

Corruption: multi-jurisdiction litigation and investigations

International cooperation on financial investigations and multi-jurisdictional prosecutions are becoming more prevalent. Understanding and measuring the risks and likely consequences is essential for wealth advisory firms, who need to prepare and manage for the best, and sometimes worst, outcomes.

These were the topics discussed:

- *International cooperation is becoming more prevalent*
- *Managing investigations in a number of different countries at same time.*
- *Collateral damage - “tainted by association”?*
- *Picking the right team. Making sure that team is coordinated.*
- *The pros and cons of carrying out an internal investigation.*
- *Protecting legal professional privilege.*
- *The “no surprise” defence*
- *Understanding and measuring the risks and likely consequences to the business*
- *Prepare for the worst outcome and hope for the best.*
- *Understanding the different approaches of Regulators in different countries. Get advice from those who deal with the Regulators in those countries and don’t just rely on head office.*
- *Proportionality in response to the Regulators*
- *Controlling the flow of information and documentation. Need to know basis*
- *Making sure that you don’t let costs get unnecessarily out of hand*

A PANEL MADE UP OF EMINENT LAWYERS AND EXPERTS in forensic financial analysis gave the audience at the Hubbis Compliance in Asian Wealth Management Forum in Singapore on January 18 some invaluable insights into the increasing cooperation between countries to fight financial crime and tax evasion.

“Litigation,” said one of the panel experts in his opening remarks, “is a huge inconvenience for busi-

PANEL SPEAKERS

- **Nigel Pereira**, Partner, Rajah & Tann
- **Peter Coleman**, Head of Forensic, United Security Solutions
- **Daniel Levison**, Partner, Morrison Foerster
- **Stefano Demichelis**, Principal, Investigations and Disputes, Kroll

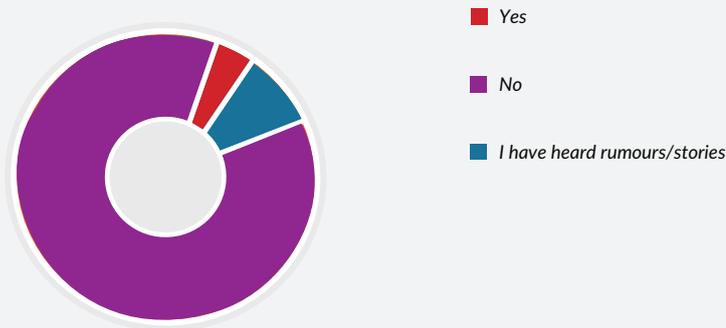


NIGEL PEREIRA
Rajah & Tann



PETER COLEMAN
United Security Solutions

APPLYING TODAY'S CONDUCT LENS, HAVE YOU EVER BEEN INVOLVED IN PROFFERING PAYMENT FOR BUSINESS?



Source: Hubbis Compliance in Asian Wealth Management Forum 2018

nesses because of the time it takes people out of the core business, because of its disruption and because it causes so much potential harm to the brand. Unfortunately, if you are in the financial services industry, money laundering and corruption are going to cross your path at some point or another. Tax evasion, or tax avoidance, are likely to be seen however good your compliance and your legal team and your culture is.”

Today, most of the corruption investigations involve several different jurisdictions, whereas years ago countries would not help each other. “Nowadays,

UNFORTUNATELY, IF YOU ARE IN THE FINANCIAL SERVICES INDUSTRY, MONEY LAUNDERING AND CORRUPTION ARE GOING TO CROSS YOUR PATH AT SOME POINT OR ANOTHER.

in the public announcements regarding various settlements with US government, the US is very publicly acknowledging the cooperation of the other jurisdictions that contributed to the resolution,” reported one panellist.

The US encouraging global responsibility

“The US government has been encouraging other countries to step up so that the world does not see the US as the world’s policeman,” he added. “And as a result, we see a huge change - whereas fines were once paid only to the US when the US was involved, they are now being paid to a variety of the governments participating in the investigation and prosecution.”

“The brown envelope joke is no longer the brown envelope joke,” noted another panellist humorously. “It has all become a lot more sophisticated.”

Developments in technology are allowing people to communicate much more privately than before with mobile phones and as a result, many organisations are asking their employees to buy their own smart devices, so that the firm is not liable if the authorities come demanding access to those phones. It is much more difficult if the devices are owned personally rather than at the corporate level.

Singapore has an enviable record in terms of dealing with public corruption cases but is in a region that does not yet match these standards, and often falls far below them, especially if viewed through the lens of the Transparency International rankings. Singapore’s standards in this regard extend to their



STEFANO DEMICHELIS
Kroll

DO YOU GET A SENSE THAT BEING A CRIMINAL IN THE DIGITAL WORLD IS EASIER THAN BEING AN OLD SCHOOL CRIMINAL ?

Yes



No



Source: Hubbis Compliance in Asian Wealth Management Forum 2018

companies, with a culture of responsibility and transparency, through good practice and training.

