



INDEPTHFEATURE

CORPORATE FRAUD & CORRUPTION

2021

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Financier Worldwide Ltd
First Floor, Building 3
Wall Island, Birmingham Road
Lichfield WS14 0QP
United Kingdom

Telephone: +44 (0)121 600 5910
Email: info@financierworldwide.com

www.financierworldwide.com

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April 2021



Introduction

The spectre of fraud and corruption can hang over any business, irrespective of industry or jurisdiction. Though companies have made great strides to address the risks, COVID-19 has changed the paradigm.

The mass migration to remote working in response to the pandemic means more employees are operating with reduced oversight. Now more than ever, companies must implement strategies to prevent fraud to the extent possible. Regular training to help employees recognise fraud should be carried out, as they form the vanguard when it comes to raising red flags. Anonymous reporting systems also encourage staff to come forward with information. If fraud is detected, a thorough investigation should follow, and it may be necessary to notify and cooperate with authorities.

Around the world, governments are cracking down on fraudulent activities and corrupt practices. In the US, for example, the Biden administration is expected to take a more aggressive stance.

As we move into the next phase of the pandemic, a return to the 'normal' we knew is unlikely. Remote working, for example, is set to persist, at least in some capacity. Companies must protect themselves and arm their employees for the fight against fraud and corruption in the 'new normal'.

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Financier Worldwide canvasses the opinions of leading professionals on current trends in corporate fraud & corruption.

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UNITED STATES

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Respondents



G. SCOTT HULSEY
Lawyer
Kobre & Kim LLP
+1 (202) 664 1904
scott.hulsey@kobrekim.com

G. Scott Hulsey is a former high-ranking Department of Justice official and corporate chief compliance officer who serves as counsel in white-collar criminal and regulatory enforcement matters. He represents individuals and institutions in complex international government investigations and trials, particularly those involving Asia and the EMEA regions. As a former federal prosecutor at the US Attorney's Office for the Northern District of Georgia, he was responsible for investigating and prosecuting complex criminal, money laundering and civil asset forfeiture matters against large-scale, international criminal organisations. He has successfully tried more than 60 federal and state cases over the course of his career.



WILLIAM F. MCGOVERN
Lawyer
Kobre & Kim LLP
+1 (212) 488 1210
william.mcGovern@kobrekim.com

William F. McGovern's practice focuses on high-stakes cross-border government enforcement and investigation matters, with a particular emphasis on matters with an Asia nexus. He counsels high-net-worth individuals, public companies, investment advisers, proprietary trading firms, and officers and directors facing sensitive investigations or criminal enforcement proceedings, often conducted by multiple government agencies, including the US Securities and Exchange Commission (SEC), the US Department of Justice, the US Commodity Futures Trading Commission, the Hong Kong Independent Commission Against Corruption, and the Hong Kong Securities and Futures Commission.

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Q. How is the new US government administration planning to approach issues of fraud and corruption differently than the previous administration?

A. The Biden administration is expected to take a more aggressive stance against financial and corporate fraud, consistent with the Obama administration's approach. While prosecutions of corporate executives increased under Trump, many view enforcement against corporations and banks themselves to have eased – something that is expected to be reversed under Attorney General Merrick Garland. Relatedly, this more assertive approach to fraud and corruption is expected to include a focus on pandemic-related fraud. Moving forward, the Consumer Financial Protection Bureau, which was largely sidelined in the previous administration, is expected to be revitalised, and its leadership replaced, resulting in more enforcement actions on behalf of consumers. Separately, the Biden administration aims to pursue criminal climate litigation against corporations and corporate executives.

Q. To what extent have you seen a notable rise in the level of corporate fraud, bribery and corruption uncovered in the US?

A. In connection with COVID-19 and workers shifting to remote work, there have been reports of an increase in fraud observed by employees over the last half of 2020. The Association of Certified Fraud Examiners (ACFE) reported in December 2020 that 79 percent of the respondents to its survey, which was comprised of in-house examiners, professional services firms, law enforcement and government or regulatory agencies, noted an increase in fraud, and 90 percent expected a continued increase in fraud over the next 12 months. Particularly relevant to corporate fraud has been an increase in payment fraud. With new leadership at the Securities and Exchange Commission (SEC) and Department of Justice (DOJ) we may well see a more vigorous approach to uncovering corporate fraud.

Q. Have there been any legal and regulatory changes implemented in the US designed to combat fraud and

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corruption? What penalties do companies face for failure to comply?

A. Congress passed an amendment to the National Defence Authorisation Act for the 2021 fiscal year. Under the Act, tipsters can receive up to 30 percent of the monetary penalties collected in an enforcement action brought by the Department of Treasury or the DOJ. The Act also included new rules for beneficial owners of US companies that requires them to register the true owner of the companies, ending anonymous shell companies. The DOJ has indicated that it will prioritise allegations of corporate bribery. Foreign Corrupt Practices Act (FCPA) regulations apply to anyone working for or on behalf of a company that does business within the US. With the new administration ramping up, there has been a significant change in the leadership of the DOJ, SEC and other criminal and regulatory bodies. We expect that in the coming months, the newly installed leaders of these agencies will define their priorities and perhaps propose additional rulemaking.

Q. In light of COVID-19, have you seen a pattern of US Department of Justice (DOJ) fines and financial penalties being reduced pursuant to ‘inability to pay’ considerations?

A. Although not new, since the DOJ issued new guidance in 2019 and 2020 adding transparency, the DOJ’s ‘inability to pay’ process has been increasingly invoked by corporations in support of reduced financial penalties. Sargeant Marine Inc, for example, pleaded guilty to violating the FCPA by bribing foreign officials in three other countries. For these charges, the minimum fine under the DOJ guidelines would have been around \$120m. After raising an inability to pay claim, it settled in September 2020 for a reduced fine of \$16.6m. As the negative financial impacts of the pandemic continue to reverberate through 2021, more claims can be expected. Corporations still must prove their inability to pay, as the DOJ can be expected to treat these claims the same as in normal times.



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Q. How does the US address instances of fraud and corruption that take place outside its national borders?

A. The FCPA is the best-known ‘tool’ available to the DOJ for policing bribery occurring outside of the US. US companies, as well as foreign corporations with registered securities in the US, fall within its ambit. US authorities, however, have been expanding their global reach in other ways. The most recent example is *United States v. Napout*, decided by the Second Circuit in 2020. There, the US Attorney’s Office for the Eastern District of New York charged two former officials of Latin American football associations with ‘honest services’ fraud in connection with a commercial bribery scheme. More particularly, the defendants were convicted by a jury of taking bribes from local companies in exchange for the granting of football marketing and broadcasting rights. This case did not fall within the scope of the FCPA because the unlawful payments were not directed to government officials. Still, a sufficient US nexus was deemed to exist where bribes either were received in or originated from US financial accounts. This case is indicative of an increasingly



Although not new, since the DOJ issued new guidance in 2019 and 2020 adding transparency, the DOJ’s ‘inability to pay’ process has been increasingly invoked by corporations in support of reduced financial penalties.

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aggressive approach by US authorities to address overseas crime, even when limited to private actors.

Q. What role are whistleblowers playing in the fight against corporate fraud and corruption? What are some trends or recent developments in US whistleblower programmes that may impact corporate compliance programmes?

A. Whistleblowers are now playing a central role in uncovering corporate fraud and tax underpayment. Despite the pandemic, existing whistleblower programmes at the SEC, Commodity Futures Trading Commission (CFTC) and Internal Revenue Service (IRS) are drawing in more tips and paying out more awards than ever before. The IRS had a budget for 2020 of \$11.8bn, while the SEC had a budget of \$403m. In 2020, the IRS received 9077 tips from whistleblowers. The SEC received 6911 – an increase of 1699 tips from 2019. In terms of awards, in 2020 the IRS paid out 169 awards in the amount of \$86,619,032. The SEC paid out 39 awards totalling \$175m – an increase from eight awards totalling \$60m the year prior. The Department of Treasury

is enhancing its whistleblower programmes aimed at uncovering money laundering abuses. The SEC announced a new rule for its whistleblower programme, effective 23 October 2020. Among other changes, this rule largely changed the procedures for determining whistleblower award amounts. Further, the SEC is no longer permitted to raise the award amount above 30 percent of the aggregate amount of disgorgement and penalties. However, the rule also gives the SEC the ability to raise award amounts of \$5m or less.

Q. What advice can you offer to companies on conducting an internal investigation to follow up on suspicions of fraud or corruption?

A. According to a recent report by PwC, only 56 percent of companies surveyed conducted an investigation into their ‘worst incident’ last year. This deficiency stems in part from difficulties posed by the pandemic, such as travel restrictions and social distancing measures. These hurdles can be expected to persist, as remote working seems likely to stay – at least in some capacity – in a post-COVID-19 world. To overcome these obstacles,



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companies might consider increasing their investments in technology. We are learning that interviews can still be conducted with some effectiveness and securely over digital platforms, like Zoom and WebEx. Further, anti-fraud technology, including artificial intelligence software, can help to identify suspicious patterns and monitor compliance. □

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SCOTT HULSEY Lawyer
+1 (202) 664 1904
scott.hulsey@kobrekim.com

WILLIAM F. MCGOVERN Lawyer
+1 (212) 488 1210
william.mcGovern@kobrekim.com

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AND INVESTIGATIONS**



BDO Brazil

Respondents



ALFREDO MARQUES
Partner
BDO Brazil
+55 (11) 3848 5880
alfredo.marques@bdo.com.br

Alfredo Marques is a partner with BDO Brazil, directing the fraud, investigations, and disputes practice. He has 40 years of experience in external audit and nearly 30 years of experience in dispute services. Mr Marques currently manages audit, litigation and fraud investigation engagements across industries including financial institutions and specialty finance, manufacturing and distribution, restaurants, and retail and consumer. Mr Marques also serves on several boards of directors. He is an accountant and a member of CRC-SP Brazil.



