

A complex network of white lines and dots on a light background, resembling a globe or a data network, positioned in the upper left corner of the page.

# Compliance Risks in Emerging Markets Series

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Asia



**Baker  
McKenzie.**

# Asia

Asia is an expansive and, often times, risk-filled region. The world's largest continent has become increasingly attractive as an area of expansion for businesses. The low cost and availability in the supply chain has drawn in many organizations. Risks common to the region include data localization requirements, money laundering, implementation of whistleblower regulations and protection of whistleblower identity, third-party due diligence issues, and employment law challenges. The numerous and diverse countries in the region add to the challenge of operating across the continent due to their varying laws, regulations, and enforcement policies.

## Top Compliance Issues In Asia

- Cybercrime and fraud
- Emerging digital assets and regulations of digital assets
- Work from home environments
- Weak legal and regulatory frameworks
- Greater focus on anti-money laundering (AML) enforcement
- ESG expectations and regulations

## Barriers to Working in Asia

- Certain jurisdictions require the use of local joint venture partners, distributors, and third party agents
- Localization requirements
- Weak worker protection standards
- Lack of visibility over operations
- Bribery and corruption exposure in high risk countries



## Localization Requirements: Data & Manufacturing

Localization requirements are a common hurdle for U.S. businesses when operating in foreign countries. These often come in two forms: (1) data storage; and (2) manufacturing. China, India, Vietnam, and Indonesia all have data storage localization requirements. Indonesia, Thailand, and Vietnam all have manufacturing localization requirements. Data localization requirements are particularly hard to navigate in this region because they vary drastically from country to country, making the creation of a uniform data policy for Asia very difficult. For instance, in Vietnam, there are administrative data localization requirements in the country's cybersecurity and data protection laws. In Indonesia, the data localization requirements are applicable to public electronic systems operators, but not across all industries and businesses.

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## Anti-Money Laundering: New Regulations and Increased Enforcement

Anti-money laundering (AML) enforcement actions have increased in Asia in recent years. Authorities are seeing AML legislation as an effective tool to show that they are trying to stem the flow of misbegotten funds and mitigate the risk of misconduct. AML legislation has existed in the region for a while and some countries have expanded the scope of AML regulation, but enforcement activities have recently begun to increase.

### WHAT SHOULD COMPANIES DO TO COMPLY WITH AML LEGISLATION IN THE REGION?

- Be vigilant of the money that is flowing into your organization.
- Report any misconduct as soon as you become aware of it.
- Ensure employees acknowledge their obligation to follow the organization's suspicious detection reporting policy.



## Increased Whistleblower Activities

There has been an increase in efforts to incentivize employees to report issues or concerns both internally and externally.

- Japan has passed amendments to the Whistleblower Protection Act that require companies to establish a reporting system for whistleblowers and also allow for fines to be levied against those who disclose the identity of a whistleblower.
- South Korea has an amendment to their anti-corruption laws that increases the penalty for revealing a whistleblower's identity.
- In Singapore, issuers are required to have a whistleblower policy.

### Other ways Asian countries have incentivized whistleblowing:

- Strengthening whistleblower confidentiality protections
- Making the process less cumbersome and more accessible
- Increased training efforts to raise awareness of the channels for reporting, the importance of raising issues or concerns without fear of retaliation, and training for managers to receive complaints

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## The Importance of Third-Party Due Diligence

Due diligence is an important part of managing third-party relationships. Often there are multiple levels of distributors, middleman and third party agents, the latter of which may be required despite not being necessary. Many of these sub-distributors are small with little to no internet presence, so financial statements and records are needed. One way to ensure the third parties in your supply chain are ethical is to enlist the help of a third-party investigator. A third-party investigator with local expertise can be beneficial and will be able to conduct the due diligence in-person, which can be more effective than if it is done remotely.

Documentation is also important when conducting third-party due diligence. If misconduct does occur, having accurate documentation can show that you have taken the proper steps to identify and mitigate risks. This record will also aid in justifying your decision whether or not to do business with the third party.



## Environmental, Social, and Governance Impact

Like in the rest of the world, ESG issues have become a rising trend in the last two years in Asia. There has been an increase in environmental regulations, with Hong Kong, Malaysia, and Thailand working to reduce single-use plastics with extend producer responsibilities laws. Customers are calling for more information on products and for responsibly sourced products.

Much of the focus of the ESG efforts are on supplier compliance with regulations and organizational rules. Companies are seeing an urgent need to demonstrate that they not only have a compliance program on paper, but that their suppliers and third-party vendors are complying with the rules. Third-party non-compliance with governance can lead to press blowback and U.S. Dept. of Justice action. Companies have begun to engage external auditors to get external accreditation for their suppliers to show that they are meeting ESG standards.



## Challenges in Employment and Termination

As in many emerging markets, employers may face challenges in terminating employees who have committed misconduct. For example, in Indonesia, foreigners cannot be involved in any HR activities (including terminating employees), and employees cannot be terminated without first having the issue dealt with in court. This often leads to an agreement with the employee for a mutual separation.

However, the employment laws in the region are evolving. The concept of unfair dismissal has emerged recently. The laws and regulations have also begun to balance out between being employer versus employee friendly. For example, in Singapore, they are bolstering their employment laws to make them more employee friendly, while still maintaining an at-will employment jurisdiction.

# Asia

## Bottom Line: Is it getting harder to do business in the region?

The answer is yes and no. The development of laws and regulations in many countries is meant to facilitate new business in Asia. Enhanced whistleblowing laws, ESG legislation, and increasing anti-money laundering regulations and enforcement were created to make the region more attractive and safer for foreign businesses and to mitigate risks. On the flip side, there are increased expenses for foreign businesses to ensure that they are complying with all the new laws. It is also difficult to navigate the laws of numerous and diverse jurisdictions. The best advice for doing business in Asia? Use your resources efficiently, and carefully consider where you want to do business.

### RISKIEST PLACES TO DO BUSINESS IN ASIA:

- Indonesia
- Myanmar
- Cambodia
- South Korea

### PLACES THAT ARE RISKY, BUT ARE IMPROVING

- Thailand
- Vietnam



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