CORPORATE FRAUD & CORRUPTION

ANNUAL REVIEW **2016**

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JUNE 2016 • ANNUAL REVIEW

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

Contents

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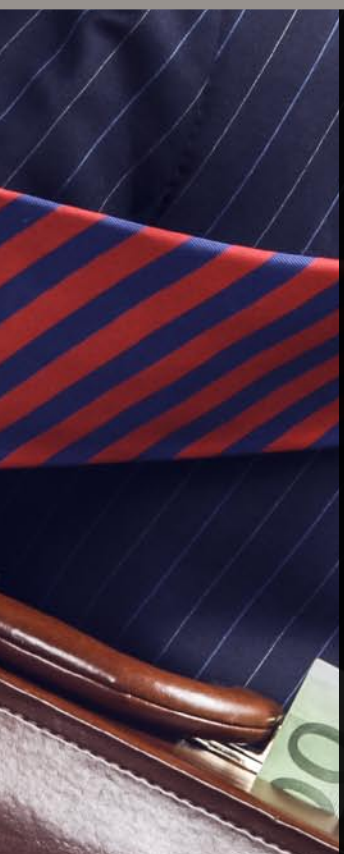
Contents

INTRODUCTION



No matter how diligent companies and organisations try to be with cracking down on fraud and corruption, they remain a constant risk for groups of all sizes. This past year has seen monumental stories of global corruption exposed, as well countries and international bodies taking great strides toward investigating, punishing and preventing fraud.

According to anti-fraud professionals the average organisation loses 5 percent of its annual revenue to fraud; when applied to the 2014 estimated gross world product of $74.16 trillion that results in a projected potential total fraud loss of up to $3.7 trillion worldwide.

With fraud and corruption costs affecting the world to such a degree, many countries have strengthened or introduced new, anti-corruption and anti-bribery laws and begun working in conjunction with multiple jurisdictions around the globe. While the US leads global anti-bribery enforcement, countries such as the UK, the Netherlands, Germany, France, Canada and Australia have increased their enforcement against companies bribing foreign officials. Not only are such nations cracking down on international bribery, but a number of countries are focusing on domestic bribery, often involving state-owned entities. According to data from TRACE International, after the US, South Korea brought the most enforcement actions regarding domestic bribery, followed by Algeria, China and Nigeria.

Many countries have enacted new anti-bribery laws, including India, Myanmar, New Zealand, Mexico, Russia, Brazil and Ireland. In addition to the introduction of the Benami Transactions Amendment Bill, Indian lawmakers are planning to introduce a bill in the future which will make bribing a foreign public official an offence; this will make the country compliant with the UN Convention against Corruption.

In addition to updating and introducing new laws, countries are also working closer with other jurisdictions to cut down on corruption. In the wake of large scandals, we have seen a more cooperative, global effort between countries. For instance, the investigation into the Ford bribery scandal, which began in Russia, was joined by both German and US authorities. The large Petrobras scandal that has led to Brazil's president Dilma Rousseff facing impeachment might have affected mainly Brazil, but US and Swiss authorities have also stepped in to help investigate.

Although the fight against fraud and corruption will always exist, this year has seen many important key developments in that fight—developments that should help set the stage for a more effective fight in the future.

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UNITED STATES

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Q TO WHAT EXTENT ARE BOARDS AND SENIOR EXECUTIVES IN THE US TAKING PROACTIVE STEPS TO REDUCE INCIDENCES OF FRAUD AND CORRUPTION FROM SURFACING WITHIN THEIR COMPANY?

PREBER: In the US, a number of stakeholders are taking proactive steps to reduce enterprise fraud, waste, abuse and corruption. The broadly visible actors include investors, lenders, boards of directors, management, insurers, regulators and activists. Never before has there been such a convergence of interests focused on fraud and corruption. Focusing exclusively on organisational proactivity, a number of pre-emptive actions can be taken. First, shrink risk appetites. Second, expand, fund and hold accountable risk management roles such as the chief risk officer. Third, prepare robust risk assessments by identifying, rating and ranking risks, as well as associated risk responses, through policies, training, internal controls, monitoring and whistleblowing systems. Fourth, conduct comprehensive trade relationship due diligence, for example pre-investment business intelligence, vendor and supplier contracting protections, on-boarding, monitoring and auditing. Fifth, simulate response events using 'table top' exercises. Sixth, expand insurance coverage. Finally, leverage sophisticated data analytics.

Q HAVE THERE BEEN ANY SIGNIFICANT LEGAL AND REGULATORY DEVELOPMENTS RELEVANT TO CORPORATE FRAUD AND CORRUPTION IN THE US OVER THE PAST 12-18 MONTHS?

PREBER: There are significant legal and regulatory developments occurring daily related to fraud, waste, abuse and corruption. For example, there have been recent changes to federal law regarding data privacy and electronically stored information. Litigation and resulting case law is driving change, and federal and state regulatory enforcement policies have been developing for years. In particular, there are regular changes in agency enforcement priorities, interpretations about the adequacy of corporate anti-fraud and corruption programmes, judgments about investigative cooperation, and the use of deferred prosecution agreements and consent decrees. In addition, regulatory agencies are investing in data analytics capabilities to discover fraud and corruption risks at higher rates. It is also important to note that global events materially affect the legal and regulatory landscape in the US. The leakage of the Panama Papers, the corruption issues reported in Brazil and other nations, and the enforcement of international anti-

fraud and anticorruption laws are influencing board agendas, management actions and regulatory responses. Further, there is a concern that disputes and litigation are becoming 'Americanised' in the European Union, which may lead to a greater propensity for class actions, broader discovery rights, more adversarial proceedings, and larger awards.

Q WHEN SUSPICIONS OF FRAUD OR CORRUPTION ARISE WITHIN A FIRM, WHAT STEPS SHOULD BE TAKEN TO EVALUATE AND RESOLVE THE POTENTIAL PROBLEM?

PREBER: Our model accounting complaint handling (MACHSM) process, for example, handles financial reporting fraud and corruption and other whistleblower claims. The MACH process covers how organisations should receive, analyse, investigate, resolve, report and retain complaints. The receipt of a complaint should address the method for documenting and housing claims. If a matter is referred to a governing body like the audit committee, then, assisted by legal advisers, an analysis should be performed to determine appropriate courses of action. It is helpful to use a standardised complaint classification system moving into the investigative phase. The resolution of a complaint requires diligent and focused efforts to identify and implement corrective actions. Throughout the process, it is important to have well-defined reporting that favours privacy and confidentiality and provides a reasonable level of information to stakeholders. Documents produced during the MACH process represent evidence that should be preserved, protected and retained in accordance with each organisation's retention policies.

Q DO YOU BELIEVE COMPANIES ARE PAYING ENOUGH ATTENTION TO EMPLOYEE AWARENESS, SUCH AS TRAINING STAFF

PREBER: For those companies that are not paying enough attention, there is a failure to recognise the importance of conducting regularly scheduled training to reinforce the basics of fraud and corruption awareness – this includes the 'fraud triangle' consisting of pressure, opportunity and rationalisation and the latest schemes and scams. It is also important to continuously advertise the availability of employee and vendor

TO IDENTIFY AND REPORT POTENTIAL FRAUD AND MISCONDUCT?

whistleblower systems. For those wishing to be best in class, training should focus on the behaviours indicative of fraud and corruption. To make an analogy, virtually everyone can identify the bad acts representative of workplace harassment. The same is true for fraud and corruption behaviours – they can be easily spotted by the average person with proper awareness and sensitivity.