LUANA MEDICI
Manager
BDO Brazil
+55 (11) 3848 5880
luana.medici@bdo.com.br

Luana Medici is a manager with BDO Brazil, focusing on fraud, investigations and dispute services. She has more than five years of experience with complex corporate investigations reporting to authorities in Brazil and abroad, anti-corruption due diligences and compliance evaluation. Ms Medici has worked on preventive compliance initiatives, designing internal controls, training and risk assessments, across industries including oil & gas, pharmaceutical and legal. She is a lawyer affiliated with the Brazilian Bar Association.

BDO Brazil

Q. To what extent have you seen a notable rise in the level of corporate fraud, bribery and corruption uncovered in Brazil?

A. The perception is that, due to the end of Operation Car Wash, there has been a notable decrease in the level of fraud, bribery and corruption in Brazil. The investigations related to Operation Car Wash, as well as other federal police-related operations, are ongoing and new phases are constantly arising. Moreover, the Organization for Economic Co-operation and Development (OECD) has created a permanent monitoring group focused on corruption in Brazil. Also, due to the pandemic and the rising public need to make healthcare purchases, there have been numerous investigations related to fraud and overpriced costs for respirators and pandemic-related materials. There has also been corruption related to the construction of field hospitals in Brazil.

Q. Have there been any legal and regulatory changes implemented in Brazil designed to combat fraud and corruption? What penalties do companies face for failure to comply?

A. There have been no major changes in the legislation aimed at combatting fraud and corruption in the last year. It is important to highlight, however, that Brazilian anticorruption legislation is relatively new, especially compared to the Foreign Corrupt Practices Act (FCPA). Thus, efforts to build a legal foundation for fighting corruption in the country are still ongoing. Companies that fail to comply with Law No. 12,846, the Clean Company Act are subject to a variety of criminal and civil penalties, such as a fine of up to 20 percent of the company's gross revenue, or up to 60 million reais if it is not possible to calculate gross revenue. There must also be an announcement in the media of any penalties imposed. Companies may also have their property seized, have their activities suspended and be dissolved or be prohibited from receiving incentives, subsidies, donations or loans from public entities or from public or controlled financial institutions for a specified period. The law also establishes several criteria for determining the severity of a fine, such as the gravity of the infraction, any illicit advantage obtained or intended by the infringer, consummation of the infraction, the economic situation of the infringer,

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In Brazil, whistleblowing is uncommon, in part because there is no provision of any sort to reward the individual reporting potential fraud or corruption.

the legal entity's cooperation with the investigation, the existence of a compliance programme and the effective application of codes of ethics and conduct within the legal entity. Calculation of a fine begins with a percentage of the company's gross revenue in the most recent financial year, prior to the initiation of the administrative accountability process (PAR), excluding taxes. Individuals who fail to comply with anticorruption legislation in Brazil are subject to fines and prison sentences.

Q. In your opinion, do regulators in Brazil have sufficient resources to enforce the law in this area? Are they making inroads?

A. Regulators have sufficient resources to enforce the law in Brazil. Since the beginning of Operation Car Wash, there has been a significant breakthrough in, and dissemination of, compliance culture. It is still a challenge to implement compliance programmes in some companies and to convince employees of the need for them, but there has been progress and the outlook is strong.



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Q. If a company finds itself subject to a government investigation or dawn raid, how should it respond?

A. The best course of action in the event of being subject to a government investigation or dawn raid is to carry out an independent investigation. This should be done in line with legislation and with the possibility of penalties in mind. For these independent investigations, it is important to have a team composed of lawyers – to ensure privilege for the client – and forensic specialists. Dawn raids have become more common in Brazil, but are subject to appropriate warrants and to the extent law enforcement oversteps the limits of the warrant, evidence obtained in the raid can be adjudicated as inadmissible.

Q. What role are whistleblowers playing in the fight against corporate fraud and corruption? How important is it to train staff to identify and report potentially fraudulent activity?

A. In Brazil, whistleblowing is uncommon, in part because there is no provision of any sort to reward the individual reporting

potential fraud or corruption. However, the Clean Companies Act requires companies to implement a whistleblower channel, as well as policies regarding confidentiality and non-retaliation. What happens after the investigation has started is the drafting of plea bargains. The target of the investigation usually presents more information to the authorities and receives a degree of leniency as far as penalties are concerned. Conversely, a compliance culture is being encouraged and enforced in Brazil and companies' 'hotlines' are receiving reports of potentially fraudulent activity which may lead to internal investigations.

Q. What advice can you offer to companies on conducting an internal investigation to follow up on suspicions of fraud or corruption?

A. The best advice for companies conducting internal investigations is to hire independent experts to carry out the investigation using the best tools and methodologies to assure completion of the work. The client benefits from best practices in investigations and compliance based on the collective experience of the

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investigative team as well as the credibility and objectivity offered by the investigative team.

Q. What general steps can companies take to proactively prevent corruption and fraud within their organisation?

A. The best course of action is for companies to implement the following steps as part of their compliance programme. First, senior management must support and be involved in the planning and execution of compliance programmes. Employees must feel it is essential to respect the compliance programme and environment. Second, the company should perform risk assessments to map and understand the highest risks and vulnerabilities and strengthen weakest links with appropriate internal controls. Third, it is important that the company develops its own code of conduct and policies to be part of its compliance programme. These rules not only enforce legal compliance, but also create a culture of integrity and encourage ethical behaviour. Fourth, establishing internal controls to mitigate risks as far as possible is also important to

ensure a strong and efficient compliance programme. Some specific company activities may have intrinsic compliance risks. In these cases, the company will have to apply strong internal controls to mitigate such risks. Fifth, all employees must know and understand the company's compliance programme. It must be part of the company's culture and there must be regular training. All the tools of the compliance programme must be made available to all employees. Employees must be aware of the existence of a hotline and where to find the company's organisational structure, policies, internal controls and code of conduct. Finally, compliance programmes should be repeatedly tested and refined as business models change and risks evolve. □



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ALFREDO MARQUES Partner

+55 (11) 3848 5880

alfredo.marques@bdo.com.br

LUANA MEDICI Manager

+55 (11) 3848 5880

luana.medici@bdo.com.br





UNITED KINGDOM

Corporate Research and Investigations Limited

Respondents



ZAFAR ANJUM

**Group Chief Executive Officer
Corporate Research and Investigations Limited
+44 (0)7588 454 959
zanjum@crigroup.com**

Zafar Anjum is founder and group CEO at CRI Group, and its ABAC Center of Excellence. He uses his extensive knowledge and expertise in creating stable and secure networks across challenging global markets. For organisations needing large project management, security, safeguard and real-time compliance applications, Mr Anjum is the assurance expert of choice for industry professionals.



HUMA KHALID

**Scheme Manager
ABAC Center of Excellence Limited
+44 (0)777 652 4355
huma.k@abacgroup.com**

Huma Khalid, as scheme manager, is responsible for leading ABAC. Ms Khalid's responsibilities include planning and overseeing all aspects of the ABAC programme, which include certification and training. Additionally, she oversees the compliance department for the implementation, management and internal audit of CRI Group's and ABAC compliance programmes.

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Q. To what extent have you seen a notable rise in the level of corporate fraud, bribery and corruption uncovered in the UK?

A. The COVID-19 pandemic has created increased opportunities for fraud worldwide. The UK is not immune, unfortunately, and such a disruptive event as the pandemic increases the likelihood that normal safeguards and risk management controls can be bypassed and subverted. There has been an increase in reported fraud and corruption cases over the past year. A survey of fraud experts by the Association of Certified Fraud Examiners (ACFE) in August 2020 showed that 77 percent were seeing an increase in fraud. Perhaps not surprisingly, cyber fraud is the fastest-growing problem area, but there has also been an uptick in unemployment fraud. This is bad news in the UK, where fraud is our most common crime, costing the country £190bn annually, according to the Royal United Services Institute (RUSI).

Q. Have there been any legal and regulatory changes implemented in the UK designed to combat fraud and

corruption? What penalties do companies face for failure to comply?

A. There is proposed legislation, supported by the secretary of state of the UK's Department of Business, Energy and Industrial Strategy, that would increase accountability for corporations that produce falsified financial statements. This includes a provision that would require company directors to personally sign off on their corporation's financial statements, under penalty of fines and possible prison time. Under the Sarbanes-Oxley Act in the US, the penalty for falsely certifying such statements is steep: up to 20 years in prison and up to \$5m in fines, and the UK is looking at similar measures to step up its fight against fraud and corruption. The UK also recently approved the formation of an audit, reporting and governance authority (ARGA) that should come into force within the next two or three years. Accordingly, the UK is taking a stronger stance against fraud going forward.

Q. In your opinion, do regulators in the UK have sufficient resources to enforce the law in this area? Are they making inroads?

