

The Fine Line Between 'Cutting Red Tape' and Throwing Out the Play Book

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By Kevin Abikoff and Laura Perkins

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The case study would nearly mirror the reported transaction—the wealthy and powerful chairman of a major sports franchise purchased 1.2 million N95 masks, a rare and critical



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commodity during the time of a major health crisis, using his professional sports team plane to ferry the goods from China to the United States. Sprinkled throughout the case study would be the following red flags:

- Purchase from China
- Under desperate circumstances ("I just had to get them there," the chairman reportedly told a friend)
- Use of intermediaries, who purportedly sourced the rare goods, possibly among other functions
- Purchase required calling in favors and involved significant red tape and obstacles to overcome
- Purchase required navigation of a dense global bureaucracy virtually paralyzed by the pandemic

- Special exemption granted to the plane by government authorities in China for an otherwise unauthorized trip
- Special visas secured by plane crew, including special opening of embassy facilities to produce the visas
- Special inspection processes in China were needed for the goods, which had to be done on an extremely expedited basis
- Payment in U.S. dollars

Responses to the question of whether the red flags should be ignored would likely be fascinating, as humanitarian crises create the sort of moral dilemmas that challenge us all. How do you deal with a request from a foreign military general with authority to award tens of millions in contracts for assistance with life-saving surgery for his wife? How about the free or discounted construction of needed water treatment or medical facilities at the request of a government official during an election cycle?

It is said that hard cases make bad law. While we do not suggest that competent legal

counsel and ethical business executives did not successfully navigate the minefield presented above, we note the potential that the COVID-19 crisis raises for bad law to be made within companies, as employees may be tempted to inject a “humanitarian exemption” in their anti-corruption compliance efforts. While it is hard not to celebrate the life-saving acts of people who come through for others in need, one can only hope those acts can withstand the test of time if they are reexamined when the crisis fades to memory.

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