“In theory,” said one expert, “multi-jurisdictional investigations should not be so difficult because the general principles are often the same. Many of the countries have signed on either to the OECD convention or to the UN convention. So, the basic elements of bribery offences are similar. However, in reality, the way that laws have been interpreted and the way they have been enforced across jurisdictions has been very different, with some considerable impediments in some countries in this region, for example.”

In Asia, there is such an immense diversity in terms of legal systems with both Common Law legal systems and Civil Law legal systems. There are many different concepts of privilege and other laws that impact investigations, for example, data privacy and what an investigator is able to take, with or without employee’s consent.

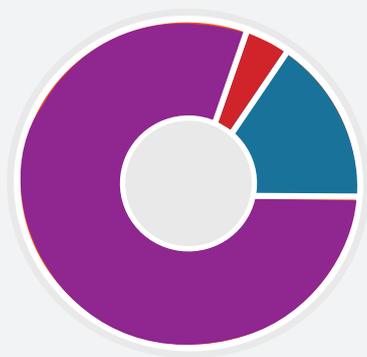
“All these factors add more than just wrinkles,” one expert explained. “Some can tear away at the fabric of the investigation, and unfortunately for the inexperienced, they are often encountered as an afterthought. Accordingly, from the outset you must plot where this could this investigation could possibly spread and think about what the many legal issues are and of course the other many practical impediments.”



DANIEL LEVISON
Morrison Foerster

HOWEVER, IN REALITY, THE WAY THAT LAWS HAVE BEEN INTERPRETED AND THE WAY THEY HAVE BEEN ENFORCED ACROSS JURISDICTIONS HAS BEEN VERY DIFFERENT, WITH SOME CONSIDERABLE IMPEDIMENTS IN SOME COUNTRIES IN THIS REGION, FOR EXAMPLE.

DO YOU THINK THAT PEOPLE ARE GENERALLY MUCH MORE HONEST TODAY THAN THEY WERE TEN YEARS AGO?



- Yes
- No
- Yes, but only because they have to be

Source: Hubbis Compliance in Asian Wealth Management Forum 2018

There are always numerous concerns surrounding data gathering, requisitioning of data and the treatment of data when it moves jurisdiction.

Careful how... and where... you investigate

Other matters include immigration regulations, obtaining and validating permits and business visas to allow investigators to conduct investigations in certain countries. And data must be obtained legally, with an appropriate train of permissions, in order for it to be valid for use in any court. Investigators have to also be extremely careful in how they use documents or data, even when trying to track down or prosecute criminals.

Another expert warned of the immigration dangers of operating in-country when conducting an investigation. He cited the example of working on an European company investigation into the European CEO of the local SE Asian unit. This particular CEO was married to a well-connected local, who evidently swayed the local authorities to throw the investigators in jail for some days, despite them having obtained the requisite official documents to allow them to conduct their work. “These things happen in this region, and one needs to be very aware of these potentialities,” he concluded.

There are also different interpretations of prosecutorial discretion and how to appropriately punish illegal conduct and incentivise compliant conduct.

The UK Bribery Act has an affirmative defence of adequate procedures. “In the US,” observed one panellist, “we have discussed implementing such defence but so far that has not been the consensus direction.”

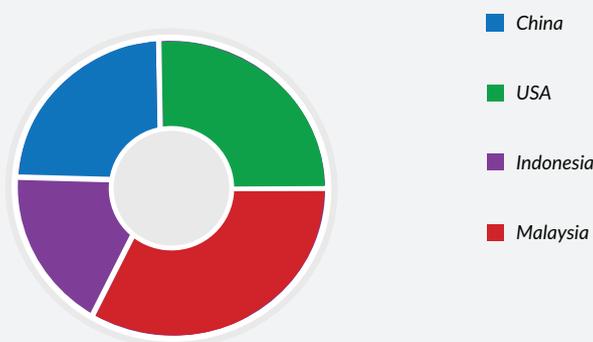
Corporate leaders often need external expertise

Another expert raised the issue of proportionality in information supply relative to the alleged wrongdoing, in other words, the burden on firms of supplying data to regulators and the management of that process. “The corporate leadership is in the best position to look internally and to ensure that steps are taken so that the organisation keeps on track, especially in face of corporate criminal liability, so paying great attention to this matter is essential.”

Corporate leaders cannot let an investigation affect the core of the corporation and, for example, its market valuation or other value metric. External perspectives are essential to achieving this.

“There is often tension between in-house and external counsel,” one panellist observed. “As an in-house counsel you are incredibly connected with protecting the reputation of the organisation, cost is involved but are often protecting their own reputation as well. So, it is vital for firms to obtain external counsel if faced with investigations that could lead to a prosecution. It is invaluable for the leaders of a firm to have external perspective as to the risks in terms of these investigations.” ■

WHICH COUNTRY TODAY DO YOU THINK IS THE MOST CORRUPT?



Source: Hubbis Compliance in Asian Wealth Management Forum 2018