

INTERACTIVE EDITION

ASIAN-MENA COUNSEL

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MAGAZINE FOR THE **IN-HOUSE COMMUNITY** ALONG THE NEW SILK ROAD

DEALS OF THE YEAR



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The dark side of Indonesian business
Malaysia's new trade mark rules

Legal recruitment trends
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The dark side of business in Indonesia

With an expected growth rate of six percent in 2011, Indonesia has become one of Southeast Asia's most popular destinations for foreign capital. Particularly attractive for investors are the infrastructure, energy, and transportation sectors, where the government of President Susilo Bambang Yudhoyono acknowledges a chronic need for foreign money. Despite its bright investment prospects, however, Indonesia has a darker side: the endemic corruption that too often greets unsuspecting investors once deals have closed. Indeed, respondents to this year's Global Fraud Survey based in Southeast Asia, feel especially vulnerable to the risks of corruption, bribery, and regulatory breaches.

Negotiating hidden risks

Kroll advises a significant number of clients on understanding and negotiating the risks inherent, although not always transparent, in any investment in Southeast Asia. We also assist clients when prior investments have not turned out as expected, often because of insufficient reputational due diligence before investing. Much of this post-transactional work takes place in Indonesia. For example, Kroll advised a foreign client caught in a legal and commercial dispute with its local partner in the country that revolved around disagreements over strategy and direction in several shared business ventures. The relationship had become so strained that the foreign party needed to exit and turned to us for help because it understood that, in Indonesia, a legal exit strategy alone was unlikely to resolve these issues. Kroll used various investigative techniques and lines of inquiry to obtain actionable intelligence and evidence that strengthened the client's hand in obtaining a commercial settlement between the two parties.

Such a range of techniques and approaches is important when conducting investigations in Indonesia because the risk of corruption is not normally apparent and certainly cannot be detected through regular financial and legal due diligence. In such a market, where wealth is closely tied to sponsors or families, prior to entering into

any definitive agreement it is absolutely critical to gain a comprehensive understanding of the business ethics and reputation of potential partners as well as their management style, backgrounds and political connections. One important issue to consider is the presence of any hidden ties to political or military interests, especially in Indonesia's resources, energy, and transportation sectors. Such connections can, at best, severely affect a company's operations under certain circumstances and, at worst, trigger significant liabilities for foreign partners under anti-corruption legislation back home, notably the *US Foreign Corrupt Practices Act (FCPA)* and the *UK Bribery Act*.

Another significant issue to investigate is the possible existence of any undisclosed related-party transactions between the company being considered for an investment and the wider family interests of current owners. These are often used to channel funds from the company to other family businesses to the detriment of foreign investors. Kroll recently investigated and uncovered just such a scheme in Indonesia for a grateful financial investor.

The importance of vigilance

The need for foreign investors – financial or strategic – to be vigilant does not end once the investment has been made. In a market where corruption appears institutionalized as an accepted business practice, the severe penalties and extraterritorial reach of legislation such as the *FCPA* and the *UK Bribery Act* make it imperative to conduct regular, ongoing “audits” of suppliers, customers, agents, distributors, and local management. After all, according to the Global Fraud Survey, approximately 47 per cent of fraud in Southeast Asia markets is perpetrated by employees – and those are just the cases that come to light.

To receive a copy of Kroll's Global Fraud Report
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