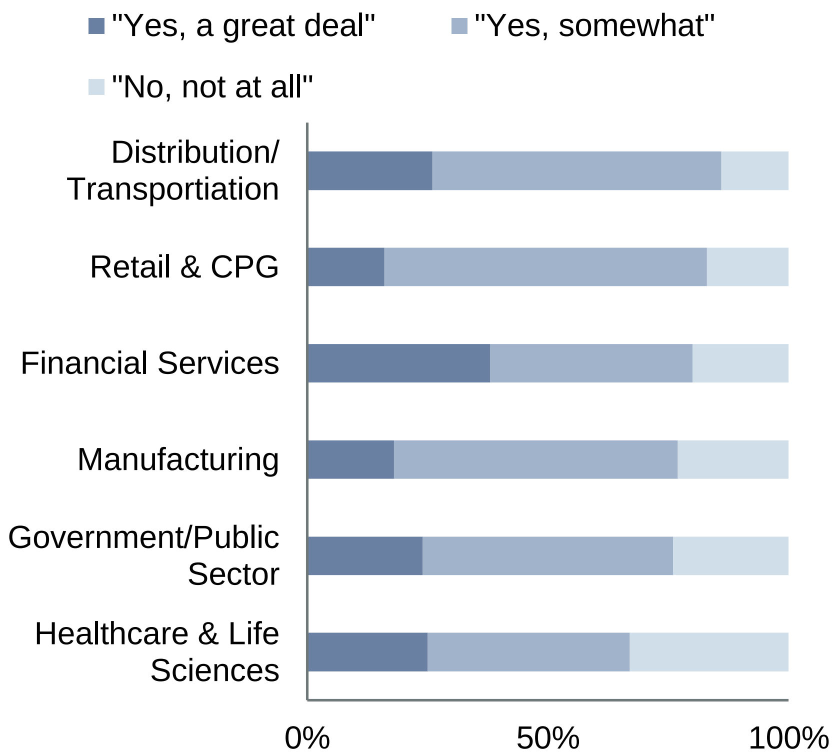
Global regulators are struggling to converge on a range of issues, including privacy and environmental responsibility. The public impact of these issues creates pressure for policymakers to act, while geopolitical tensions, national security concerns and a possible retreat from multinational institutions make it harder for jurisdictions to agree on standards. The result is a complex patchwork of local, national and multinational regulations and commitments that organizations must navigate.

Though this has been a challenge for privacy regulations for some time, today's divergence occurs across more areas of the law and impacts a greater number of organizations.[1] A survey by the Economist Intelligence Unit found the pace and scope of regulatory change has accelerated in the past three years for significant majorities of organizations across six industries.[2]

As a result, organizations are left unsure of where and how regulators will take action and what that might mean for business model change and strategic decision making. Gartner analysis shows that regulatory risks are the most commonly reported risks across the S&P 100, FTSE 100 and ASX 100, possibly as a result of increased scrutiny of business and evolving global regulatory regimes.[3] This creates challenges in forward planning, as organizations struggle to understand the potential costs and risks associated with everything from adopting a new technology to entering a new market.

Increase in the Scope of Relevant Regulatory Change in the Past Three Years

Percentage of Respondents Agreeing



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Source: “Compliance and Regulatory Disruption,” Economist Intelligence Unit.

Patchwork Regulation in Key Areas

Legal, Compliance and Privacy Implications

The Cost and Complexity of Compliance Will Increase

- Legal leaders will have to work more effectively with other partners in the organization to track regulatory developments and advise on the overall compliance strategy – whether to adopt various local standards across operations or choose to operate by the strictest standard globally.
- These activities will become more resource intensive, as lessons from peer finance functions show. After significant divergence in regulations post-2009, the industry now spends 5% to 10% of annual turnover on costs related to this regulatory divergence.[4]

Relationships With Local Regulators Matter More

- Relationships with local regulators will become more important as regulatory ideas become less portable across borders. These relationships will enable organizations to build an early understanding of – and potentially to shape – future developments.
- For organizations with high exposure, building a well-integrated government affairs department will help to scale their business model.
- Those who have government affairs in-house will need to keep them well appraised of the organization's strategic goals, so that dialogue is constant and productive.