Q HOW HAS THE RENEWED FOCUS ON ENCOURAGING AND PROTECTING WHISTLEBLOWERS CHANGED THE WAY COMPANIES MANAGE AND RESPOND TO REPORTS OF POTENTIAL WRONGDOING?

PREBER: Progressive organisations recognise that early discovery of potential fraud and corruption is best for business and stakeholder value. The sooner a problem is identified and 'nipped in the bud' the better the reputational and associated outcomes. To get these more favourable positions, executives generally agree that there is a need to protect the privacy and confidentiality of the whistleblower and any accused parties. However, there is a wide disparity of opinions about whether encouraging whistleblowers, especially with cash rewards, to provide information is healthy. The possible adverse impacts on organisational culture are clear – you get paid to 'tattle'. This gets even more controversial when the government allows for the payment of cash awards to whistleblowers that circumvent organisational reporting systems. The fear is that the board and management lose control of complaint handling and investigation, thereby exposing the organisation to unnecessary reputational and litigation risks.

Q COULD YOU OUTLINE THE MAIN FRAUD AND CORRUPTION RISKS THAT CAN EMERGE FROM THIRD PARTY AND COUNTERPARTY RELATIONSHIPS? IN YOUR OPINION, DO FIRMS PAY SUFFICIENT ATTENTION TO DUE DILIGENCE AT THE OUTSET OF A NEW BUSINESS RELATIONSHIP?

PREBER: Third-parties in the vendor and supply chain – such as contractors, suppliers, lawyers and accountants – pose significant fraud and corruption risks to any organisation because they ultimately are an extension of the products or services offered and sold to the marketplace. As such, derogatory press, violations of laws, data breaches, human rights infringements and law suits involving third-parties and counterparties can cause reputational harm, derivative litigation and damages and derail the careers of executives. Responsible organisations are attending to this risk by recognising, measuring, mitigating and monitoring it diligently. Periodic risk assessments are designed to capture third-party risks and match them to key internal controls, insurance coverage, and tailored contracting

"Progressive organisations recognise that early discovery of potential fraud and corruption is best for business and stakeholder value."

terms and conditions. In summary, the course is clear and obvious: only do business with parties you know and trust – and can verify.

Q WHAT ADVICE CAN YOU OFFER TO COMPANIES ON IMPLEMENTING AND MAINTAINING A ROBUST FRAUD AND CORRUPTION RISK ASSESSMENT PROCESS, WITH APPROPRIATE INTERNAL CONTROLS?

PREBER: There is a comprehensive publication that organisations should look to as a resource – 'Managing the Business Risk of Fraud: A Practical Guide' prepared by the sponsoring organisations of the Institute of Internal Auditors, the American Institute of Certified Public Accountants and the Association of Certified Fraud Examiners. Although not authoritative, this guidance was prepared by reputable organisations knowledgeable about fraud and corruption risk. In addition, the US Governmental Accountability Office recently released 'A Framework for Managing Fraud Risks in Federal Programs'. This framework is designed to consider internal control activities, structures and environmental factors necessary to reduce fraud risks.

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MEXICO

IGNACIO CORTÉS
EY

Q TO WHAT EXTENT ARE BOARDS AND SENIOR EXECUTIVES IN MEXICO TAKING PROACTIVE STEPS TO REDUCE INCIDENCES OF FRAUD AND CORRUPTION FROM SURFACING WITHIN THEIR COMPANY?

CORTÉS: The global priority nowadays is combating corruption, as this type of fraud is a major impediment to economic growth. In this sense, companies in Mexico are adopting the best practices stated by the SEC and the DOJ by developing and implementing anti-bribery and anticorruption controls to reduce the incidences of corruption in their regular operations. Although these controls are more likely to be developed in Mexican subsidiaries of US or UK controlled companies, boards and senior executives of emerging or large Mexican corporations are following these practices and demonstrating their concern in having complaint mechanisms that allow companies to reduce fraud incidences including hotlines, training, risk assessments and due diligence, among others.

Q HAVE THERE BEEN ANY SIGNIFICANT LEGAL AND REGULATORY DEVELOPMENTS RELEVANT TO CORPORATE FRAUD AND CORRUPTION IN MEXICO OVER THE PAST 12-18 MONTHS?

CORTÉS: In May 2015, a reform to the political Constitution of Mexico took place. Within the provisions of this reform, the creation of a National Anticorruption System (SNA), as well as the subsequent development of secondary laws and regulations for such matters, was established to be published no later than May 2016. The Mexican government is currently working on the development of these secondary laws, including the National Anticorruption System General Law, the Federal Oversight and Accountability Law, the Organic Law of the Administrative Justice Federal Court, and the Federal Public Administration Organic Law. Additionally, the government is working on changes to the Federal Criminal Code. It is worth emphasising that such an initiative arises from the demands of citizens following several public corruption scandals.

Q WHEN SUSPICIONS OF FRAUD OR CORRUPTION ARISE WITHIN A FIRM, WHAT STEPS SHOULD BE TAKEN TO EVALUATE AND RESOLVE THE POTENTIAL PROBLEM?

CORTÉS: The first step is to establish the warning signs or 'red flags' that led the company to suspect that a potential fraud or corruption has occurred. Commonly, red flags could be confirmed through a forensic data analytics review. The aim of this review is to perform a transactional analysis in order to identify any irregular behaviour within the accounting records or any pattern that could represent potential anomalies in company disbursements. It is worth identifying at this stage the potential departments involved and the employees that work in such areas. Efforts should also include analysing and assessing any atypical behaviour by the suspected employees, including refusal to take vacations, exceeded usual working hours, and so on. For those individuals suspected of fraud or corruption, companies should conduct interviews, transactional testing and undertake a forensic analysis of employees' computers. Companies, based on their policies and procedures, should assess the possibility of presenting an expert report to the public prosecutor. In Mexico, unlike the US, the authorities require sufficient evidence of any potential fraud and the original version of each of the documents should be considered as proof which must comply with Mexican regulations.

Q DO YOU BELIEVE COMPANIES ARE PAYING ENOUGH ATTENTION TO EMPLOYEE AWARENESS, SUCH AS TRAINING STAFF TO IDENTIFY AND REPORT POTENTIAL FRAUD AND MISCONDUCT?

CORTÉS: Companies are not paying enough attention to this in Mexico. Anti-corruption training, for example, is more likely to be attended by executives in mature markets, where corruption is perceived to be lower. This was confirmed by our Global Fraud Survey, in which 58 percent of respondents in developed markets received anti-corruption training, compared with only 40 percent in emerging markets. This disparity is indicative of the significant challenges that companies based in Mexico are facing in terms of training. However, many firms are becoming more interested in the development and implementation of anti-corruption training.

"Third-parties represent the highest risks in Mexico in terms of corruption, as they are mainly used to conceal improper payments to the authorities."

Q HOW HAS THE RENEWED FOCUS ON ENCOURAGING AND PROTECTING WHISTLEBLOWERS CHANGED THE WAY COMPANIES MANAGE AND RESPOND TO REPORTS OF POTENTIAL WRONGDOING?