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A. Combatting fraud is never straightforward. When looking at progress in detecting and preventing fraud, it sometimes feels like a question of whether the glass is half full or half empty. For example, the Serious Fraud Office (SFO) brought 13 fraud defendants to trial in 2019 and 2020, with a 95 percent four-year success rate by case. Many of these represent large frauds, and they are meaningful wins, but how many more fraudsters are out there undiscovered? Other bodies, including Her Majesty's Revenue and Customs (HMRC), among others, also have key roles to play in investigating fraud, but a considerable amount of fraud is still investigated and prosecuted at the local level. It is important for leaders in the UK to know what resources law enforcement have and where they need training and support in the fight against fraud.

Q. If a company finds itself subject to a government investigation or dawn raid, how should it respond?

A. Any investigation, and especially a raid, can be an incredibly stressful time for a company and its employees. The important

thing is to not panic – the investigators have a job to do, and the sooner they get to the truth of the situation, the better for everyone. Companies should direct their management and their employees to cooperate fully, while also engaging legal counsel to properly protect the corporation from future litigation. If fraud is detected, it is a criminal matter and the company should make a good faith effort to work with prosecutors and regulators, while making sure to document all control measures and prior steps taken to manage fraud risk. Having a track record of meeting compliance requirements and having proper internal controls in place at the time fraud occurs could have a mitigating effect in terms of potential prosecution and penalties down the road.

Q. What role are whistleblowers playing in the fight against corporate fraud and corruption? How important is it to train staff to identify and report potentially fraudulent activity?

A. Employees are a company's first line of defence against fraud and corruption. But training them to recognise the red flags of fraud is only half of the process. The

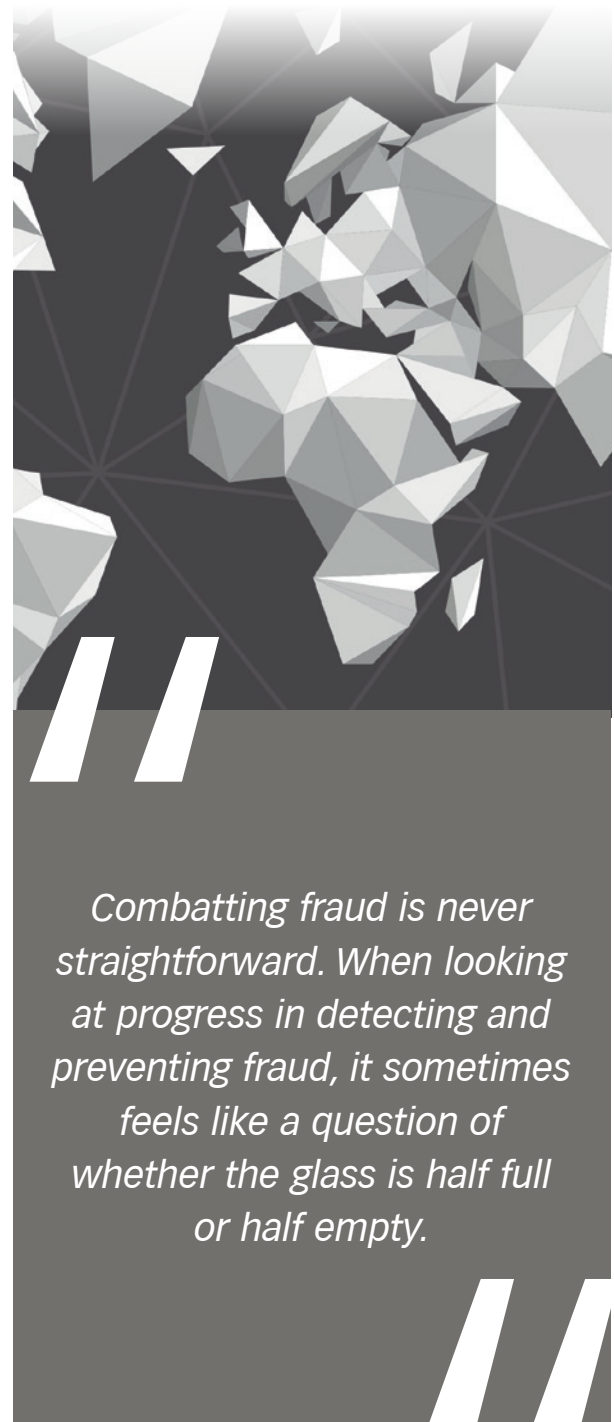


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company must also implement a reporting system that is anonymous and easy to use, so that employees are encouraged to report any suspicions. Then, the company must follow through and fully investigate any reports that do come in. If it does not, whistleblowers will believe that combatting fraud and corruption is not a corporate priority, and the tips will stop coming in. How important are those tips? According to the ACFE, they are by far the highest detection method for fraud, well above audits and other means. The company should communicate that a whistleblower hotline or online reporting system is available, and that there is a zero-tolerance policy for any type of retaliation against whistleblowers. Over time, the tips will come in.

Q. What advice can you offer to companies on conducting an internal investigation to follow up on suspicions of fraud or corruption?


A. Investigations can be challenging, and they require expertise. For example, there are rules for collecting and handling evidence, including physical evidence and witness statements, that must be followed



Combatting fraud is never straightforward. When looking at progress in detecting and preventing fraud, it sometimes feels like a question of whether the glass is half full or half empty.

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for such evidence to be admissible in court. There are also laws in the UK dealing with privacy and the rights of the accused. The bottom line is that a company already dealing with a potentially costly and damaging fraud scenario should not risk adding more legal trouble through a faulty investigation. Hire experts who deal with corporate crime and specialise in fraud and corruption cases. Like any other area of expertise, they will have the knowledge and resources to help proceed with an investigation and lead it to the most favourable outcome for your company. If you already have anti-fraud professionals on staff, let them take the lead, but provide outside resources as needed.

conduct signed by every member of staff, providing regular and surprise audits, and implementing a fraud reporting system are all effective ways to help prevent and detect fraud and corruption. None of these methods is strong enough on its own to properly protect organisations. But together, they can be very effective. It is also important to set a 'tone at the top', from ownership, directors and management on down, that fraud will not be tolerated. Anti-fraud controls only work if the company sees them through and thoroughly investigates every report. When fraud is confirmed, any perpetrators should be terminated and potentially prosecuted, sending a message of zero-tolerance. 

Q. What general steps can companies take to proactively prevent corruption and fraud within their organisation?

A. A fraud prevention strategy has many different elements, and the sooner companies implement them, the sooner they can begin to work together in a proactive way to prevent fraud. Mandating employee training, such as ISO 37001 ABMS, having an ethical code of



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ZAFAR ANJUM Group Chief Executive Officer
+44 (0)7588 454 959
zanjum@crigroup.com

HUMA KHALID Scheme Manager
+44 (0)777 652 4355
huma.k@abacgroup.com

RAZA SHAH Business Development and Marketing Executive
+92 300 501 2632
raza.shah@crigroup.com

AYESHA SYED Lead Auditor
+971 4 358 9884
ayesha.s@abacgroup.com





Grant Thornton

Respondents



PAUL JACOBS

Partner

Grant Thornton

+353 (0)1 6805 835

paul.jacobs@ie.gt.com

Paul Jacobs is head of forensic & investigation services. For 25 years he has worked on investigations and expert witness assignments, principally in Ireland, UK, Europe and the Middle East. Mr Jacobs heads a multidisciplinary team of 40 in Dublin and Belfast, leveraging leading technology solutions, including computer forensics, e-discovery and cyber security expertise.

He is a fellow of both the Association of Chartered Certified Accountants and the Institute of Chartered Accountants of Australia and New Zealand.



FRANKIE CRONIN

Director

Grant Thornton

+353 (0)1 6805 805

frankie.cronin@ie.gt.com

Frankie Cronin is a regulatory and risk consultant with over 15 years' experience supporting financial services institutions with their governance, risk and regulatory compliance challenges. Mr Cronin is based in Dublin and leads a dedicated team of 45 governance, risk and regulatory compliance professionals. He previously worked with Grant Thornton LLP in New York City for a number of years. He is a fellow of the Institute of Chartered Accountants of Ireland (ICAI).

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Q. To what extent have you seen a notable rise in the level of corporate fraud, bribery and corruption uncovered in Ireland?

A. The terms ‘economic crime’, ‘fraud’, ‘corporate crime’ and ‘white-collar crime’ are used interchangeably. Generally, these terms fall into the same category – illegal activities – and can include asset misappropriation, bribery and corruption, corporate and personal fraud, and money laundering. Findings from a 2019 economic crime survey published by Chartered Accountants Ireland highlight that the level of reported economic crime and fraud in Ireland has increased. Among the reasons for this is the legal requirement to report suspicions of fraud. The survey results also indicated that the non-financial costs – reputation, share price, employee morale, as well as business and regulator relationships – are underestimated by Irish companies. Unsurprisingly, cyber crime has taken over from asset misappropriation as the most prevalent economic crime. Ireland is similar to other jurisdictions and we have been impacted by corporate fraud, bribery and corruption.

Q. Have there been any legal and regulatory changes implemented in Ireland designed to combat fraud and corruption? What penalties do companies face for failure to comply?

A. The Irish government introduced changes to existing legislation in the form of the Criminal Justice (Corruption Offences) Act, 2018, which consolidated existing law in the areas of anti-corruption and bribery as part of the government’s package on the proposed reform of white-collar crime. This included establishing the Office of the Director of Corporate Enforcement (ODCE) as an independent company law, compliance and enforcement agency to be formally known as the Corporate Enforcement Authority. The government has also evaluated the Protected Disclosures Act 2014 – Ireland’s whistleblower legislation – to identify its effectiveness and how it might be improved. Furthermore, the Garda National Economic Crime Bureau is the primary body tasked with investigating bribery and corruption in Ireland.

