

CORPORATE FRAUD & CORRUPTION

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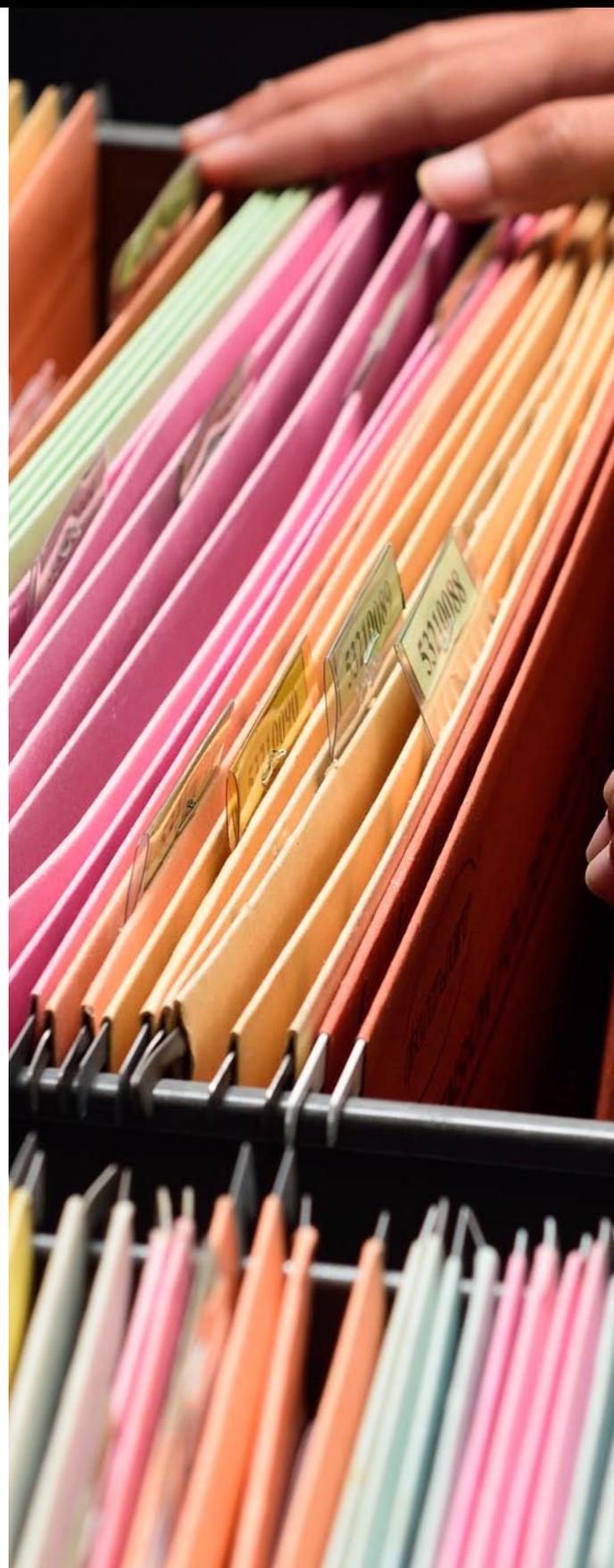
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Financier Worldwide canvasses the opinions of leading professionals around the world on the latest trends in corporate fraud and corruption.

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INTRODUCTION

Irrespective of company size or industry, fraud and corruption remains a persistent and corrosive influence. Though many countries and international organisations have redoubled efforts to investigate, punish and prevent fraud, there is still much work to be done.

While technological developments have revolutionised so many different industries, they have also helped to facilitate fraud, corruption and bribery. According to a 2016 study commissioned by the European Parliament, corruption costs the European Union around £800m a year.

To counter the evolving threat of bribery and corruption, a number of jurisdictions are responding. Many countries are enacting or revamping new anti-bribery laws. Such developments include greater protection for whistleblowers, who have a vital role to play in the fight against fraud and corruption.

But companies must do more to support whistleblowers. By providing employees with an anonymous, independent and safe channel through which they can report suspicious activity, companies will embolden their staff to do the right thing, safe in the knowledge that their reports will be handled sensitively and discreetly, with no retaliatory repercussions.

In the coming years, legislators, regulators and companies across jurisdictions are likely to better coordinate their anti-fraud and anti-corruption efforts to keep pace with a new breed of ambitious, technologically-savvy wrongdoers. While some jurisdictions still lag behind, the time has come for action.





PORTUGAL

FILIPA MARQUES JÚNIOR

MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA & ASSOCIADOS

Q TO WHAT EXTENT HAVE YOU SEEN A NOTABLE RISE IN THE LEVEL OF CORPORATE FRAUD, BRIBERY AND CORRUPTION UNCOVERED IN PORTUGAL IN RECENT YEARS?

MARQUES JÚNIOR: There has been a rise in the number of known investigations by the authorities regarding fraud, corruption and bribery involving companies. However, this trend seems to be more related to the available means of investigation and enhanced cooperation between authorities and enforcement agencies at both the national and international levels, than to an increase in corporate crimes. The public exposure of these cases and rising awareness of compliance issues have increased companies' concerns with the adoption of mechanisms aimed at reducing these crimes.