CORTÉS: Although the US is adopting new tools to encourage and support individuals to provide information – such as the Dodd-Frank Act which provides financial incentives for whistleblowers as well as the SEC's continuing efforts to incentivise whistleblowing – in Mexico there is not a strong culture or incentive for reporting fraud or corruption indicators within a company. Globally, a number of international companies have implemented hotlines in their Mexican subsidiaries and this has also been adopted by a few Mexican companies. This has allowed management to identify real fraud situations and to react to the allegations in a quicker and more accurate manner.

Q COULD YOU OUTLINE THE MAIN FRAUD AND CORRUPTION RISKS THAT CAN EMERGE FROM THIRD PARTY AND COUNTERPARTY RELATIONSHIPS? IN YOUR OPINION, DO FIRMS PAY SUFFICIENT ATTENTION TO DUE DILIGENCE AT THE OUTSET OF A NEW BUSINESS RELATIONSHIP?

CORTÉS: Third-parties represent the highest risks in Mexico in terms of corruption, as they are mainly used to conceal improper payments to the authorities in regular operating transactions due to cultural facts and 'common practice'. Moreover, these third-parties can be involved in fraud schemes including billing nonexistent services, conflicts of interest and irregular sales commissions. Companies are not paying sufficient attention to their third-party relationships. According to our Global Fraud Survey, one in five respondents do not identify third-parties as being part of their anti-corruption due diligence. A greater proportion of companies, more than one in three, do not assess country or industry-specific risks before an investment. The overall proportion of respondents undertaking any common anti-corruption due diligence measures has decreased since our last survey.

Q WHAT ADVICE CAN YOU OFFER TO COMPANIES ON IMPLEMENTING AND MAINTAINING A ROBUST FRAUD AND CORRUPTION RISK ASSESSMENT PROCESS, WITH APPROPRIATE INTERNAL CONTROLS?

CORTÉS: Companies should definitely develop and implement steps to quickly identify and mitigate any fraud and corruption risks. This includes adequate resource compliance and investigations functions, so that they can proactively engage before regulatory action. They should establish whistleblowing channels and policies that not only raise awareness of reporting mechanisms, but encourage employees to report misconduct. They should undertake regular fraud risk assessments and internal audits to monitor the fraud and anticorruption controls in place. They should conduct robust anticorruption due diligence on third-parties, before entering into a business relationship. Finally, they should execute a comprehensive anticorruption compliance and anti-fraud programme that incorporates data analytics and tailored bribery and corruption training.

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COLOMBIA

LIUDMILA RIAÑO G.,
EY

Q TO WHAT EXTENT ARE BOARDS AND SENIOR EXECUTIVES IN COLOMBIA TAKING PROACTIVE STEPS TO REDUCE INCIDENCES OF FRAUD AND CORRUPTION FROM SURFACING WITHIN THEIR COMPANY?

RIAÑO: In Colombia, some boards and senior executives are starting to take action to actively prevent corruption or fraud by implementing ethics and compliance programmes in their companies. However, the compliance culture still has room for improvement, specifically in implementing effective monitoring procedures to mitigate those risks. There is a more profound anti-fraud and anticorruption regime in local Colombian companies tied to the larger offshore headquarters where these regimes are implemented due to internal company policies and compliance with global anticorruption laws and regulations.

Q HAVE THERE BEEN ANY SIGNIFICANT LEGAL AND REGULATORY DEVELOPMENTS RELEVANT TO CORPORATE FRAUD AND CORRUPTION IN COLOMBIA OVER THE PAST 12-18 MONTHS?

RIAÑO: In February 2016, the Colombian government put in place Act 1778, which regulates transnational anti-bribery efforts by obligating companies to implement ethics and compliance programmes. The Superintendent of Corporations in Colombia will be the main body responsible for managing compliance with the new Act. Under the terms of the Act, the penalties for offering, paying or insinuating any sort of bribe to government officials includes, but is not limited to, fines up to $46m, being prohibited from working with the Colombian government for up to 20 years, and the company's reputation being called into question by media publications. Ultimately, Colombia is looking to join the OECD and the implementation of the Act 1778 is an important step toward gaining that membership. However, the Act will not be sufficient by itself as it is important that additional steps for compliance are regulated by the government. To date, Colombia has managed to obtain the approval of more than half of the 23 committees needed to reach membership status with the OECD.

Q WHEN SUSPICIONS OF FRAUD OR CORRUPTION ARISE WITHIN A FIRM, WHAT STEPS SHOULD BE TAKEN TO EVALUATE AND RESOLVE THE POTENTIAL PROBLEM?

RIAÑO: It is important that the company has previously established and documented processes to manage incidents. This should involve an initial assessment of the seriousness of the incident and what should be done about it, such as data preservation and collection to maintain the chain of custody, further investigations, root cause analysis, escalation to other parts of the organisation, and so on. A major part of the response to any suspicion of fraud or corruption is the performance of an investigation into the facts surrounding the incident.

Q DO YOU BELIEVE COMPANIES ARE PAYING ENOUGH ATTENTION TO EMPLOYEE AWARENESS, SUCH AS TRAINING STAFF TO IDENTIFY AND REPORT POTENTIAL FRAUD AND MISCONDUCT?

RIAÑO: Companies in Colombia are still in the process of implementing mechanisms such as ethics lines to report potential fraud and misconduct. In some companies, however, such mechanisms appear to be ineffective as employees or third parties are not aware of their existence or sufficient training on what matters to report in an ethics line has not been provided. This can often lead to ethics lines receiving client service claims or unrelated ethics and compliance issues.

"There is an ongoing project for whistleblower protection being developed by the government as part of the agenda of Colombia entering the OECD."

Q HOW HAS THE RENEWED FOCUS ON ENCOURAGING AND PROTECTING WHISTLEBLOWERS CHANGED THE WAY COMPANIES MANAGE AND RESPOND TO REPORTS OF POTENTIAL WRONGDOING?

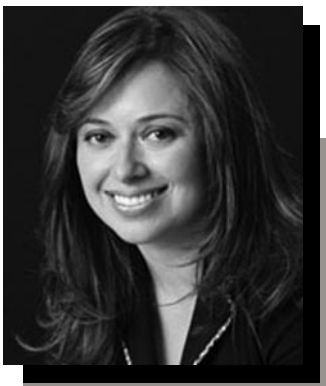
RIAÑO: Government officials have an obligation to report misconduct and any suspicion of corruption. However, Colombia does not have any regulation to prevent or protect retaliation against whistleblowers. There is an ongoing project for whistleblower protection being developed by the government as part of the agenda of Colombia entering the OECD.

Q COULD YOU OUTLINE THE MAIN FRAUD AND CORRUPTION RISKS THAT CAN EMERGE FROM THIRD PARTY AND COUNTERPARTY RELATIONSHIPS? IN YOUR OPINION, DO FIRMS PAY SUFFICIENT ATTENTION TO DUE DILIGENCE AT THE OUTSET OF A NEW BUSINESS RELATIONSHIP?

