Financial crime risk management: A critical pathway to success

Wherever in the world you do business, adequately identifying and mitigating against your financial crime risks has to be a fundamental priority. Failure to dedicate sufficient resources to this business critical issue can have devastating consequences including lost profit, time, resource, reputation and even imprisonment. Its importance simply cannot be underestimated.

Financial crime risk management has always featured highly on the Middle East’s agenda. However, the levels of anti-corruption activity witnessed in the region over the last few years sends out the clear message to the wider world that it is an agenda item here to stay, with levels of commitment designed to create an environment of integrity only set to increase.

A CLOSER LOOK
So what is driving the region’s heightened focus on anti-corruption initiatives? Apart from the obvious answer that many of those in a position of power fully understand that ‘crime doesn’t pay’ and want to achieve change for the greater good, there are other key factors at play. The wider region received the wrong kind of attention as a result of last year’s Transparency Corruption and Perception Index (“TCPI”) results, with 90 per cent of Arab Countries scoring below 50, figures considered to be failing grades. The report is often a first point of reference for those seeking to assess risks outside of their own jurisdiction. It is only natural therefore that its results help drive change, with countries keen to maintain or improve their ranking in what has become an internationally-renowned league table. With only the UAE scoring in the top 25, several other countries were spurred into action to improve their positioning.

Jordan is a good example of a country that responded decisively to its most recent TCPI ranking when it placed at 57, 12 positions lower.
than the previous year. Having laid the foundations for its anti-corruption strategy in 2016 with the implementation of its Integrity and Anti-Corruption Law and Commission ("IACC"), 2017 saw Jordan’s parliamentarians play a far more active role in advancing anti-corruption measures, voting to refer more than 90 violations to the IACC in March alone, followed by a vote to refer three former ministers to the IACC committee in April along with various AML and CTF legislative changes designed to ensure that the relevant regulations applied to societies and non-profit organisations. With the 2017 TCPI rankings expected imminently, it will be interesting to see what action plans follow.

The focus on financial crime is not just statistic-driven. The forthcoming inspections by the Financial Action Task Force (the “FATF) for several countries in the Middle East have meant that various regulators, public bodies and institutions have been tackling requests for information and preparing for onsite visits by the FATF assessment team for many months, if not years now. Countries expecting 2018 on site FATF inspections include the Kingdom of Saudi Arabia, Yemen and Jordan with the UAE and Egypt scheduled for 2019. The degree of scrutiny involved in FATF inspections, designed to monitor progress against the implementation of its 40 Recommendations on how to combat money laundering and terrorism financing, cannot be underestimated and the levels of anti-corruption activity in the region have noticeably increased in recent months.

LEGAL & REGULATORY REFORM

2016 saw the UAE make two significant legislative changes designed to help meet best practice international anti-corruption standards and was no doubt part of its overall FATF assessment preparations. The first change was the amendment of its Penal Code to make it an offence to bribe both foreign and domestic public officials. Bribes made in a private context, including both those made and accepted, are also now deemed criminal offences, with increased penalties imposed and importantly, no limitation surrounding any civil or criminal action that can be taken. These significant changes are considered to be part of the reason behind the UAE holding the region’s leading position of 24 in the Transparency Corruption Perception Index.

Another key step forward was achieved through the implementation of the Dubai Economic Security Law No. (4) of 2016, a law which created the Dubai Economic Security Centre. The Centre, whose remit is yet to be fully established, is considered by some to be the watchdog of corruption and an authority with the potential to take the UAE’s TCPI ranking even higher.

The Centre has been established to protect investors and financial and capital markets, from financial instability and to deal with risks related to corruption, fraud, bribery, and money laundering. However, perhaps the most awaited development is...
The Centre’s power to offer immunity to whistleblowers who truthfully report on issues affecting the economic security of Dubai. Creating an environment in which individuals feel able to ‘speak up’ about wrong doings is an essential part of any strategy designed to stamp out corruption. However, to date, whistleblowers seeking to raise the alarm in many parts of the Middle East have not benefited from the protections offered in other countries, and instead face the risk of a criminal prosecution if in blowing the whistle they disclose information considered to be confidential. Once fully-established, it is hoped that Dubai’s Centre will be able to encourage whistleblowers to step forwards, safe in the knowledge that they will have their identity and place of residence protected and be free from reprisal at their place of work.

