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Indonesia – A Practical Approach to Security Threats

Executive Summary

In recent years, the world has witnessed a number of political and economic developments that have reshaped companies' business operations. A growing number of companies are seeking to diversify their investment portfolios and supplier bases after the impact of trade wars and COVID-19, with many having established or considering establishing a presence in Indonesia. However, companies may be subject to compliance-related exposure in this jurisdiction due to community-led protests leading to a potential increase in interactions with government security agencies. If your company is or may be facing such activity, it is well worth considering and implementing precautionary measures in advance rather than taking a reactionary approach in real time.

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Broadening Geographical Scope

Given recent global challenges, companies are increasingly considering broadening the geographical scope of their manufacturing bases and supply chains. Those already operating in emerging market jurisdictions are no stranger to corruption risks related to dealing with differences in cultural norms and traditions across different regions. While many are familiar with traditional bribery risks such as providing benefits to business partners with ties to government officials, charitable donations, and other forms of financial assistance, in Indonesia, security concerns have also been a point for exposure.

Security Challenges

If a company becomes visible in local political issues, they can inadvertently become the targets of protests or other forms of interference initiated by discontented local communities. This has previously been illustrated by community groups in several provinces across Indonesia that organized recurrent protests and interference at company facilities. Such events can have significant repercussions on business operations, leading to security challenges. This could also lead to opportunities for local officials and community leaders to solicit bribes and other improper advantages in exchange for providing security services and maintaining public order.

Forewarned is Forearmed

In light of this dynamic, companies operating in Indonesia (and elsewhere) may wish to consider in advance roadmaps for ensuring the integrity and continuity of business operations, including appropriate guidance on engaging with the police during protests, strikes or other activities that may disrupt the company's operations. Also, Indonesian law provides some tools for companies dealing with such emergencies, including enabling private companies to request the Indonesia National Police to help safeguard certain assets. However, the option to engage the police for security services may increase government exposure, and we advise that any such engagements would be best utilized with the benefit of local counsel advice. Having to consider such issues in the heat of the moment when management is already dealing with the stress of a security threat only increases the potential of further exposure, and by adopting related guidance, companies mitigate corruption risks associated with such exposure.

FCPA and UKBA – A Cautionary Note

While global anti-corruption legislation such as the Foreign Corrupt Practices Act ("FCPA") and the U.K. Bribery Act ("UKBA") do not *per se* prohibit companies from entering into *bona fide* commercial arrangements with government bodies, such agreements and associated interactions with the government inherently entail a degree of corruption risk because they present a potential for abuse, such as where funds are funneled to gain improper benefits. Again, appropriate legal advice in advance is helpful to avoid reactive decisions being made under pressure.

Recommendations

In light of the above, companies who may potentially need to respond to community-led protests and other types of security concerns should consider the following in advance:

- How their physical assets, business and employees may be impacted by such threats and have a contingency plan;
- Obtain legal advice and establish clear guidance on when cooperation with police may be undertaken, relevant approval and reporting processes (including of any agreements), and protocols for management;
- Provide robust training to relevant company employees and consider appropriate precautionary measures relating to what is and is not permissible; and
- Ensure that company representatives who would potentially interact with government entities and officials are prepared to clearly message the company's approach to compliance (*e.g.*, demonstrate knowledge of relevant anti-corruption obligations and norms, have company anti-corruption policies readily available, etc.) with regard to engaging or participating in any improper activity.