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Unsurprisingly, cyber crime has taken over from asset misappropriation as the most prevalent economic crime.

Q. In your opinion, do regulators in Ireland have sufficient resources to enforce the law in this area? Are they making inroads?

A. Concerns were raised by both An Garda Síochána and the Department of Foreign Affairs regarding the Garda National Economic Crime Bureau. The bureau is the primary body tasked with investigating bribery and corruption in Ireland and to enforce bribery offences by state officials and businesses in foreign countries. In addition, concerns were raised that the legislation fell short of the Organisation for Economic Co-operation and Development's (OECD's) convention on combatting bribery of foreign public officials. The new legislation includes a requirement for 'dual criminality', which means that in order to pursue a successful prosecution, bribes deemed illegal under Irish law must also be an offence in the countries in which they have allegedly taken place and to prove an allegation of corruption occurring overseas was also an offence in that country. A recent Garda report submitted to the government department said bribery and corruption is more prevalent in developing countries.



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Q. If a company finds itself subject to a government investigation or dawn raid, how should it respond?

A. All organisations should have a procedure and policy in place to deal with unexpected events, including the arrival of officials from a governmental or regulatory authority, indicating they intend to carry out a search and seizure of documentation at a firm's offices. This is colloquially known as a dawn raid, as they usually occur early morning, but this is not always the case. A nominated individual within the firm should be appointed to liaise and act as coordinator with the government officials and have the visiting officials brought to a meeting room. Under no circumstances should any information or questions be addressed until a full explanation has been obtained as to the purpose of the unannounced visit and once confirmation has been provided of the following. First, the purpose of the visit. Second, names, titles or position held and exact time of arrival of all individuals present. Third, the power or authority to conduct the visit and examination. Fourth, relevant documentation setting out the authority for inspection, visit, search,

and to satisfy oneself as to its relevance, authenticity and appropriateness. You should make contact with your legal advisers and provide all information obtained. Finally, contact key individuals internally who may be best placed to deal with the subject matter of investigation.

Q. What role are whistleblowers playing in the fight against corporate fraud and corruption? How important is it to train staff to identify and report potentially fraudulent activity?

A. Whistleblowers are defined as those who expose information or activities deemed illegal or unethical. They have historically played an important role in helping banks protect the economic interests of their country and clampdown on wrongdoing in the financial services industry. They have also raised concerns where there exist inappropriate or ineffective safeguards for employees, or consumers in various sectors, including health, justice and education. The advantage of some whistleblowing reports is the knowledge and understanding of the internal processes, procedures and workings of the organisation and this can

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often greatly assist investigators. However, they can also have a bird's eye view and may lack an understanding of the greater details by not being central to decision-making issues. Whistleblower disclosure is similar to suspicious transaction reports and often have inside knowledge, which is vital for fighting breaches or crimes. Developing an open culture of identifying and disclosing wrongdoing in the workplace will often require a top-down approach. However, some whistleblowers may have their own agenda, and, in some circumstances, have lied or obstructed justice.

Q. What advice can you offer to companies on conducting an internal investigation to follow up on suspicions of fraud or corruption?

A. When conducting an internal investigation in your company it is always recommended to appoint an independent, external, professionally qualified consultant. It should be noted that any internal investigation must adopt and rigidly stick to the approach set out in the company's employee handbook. Where suspected fraud or corruption exists in a

company you should immediately review and ensure all internal controls, especially financial and stock controls, are operating in accordance with the company's stipulated policies and adherence to stated procedures. Gather all facts relevant to the alleged fraud or corruption, and retain all documentation, data, material and records relevant to the investigation of the alleged fraud or corruption. Do not purge any documentation, data, material or records and cancel any scheduled or planned document or recycling collections. The HR department may be requested to review employment terms and conditions and HR policies to ascertain if there is a requirement for any identified or suspected personnel to be placed on 'administrative leave' until the investigation is completed.

Q. What general steps can companies take to proactively prevent corruption and fraud within their organisation?

A. Proactively preventing corruption and fraud within organisations is key. When considering what general steps should be taken to prevent fraud, companies should consider the following. First, identifying a senior member of staff to own fraud



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and corruption risk, since tone from the top is key in fraud prevention. Second, implementing ongoing training and awareness for all staff around fraud and corruption. Third, performing a fraud risk assessment. Companies should understand and identify their vulnerabilities to both internal and external frauds. You need to know your customers, your suppliers, your staff and agents, if appropriate. Fourth, implementing controls to detect and identify fraud and corruption red flags. Fifth, developing fraud detection analytics. Finally, putting a whistleblowing and fraud hotline in place. Remember, fraud prevention is not a ‘set and forget’ project – it is ongoing and will change all the time. □

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PAUL JACOBS Partner
+353 (0)1 6805 835
paul.jacobs@ie.gt.com

FRANKIE CRONIN Director
+353 (0)1 6805 805
frankie.cronin@ie.gt.com

PATRICK D’ARCY Director, Forensic & Investigation Services
+353 (0) 1 680 5709
patrick.darcy@ie.gt.com

DWAYNE PRICE Partner, Financial Services Advisory
+353 (0)1 436 6494
dwayne.price@ie.gt.com



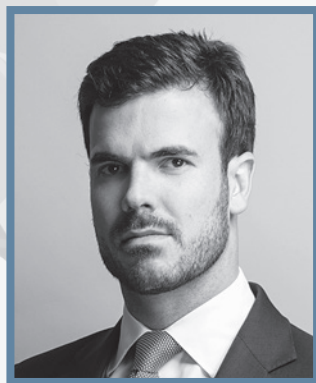
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PORTUGAL

*Morais Leitão, Galvão Teles,
Soares da Silva & Associados*

Respondent



TIAGO GERALDO

Managing Associate

**Morais Leitão, Galvão Teles, Soares da Silva &
Associados**

+351 210 091 783

tgeraldo@mlgts.pt

Tiago Geraldo is a senior associate in the criminal, misdemeanour and compliance practice group. His practice focuses on criminal litigation, specifically white-collar defence and corporate crime, where he has substantial experience in representing and advising companies and individuals, both in and out of court. He is also actively engaged in relevant regulatory disputes in sectors such as energy, banking, capital markets, telecommunications and media. He teaches criminal law as assistant teacher at the University of Lisbon School of Law and regularly writes and lectures in seminars and conferences about a broad range of topics related to criminal justice.

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Q. To what extent have you seen a notable rise in the level of corporate fraud, bribery and corruption uncovered in Portugal?

A. In recent years, there has been steady growth, both in the number of cases and in their media exposure, of corruption-related investigations and related criminal infractions, mainly involving the political and public sector and the sports sector in Portugal. The number of corruption investigations related to international trade or in the private sector has been negligible. However, the aftermath of economic crises, such as COVID-19, can lead the authorities to pursue mega-investigations which lack credible evidence and push forward cases that simply do not hold up in court, which leads, wrongly, to the notion that in Portugal the punishment for corruption is still too soft, which is far from the case.

Q. Have there been any legal and regulatory changes implemented in Portugal designed to combat fraud and corruption? What penalties do companies face for failure to comply?

A. In addition to the traditional crimes of active and passive corruption and related incriminations, the Portuguese government is preparing some changes that may have a large impact on the fight against corruption. Among these changes is the creation of a legal regime for the protection of whistleblowers and the obligation to implement compliance programmes in public entities and large and medium-sized companies, with minimum standards and potential consequences for failure to adopt such programmes. Furthermore, this new legislative package provides for increased penalties applicable in corruption convictions and sentencing agreements in corruption cases, inspired by plea-bargaining agreements available in the common-law system that could significantly improve the effectiveness of investigations.

Q. In your opinion, do regulators in Portugal have sufficient resources to enforce the law in this area? Are they making inroads?

A. In Portugal, there is no regulatory authority in charge of centralised law

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enforcement for corruption. However, the new legislative package also provides for the creation of a General Regime for Corruption Prevention (GRCP) applicable to the public and private sectors, as well as an Agency for Corruption Prevention, responsible for monitoring the implementation of the GRCP, among other preventive functions. Currently, therefore, law enforcement for corruption matters is carried out by criminal investigation authorities spread throughout the country, in the respective investigation departments of the Public Prosecutor's Office, which in the largest judicial districts include specialised anti-bribery sections. In particularly complex cases and with territorial dispersion, the investigation is conducted by the Central Department of Investigation and Penal Action. While the lack of a regulatory authority is lamentable, it is not a valid reason to explain the lack of efficiency in investigations.

Q. If a company finds itself subject to a government investigation or dawn raid, how should it respond?

A. A company which is targeted in a corruption case has the exact same rights as anyone who is considered a suspect or who becomes a defendant in a criminal case, starting with the presumption of innocence. It is recommended in all circumstances that a lawyer is present and follows the investigation or the dawn raid, to understand its nature, be it criminal or regulatory, the main features of the case at hand, its relationship with the targeted company and its procedural status, to better and more thoroughly advise the company on an appropriate reaction. Companies should undertake any recommended action, which may include, notably, an internal risk analysis, mapping the possible consequences that the company may suffer or supporting a more grounded decision by management on the position to adopt in the proceedings.

Q. What role are whistleblowers playing in the fight against corporate fraud and corruption? How important is it to train staff to identify and report potentially fraudulent activity?