RIAÑO: From our 14th Global Fraud Survey developed in 2016, we can see that 98 percent of the respondents in Colombia believe that it is important to know the ultimate beneficial ownership of the entities with which they do business. Despite a general consensus of belief in the importance of knowing your third-party, 66 percent are not assessing the risks specifically tied to the industry or country before an investment and only 12 percent are identifying third-parties as part of their anticorruption due diligence.

Q WHAT ADVICE CAN YOU OFFER TO COMPANIES ON IMPLEMENTING AND MAINTAINING A ROBUST FRAUD AND CORRUPTION RISK ASSESSMENT PROCESS, WITH APPROPRIATE INTERNAL CONTROLS?

RIAÑO: In our 14th Global Fraud Survey, we mentioned the elements that companies should consider when implementing and maintaining a robust fraud and corruption risk assessment process. First, establish clear whistleblowing channels and policies that not only raise awareness of reporting mechanisms but also encourage employees to report misconduct. Second, undertake regular fraud risk assessments, including an assessment of potential data-driven indicators of fraud or forensic data analytics (FDA) indicators of fraud. Third, develop a cyber breach response plan that brings all parts of the business together in a centralised response structure. Finally, undertake robust anticorruption due diligence testing on third-parties before entering into a business relationship.



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BRAZIL

MARTIN WHITEHEAD
PWC

Q TO WHAT EXTENT ARE BOARDS AND SENIOR EXECUTIVES IN BRAZIL TAKING PROACTIVE STEPS TO REDUCE INCIDENCES OF FRAUD AND CORRUPTION FROM SURFACING WITHIN THEIR COMPANY?

WHITEHEAD: There have been some positive steps in this direction over the last two years in Brazil. This has been fuelled by three key drivers. First, the introduction of the Brazil Clean Company Act (BCCA) which became effective in January 2014. Second, the impact of increased FCPA enforcement, which has affected some Brazilian companies during this period. And third, the fallout arising from some high profile corporate scandals which has drawn massive publicity locally and indeed globally in some cases, with Petrobras being the most notorious. In aggregate, these drivers have meant that the issues of fraud and corruption in Brazil have been widely discussed within society and more specifically within boardrooms. But what have companies actually done? In many cases there has been more lip-service paid than action and investment committed, but the trajectory is generally upwards. We have seen some entities really embrace a proactive stance, including CEO-led initiatives to hire and remunerate talent, upgrade systems, and establish and adequately resource compliance units. Fraud prevention initiatives – as opposed to anti-bribery and anticorruption controls – still lag, despite the inherent risks in Brazil. For example, our 2016 Global Economic Crime Survey found that Brazil has the largest relative incidence of procurement fraud anywhere in the world.

Q HAVE THERE BEEN ANY SIGNIFICANT LEGAL AND REGULATORY DEVELOPMENTS RELEVANT TO CORPORATE FRAUD AND CORRUPTION IN BRAZIL OVER THE PAST 12-18 MONTHS?

WHITEHEAD: Following the January 2014 introduction of the BCCA, there was a gap of more than a year before any further guidance or clarifications were issued. We then had a burst of four supplementary issuances within a nine-month period in 2015. In March 2015, president Dilma issued a decree which clarified certain aspects of the new law. This was rapidly followed by a supplemental decree in April 2015 which provided further clarification. In September 2015, the federal comptroller's office released a guide to assist companies with compliance to the BCCA and to implement anticorruption programmes. Finally, in December 2015,

the BCCA was updated to incorporate corporate leniency agreements. It is important to keep in mind that these are still early days post-BCCA, and the legislation has not yet been tested in the courts.

Q WHEN SUSPICIONS OF FRAUD OR CORRUPTION ARISE WITHIN A FIRM, WHAT STEPS SHOULD BE TAKEN TO EVALUATE AND RESOLVE THE POTENTIAL PROBLEM?

WHITEHEAD: In such situations a company should follow its laid-down action plan or protocols for evaluating the risks and actions needed. Of course, this assumes a company has such a plan in place. In the real world, often a company in Brazil will either not have any appropriate set of procedures to deal with this situation or else the 'incidence response' plan may not be sufficiently clear on roles and procedures. In either case, a poorly executed response can escalate quickly, becoming a seriously disadvantaged outcome. A well-constructed response plan will incorporate a clear process of rapid first level risk assessment to determine inherent and situational risk. In many organisations, this would be overseen by the compliance officer or equivalent. This step is crucial to getting it right. Mistakes, or 'type II' errors, missing a potentially serious matter that should be looked at further, and in extreme cases, reported to the board, can be catastrophic. As a result, many smart companies adopt conservative policies for reporting more rather than less upwards, particularly where bribery is suspected.

Q DO YOU BELIEVE COMPANIES ARE PAYING ENOUGH ATTENTION TO EMPLOYEE AWARENESS, SUCH AS TRAINING STAFF TO IDENTIFY AND REPORT POTENTIAL FRAUD AND MISCONDUCT?

WHITEHEAD: In my view there has been good progress in this regard over the last three and a half years in Brazil. Awareness has jumped considerably, primarily because of situational drivers. As a result, most entities seem to 'get it'; increasingly, they see the need to enhance staff awareness of what constitutes improper business conduct, particularly in relation to bribery and corruption. Consequently, some form of bribery and corruption awareness training is common in all large and most medium sized entities in Brazil these days. However, there is some complacency in respect of

follow-up or ongoing training, as too often training is seen as a one-time thing. We also see gaps in training content around fraud prevention.

Q HOW HAS THE RENEWED FOCUS ON ENCOURAGING AND PROTECTING WHISTLEBLOWERS CHANGED THE WAY COMPANIES MANAGE AND RESPOND TO REPORTS OF POTENTIAL WRONGDOING?

WHITEHEAD: Overall, this renewed focus on whistleblowers has not yet impacted companies in Brazil to any great extent. Over the last decade or so, hotlines and other whistleblowing channels have become reasonably widely adopted in Brazil, certainly at larger companies and those in the public sector. Cultural attitudes impact the effectiveness of such initiatives, both at the wider societal and corporate cultural level. In many cases, costly whistleblowing channels have simply not been used because of the inherent lack of trust in management or an unwillingness to get involved. We have seen that companies have started to change the way they manage and respond to potential wrongdoing, primarily as a result of the other forces at play – and in particular because of the introduction of BCCA – rather than because of concerns around the increased likelihood of whistleblowing *per se*. However, Brazil could readily see more internal whistleblowing start to happen both as part of the debate and transition in business practices that is currently playing out, and the wider renewed focus externally.

Q COULD YOU OUTLINE THE MAIN FRAUD AND CORRUPTION RISKS THAT CAN EMERGE FROM THIRD PARTY AND COUNTERPARTY RELATIONSHIPS? IN YOUR OPINION, DO FIRMS PAY SUFFICIENT ATTENTION TO DUE DILIGENCE AT THE OUTSET OF A NEW BUSINESS RELATIONSHIP?

WHITEHEAD: In Brazil the risks mirror those seen elsewhere, albeit the inherent risk is heightened because Brazilian companies commonly make relatively high usage of third-parties in their dealings. In addition, Brazil has a large and far-reaching public sector. The primary risk is that such entities might use bribery or other corrupt practices in representing a company, which could then lead to BCCA, FCPA or UK Bribery Act liability repercussions. Third-party or counterparty risk is generally well understood, and due diligence is becoming more common. However, it is not uncommon to see due diligence procedures that are inadequate to address the risks. Too often they are 'box ticking' exercises, presumably designed to save cost. Overall, I would say insufficient attention is given to this area.