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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?

MARQUES JÚNIOR: One of the last relevant changes in the legal framework occurred in 2015 when penalties regarding corruption related crimes were raised. In 2016, the Group of States against Corruption (GRECO) issued a report addressing some recommendations to the Portuguese State to reinforce integrity, accountability and transparency in the regimes that apply to members of parliament, judges and prosecutors, aiming for the adoption of more proficient preventive practices. Failure to comply is not a criminal offence per se, but a company may be held responsible for offences occurring within the organisation if it was not capable of preventing such offences.

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Q IN YOUR OPINION, DO REGULATORS IN PORTUGAL HAVE SUFFICIENT RESOURCES TO ENFORCE THE LAW IN THIS AREA? ARE THEY MAKING INROADS IN THIS AREA?

MARQUES JÚNIOR: Not only does the law provide for such effective means, but also support from public opinion is relevant in terms of providing legitimacy to the regulators that are aiming at the elimination of these types of wrongdoing. In addition, an increase in international cooperation has not only given the regulators more access to information, but also enforced the law in a broader manner.

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Q IF A COMPANY FINDS ITSELF SUBJECT TO A GOVERNMENT INVESTIGATION OR DAWN RAID, HOW SHOULD IT RESPOND?

MARQUES JÚNIOR: Companies should be prepared and should have elaborated their own procedures and guidelines beforehand to deal with these cases. During an investigation, a company should, first, understand the scope of the investigation or dawn raid and be legally prepared to react to it. Cooperation is essential. Employees must be informed. A point of contact response team should be immediately set up to address the requests of the authorities, the doubts of the employees and the message from the board so that there is an understanding of the matters that are being questioned, the legal basis for the requests and an understanding of the message from the company. Legally privileged documents should be protected and a member of the response team should accompany the officials conducting the investigation. A communications plan should also be established, and the company should follow up with its own investigation to better assess the possible findings of the authorities and consider the next steps.

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“Understanding a counterparty and conducting due diligence on third-party relationships is also a crucial element of a robust fraud and corruption risk assessment process.”

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?

MARQUES JÚNIOR: As there is limited legal protection for whistleblowers, reactions to suspicions of fraud or corruption are still slow and less effective. In any case, even without such protection, there have been cases initiated based on a report of crimes by non-related entities. Training staff at all levels is an important strategy to identify and report potential fraud and misconduct and should be part of any compliance programme. There is still room for improvement in the way companies are dealing with this topic as sometimes employees remain silent due to lack of trust and fear of the system. It is therefore necessary to improve employees' relationship with the company, ensuring their trust and participation in setting up compliance programmes, while making them understand that they are an essential part of such a programme.

Q WHAT ADVICE CAN YOU OFFER TO COMPANIES ON CONDUCTING AN INTERNAL INVESTIGATION TO FOLLOW UP ON SUSPICIONS OF FRAUD OR CORRUPTION?

MARQUES JÚNIOR: Anticipation and prevention are the most effective strategies to protect a firm in such cases. However, when already detected, the suspicion must be handled assertively and as early as possible. The relevant risk or compliance department should set up a plan and take measures to ensure that, for example, a company's data, most of which may be stored electronically, is analysed and protected. It is important to consider working with external consultants, advisers and experts so that the internal investigation phase is pursued in an independent environment, but always with the cooperation of the relevant departments. In the end, the reaction should be perceived as a translation of a strong commitment by the board to fight against fraud and corruption. Disciplinary procedures, disclosure and cooperation with the authorities must be considered.



Q WHAT GENERAL STEPS CAN COMPANIES TAKE TO PROACTIVELY PREVENT CORRUPTION AND FRAUD WITHIN THEIR ORGANISATION?

MARQUES JÚNIOR: Setting up a robust, adequate and tailor-made compliance programme is essential. Special attention should be paid to the risk in the country where the business activity is taking place, by understanding where it stands in the corruption indexes as well as the applicable laws and regulations. In addition, companies should be particularly concerned with some types of transactions, and must have detailed policies regarding, among others, gifts and courtesies, hospitalities, facilitation payments and sponsorships, as these are relevant areas of fraud and corruption risk. Moreover, understanding a counterparty and conducting due diligence on third-party relationships is also a crucial element of a robust fraud and corruption risk assessment process. The process to be implemented should also foresee continuous monitoring, routine reviews, as well as a strong training programme with independent auditing and control.

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Filipa Marques Júnior is a partner at MLGTS and a member of the litigation team, where she focuses mainly on criminal and regulatory litigation, internal investigations and compliance. Having joined MLGTS in 2002, she has extensive experience in assisting clients both in court proceedings and in pre-litigation stages in several areas, with special attention on economic crime, money laundering and corruption. In recent years she has worked in preventive and compliance measures and conducts internal training on corruption and money laundering topics. Previously, she worked as an adviser to the Legal Policy and Planning Office of the Ministry of Justice.



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