Growing Importance of Legal as a Strategic Consideration

- Companies that figure out how to navigate the global regulatory environment and efficiently scale compliance systems will find themselves better able to move in and out of new markets – a significant competitive advantage.
- Legal and compliance will increase in strategic value, as the emerging global regulatory patchwork makes it harder to scale businesses globally and increases the cost of compliance (e.g., tailoring systems and processes by jurisdiction).

Patchwork Regulation in Key Areas

Impacted Legal and Compliance Risk Areas
Anti-Corruption, Antitrust/Fair Competition, Environmental Health and Safety, Information Access, Intellectual Property, Privacy

Action Items

1. Facilitate a discussion with senior executives about the organization's regulatory compliance strategy, focused on when to adopt local standards versus when to adopt a global standard. Be sure to define who within the organization can make these decisions and the criteria and information that must inform such a decision.
2. Assess your regulatory relationships and tracking capabilities, whether they are in-house or done through outside counsel (including any technology solutions in place in the organization). Determine whether legal's role in regulatory tracking and relationship building should change to accommodate this new environment.
3. Be sure business partners understand compliance costs are a key criterion when making decisions, and should be weighted appropriately (e.g., when choosing where to build a data server, select a geography that ensures compliance with the greatest number of regulations).

Conversations

Ask the c-suite:
- Who makes the decision about whether we set a single global standard or have multiple regional standards (e.g., for environment or privacy)?
- What is the most important information for us to make that decision?
- What foreseeable regulatory changes would cause us to consider switching from global to local standards, or vice versa?

Ask government affairs or outside counsel:
- In this key risk area, what would it look like if we adopted a "least common denominator" as our global standard?
- Do global regulations group into any obvious categories?

Ask corporate counsel:
- What regulatory information does it take you too long to uncover? Where is the most time wasted?
- How should we be creating competitive advantages out of the current regulatory environment?

Heightened Recession Chatter

Overview

The global macroeconomic picture is increasingly rife with warning signs. Industrial output in Germany and China are at record lows, Italy is strapped with high debt and unemployment levels, and Argentina suffered its second largest stock market crash since 1950.[1]

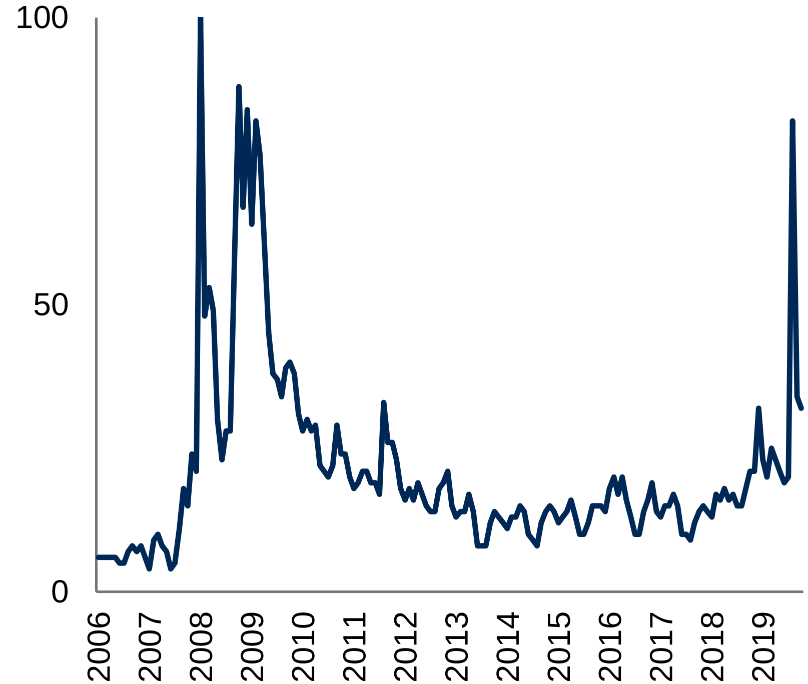
Yet it is talk of a U.S. recession that has dominated market chatter, fueled by a decline in economic indicators in the second half of 2019. The yield curve inverted, manufacturing output decreased, and copper prices - a signal of industrial health - sharply decreased. Perhaps as a result, mentions of 'recession', 'downturn' or 'slowdown' on earnings calls have increased by 50% from 2H18 to the 1H19.[2] While economic forecasting is an uncertain art, the combination of signs of trouble globally and within the U.S. is fueling anxiety.