A. In tackling and dismantling corrupt practices, where there is normally a pact



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of silence, the role of the whistleblower is and will always be fundamental, starting from within organisations, which should promote the implementation of whistleblower channels and mechanisms and encourage them through guaranteed anonymity and by taking effective measures following a legitimate accusation of illicit acts or omissions committed by company officers or employees. We cannot and should not, however, fall into the opposite extreme and create a culture of permanent whistleblowing, where workers watch each other looking for the slightest fault to report. Moreover, although the public opinion and media discourse is currently sensitive and supports the need to expand whistleblowing channels and the role of whistleblowers, there are some risks to be aware of, such as those associated with so-called professional whistleblowers, often outsiders to the organisation who resort to crimes to obtain supposedly incriminating information.

Q. What advice can you offer to companies on conducting an internal investigation to follow up on suspicions of fraud or corruption?



A company which is targeted in a corruption case has the exact same rights as anyone who is considered a suspect or who becomes a defendant in a criminal case, starting with the presumption of innocence.

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A. My first and main advice to Portuguese companies on this matter is quite simple: you should do more internal investigations. Although today corporate compliance is a well-known reality, and routines are already well developed in the most relevant Portuguese companies, internal investigations and audits are still uncommon, especially compared to countries where this practice has existed for a long time and with good results. In order to change habits, it is necessary to raise awareness and make it clear that internal investigations are neither a threat nor a means to expose the company. On the contrary, internal investigations can be defined as a prophylactic risk management exercise: just like going to the doctor for a check-up or seeking a specialist consultation for a suspected health issue, internal investigations often help to prevent major legal problems, or at least contain their impact, by avoiding or mitigating the company's liability. To be useful and effective, internal investigations must be planned and conducted considering all relevant legal aspects, defining the subject matter and the evidence to be collected, and providing for a non-judgmental environment that

encourages openness from those who are cooperating, which tends to be easier to achieve when people independent of the organisation are involved with the process.

Q. What general steps can companies take to proactively prevent corruption and fraud within their organisation?

A. Companies must start by recognising the obvious: prevention is better than cure. In today's business context, and in a globalised economy, there is no company that, from the point of view of its management, does not realise that corruption and fraud, although they may generate immediate financial benefits, always result in an enormous loss of value, reputation and goodwill, which can only be recovered several years later, if at all. Furthermore, individual penalties may include imprisonment for those responsible, and companies can be subject to significant fines, among other measures, such as being barred from contracting with public entities. Once that premise is established, companies must be consistent and establish themselves as the first line of defence against the risk of corruption and fraud, identifying sensitive risk areas



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within their businesses, creating awareness among officers and employees, and closely monitoring activity in those risk-sensitive areas, ideally in partnership with risk advisers. But companies should not expect miracles. Even if it can be reduced to a marginal level, the criminal risk within a company will always exist. However, if the company has done everything possible to contain it, these efforts can prevent criminality and its associated liabilities from spreading throughout the organisation. □

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TIAGO GERALDO Managing Associate
+351 210 091 783
tgeraldo@mlgts.pt



MORAIS LEITÃO
GALVÃO TELES, SOARES DA SILVA
& ASSOCIADOS



RUSSIAN FEDERATION

BDO

Respondent



SERGEI PETROSOV

Partner

BDO

+7 495 797 5665 (ext. 4401)

s.petrosov@bdo.ru

Sergei Petrosov has more than 20 years of experience as a forensic, audit and assurance services professional for major international firms, including six years of international experience in the US and the UK. Over this time, he has been actively involved and led numerous assurance and consulting projects in various industries, including forensic investigations, dispute and litigation support, anti-bribery and anti-corruption compliance, business intelligence, internal controls evaluation and implementation, and the audit of US GAAP and IFRS financial statements.

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Q. To what extent have you seen a notable rise in the level of corporate fraud, bribery and corruption uncovered in the Russian Federation?

A. We have not seen notable rise in the level of corporate fraud, bribery and corruption uncovered in Russia. The related risks remain rather high compared to many other countries.

Q. Have there been any legal and regulatory changes implemented in the Russian Federation designed to combat fraud and corruption? What penalties do companies face for failure to comply?

A. While there have been no recent significant legal and regulatory changes implemented in Russia designed to combat fraud and corruption, there have been some changes. Measures have been strengthened to ensure the confidentiality of information in relation to individuals subject to state protection. According to the amendments, the confidentiality of information in relation to these individuals should now be protected even without an explicit threat to their life, health or property. Also, the Russian Ministry of

Labour has prepared detailed guidelines for identifying the personal interests of state and municipal employees, as well as employees involved with public procurement. Some of the anti-corruption requirements and restrictions imposed on elected officials and people holding public office within the constituent entities of the Russian Federation have also been clarified. In particular, the prohibition on officials participating in the management of a commercial or non-commercial organisation does not apply if they are exercising their powers on a temporary basis. In general, the punishment for fraud can range from a fine to imprisonment. Punishment for individuals who commit criminal acts using their official position includes more significant fines, and possibly imprisonment for up to six years. The Criminal Code of the Russian Federation also provides for imprisonment for up to eight years, either for giving or receiving a bribe. If a bribe is transferred through an intermediary, then that third party is also subject to criminal liability for complicity in giving a bribe.

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Q. In your opinion, do regulators in the Russian Federation have sufficient resources to enforce the law in this area? Are they making inroads?

A. It is hard to say whether regulators in Russia have sufficient resources, or whether corruption persists due to a lack of resources or the inherent difficulty of fighting corruption, or both. For instance, there is an established state programme to ensure public order and combat corruption, which has funding of around US\$9.5bn. At the same time, according to the available reports of local governments, most of these funds are devoted to preventative measures related to violations other than corruption and to general public welfare topics. Still, there is generally greater awareness of corruption matters, especially in bigger cities. There has been a noticeable increase in public service announcements and social advertising promoting ethical behaviour of late.

Q. If a company finds itself subject to a government investigation or dawn raid, how should it respond?



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A. Any company subject to an investigation should respond by fully cooperating with the authorities.

Q. What role are whistleblowers playing in the fight against corporate fraud and corruption? How important is it to train staff to identify and report potentially fraudulent activity?

A. Publicly available research generally shows that tips from employees are the most common source of fraud detection. While my experience of investigations in Russia upholds this theory, there have been many situations where whistleblowers have acted out of other interests, rather than simply fighting fraud and corruption. Such motivations include personal retaliation, assisting outsiders in hostile takeovers, creating advantageous career opportunities, and even blackmail and creating an opportunity to commit fraud themselves. So, it is very important to train staff to identify and report potentially fraudulent activity. But it is also very important, while acting diligently on any whistleblower report, to understand the reasons why the individual is blowing the whistle.

Q. What advice can you offer to companies on conducting an internal investigation to follow up on suspicions of fraud or corruption?

A. The main advice we can offer to companies conducting an internal investigation is to ensure that it is independent and impartial. In Russia, some companies still have very powerful security departments which could act with their own agenda, which may be different from the goals of shareholders or senior management. So, depending on the nature of the investigation, options such as involving outside consultants or investigators should be considered.

Q. What general steps can companies take to proactively prevent corruption and fraud within their organisation?

A. Generally, companies should develop an anti-corruption compliance system and reliable system of internal controls and establish an ethics code. The extent of these measures should obviously depend on the company's risks, size, complexity, industry, regulatory requirements, and the results of a cost-benefit analysis. □

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SERGEI PETROSOV Partner
+7 495 797 5665 (ext. 4401)
s.petrosov@bdo.ru





BDO India

Respondent



AMIT MEHER

Partner, Forensics

BDO India

+91 88 7935 7030

amitmeher@bdo.in

Amit Meher is a partner with the business advisory practice with a special focus on forensic audits and investigations. He has over 18 years of experience in servicing large and medium-sized clients in the areas of forensic accounting, fraud investigations, dispute resolution, litigation support, FCPA compliance, due diligence, enterprise risk management, internal audits and Sarbanes-Oxley compliance. He has worked with clients in 14 countries, including the US and the UK, and has assisted them with an array of solutions. He has worked across sectors including pharmaceuticals, infrastructure, FMCG, manufacturing, hospitality, media and entertainment, oil & gas and agriculture.

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Q. To what extent have you seen a notable rise in the level of corporate fraud, bribery and corruption uncovered in India?

A. In India, corporate frauds have a long and chequered history. In addition to the traditional procurement and third-party frauds which remain a key concern, there has been over a 100 percent increase in cyber crimes in the current COVID-19 scenario. A paramount shift and disruption to the way business is conducted has led to a plethora of vulnerabilities for fraudsters to exploit.

Q. Have there been any legal and regulatory changes implemented in India designed to combat fraud and corruption? What penalties do companies face for failure to comply?

A. There are various laws to combat fraud and corruption in India. The Companies Act 2013 provides guidelines for corporate governance and prevention and detection of fraud. Under the Act, any person found guilty of fraud, providing false statements or documentation, is punishable with imprisonment up to a maximum of 10

years or a fine up to three times the sum involved in the fraud. Recently, in a bid to check and monitor corporate frauds and scams, the Ministry of Corporate Affairs (MCA) revised the Companies Auditor's Report Order (CARO), under which auditors are now required to report more extensively on frauds, loan defaults, whistleblower complaints and unascertained properties, among other items. The Prevention of Corruption Act is the principal legislation in India which provides for penalties in relation to corruption by public servants and those involved in the abetment of corruption.