"The risk assessment process must start at the top, and be seen to start there."

Q WHAT ADVICE CAN YOU OFFER TO COMPANIES ON IMPLEMENTING AND MAINTAINING A ROBUST FRAUD AND CORRUPTION RISK ASSESSMENT PROCESS, WITH APPROPRIATE INTERNAL CONTROLS?

WHITEHEAD: The risk assessment process must start at the top, and be seen to start there. This means that the CEO or CFO must be identified with it from the get go. Signalling is important to drive change and behaviours that will follow, but in any event the risk assessment process needs senior executive input because some of the fundamental risks can only be appreciated by senior staff who have situational knowledge and who can take a landscape view. The risk assessment team must be well balanced to draw on the diverse knowledge within the company, both across the value chain and in terms of experience, so that a robust, practical and real-world internal control programme is drawn up. Thereafter, the compliance programme must be maintained and monitored with similar attention paid by senior executives. Investigations and remedial actions should be taken swiftly, and to the extent possible people should be informed of such actions and consequences.

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PERU

RAFAEL HUAMAN
EY

Q TO WHAT EXTENT ARE BOARDS AND SENIOR EXECUTIVES IN PERU TAKING PROACTIVE STEPS TO REDUCE INCIDENCES OF FRAUD AND CORRUPTION FROM SURFACING WITHIN THEIR COMPANY?

HUAMAN: According to our 2014 survey of executives at the top 250 companies in Peru, 43 percent of respondents believed that their organisations had implemented a fraud prevention programme, 48 percent felt that the heads of their companies were committed to fulfilling it, and 50 percent had standard procedures and protocols to answer allegations and cases of fraud. Additionally, 54 percent of respondents indicated that their organisations already had some form of internal channel to receive reports in the form of a whistleblower hotline, which is a key mechanism for employees and helps to detect situations that could be a violation of the company's policies and procedures. These are all proactive steps taken by top management which help them to face fraud and corruption, nevertheless the percentages are still low.

Q HAVE THERE BEEN ANY SIGNIFICANT LEGAL AND REGULATORY DEVELOPMENTS RELEVANT TO CORPORATE FRAUD AND CORRUPTION IN PERU OVER THE PAST 12-18 MONTHS?

HUAMAN: In March 2016, Congress approved a law that incorporates the administrative responsibility of legal persons to act on offences of transnational active bribery. Its main difference with past legislation is the autonomous corporate responsibility for corruption offences. While it is true that the scope of this initiative is just focused on corrupt foreign public officials, this constitutes progress in anticorruption legislation in Peru and demonstrates the governance Peru is trying to achieve, with the aim of becoming a full member of the OECD anticorruption Working Group. A key aspect of the law is that it exposes the importance of implementing a prevention programme in companies. This law provides the possibility of exempting from responsibility or softening the penalties applicable to companies, to the extent that they are able to attest that a prevention programme was implemented before a crime was committed.

Q WHEN SUSPICIONS OF FRAUD OR CORRUPTION ARISE WITHIN A FIRM, WHAT STEPS SHOULD BE TAKEN TO EVALUATE AND RESOLVE THE POTENTIAL PROBLEM?

HUAMAN: Once it has been validated in a confidential way that the information has elements that require attention, suitable escalation protocols should be followed. The company's ethics officer, compliance officer and legal adviser should be informed about the existence of a possible act of fraud or corruption to determine if the case needs a higher level of escalation and to evaluate the reporting obligations and confidentiality protocols to be followed. Then, it is vital to identify the information sources related to the possible fraud or corruption, to protect the corresponding evidence and preserve its probative value. The third step would be to collaborate with legal advisers to define three elements: strategy, final objective of the investigation, and scope. Finally, it must be decided if the investigation would be conducted by an internal or external team. For that decision to be made, an evaluation of company resources, such as experienced personnel and technology, as well as the independence of the team involved in the investigation, should be conducted. Independence is critical if a case is headed for litigation. In summary, it is important that companies have defined protocols and procedures that dictate how to react when a potential fraud arises. Fraud could cause the company not only economic damage, but also reputational damage.

Q DO YOU BELIEVE COMPANIES ARE PAYING ENOUGH ATTENTION TO EMPLOYEE AWARENESS, SUCH AS TRAINING STAFF TO IDENTIFY AND REPORT POTENTIAL FRAUD AND MISCONDUCT?

HUAMAN: According to our survey on Peru, 53 percent of those surveyed indicated that they did not receive training related to prevention or anti-fraud policies. The main partners in the fight against fraud and corruption are employees themselves. After investigating cases of fraud and corruption, statistics show that 20 percent of employees in an area where fraud occurred, knew or had an indication of fraud, but did not report it. The generation of 'awareness prevention' in employees strengthens the first line of defence in the company and increases the likelihood of early detection of misconduct.

"Before talking about the implementation and maintenance of a robust fraud and corruption risk assessment process, focus first on ethical prevention and cultural climate."

It is critical that senior management encourage prevention, empowering their employees to develop and maintain integrity in the company.

Q HOW HAS THE RENEWED FOCUS ON ENCOURAGING AND PROTECTING WHISTLEBLOWERS CHANGED THE WAY COMPANIES MANAGE AND RESPOND TO REPORTS OF POTENTIAL WRONGDOING?

HUAMAN: One of the main fears of a person who wants to communicate an irregular event is that their identity might be exposed. For some, the price of sticking to the rules is just too high. Employees know when malfeasance is occurring, but they don't have the appropriate training and confidential channels to communicate the situation. There should be multiple channels for communication that are able to create empathy with the person who wants to communicate the irregular situation, to provide confidentiality and the possibility for anonymity, and to get the right and complete information. Sometimes whistleblowers see the tip of the iceberg and for them that's the biggest issue, so the benefit of having experts communicating with them is the ability to see the rest of the iceberg which might not be visible. Employees are afraid of retaliation if they report an irregularity. They make their own assessment and conclude that the risk and cost is too high for them. What should be done is to take measures that generate a climate of real confidence.

Q COULD YOU OUTLINE THE MAIN FRAUD AND CORRUPTION RISKS THAT CAN EMERGE FROM THIRD PARTY AND COUNTERPARTY RELATIONSHIPS? IN YOUR OPINION, DO FIRMS PAY SUFFICIENT ATTENTION TO DUE DILIGENCE AT THE OUTSET OF A NEW BUSINESS RELATIONSHIP?

HUAMAN: Most of the time, companies focus on controlling what is under their own roof but tend to forget that there are others involved in the process, people who might not have the same ethical standards. It is unrealistic to apply extreme controls to every third-party relationship, but companies must learn to discern the type of relationship they will have with each party and the risk level of the relationship. Commonly, third-parties that act on behalf of the company are classified as high risk. Understanding who we do business with is the important focus. Nowadays, with the boom of technology and social media, people have forgotten what it is to get to know someone. We are used to generating links with people we don't really know, and that could be detrimental for a company. The main fraud and corruption risks are related to possible conflict of interests, theft and reputational risks that can affect the company due to the activities performed by a third-party that is not controlled by the company.