CEOs ranked the possibility of a global recession as their top concern at the start of 2019, and increased chatter around recession has already started to impact investments.[3] Gartner's CEO survey finds that CEOs are prioritizing ways to achieve incremental growth over corporate structural development.[4] While CEOs may not be actively preparing for a recession, their confidence is waning.

As organizations begin strategic planning for 2020, the question of if or when a recession might hit looms large with little reliable consensus on when or how to adapt strategies, business models or cost structures in response.

Online Recession Chatter

Volume of Google Searches for "Recession" in the U.S.



Source: Google Trends, "Recession".

Heighted Recession Chatter

Legal, Compliance and Privacy Implications

Scenario Planning Is Critical for Success

- Effective planning is the only way to grow during an economic contraction, but leadership teams are not aligned on how to respond. For example, while 83% of CFOs would revisit the firm's long-term strategy at the onset of a recession, only 38% of CSOs agree.[5]
- Legal leaders must shape the organization's contingency plans, informing decisions about where and how the organization should take risks in pursuit of growth and cost reductions.

Vendor Solvency and Management Concerns

- 66% of organizations agree that their third-party networks include an increasing number of startups and business innovators. Often, smaller, newer third parties are more financially precarious than larger established partners.[6]
- Legal leaders must ensure contracts are clear on how and when third parties must communicate solvency issues, and how assets will be divided in the even the relationship is terminated (e.g., data-sharing rights).

Downward Pressure on Department Resources

- Legal work is likely to increase due to recessionary strategies like layoffs and divestitures.
- Legal leaders are likely to be asked to hit cost-cutting targets – to do more with less.
- Legal leaders must resist the urge to cut larger line items in the budget that might ultimately undermine fundamental department capabilities (e.g., new tech solutions) and focus instead on creating efficiencies (e.g., renegotiating outside counsel fees or bringing more work in-house).

Increased Likelihood of Noncompliance During a Downturn

- Often, in a recession, organizations make difficult decisions to cut costs, like closing lines of business, divesting risky assets, and layoffs. These events often increase risk by changing employee perceptions of organizationall integrity (among other things).[7]
- In fact, employees experiencing two or more such events in a given year observe twice as much misconduct as other employees.[7]
- Legal leaders must proactively manage change risk by equipping managers to lead through these career moments, and creating moment-relevant messages that help employees understand and navigate changes.

Heightened Recession Chatter

Impacted Legal and Compliance Risk Areas
Corporate Compliance and Culture, Labor and Employment, Legal, Third-Party

Action Items

1. Ensure legal leaders participate in scenario planning exercises and strategic planning processes that determine the approach the organization will take to navigating a future recession.
2. Make the most of legal department resources by inventorying work that is usually sent to outside counsel to identify opportunities to bring work in-house and explore opportunities for automation.
3. Evaluate third-party vendor contracts, assessing where flexibility is needed in case of a recession.
4. Equip direct managers with sample messaging and training to help them talk about changes with their teams and reinforce the organization's commitment to integrity.

Conversations

Ask the CEO, finance and strategy:

- What assumptions related to a possible recession are we using in our strategic planning?
- What is our strategy to manage a possible recession, and what are the key initiatives related to this strategy?
- For each key initiative, what is our risk tolerance? How would changes in the macroeconomic environment impact this?

Ask human resources:

- How is your function planning for any eventual cost-cutting targets?
- How should we be monitoring our corporate culture at this time?
- How have managers been equipped to lead through potential difficult moments (e.g., layoffs, restructuring)?

Contact Us

For the full report or to learn more about Gartner for Legal & Compliance Leaders

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