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Navigating Regulatory Shift:

When Political Change Becomes a Litigation Risk

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Introduction: The Global Reality of Shifting Laws and Regulations Creates Volatility Without Borders

Businesses throughout the world have always had to manage regulatory risk. What is new is the velocity, breadth, and legal complexity of regulatory change in the current political environment. One leadership change can cause a firestorm of regulatory and statutory changes that can radically change the landscape for a business and the legal issues and risks it faces. These shifts can cause tectonic shifts in how businesses have traditionally operated and also create legal risks that have to be addressed in a proactive but measured approach. These changes can come in several forms whether they be executive actions, legislative changes, regulatory agendas, and or societal pressures.

In the United States, the elimination of long-standing judicial deference doctrines has empowered courts to strike down agency rules independent of executive preference, creating a two-track system in which legal and political change operate on different timelines. In the European Union, major legislative programs — AI regulation, sustainability due diligence, digital markets law — are entering force simultaneously, creating compliance obligations that interact in unresolved ways. In the United Kingdom, post-Brexit regulatory divergence continues to produce its own distinct compliance landscape. Across Asia-Pacific, data localization requirements, national security-driven investment restrictions, and state-directed industrial policy are being deployed as active regulatory tools. In Latin America, resource nationalism, currency controls, and shifting competition law enforcement create recurring transactional complexity.

For multinational businesses, the practical consequence is a regulatory environment in which no major jurisdiction can be treated as stable, no compliance program can be set and forgotten, and no transaction can be structured without accounting for the possibility that the legal framework governing it will shift materially before the ink is dry.

The result is a paradox: deregulation can create as much legal risk as regulation. When governments categorically shift the regulatory/statutory framework within which a business operates with little to no predictability then companies have to act quickly to adjust and mitigate its potential risks. This article addresses the genesis of these changes, legal landscape as it now stands and provides practical guidance for counsel operating on both sides of the client relationship as to how to best advise their client on this situations and have a cogent plan for addresses these potential risks.

How Regulatory Change Generates Litigation and Enforcement Risk

A. Government Enforcement: Intensity and Direction Both Shift

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Enforcement risk is not a one-way ratchet. Companies face exposure whether enforcement intensifies or lessens. When a new government expands enforcement priorities — in competition law, environmental regulation, financial services, labor standards, or technology governance — companies that had grown comfortable with lighter-touch oversight must rapidly reassess their exposure. When enforcement lessens, different risks emerge: private rights of action, civil society enforcement mechanisms, and foreign regulatory pressure frequently fill the space vacated by domestic regulators.

The extraterritorial reach of major regulatory regimes compounds this risk. The U.S. Foreign Corrupt Practices Act, the UK Bribery Act, EU sanctions and data protection regulations, and the growing network of corporate supply chain due diligence laws (Germany's LkSG, France's Duty of Vigilance law, and the EU Corporate Sustainability Due Diligence Directive) impose obligations that follow companies across borders regardless of where domestic enforcement stands. A company that believes it has managed its U.S. regulatory exposure may find itself subject to an EU investigation, a UK enforcement action, or private litigation in multiple jurisdictions simultaneously.

B. Private Litigation and the Regulatory/Statutory Vacuum

Reduced government enforcement does not reduce litigation risk — it often increases it. When regulators signal restraint, plaintiff law firms, civil society organizations, shareholder activists, and whistleblowers frequently accelerate their own activity. Consumer class actions, securities fraud claims, derivative suits, and tort actions can all proceed independently of — and sometimes because of the absence of — active regulatory enforcement. In common law jurisdictions, private litigants have well-developed tools for pursuing corporate conduct that regulators have chosen not to challenge.

Whistleblower and qui tam mechanisms deserve particular attention. In the United States, the False Claims Act allows private plaintiffs to initiate federal fraud actions regardless of government interest; comparable mechanisms exist in the UK, Australia, and increasingly in EU member states following the 2019 Whistleblower Directive. These mechanisms function independently of enforcement posture and create sustained litigation risk even in periods of regulatory retreat.