Q WHAT ADVICE CAN YOU OFFER TO COMPANIES ON IMPLEMENTING AND MAINTAINING A ROBUST FRAUD AND CORRUPTION RISK ASSESSMENT PROCESS, WITH APPROPRIATE INTERNAL CONTROLS?

HUAMAN: Before talking about the implementation and maintenance of a robust fraud and corruption risk assessment process, focus first on ethical prevention and cultural climate. There are many examples of cases where companies with the best prevention and compliance systems 'on paper' were involved in major corruption scandals or were victims of significant fraud. The way decisions are made in a company is what counts. When making business decisions, are executives thinking about achieving goals by doing the right thing, or are they just thinking about achieving the goal? What is the real cultural climate? In organisations that have deteriorated into a 'do whatever it takes' mindset, it is more common to see cases of internal fraud and corruption. That climate fosters rationalisation, taking advantage of opportunities and a lack of control. Our recommendation is to start at the board and top management, generating conviction, commitment and support at the highest level.

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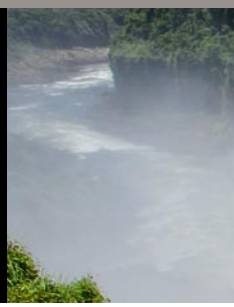
ARGENTINA

RAÚL SACCANI
DELOITTE

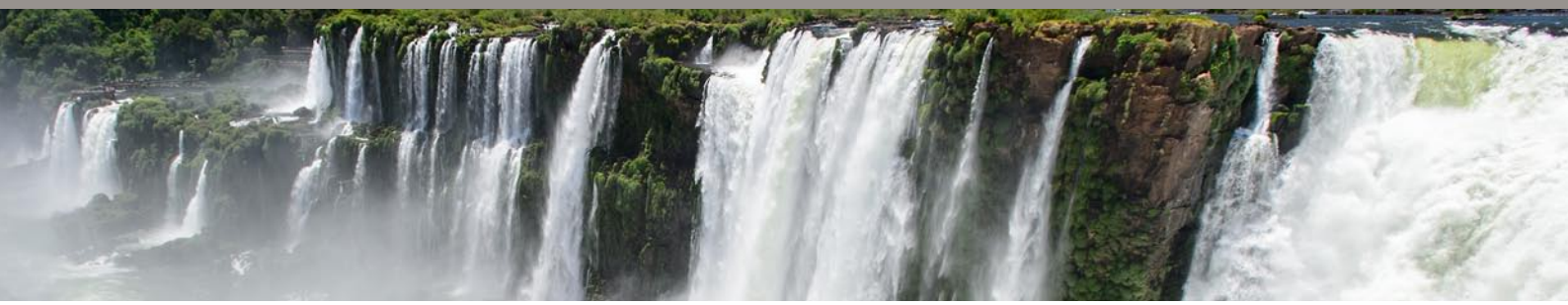


Q TO WHAT EXTENT ARE BOARDS AND SENIOR EXECUTIVES IN ARGENTINA TAKING PROACTIVE STEPS TO REDUCE INCIDENCES OF FRAUD AND CORRUPTION FROM SURFACING WITHIN THEIR COMPANY?

SACCANI: Latin American tone-at-the-top very much depends on the sanction track record of the company in question. If a US regulator imposed penalties at the parent company level in the past, it is likely that local management will have a proactive mindset. In the case of multinational companies that have not yet been under scrutiny or local companies that usually have weaker compliance programmes – or no programme whatsoever – it is common that boards and senior executives are focused on the minimum effort to meet requirements. In such an environment, no investments are made in prevention plans; rather, companies wait to react in the event a fraud or corruption scandal surfaces.

Q HAVE THERE BEEN ANY SIGNIFICANT LEGAL AND REGULATORY DEVELOPMENTS RELEVANT TO CORPORATE FRAUD AND CORRUPTION IN ARGENTINA OVER THE PAST 12-18 MONTHS?

SACCANI: Many countries in the region are introducing new legislation to catch up with the OECD standards on anticorruption. As a result, more and more local companies are implementing compliance programmes which include policies, procedures and management of fraud and corruption risks. In Colombia, for example, Congress approved the Transnational Corruption Act in February 2016, the country's first foreign bribery law. In Peru, Law 30424 was enacted on 21 April, establishing that Peruvian legal entities are themselves liable on the administrative side for corruption involving foreign government officials. Furthermore, the Argentine government is proposing new anti-corruption regulations which will introduce corporate liability for corruption, asset recovery in cases of corruption, enhanced transparency of government information, and benefits for those who engage in corruption but then cooperate with the authorities. One of the main criticisms of these FCPA-like legislations being enacted in some countries is that they only cover foreign official corruption and not local official corruption. Since there is very limited investment by local companies outside their country of origin, the practical application of such regulations would appear to be very limited.



Q WHEN SUSPICIONS OF FRAUD OR CORRUPTION ARISE WITHIN A FIRM, WHAT STEPS SHOULD BE TAKEN TO EVALUATE AND RESOLVE THE POTENTIAL PROBLEM?

SACCANI: Once the reliability of the tip or rumour has been evaluated, a thorough investigation should be carried out to ensure accountability. Since trust cannot be restored without an independent investigation, top management should be careful when designating the key investigator, whether internal or otherwise. There are substantial differences between applicable local and foreign legal frameworks – in terms of evidence, privacy and privilege rules, as well as bribery defences and exceptions; therefore, local legal counsel should be involved. The objective of the investigation should be set carefully and always kept in mind. Take any available, legal measure to preserve and safeguard related electronic and physical information. After executing the investigation, produce a factual report of findings that may lead to administrative sanctions or legal actions, where applicable. Finally, evaluate the effectiveness of corporate policies, procedures and controls that were circumvented, particularly if collusion took place.

Q DO YOU BELIEVE COMPANIES ARE PAYING ENOUGH ATTENTION TO EMPLOYEE AWARENESS, SUCH AS TRAINING STAFF TO IDENTIFY AND REPORT POTENTIAL FRAUD AND MISCONDUCT?

SACCANI: A recent survey we conducted shows that 78 percent of companies in Argentina provide employees with compliance training, most of which is internet based and focused on culture enhancement. However, in my opinion, local companies in the region should improve employee awareness. The perception is that most companies have the false belief that they are not vulnerable to such events and remain confident in their poorly established policies and in the loyalty of their personnel. Adequate training and communication vehicles certainly aid the prevention and detection of fraud and misconduct.

"Companies should know who their third-parties are and stay in control of the activities they were hired to perform."

Q HOW HAS THE RENEWED FOCUS ON ENCOURAGING AND PROTECTING WHISTLEBLOWERS CHANGED THE WAY COMPANIES MANAGE AND RESPOND TO REPORTS OF POTENTIAL WRONGDOING?

SACCANI: Whistleblowing mechanisms are quite difficult to implement in the Latin America region, particularly due to the retaliation that normally follows a report. Despite the renewed focus on fighting corruption, this remains largely true, so companies must continue to learn how best to structure their reporting systems in order to become more effective. Just creating the mechanism is not usually enough. Some companies are finding that frivolous tips or reports flood reporting channels and others find that their reporting mechanisms are never utilised. Each of these extremes suggests that programmes can be improved. Fine-tuning reporting mechanisms is often necessary to respond to the nature of an organisation and the countries and cultures in which it operates.

