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# GLOBAL FORENSICS

## A Q&A WITH PEI-LI WONG, BDO CONSULTING MANAGING DIRECTOR AND ASIA FORENSIC DESK LEADER

### What are your clients' greatest challenges when it comes to doing business in Asia?

One of the greatest hurdles companies encounter when considering whether to expand or launch operations in Asia is getting beyond the view of "business in Asia" as an umbrella term. Oftentimes when we talk about Asia, we make the mistake of homogenizing the region; however, the individual markets are distinct. Each country is comprised of varying languages, governing bodies, and regulations and cultures—all of which come with a unique set of challenges. Acquiring the knowledge and skillsets needed to succeed in Asia is often the first step to expanding or launching operations, but ensuring compliance with laws of both the home country and overseas ups the ante.

Another challenge is ensuring policies and compliance programs are updated on a timely basis to take into account changes in the business and geopolitical environments of each respective country. When policy and regulatory changes are implemented, individuals generally react in two ways—by either adjusting their behaviors and attitudes to work toward full compliance; or creating schemes or methods to bypass those new rules. Consequently, those involved in implementing compliance policies and monitoring transactions need to be cognizant of the latter type of response, and update their investigative procedures and work plans accordingly.

### What do foreign companies looking to break into or already conducting business in the Chinese market need to know?

China in particular has taken recent steps to further regulate the way business is conducted under its jurisdictions. In November 2015, the Ninth Amendment to the Criminal Law of the People's Republic of China (PRC), which introduced a new bribery offense and revised the anti-bribery and anti-corruption (ABAC) provisions of the law, went into effect. Those standards were later updated in April 2016 to clarify sentencing criteria for government officials and commercial bribery offenses. In addition, the new "Management of Foreign Non-Governmental Organizations Activities in China" law, which passed earlier this year, set forth regulations for how international non-governmental organizations (INGOs) operate within the country. The White House has expressed "deep concern [that the law would] further narrow space for civil society in China." However, Chinese officials contend the law is necessary to national security and provides a clear legal framework for INGOs.

As such, it becomes increasingly important that foreign companies operating in China maintain compliance with both its regulations and those of their home countries. This helps ensure no activities abroad negatively affect their investment.

For example, operating through a third-party intermediary is common practice for many foreign companies in China. But relying on third-party agents also poses significant bribery risk, which must be monitored closely. In July, a U.S. technology provider settled with the Securities



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and Exchange Commission for a bribery scheme that involved a regional sales manager at its Beijing-based subsidiary. The money the employee used to bribe customers to sign up for contracts came through a third-party vendor that sold the company's services—a vendor that also ultimately benefited monetarily from the signed contracts. Conducting due diligence prior to engaging third parties, as well as during ongoing relationships with third parties, is a key component to any organization's compliance.

#### **Are different industries more vulnerable to compliance issues than others?**

Industries that are heavily regulated (e.g., telecommunications) and/or deal with government officials or state-owned entities (e.g., infrastructure) can expect an additional layer of scrutiny, as they would almost anywhere. The challenge is having the resources to identify where gaps may occur. A diverse team comprised of individuals from different functions and with different skillsets should be responsible for putting in place a preemptive investigatory mechanism to strengthen internal controls overseas. This team should include personnel from both headquarters and global (local) entities so as to mitigate potential conflicts of interest between local entities and intermediaries or employees.

Regardless of industry, a more strategic approach to regulatory compliance and risk management is needed for any company operating in Asia.

#### **When it comes to anti-corruption policies in China, has there been a shift in how businesses operate in light of the crackdown?**

With the steps China has taken, more foreign businesses are voicing concern about the increasingly intricate regulatory environment, which could eventually inhibit their ability to conduct business in the country. While it's alleged that many of the new regulations favor local firms, Chinese officials insist they are committed to welcoming foreign companies and changing the political and business culture for the better. More recently, China reached an agreement with G20 leaders to advance fugitive repatriation and asset recovery in the country, signifying greater inclination to cooperate with international regulators.

Companies with more experience managing compliance with international laws and regulations have reacted to more stringent policies by putting in place measures to comply with them. However, there are also calls for greater transparency as public details on a number of high-profile investigations have been left vague, leaving company stakeholders in the dark. That said, the anti-corruption campaign has had a largely positive impact.

#### **How can BDO help?**

Our knowledgeable professionals have feet on the streets in more than 150 countries—working to best serve our clients with customized solutions that address their specific issues. BDO's Global Forensics Practice can help build a comprehensive compliance framework, institute internal controls testing and provide an organization with the business acumen to make informed decisions that reduce and mitigate potential risks. We're well versed in international and local regulations, with relationships spanning across sectors to ensure our clients are well positioned to deter and detect fraud and corruption.

## **CONTACT:**

### **PEI-LI WONG**

Managing Director and Asia Forensic  
Desk Leader  
212-885-8288  
pwong@bdo.com

### **GLENN POMERANTZ**

Partner and Global Forensics Practice Leader  
212-885-8379  
gpomerantz@bdo.com

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