Q. In your opinion, do regulators in India have sufficient resources to enforce the law in this area? Are they making inroads?

A. Although there has been a significant increase in the number of cases being investigated, the regulators are not yet able to match up resources with the fraud being reported, resulting in delays. There is a definite need for regulators to ramp up personnel and technology to ensure thorough and speedy investigations. Additionally, regulators have started to



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take advantage of forensic expertise of consulting firms, especially on the digital forensic front, which is a welcome move.

Q. If a company finds itself subject to a government investigation or dawn raid, how should it respond?

A. The first thing a company should do in this situation is to consult with a law firm and forensic experts to devise an effective response strategy.

Q. What role are whistleblowers playing in the fight against corporate fraud and corruption? How important is it to train staff to identify and report potentially fraudulent activity?

A. Whistleblowers are the eyes and ears of an organisation and are one of the most important pillars in a fraud prevention programme. Organisational culture should foster the right environment to ensure the person blowing the whistle feels secure and protected. The senior management should also promote the importance of reporting any wrong or unacceptable act. Further, fraud awareness training and robust compliance policies are critical in



Whistleblowers are the eyes and ears of an organisation and are one of the most important pillars in a fraud prevention programme.


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ensuring employees have clarity on what red flags to look out for, what actions they need to take in order to detect fraud and how they will be protected when it is reported.

Q. What advice can you offer to companies on conducting an internal investigation to follow up on suspicions of fraud or corruption?

A. An investigation should be internally initiated by an independent committee and ideally be conducted by a third party to ensure confidentiality and independence. It is important to secure the suspect's data backups to ensure there is no deletion of data that may hamper the investigation. Also, a proper chain of custody is of utmost importance to ensure evidence is admissible in court. Suspect interviews should be undertaken with the involvement of relevant departments, including HR, compliance and legal to ensure due process is followed.

Q. What general steps can companies take to proactively prevent corruption and fraud within their organisation?

A. Companies can take the following proactive steps to help prevent fraud. First, seek endorsement from the organisation's leadership, to underscore commitment to ethics and integrity. Second, implement a periodic programme of anti-fraud risk assessment and implementation. Third, regularly communicate the company's fraud risk and prevention policy, including types of fraud and their consequences. Fourth, implement effective internal controls to safeguard the company's assets. Fifth, segregate duties so that the risk of fraud is reduced. Sixth, operate a clear organisational structure, with written policies and procedures, and fair employment practices. Finally, encourage an open-door policy to provide employees a clear line of communication with the senior management. 



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AMIT MEHER Partner, Forensics
 +91 88 7935 7030
 amitmeher@bdo.in





CHINA & HONG KONG

Alvarez & Marsal Disputes and Investigations Limited

Respondents



FRANKIE LEUNG
Managing Director

**Alvarez & Marsal Disputes and Investigations
Limited**

+852 6632 5000

frankie.leung@alvarezandmarsal.com

Frankie Leung is a managing director with Alvarez & Marsal disputes and investigations in Hong Kong and Shanghai with more than 20 years of experience in forensic and investigative accounting experience. His primary areas of concentration are corporate investigations, Foreign Corrupt Practices Act (FCPA) reviews, compliance framework assessments, and distributor and supplier audit reviews. He has undertaken investigations involving commercial bribery, employee fraud and kickback schemes, financial statements manipulation, management fraud and asset misappropriation, and internal control reviews on behalf of multinationals with business operations in China.



CHRIS FORDHAM
Managing Director

**Alvarez & Marsal Disputes and Investigations
Limited**

+852 3102 2637

cfordham@alvarezandmarsal.com

Chris Fordham is a managing director with Alvarez & Marsal's disputes and investigations team in Hong Kong and China. He brings 30 years of forensic and related accounting experience, specialising in investigations of fraud, bribery and corruption (including US FCPA and UK Bribery Act), financial crime and regulatory issues, including anti-money laundering and sanctions risk consulting, fund flow and asset tracing, cyber response and investigations, as well as litigation support and expert witness services in both criminal and commercial proceedings at court or before arbitration tribunals.

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Q. To what extent have you seen a notable rise in the level of corporate fraud, bribery and corruption uncovered in China & Hong Kong?

A. We are seeing previously concealed fraud, bribery and corruption issues rising to the surface as companies continue to recover from the effects of the pandemic and we expect this trend to continue as we enter the financial reporting season. Authorities in mainland China and Hong Kong have both taken a firm stance on the fight against corruption in recent times, in the process revealing many bribery and corruption cases. We foresee this stance being maintained, especially recognising the increased risks brought about by the pandemic, with cases being revealed over the next few years, which is the typical length of time it takes for these fraudulent issues to come to light.

Q. What enforcement trends to combat fraud and corruption are you seeing China & Hong Kong? Do you expect any changes to enforcement measures? What penalties do companies face for failure to comply?

A. We are already witnessing a strengthening in enforcement activities in both mainland China and Hong Kong, while the authorities are also considering new regulations to combat emerging threats. Heavier penalties continue to be imposed, with particular emphasis on criminal and individual accountability. Authorities are also encouraging a more proactive stance from companies. For example, in China supplemental corporate compliance framework guidelines had initially been rolled out in Shenzhen and have now been followed by similar guidelines in Shanghai. As with the US Department of Justice's (DOJ's) 2020 guidance on the evaluation of corporate compliance programmes, the new China guidelines may allow for penalty reductions if companies can adequately demonstrate that they have an effective ongoing compliance framework, with periodical monitoring and reviews in place, to minimise fraud risks.

Q. In your opinion, are businesses prepared for upcoming regulatory enforcement trends? What can businesses do to ensure they are well-prepared?

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It is important in the fight against corruption and fraud for companies to get their culture right and find ways to measure and strengthen their ethical culture.

A. Despite the challenging economic times brought about by the pandemic, it is clear that regional regulators are not minded to allow businesses an enforcement reprieve and, if anything, are introducing stronger enforcement measures in response to the perceived risks to protect markets and stakeholders. Consequently, businesses in the region may face a tougher year of regulatory enforcement than they had anticipated and budgeted for. Those companies that realise the importance of proactively implementing effective compliance frameworks, in part due to encouragement from recently issued compliance guidelines, will be in a better place than those that languish behind.

Q. How should companies handle investigations differently during pandemic times or post-pandemic in China & Hong Kong?

A. Business use of mobile chat apps such as WeChat was already on the rise and with the shift toward remote working during and post-pandemic, employees have continued to increase the frequency of their communications through these channels. Companies need to plan and



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consider the challenges of collecting employees' chat data for the purposes of investigations into fraudulent or other unethical behaviour. For example, companies can familiarise themselves with the new methodologies being developed that can capture and import chat data, including images, audio and video files, and display them in near native formats for review, enabling legal teams and investigators to cope better with chat discovery in investigations and compliance assessments.

Q. What role are whistleblowers playing in the fight against corporate fraud and corruption? How important is it to train staff to identify and report potentially fraudulent activity?

A. An effective whistleblower hotline is critical to a corporate compliance programme as it plays an instrumental role in the fight against corporate fraud and corruption by getting first-hand knowledge and evidence of misconduct to assist with investigations. Employees may not be fully aware of what constitutes unethical misconduct, so periodic training on the latest trends and how to report suspected

cases internally through whistleblowing hotlines is necessary. The effectiveness of whistleblowing hotlines heavily depends on whether the company's corporate compliance culture is shaped in a way that encourages whistleblowers to speak up anonymously without fear of retaliation.

Q. What advice can you offer to companies on conducting an internal investigation to follow up on suspicions of fraud or corruption?

A. With any investigation, companies must review and consider all available information or data and immediately prepare an investigative plan. Companies need to ensure all relevant data is secured and preserved in a forensically sound manner. Taking account of the size and complexity of the issues, resources should then be allocated accordingly. Companies can consider engaging experts with the technical know-how early in the process, particularly if the suspected issues may be regulatory violations. Furthermore, companies may not be equipped with forensic technology tools to handle data collection and analysis, risk profiling and

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deep-dive forensic investigations without the help of experts.

Q. What general steps can companies take to proactively prevent corruption and fraud within their organisation?

A. Companies should maintain an effective corporate compliance programme and monitor, measure and assess it continuously to ensure its effectiveness. Companies should also build a strong compliant and ethical culture. This can be challenging in a region where business practices and norms such as ‘*guanxi*’ relationships may blur ethical lines and are subject to abuse by employees. Companies need to take these regional practices into account in their culture-building efforts. As culture influences the behaviours, values and decisions employees make, it is important in the fight against corruption and fraud for companies to get their culture right and find ways to measure and strengthen their ethical culture. □

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FRANKIE LEUNG Managing Director
+852 6632 5000
frankie.leung@alvarezandmarsal.com

CHRIS FORDHAM Managing Director
+852 3102 2637
cfordham@alvarezandmarsal.com





KINGDOM OF SAUDI ARABIA

BDO

Respondent



AAKASH BASSI

**Partner – Forensic Services
BDO**

+971 4 518 6666

aakash.bassi@bdo.ae

Aakash Bassi is a partner with BDO UAE, and the forensic practice leader for BDO in the UAE and Kingdom of Saudi Arabia. He has over 15 years of experience across India and the US assisting leading organisations in the prevention, detection and response to integrity breakdowns. He delivers specialised forensic advisory services, including leading and managing complex international investigations into fraud and misconduct with a focus on bribery, corruption and third-party risk, among others. He has also assisted clients across industry sectors in relation to financial reporting and disclosure issues.