C. Multi-Jurisdictional Enforcement and Regulatory Arbitrage

Perhaps the most operationally complex dimension of global regulatory risk is the interaction of multiple enforcement regimes operating simultaneously. Competition authorities in Brussels, Washington, London, Beijing, and New Delhi routinely review the same transactions and conduct under different legal standards and political priorities. Environmental and human rights enforcement increasingly involves coordinated action across national borders. Sanctions regimes require real-time compliance because designation lists can change overnight and the consequences of violation — asset freezes, correspondent banking restrictions, reputational damage — are immediate and severe.

The temptation to engage in regulatory arbitrage — structuring transactions or operations to exploit differences between jurisdictions — is understandable but carries its own risks. Regulators have become increasingly sophisticated at identifying and challenging arbitrage strategies, and the reputational and legal costs of being perceived as deliberately evading regulatory intent can exceed the compliance costs avoided.

Counsel's Role: From Reactive Defense to Strategic Resilience

A. The In-House Counsel's Role

In-house counsel operating in a multi-jurisdictional environment can no longer treat regulatory change as a compliance department issue. Regulatory volatility is a board-level governance concern, a financial disclosure issue, and a core strategic risk. The general counsel's first obligation is to ensure that executive leadership understands the nature and materiality of the risk — calibrated to the specific regulatory regimes most relevant to the company's operations — and that the organization has institutional processes for tracking, assessing, and responding to regulatory change.

Privileged regulatory compliance audits — structured reviews conducted under counsel supervision, with findings protected by attorney-client privilege — are the foundation of effective risk management and the most effective protection against enforcement and private litigation. The scope and legal nature of these audits must be carefully documented; in many jurisdictions, the privilege can be lost if legal and business functions are not clearly separated in the audit process. Documentation of good-faith compliance efforts serves an independent purpose: it is the evidentiary foundation of the defenses most likely to succeed in enforcement proceedings and civil litigation.

Cross-functional coordination is equally essential. Regulatory risk management cannot be siloed in the legal department. Effective responses require integration among legal, compliance, government affairs, finance, operations, and human resources — and a governance structure that ensures regulatory developments are translated into operational decisions at the appropriate speed.

B. The Outside Counsel Role

Outside counsel in a volatile regulatory environment must function as strategic partners rather than matter-by-matter vendors. The most valuable outside counsel bring generally three capabilities: real-time regulatory intelligence tailored to the client's industry and geography; proactive enforcement defense preparation, including response protocols and document preservation procedures that can be activated before an investigation begins; and the capacity to pursue affirmative legal strategies — challenging unfavorable regulatory action, coordinating multi-jurisdictional defense, and positioning the client advantageously in the litigation landscape.

Where domestic regulatory frameworks are being challenged or revised, outside counsel should assess whether judicial or administrative challenges are available and viable. In jurisdictions with active administrative law practice — the EU, the UK, common law jurisdictions generally — regulatory decisions are frequently subject to judicial review, and companies adversely affected by new rules have standing to challenge them. These opportunities are time-sensitive, and counsel who tracks the regulatory and litigation landscape can identify them before they close.

Transactional Risk: Regulatory Uncertainty in Deals and Contracts

Regulatory volatility creates specific and underappreciated risks in transactional practice. Deals structured and valued under one regulatory framework may be performed — or litigated — under a materially different one. Counsel on both sides of any significant transaction must account for this possibility in the deal architecture.

In mergers and acquisitions, regulatory due diligence must be forward-looking as well as historical: not merely whether the target is currently compliant, but whether the regulatory regimes governing its business are likely to shift materially before or after closing, and what the financial and operational consequences of plausible

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regulatory scenarios would be. Material adverse change (MAC) definitions should be negotiated with specific regulatory triggers in mind. Representation and warranty packages should identify the specific regulatory regimes material to the target's business rather than relying on generic compliance-with-laws representations that provide thin protection in volatile environments. Indemnification structures and escrow arrangements should be sized to cover regulatory contingencies that may not crystallize for years after closing.