Sometimes, it can take the sharp teeth of the regulators to shift behaviour in a way that other regulatory requirements cannot and there is no doubt that the prosecution of the Sweett Group PLC by the UK’s Serious Fraud Office (“SFO”) made its mark in the Middle East. This case saw the SFO fine the Sweett Group PLC GBP 2.25 million after it pleaded guilty to a ‘failure to prevent bribery’ charge in relation to its subsidiary’s business dealings in the UAE. The subsidiary was a Cypriot company who secured a contract for the construction of a hotel in the UAE but the case still fell within the remit of the SFO’s powers as the parent company was held responsible for the failings of ‘an associated person’ who performed services on its behalf. The company no longer has a presence in the Middle East which is considered by many to be no coincidence given the negative publicity that the case generated. A lesson to many that their financial crime risk management strategy has to meet international best practice standards.

2018 IN FOCUS
So what changes are anticipated in 2018, as a part of the region’s wider efforts to stamp out corruption, prepare for FATF assessments, improve TCPI rankings, and attract investment? It is difficult to predict precisely what lies ahead, particularly in view of the ever evolving political environment in which the region operates. However, putting these challenges to one side, there are many who expect to see a growing focus on publicly available information. Those new to the region often innocently enquire about the ability to run searches of insolvency registers, property registers, court judgment registers and generic company records. Explaining the differences in the level of detail available is no easy task, particularly when dealing with one of the many free zone entities in which the whereabouts of information available is not always immediately obvious.
However, the authorities are already demonstrating a desire to act with more transparency. In 2016, the UAE introduced its new insolvency law. Whilst its impact is still to fully develop, one of its expected features is the introduction of an insolvency register, a source of information that would no doubt prove useful to those seeking to easily identify the financial status of a company. The UAE is also expected to introduce a new registration system for security taken over moveable assets, designed to record the rights of the parties and to prevent the risk of undeclared multiple pledges being given to different banks over the same asset without their knowledge. More widely, many Middle Eastern countries, including the UAE, Bahrain, Kuwait and Lebanon have recently signed up to the Common Reporting Standards, an initiative developed by the Organisation for Economic Cooperation and Development (‘OECD’) in 2014 which requires participating jurisdictions to collect and then automatically exchange financial information about individuals and legal entities, designed to combat tax evasion, following similar principles to those created by the US in 2010 with its Foreign Account Tax Compliance Act.

The changes designed to improve integrity and prevent corruption can be witnessed in all shapes and sizes, as demonstrated by the recent introduction of the ISO 37001:2016 anti-bribery management systems certification. The ISO certification is an internationally recognised award based on best practices designed to improve anti-bribery management systems. On its launch, it was unclear how widely it would be embraced by the global business community and whether the certification would receive the credibility it deserved. It is therefore reassuring to see that one of the first companies to invest in the certification was Germany’s Robert Bosch Middle East, a leading global supplier of technology with its regional headquarters in Dubai. This was the region’s first company to receive the award, but it is unlikely to be the last, with more applications anticipated in the near future.

RAPID PACE OF CHANGE

The momentum for change shows no signs of slowing in the Middle East. The widespread efforts to combat corruption are set to continue with the focus being on improved transparency and integrity, designed to instill investor confidence and trust. This pace of change makes it an exciting place to be as the compliance environment continues to evolve at unprecedented levels. Those who engage with these challenges are likely to reap the rewards of a region renowned for its ambitious visions. The list of opportunities is now ever increasing with the region becoming a global leader for Artificial Intelligence and Fintech innovation, Dubai’s Expo 2020 becoming an impending reality, driverless vehicles expected imminently and an increasing number of iconic buildings anticipated for the future.

Whatever the investment made, adopting an effective approach to financial crime risk management and keeping up-to-speed with the pace of change will have to be centre stage in any business plans designed to fully reap the rewards that the region offers.

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