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Q. Have there been any legal and regulatory changes implemented in the Kingdom of Saudi Arabia designed to combat fraud and corruption? What penalties do companies face for failure to comply?

A. Saudi Arabia has instituted numerous measures over the last decade to combat fraud and corruption, as a signatory to the United Nations Convention against Corruption (UNCAC) and the G-20 anti-corruption action plans. This has included the creation of the National Anti-Corruption Commission, which has jurisdiction over the public sector and all companies owned 25 percent or more by the state. The Commission is an independent body which reports directly to the King. Further, the country has also seen improvements in its ranking in the Transparency International Corruption Perceptions Index over the last several years. The kingdom has also established an anti-money laundering law, and guidelines have been prescribed by the Saudi Arabian Monetary Authority (SAMA) for detecting money laundering. Companies engaging in fraud and corruption can face investigation and prosecution by the

Public Prosecution Office. For example, in 2018, the country convicted individuals, including government officials and private sector employees, of bribery, fraud and abuse of office following an investigation by the Public Prosecutor. Lastly, Saudi Arabia became the first Arab country to be granted full membership of the Financial Action Task Force (FATF) in 2019. This has led to increased cooperation between regulatory and enforcement agencies. For example, in January 2021, the National Anti-Corruption Authority, along with the Saudi Central Bank, uncovered a corruption scheme involving bank officials and private businesses. This further demonstrates that anti-corruption monitoring and enforcement is on the rise.

Q. In your opinion, do regulators in the Kingdom of Saudi Arabia have sufficient resources to enforce the law in this area? Are they making inroads?


A. In recent years, the National Anti-Corruption Commission has intensified its efforts to combat fraud and corruption. Furthermore, the Capital Markets Authority has instituted a system of internal control designed to reduce risks

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and ensure that listed companies and their employees comply with applicable laws and regulations. Furthermore, they have instituted procedures to carry out inspections and reviews into the financial affairs of companies listed on the local stock exchange, if required.

Q. If a company finds itself subject to a government investigation or dawn raid, how should it respond?

A. It is critical for any organisation to have formalised protocols that provide guidance around what needs to be done during a government investigation or similar situation. Among other things, organisations should have a response plan in place, including a team that comprises external counsel, wherever necessary, that could assist with the response. Additionally, a coherent communications strategy around media inquiries should be formulated. Finally, it is important to conduct internal investigations, if permissible, to proactively identify misconduct. Companies should have protocols in place to effectively respond to dawn raids, including clarity around specific roles and responsibilities, and



It is critical that employees understand that they have an affirmative obligation to report issues or concerns in good faith.

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when to seek external help from counsel and communication experts. Specifically, there should be clearly laid down procedures.

Q. What role are whistleblowers playing in the fight against corporate fraud and corruption? How important is it to train staff to identify and report potentially fraudulent activity?

A. I believe the government is determined to combat corruption. To that extent, there has been an increase in the acknowledgment of and importance assigned to the notion of whistleblowing as a means of mitigating fraud and corruption. Furthermore, attitudes toward whistleblowers are changing. For example, the government has instituted provisions governing the adequate protection of every employee of an organisation who submits a complaint against corrupt practices to prevent retaliation against them for raising concerns in good faith. It is fair to say that a significant proportion of financial misconduct is uncovered through tips provided by employees. It is critical that employees understand that they have an

affirmative obligation to report issues or concerns in good faith.

Q. What advice can you offer to companies on conducting an internal investigation to follow up on suspicions of fraud or corruption?

A. All organisations should plan for, devote and deploy resources to carry out an effective investigation into potential financial misconduct. Obtaining the most qualified professionals to perform the investigation, including setting up appropriate protocols, is one of the keys to an effective investigation. We often see organisations embark on internal investigations without having the appropriate in-house capabilities and realise they need external expertise halfway through the process, which can lead to the potential compromise of both data and evidence. A poorly conducted investigation can be as damaging as if the organisation did nothing at all. Seeking assistance from external subject matter experts, including assessing privilege considerations and data privacy protections, are critical in responding to and remediating misconduct.

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Q. What general steps can companies take to proactively prevent corruption and fraud within their organisation?

A. It all starts with the right governance structure. Often the most overlooked factor of all is the company's fraud prevention programme and its related ethical culture. The board should set the agenda for the overall fraud prevention programme, including the related roles and responsibilities at the senior management level, and provide the necessary authority and autonomy across the three lines of defence in relation to fraud prevention, detection and response. The agenda should be supplemented by designing, implementing and evaluating policies, programmes and controls to prevent, detect and respond to integrity breakdowns and enhance overall governance and responsible business conduct. Lastly, there is no 'one size fits all' approach to preventing corruption and fraud within an organisation, and all policies, programmes and controls to help build and enhance the overall culture of ethics and integrity should be based upon the fraud risk profile of the organisation.



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AAKASH BASSI Partner – Forensic Services
+971 4 518 6666
aakash.bassi@bdo.ae





UNITED ARAB EMIRATES

Corporate Research and Investigations Limited

Respondents



ZAFAR ANJUM

**Group Chief Executive Officer
Corporate Research and Investigations Limited
+44 (0)7588 454 959
zanjum@crigroup.com**

Zafar Anjum is founder and group CEO at CRI Group, and its ABAC Center of Excellence. He uses his extensive knowledge and expertise in creating stable and secure networks across challenging global markets. For organisations needing large project management, security, safeguards and real-time compliance applications, Mr Anjum is the assurance expert of choice for industry professionals.



HUMA KHALID

**Scheme Manager
ABAC Center of Excellence Limited
+44 (0)777 652 4355
huma.k@abacgroup.com**

Huma Khalid, as scheme manager, is responsible for leading ABAC. Ms Khalid's responsibilities include planning and overseeing all aspects of the ABAC programme, which include certification and training. Additionally, she oversees the compliance department for the implementation, management and internal audit of CRI Group's and ABAC compliance programmes.

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Q. To what extent have you seen a notable rise in the level of corporate fraud, bribery and corruption uncovered in the UAE?

A. The United Arab Emirates (UAE) remains the least corrupt country in the Middle East and North Africa region. It was perhaps fitting that the United Nations (UN) held its anti-corruption conference in the UAE just over a year ago. At the conference, delegates drafted anti-corruption resolutions and discussed asset recovery, international cooperation, and other topics in preparation for an upcoming special session of the UN General Assembly against corruption. Of course, there is still much work to be done. Fraud, bribery and money laundering are still problems in the UAE that require a united focus to overcome. Of special concern is the real estate sector, which some have called a haven for stashing and laundering cash. In some cases, these funds are linked to terrorist financing, raising the alarm beyond just the balance sheet for typical financial or corporate fraud.

Q. Have there been any legal and regulatory changes implemented in the UAE designed to combat fraud and corruption? What penalties do companies face for failure to comply?

A. The recent Anti-Commercial Fraud Law in the UAE strengthened rules around counterfeiting and intellectual property (IP) theft, among other areas. In addition, lawmakers and regulators are applying an anti-fraud focus to other laws. A perfect example is the UAE's Insolvency Law 2020. The Ministry of Finance announced that penalties will be imposed on those who fraudulently abuse the law. This could include making a fake claim or a sham debt against a debtor or illegally increasing a debt amount. Such offences are punishable by jail time and fines. An awareness campaign by the UAE Banks Federation (UBF), the Central Bank of the UAE (CBUAE), Abu Dhabi Police, and Dubai Police was the first such collaboration in the UAE and it comes as both corporate and consumer fraud have increased. Companies are expected to protect their stakeholders' investments, and failure to do so can lead to regulatory and legal punishments.

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Q. In your opinion, do regulators in the UAE have sufficient resources to enforce the law in this area? Are they making inroads?

A. There are at least two daunting tasks facing regulators in the UAE at present: detecting and preventing money laundering and stemming the growing threat of cyber crime. While these problems are not unique to the UAE, they do require significant investment and increased investigation and enforcement efforts. Recent reports allege that illicit funds flow through ‘free trade zones’ and into real estate deals, such as luxurious properties in Dubai and other locations. The laws are in place to punish such crimes, but more inroads will need to be made to bring this under control in a country that largely succeeds at fighting fraud in other areas. Cyber crime is also a constant challenge that has been exacerbated by the COVID-19 pandemic. Many fraudsters have sought to take advantage of companies having to transition to different employment models, such as remote working. Fraud fighters are working hard to stay ahead of the curve in this regard.



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Q. If a company finds itself subject to a government investigation or dawn raid, how should it respond?

A. If a company finds itself under investigation, one of the first things it must do is mandate down the chain of command that employees cooperate fully with investigators. Any efforts to the contrary may be considered obstruction, and lead to more punishments or a higher likelihood of penalties at the end. In contrast, engaging in a good-faith effort to assist an investigation may weigh in the company's favour. Questions will arise, such as: Was this a surprise? What are the facts of the case? How did this occur? Legal counsel must be engaged immediately, but it is also important to speak with compliance officers, risk management, executives and the board in a transparent way to help the company move forward. Communicate a zero-tolerance policy toward fraud, and if employees are proven to have engaged in such behaviour, they should be terminated and prosecuted.

Q. What role are whistleblowers playing in the fight against corporate fraud and corruption? How important is it to train

staff to identify and report potentially fraudulent activity?