In commercial contracts, force majeure clauses — the traditional mechanism for allocating the risk of legal and regulatory change — are frequently inadequate as drafted. Most standard provisions do not cover regulatory changes that make performance more burdensome or expensive without making it technically impossible. In contracts with significant regulatory dependencies, parties should negotiate explicit provisions addressing the allocation of risk when regulatory change materially affects the economics of the agreement. Price adjustment and pass-through provisions, termination rights triggered by defined regulatory events, and compliance-with-laws representations tied to specific regulatory regimes as of a specified date are all tools that sophisticated counsel deploy in regulatory-sensitive transactions.

Cross-border transactions carry additional layers of complexity. Foreign investment review regimes — the U.S. CFIUS process, the EU FDI screening framework, the UK National Security and Investment Act, and similar mechanisms in Australia, Canada, Japan, and India — have expanded significantly in scope and rigor, and the political sensitivity of foreign investment in strategic sectors continues to grow. Export controls and sanctions compliance require real-time monitoring because designation lists change without warning. ESG-linked financing — sustainability-linked loans and green bonds — presents particular vulnerability to regulatory reversal: companies that structured financing around prior-administration ESG requirements may face covenant disputes or repricing events if the regulatory foundation for their sustainability commitments is withdrawn or challenged.

A Framework for Global Regulatory Resilience

Below is a general framework of the approach companies may want to take as a common set of organizational imperatives for companies operating in a multi-jurisdictional regulatory environment.

Monitor & Assess	Plan & Act	Transact & Adapt
• Real-time tracking of agency action, legislative activity & litigation trends • Jurisdictional heat maps for material regulatory risk • Regular board/C-suite regulatory briefings • Whistleblower & enforcement intelligence monitoring	• Scenario planning for 2-3 regulatory futures per key jurisdiction • Privileged compliance audits under counsel supervision • Enforcement response protocols activated before investigation begins • Engagement in rulemaking, trade associations & advocacy	• Forward-looking regulatory due diligence in M&A • MAC clauses, R&W coverage & indemnification for regulatory contingencies • Contract force majeure & price-adjustment provisions for regulatory change • Post-event compliance reviews & program updates

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Effective regulatory resilience requires organizational infrastructure, not just legal expertise. That means a cross-functional regulatory task force with defined reporting lines to executive leadership; governance mechanisms that translate regulatory intelligence into operational decisions at appropriate speed; and a culture in which regulatory risk is treated as a strategic business issue rather than a compliance formality.

It also requires a different kind of relationship between companies and their outside counsel. The monitoring-and-response function described above cannot be performed effectively on a matter-by-matter basis. Companies facing sustained regulatory volatility need outside counsel who understand their business continuously, track their regulatory environment in real time, and can provide strategic advice before problems become litigation — not after.

Conclusion: Preparedness, Flexibility, and Proactive

Regulatory change is not episodic. It is a permanent feature of the global legal environment, operating simultaneously across jurisdictions, legal systems, and political cycles. The companies that navigate it most successfully are not those with the most comprehensive compliance checklists, but those that have built institutional capacity to anticipate change, respond quickly, and adapt continuously.

For in-house counsel, that means treating regulatory risk as a board-level strategic issue and building the cross-functional governance infrastructure to manage it. For outside counsel, it means serving as proactive strategic partners — providers of regulatory intelligence and enforcement defense, not merely litigation vendors. For deal lawyers, it means accounting for regulatory volatility in the architecture of every significant transaction.

The regulatory landscape will not stabilize. The obligation of counsel — everywhere — is to ensure their clients are prepared for the next change, whatever form it takes.