

MIDDLE EAST



# Countering corruption in the Middle East



**By Jonathan Silver and Mansi Kochhar**

Countering corruption has become a priority for a number of governments in the Middle East, as is illustrated by public statements made by several leaders and a number of recent high profile prosecutions. For companies operating in this region, this has led to an increased need for awareness of anti-corruption laws and regulations that apply in the region (whether imposed locally or internationally), to educate and train employees to understand their legal obligations and the risks that exist, and to develop robust, internal audit mechanisms to detect corruption. Such action could go a long way to avoiding potential liabilities – both civil and criminal – for corporations and their employees, and will improve corporate governance and transparency and boost investor confidence.

**Local considerations**

In order to do business in the Middle East, particularly in the AGCC countries, companies are often required to enter into commercial arrangements with nationals of the AGCC countries (or others), whether as a partner, a sponsor, a commercial agent or distributor, or a consultant. This interface needs to be managed so as to minimise any risks of allegations of bribery and conflicts of interest. While some AGCC states such as the UAE and Bahrain are in the process of enacting comprehensive anti-corruption legislation, a wide body of laws and regulations already exists in different countries in the region which could currently have an impact on these types of arrangements. However, because of the way in which legislation is promulgated in the region, the relevant provisions tend to be dispersed in different laws and regulations and are not always easy to find. For instance:

- The Kingdom of Saudi Arabia has an Anti-Bribery Law which prohibits certain types of conduct such as acceptance by a public official of a gift in exchange for performing an act that would otherwise be part of his duties. However, this law is not

the only decree relevant in the context of compliance with anti-corruption legislation: it must be read along with other laws such as the Civil Service Law issued by Royal Decree No. 49 of 10/7/1397(H) and the Public Employee Audit Regulations issued by Royal Decree No. 16 of 7/3/1382(H).

- Provisions in the UAE Penal Code expressly make acceptance of a bribe by a public official a criminal offence, punishable by imprisonment and fines. The offerer of, or person who facilitates, a bribe can also face criminal liability.

**Foreign conventions and legislation**

Companies established outside the region that operate in the Middle East need to be aware not just of country specific legislation dealing with bribery or corruption but also of international treaties and laws that may be applicable. For instance:

- *UN Convention against Corruption*: applies to both public officials and individuals in the private sector. Several countries are signatories to the Convention though most of them are yet to pass legislation to implement it.
- *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*: seeks to make bribery of a foreign public official punishable by criminal penalties, and can have implications for multinationals that are active in the region.
- *US Foreign Corrupt Practices Act (FCPA)*: quite aggressive in its extra territoriality reach, the provisions of the FCPA prohibit US companies, citizens, foreign companies listed on a US stock exchange, or any person acting while in the US, from corruptly paying or offering to pay, directly or indirectly, anything of value to a 'foreign official' to obtain or retain business. MNCs with any nexus to the US must be careful to ensure that company personnel and anyone acting on their behalf do not contravene any anti-bribery laws that may apply to such company.

**Clyde & Co**

Dubai Office: City Tower 2, Suite 102, Sheikh Zayed Road  
PO Box 7001, Dubai, United Arab Emirates

Tel: (971) 4 331 1102

Fax: (971) 4 331 9920

Email: [jonathan.silver@clydeco.ae](mailto:jonathan.silver@clydeco.ae)

[mansi.kochhar@clydeco.ae](mailto:mansi.kochhar@clydeco.ae)

[www.clydeco.com](http://www.clydeco.com)