A. Some business leaders falsely believe that audits, account reconciliation and other procedures offer the best protection against fraud. They are important functions, but they are not the most effective detection method. Fraud is often uncovered by tips, according to the ACFE's Report to the Nations on Occupational Fraud and Abuse. Employees are truly the front line of defence for companies, and the first to throw up warning flags about unethical behaviour. The question is whether companies listen to their employees. And is there an easy, anonymous way for employees to submit tips, without fear of retaliation? Companies should educate employees about the red flags of fraud, and then make sure they know they can and should report it.

Q. What advice can you offer to companies on conducting an internal investigation to follow up on suspicions of fraud or corruption?

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A. If the company does not have an experienced team of anti-fraud professionals on staff, it is crucial to enlist the help of an outside firm with experts who specialise in this area. There are mistakes companies make at the beginning of an investigation that can haunt them later. For example, most countries, including the UAE, have laws that govern the proper collecting and handling of evidence. With most evidence in a digital format, following the right protocols is more important than ever. There are also important guidelines for interviewing witnesses and those suspected of fraud which, when disregarded, could lead to a failed investigation. The bottom line is: do not go it alone – get expert professional help. And if criminal conduct is discovered, contact the authorities.

how to recognise it, and how to report it. Second, the company must communicate that fraud will not be tolerated on any level, and those who commit fraud will be terminated and prosecuted if they are found to have broken the law. Companies should also have anti-corruption and anti-fraud controls in place, including an employee code of conduct, regular and surprise audits, and a fraud reporting system available to employees, contractors and even customers. Achieving certification in internationally recognised standards, such as ISO 37001 ABMS, is a good practice too. When it comes to fraud and corruption, an ounce of prevention is worth a pound of cure. Being proactive is truly the only practical option for protecting the business and its assets. □

Q. What general steps can companies take to proactively prevent corruption and fraud within their organisation?

A. Preventing and detecting fraud starts with a company's employees, so training and communication are key. First, employees must be trained on what constitutes fraud, bribery and corruption,



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ZAFAR ANJUM Group Chief Executive Officer
+44 (0)7588 454 959
zanjum@crigroup.com

HUMA KHALID Scheme Manager
+44 (0)777 652 4355
huma.k@abacgroup.com

RAZA SHAH Business Development and Marketing Executive
+92 300 501 2632
raza.shah@crigroup.com

AYESHA SYED Lead Auditor
+971 4 358 9884
ayesha.s@abacgroup.com





SOUTH AFRICA

*KPMG Services (Pty) Limited,
South Africa*

Respondent



SHIRLEY IVASON-WAGENER

Partner

KPMG Services (Pty) Limited, South Africa

+27 82 714 0278

shirley.ivason-wagener@kpmg.co.za

Shirley Ivason-Wagener is a seasoned and decorated forensic professional with 30 years of experience in her field. She holds a Master of Business Leadership (MBL), a Bachelor of Technology degree in forensic investigations and a certificate in corporate governance. She has multidimensional forensic experience, including forensic investigations, fraud risk management, use of forensic data analytics and ethics advisory across various industries and sectors, both private and public.

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Q. To what extent have you seen a notable rise in the level of corporate fraud, bribery and corruption uncovered in South Africa?

A. The impact of COVID-19 has certainly played a role in the fraud and corruption trends we have seen over the past year. The drive was, and still is, on providing healthcare and gearing the country to battle the pandemic, with greater emphasis placed on the procurement of personal protective equipment (PPE) and related services by government and private companies. The government spent billions of rand in the past year on PPE procurement. Naturally, opportunistic companies and individuals wanted a piece of the pie. Currently, there are many investigations underway by the South African law enforcement agencies in relation to PPE procurement fraud. A drastic change in workplace arrangements saw employees working remotely with minimal supervision and remote access to companies' systems. Coupled with that, the economic hardships presented by the pandemic resulted in the closure of businesses, the loss of jobs and salary cuts,

all of which provided fertile ground for fraud and corruption to flourish.

Q. Have there been any legal and regulatory changes implemented in South Africa designed to combat fraud and corruption? What penalties do companies face for failure to comply?

A. South Africa has a robust legal framework for combatting fraud and corruption. However, the challenge rests in enforcement. Effectively addressing fraud and corruption requires a collaborative effort from the relevant actors, including government, corporates, law enforcement agencies and the judiciary. Key legislation, such as the Prevention and Combatting of Corrupt Activities Act (PRECCA), the Public Finance Management Act, the Public Audit Act, the Prevention of Organised Crime Act (POCA) and the Financial Intelligence Centre Act, are designed to combat fraud and corruption and impose monetary and custodial punishments on transgressors. In line with Section 34 of PRECCA, all companies and government entities are legally required to report all fraud, corruption, theft and extortion over R100,000

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to the Department of Priority Crimes Investigation (DPCI). Failure to report is a criminal offence.

Q. In your opinion, do regulators in South Africa have sufficient resources to enforce the law in this area? Are they making inroads?

A. The Special Investigating Unit (SIU) and the DPCI, known as the Hawks, which is part of the South African Police Service, are the key law enforcement agencies that target organised crime, fraud, corruption and other serious crimes. These agencies work closely to ensure that there is an effective investigation and prosecution. The SIU also works closely with the Asset Forfeiture Unit (AFU), which forms part of the National Prosecuting Authority (NPA), in recovering the proceeds of crime. There are two key aspects to law enforcement: prevention and response. Enforcement of the law in response to offences reported remains a challenge. Much focus over the recent years by the SIU, Hawks and NPA was on prioritising fraud and corruption cases relating to state capture. Following the emergence of COVID-19, a new breed of corruption emerged, with

PPE procurement fraud placing an even greater burden on the already strained resources of law enforcement agencies. There is a definite mismatch between the case load and resources available to investigate and bring the matter before a court of law. In addition, the lack of skills and experience of dealing with complex financial investigations is a challenge. For this reason, many companies and government entities reach out to private forensic consulting firms for support in this area. An integrated effort between law enforcement agencies and private forensic firms is crucial for a successful criminal investigation and prosecution. On the prevention side, ensuring that offenders are successfully prosecuted and appropriately sentenced, and the proceeds of the crime recovered, are key deterrents to fraud and corrupt activities.

Q. If a company finds itself subject to a government investigation or dawn raid, how should it respond?

A. The first step should be to fully understand what is being alleged and the level of staff being implicated, as this may help determine how the company



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responds. If any directors or executives are implicated, this may warrant engagement with the board and the company's legal and communications teams. The company should cooperate with the criminal investigation. It should also simultaneously conduct its own internal investigation to understand its exposure and enable it to take appropriate action against implicated persons. The company may want to appoint an independent firm to conduct the investigation should any of the directors be implicated. It is equally important to understand the root causes of the fraud or corruption and fix the control environment. This may include reviewing policies, assessing the relevant risks and controls and providing fraud awareness training to staff.

Q. What role are whistleblowers playing in the fight against corporate fraud and corruption? How important is it to train staff to identify and report potentially fraudulent activity?

A. South Africa's whistleblowing legislation, the Protected Disclosures Act, provides for the protection of whistleblowers who come forward and



South Africa has a robust legal framework for combatting fraud and corruption. However, the challenge rests in enforcement.

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make a report. However, there have not been notable strides in the application of this legislation as whistleblowers have reservations regarding its effectiveness. Thus, anonymous reporting remains a key reporting mechanism. Many organisations fail to provide fraud awareness training to employees. Staff must be trained to identify fraud and know when and how to report it. To create confidence that something will be done, employees must also be made aware of the response protocols in place. Training should include statistics on the outcomes of investigations and sanctions as this serves as a deterrent for potential fraud if organisations are seen to be acting on reported fraud.

Q. What advice can you offer to companies on conducting an internal investigation to follow up on suspicions of fraud or corruption?

A. First and foremost, the company should have a fraud response plan that is implemented and understood by all within the company. The purpose of the response plan is to set out the protocols to be followed when fraud occurs and ensure that reported incidents are dealt

with quickly and effectively to prevent further losses. The plan also outlines the responsibility for action of the relevant custodians and role-players. The initial screening of the incident is important to understand the profile of the matter, including senior management involvement, the nature and complexity of the matter and whether any immediate steps must be taken to secure evidence and avoid potential tampering or the destruction of evidence. The initial assessment will determine whether the matter is dealt with internally by the company's in-house investigators or by an independent firm. It may be so that an in-house investigation is supported by external forensic experts if the matter is complex and there is a lack of skills internally.

Q. What general steps can companies take to proactively prevent corruption and fraud within their organisation?

A. Companies should ask themselves a series of questions. Is fraud is considered a strategic risk? What is the company's stance on fraud? Is this stance understood by all the company's stakeholders, both internal and external? What structures and



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measures are in place for an integrated approach to fraud risk management? Companies should implement a comprehensive fraud risk management strategy and plan to addresses the risk of fraud from a prevention, detection and response perspective. This plan must be reviewed at least biannually to align the company's response to the ever-changing fraud environment. Targeted fraud risk assessments should be conducted in high-risk areas of the business. Proactive forensic data analytics and fraud surveys may form part of the fraud risk assessment process. □

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KPMG's purpose is to inspire confidence and empower change in its clients' businesses. The firm believes that its purpose is not just how it energises and engages its people, but how the firm operates in the marketplace and society at large.

SHIRLEY IVASON-WAGENER Partner
+27 82 714 0278
shirley.ivason-wagener@kpmg.co.za





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