Q COULD YOU OUTLINE THE MAIN FRAUD AND CORRUPTION RISKS THAT CAN EMERGE FROM THIRD PARTY AND COUNTERPARTY RELATIONSHIPS? IN YOUR OPINION, DO FIRMS PAY SUFFICIENT ATTENTION TO DUE DILIGENCE AT THE OUTSET OF A NEW BUSINESS RELATIONSHIP?

SACCANI: Gone are the days when organisations could wash their hands of liability or reputational damage from outsourced work due to ethics and compliance failures. As recent cases have demonstrated, third-parties are one of the most common channels for illegal payments. An appropriate level of due diligence may vary depending on the risks arising from a particular relationship, but in any case, companies should know who their third-parties are and stay in control of the activities they were hired to perform. Unfortunately, this is not always the case in our region. Due diligence may be conducted at the beginning of the business relationship, but it is not always sufficient. Beneficial owners are not always fully disclosed and the business rationale for including a third-party in a transaction may not be appropriately documented.

Q WHAT ADVICE CAN YOU OFFER TO COMPANIES ON IMPLEMENTING AND MAINTAINING A ROBUST FRAUD AND CORRUPTION RISK ASSESSMENT PROCESS, WITH APPROPRIATE INTERNAL CONTROLS?

SACCANI: No genuine ethics and compliance policy can be set in motion without beginning with a risk assessment of your company. Mapping your company's exposure to fraud and corruption will enable you to evaluate your company's strengths and weaknesses and to set your priorities. Clearly, there is no 'one size fits all' solution for conducting risk assessments. You need to identify the most sensitive areas in your company, which countries or business units present the highest risk exposure, and which instances or activities have led to the highest number of incidents. To do that, there are three basic steps: identify key risk factors, evaluate their likelihood of occurrence, and implement mitigation action. A whole range of external and internal factors can have a direct impact on the fraud and corruption risks that a company may face. Therefore, a broader team of executives from different functions should be gathered in order to ensure a comprehensive risk assessment exercise.

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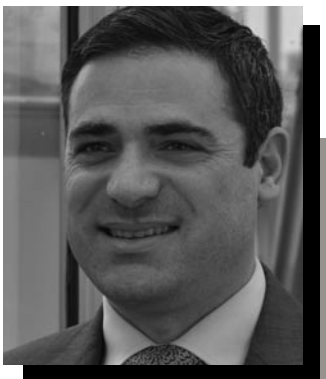

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Raúl Saccani has over 15 years of international experience in forensic auditing, accounting fraud investigation, and prevention of money laundering and anti-corruption. He has provided expert testimony at the World Bank (ICSID) and the ICC international arbitration. He is the author of the Forensic Audit Treatise (Thomson Reuters, 2012), and Fellow of the Governance and Transparency Centre at IAE Business School an anti-corruption investigator at the UDESA Centre.

UNITED KINGDOM

KEVIN SHERGOLD
GRANT THORNTON

Q TO WHAT EXTENT ARE BOARDS AND SENIOR EXECUTIVES IN THE UK TAKING PROACTIVE STEPS TO REDUCE INCIDENCES OF FRAUD AND CORRUPTION FROM SURFACING WITHIN THEIR COMPANY?

SHERGOLD: The UK Corporate Governance Code says that establishing the culture, values and ethics of the business and setting the correct 'tone from the top' is one of the key roles for the board. Our 2015 Corporate Governance review reported that for the UK FTSE 350 companies, the number of chairmen who mention culture and values in their primary statement has more than doubled to nearly 13 percent compared to the equivalent survey we conducted in 2013. Beyond the rhetoric, we have observed an increase in action. Large UK based corporates have taken steps to address fraud risk and the requirements of the UK Bribery Act (UKBA) by investing in compliance programmes, particularly data analytics and integrity due diligence solutions. There is also greater focus on risk assessments, policies and procedures, contract audits, training and setting up effective whistleblowing systems. With arguably a greater squeeze on available resources, the same level of investment is not quite so evident for mid-market companies, which causes risk both to them and to larger companies within their supply chains.

Q HAVE THERE BEEN ANY SIGNIFICANT LEGAL AND REGULATORY DEVELOPMENTS RELEVANT TO CORPORATE FRAUD AND CORRUPTION IN THE UK OVER THE PAST 12-18 MONTHS?

SHERGOLD: There have now been four enforcements against UK corporates for failure to prevent bribery under Section 7 of the UKBA. These include the first deferred prosecution agreement, involving ICBC Standard Bank, and the first prosecution by the SFO, against Sweett Group. Draft legislation to punish failure to prevent the facilitation of tax evasion was published in December 2015 and is now the subject of consultation. In April 2016, the UK government announced that it will establish a new office, the Office of Financial Sanctions Implementation, to help ensure that financial sanctions are "properly understood, implemented and enforced". Meanwhile, the government announced in May 2016, that it will consult on extending Section 7 of the UKBA to cover other economic crimes, such as fraud and money laundering. More generally there is pressure on the government to do more to tackle money laundering. This follows the revelations in the Panama Papers and Transparency International's recent publication 'PARADISE LOST: Ending the UK's role as a safe haven for corrupt individuals'. In preparation for the implementation of the fourth European Money Laundering

Directive, the UK government is conducting a consultation on significant changes to anti-money laundering and counterterrorist finance legislation.

Q WHEN SUSPICIONS OF FRAUD OR CORRUPTION ARISE WITHIN A FIRM, WHAT STEPS SHOULD BE TAKEN TO EVALUATE AND RESOLVE THE POTENTIAL PROBLEM?

SHERGOLD: This is a complex area, potentially with both legal and regulatory considerations impacting rights of individuals, and duty to report. Careful planning and the consultation of experts is essential. This should include fair and transparent procedures for investigation and fact-checking – for instance, the activation of an investigations protocol and identifying key personnel to conduct the investigation and be party to its findings. Companies should secure evidence, both electronic and non-electronic. They should identify internal and external witnesses and suspects, including protection of any whistleblower, before interviewing them, potentially under caution. They should undertake preliminary assessment to identify whether individuals need to be suspended, referencing HR policies. An appropriate review of banks statements and records from the accounting system is recommended, along with analysis of available evidence and any gaps in this evidence in order to form an initial case hypothesis. They should also consider methods to interrogate electronic data, and report on the findings and assessment of next steps, including recovery, disciplinary action, disclosure to authorities, identifying system and control weaknesses and remediation.

Q DO YOU BELIEVE COMPANIES ARE PAYING ENOUGH ATTENTION TO EMPLOYEE AWARENESS, SUCH AS TRAINING STAFF TO IDENTIFY AND REPORT POTENTIAL FRAUD AND MISCONDUCT?

SHERGOLD: In highly regulated sectors, UK companies have invested in training programmes – mostly computer based – with particular coverage of fraud, proceeds of crime, bribery, data protection and sector specific legislation. Reporting fraud can be done via whistleblower arrangements, where available. Outside of organisations, reports can be made directly to regulator or trade body 'prescribed persons and bodies'. Awareness of regulation among staff and the channels open to them is often low as there is a tendency for organisations to roll out training programmes as tick-box exercises. The use of whistleblowing arrangements in the UK to report incidents is in its infancy. Generally, mid-market

and smaller companies provide a reduced level of training to their staff. Greater emphasis should be placed on integrity and culture, and aligning these with how companies do business.

