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Fast Changing Regulations Remain the Number One Business Risk for Mature Asian Economies; New Research

- Singapore and Hong Kong businesses fare better than those in Japan in being prepared for potential regulatory investigation
- Businesses are expected to continue increasing resources to improve internal risk management policies and procedures in the next 12 months
- Majority of companies in Singapore and Tokyo have yet to introduce dawn raid guidelines and training
- Mitigating M&A risks through due diligence and insurance continues to be one of the key concerns for dealmakers

Asia Pacific, 11 December 2018 - Adapting to fast changing regulations continues to be the biggest risk facing businesses in key Asian financial centres, according to a new survey of 260 business executives and legal managers based in Hong Kong, Singapore and Tokyo by global law firm Baker McKenzie.

On a more positive note, a majority of the respondents in Singapore (65.5%) and in Hong Kong (62.5%) believe that their companies are well prepared for potential regulatory investigations by having good, albeit untested, policies in place. By contrast, half of the respondents in Tokyo (53.8%) said they are still unsure where all key risks lie or how to prepare.

Meanwhile, regulators around the world are stepping up their efforts to clamp down on corporate abuses and non-compliant behaviour; dawn raids are becoming a more frequent tool for enforcement agencies. However, a significant portion of the surveyed companies in Tokyo (62.2%) and Singapore (43.8%) do not have dawn raid guidelines in place. This contrasts with Hong Kong, where 61% of the respondents said they have developed internal guidelines and processes in preparation for any unannounced inspections. Yet most of the surveyed companies in all three economies (Tokyo, 82%; Singapore, 61%; Hong Kong, 48%) have not conducted any dawn raid training to help prepare their employees for such a stressful situation.

"A disorganized response to a dawn raid could have significant impact on businesses," says Mini vandePol, the Asia Pacific chair of Baker McKenzie's Global Compliance and Investigations Group. "Employees could be exposed to the risks of unknowingly obstructing the raid or providing the authorities with access to legally privileged information. There is also the reputational risk which can be very damaging to the business."

"It is imperative for businesses to ensure that they are prepared for a dawn raid," vandePol adds. "That means not only by having guidelines and protocols in place that would safeguard the company's rights and interests; but more importantly, providing necessary trainings to their staff and even carrying out mock dawn raids so that all the relevant individuals are attuned to the appropriate responses and actions when the enforcement agencies knock on your office door expectedly."

Baker McKenzie has developed a Global Dawn Raid App that provides clients experiencing a raid with real-time step-by-step practical guidance on what to do and what not to do for civil and criminal anti-bribery, antitrust and tax raids in 44 countries. The App not only enables the users to directly contact a local Baker McKenzie lawyer but also comes with camera accessibility so that users can take and send photos of the dawn raid warrant and other key documents, thereby allowing Baker McKenzie lawyers to provide immediate legal support before even arriving at the site of the raid.

Besides regulatory compliance, "cyber security", "rising cost pressure" and "increasing protectionism and geopolitical risk" are challenges that are keeping C-suites and in-house counsel up at night. Business executives (more than 40% in each of the three economies in our survey) expect that their companies will further invest in developing internal policies and procedures over the next 12 months so that they can be better prepared to manage any risks and crises that may arise.

With cross-border M&A deals on the rise, mitigating transactional risks through due diligence has become a major concern for dealmakers. Our respondents have noted that "how to structure the due diligence process under an accelerated deal timetable" and "how to manage the risks arising from inaccurate/misleading/false information found during the due diligence process" continue to be two of their top challenges. Furthermore, "when to invoke a warranty & indemnity (W&I) insurance policy" remains an issue that requires careful consideration.

"Each cross-border transaction comes with its own unique set of challenges — be it regulatory compliance, different tax and accounting systems, cultural differences and business practices. Therefore, there is no one-size-fits-all approach to pre-closing risk mitigation and due diligence process and post-closing crisis handling," says Yoshiaki Muto, Asia Pacific chair of Baker McKenzie's Dispute Resolution Practice.

He adds: "Companies are recommended to engage legal advisors early in the deal cycle. The earlier the lawyers can get involved in the due diligence process, the better the chance any possible red flags or concerns can be identified and addressed before a deal is complete and deal value and company's reputation is impacted."

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