Q HOW HAS THE RENEWED FOCUS ON ENCOURAGING AND PROTECTING WHISTLEBLOWERS CHANGED THE WAY COMPANIES MANAGE AND RESPOND TO REPORTS OF POTENTIAL WRONGDOING?

SHERGOLD: While whistleblowing arrangements are not mandatory in the UK, there are many examples where regulators require or encourage whistleblowing arrangements to be put in place. From September 2016 it will be compulsory for National Health Services bodies, as well as FCA/PRA regulated companies, to have whistleblowing arrangements in place. It is recommended that listed companies have such arrangements or explain their absence. Critics of the UK's whistleblower regime argue firms are only paying lip service to what is required of them. Compared to other European countries, the UK has some of the most comprehensive rules to protect whistleblowers under the 1998 Public Information Disclosure Act, as updated in 2013. Enlightened organisations see that whistleblowing arrangements are good for business. Arrangements can also help corporates satisfy the requirement to have 'adequate procedures' in place as a statutory defence for actions under Section 7 of the UKBA and embed a culture which deals with other forms of financial crime. Whistleblowing reports and statistics are now frequently discussed by audit committees, and also by the board.

Q COULD YOU OUTLINE THE MAIN FRAUD AND CORRUPTION RISKS THAT CAN EMERGE FROM THIRD PARTY AND COUNTERPARTY RELATIONSHIPS? IN YOUR OPINION, DO FIRMS PAY SUFFICIENT ATTENTION TO DUE DILIGENCE AT THE OUTSET OF A NEW BUSINESS RELATIONSHIP?

SHERGOLD: Breaches of UK and global bribery legislation, and resulting penalties, are often a consequence of the conduct of third-parties. A particular UK example of this is the SFO's ongoing investigation of Rolls Royce. Risk issues for third-party and other counterparty relationships can be categorised under jurisdiction, service delivery channels, industry, government connections, legal status and structure, regulatory status, payment terms, status of compliance programmes and related parties connections. Companies that do not take due diligence seriously expose themselves to risk. There is significant variation in how UK firms onboard business relationships. Large organisations in high risk sectors tend to pay more attention to third-party risk, especially if they have previously experienced a significant compliance programme breach. Furthermore, while initial due diligence is mostly undertaken by companies, fewer of these adequately monitor ongoing high-risk relationships.

"Greater emphasis should be placed on integrity and culture, and aligning these with how companies do business."

Q WHAT ADVICE CAN YOU OFFER TO COMPANIES ON IMPLEMENTING AND MAINTAINING A ROBUST FRAUD AND CORRUPTION RISK ASSESSMENT PROCESS, WITH APPROPRIATE INTERNAL CONTROLS?

SHERGOLD: Risk assessment is the foundation for building an effective compliance programme and should be regularly undertaken. Results are optimised by getting management to buy in to risk assessment and for the process to involve key stakeholders – for instance, frontline middle management, compliance, HR, finance, legal and internal audit. Organisations should use risk assessment as a tool to understand the current state of their compliance programmes. It is advisable to perform a 'gap analysis' of the current programme versus the fraud and corruption risks identified. The recommendations made to improve compliance programmes should be based on common and best practice. It is also important that recommendations be practical, bespoke and work for the business in all of its locations.

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NETHERLANDS

ANGELIQUE KEIJSERS
EY

Q TO WHAT EXTENT ARE BOARDS AND SENIOR EXECUTIVES IN NETHERLANDS TAKING PROACTIVE STEPS TO REDUCE INCIDENCES OF FRAUD AND CORRUPTION FROM SURFACING WITHIN THEIR COMPANY?

KEIJSERS: When comparing the results of our EMEIA 2015 Fraud Survey for the Netherlands with those for other countries in Western Europe, fewer companies in the Netherlands, at 46 percent, have anti-bribery or anticorruption policies and codes of conduct in place than companies in other Western European countries, at 59 percent. One of the reasons for this may be that corruption risk in the Netherlands, despite a number of major corruption cases in recent years, is still considered low. Only 6 percent of survey respondents believe that corruption occurs on a broad scale in the Netherlands. This is significantly lower than in the rest of Western Europe, where 20 percent of respondents stated there was a risk of corruption and bribery in their country.

Q HAVE THERE BEEN ANY SIGNIFICANT LEGAL AND REGULATORY DEVELOPMENTS RELEVANT TO CORPORATE FRAUD AND CORRUPTION IN NETHERLANDS OVER THE PAST 12-18 MONTHS?

KEIJSERS: New legislation extending existing measures to combat financial and economic crime entered into force on 1 January 2015. This means that companies and their employees are increasingly exposed to criminal prosecution. The maximum term of imprisonment for economic crime increased to four years and courts can impose maximum fines amounting to the company's annual turnover. As of 1 July 2016, all companies with more than 50 employees will be obliged to have formal whistleblower policies in place under the Dutch Whistle-Blowers' House Act . This Act will enable employees to obtain advice on whistleblowing notifications. The Dutch Department of Justice increased the resources available for the investigation of potential corruption cases, and efforts undertaken by Dutch regulators have increased, resulting in more corruption cases being brought to court.

Q WHEN SUSPICIONS OF FRAUD OR CORRUPTION ARISE WITHIN A FIRM, WHAT STEPS SHOULD BE TAKEN TO EVALUATE AND RESOLVE THE POTENTIAL PROBLEM?

KEIJSERS: In our experience, the first 24 hours are the most important. Therefore, companies should be well-prepared in advance, for example by having a fraud response plan in place that covers the basic actions that need to be taken when possible irregularities occur. This plan should include a number of steps. First, obtain an understanding of the possible irregularities. Second, safeguard the relevant information by obtaining forensic copies of data carriers and hardcopy documentation. Third, determine which employees are possibly involved in the incident and take preventive measures, which may include limiting access to key information. Both physical and logistical access should be evaluated. Fourth, investigate the irregularities, which requires decisions regarding the investigation plan, the investigators involved, interview scheduling, investigation methods and reporting timelines. Finally, correct the irregularities in financial statements and take measures to prevent them from reoccurring.

Q DO YOU BELIEVE COMPANIES ARE PAYING ENOUGH ATTENTION TO EMPLOYEE AWARENESS, SUCH AS TRAINING STAFF TO IDENTIFY AND REPORT POTENTIAL FRAUD AND MISCONDUCT?

KEIJSERS: Training is a critical method for communicating anti-fraud and anticorruption policies to employees. This should be mandatory for specific employees, with their attendance being monitored. According to our EMEIA 2015 Fraud Survey, almost 59 percent of Dutch respondents have not received any anti-bribery or anticorruption training. It is essential that businesses assess the effectiveness of training and ensure it is relevant for different roles within the business. The good news is that 60 percent of respondents who attended training found it useful for making decisions in their role.

"Knowing with whom you are doing business is critical to managing regulatory and reputational risk."

Q HOW HAS THE RENEWED FOCUS ON ENCOURAGING AND PROTECTING WHISTLEBLOWERS CHANGED THE WAY COMPANIES MANAGE AND RESPOND TO REPORTS OF POTENTIAL WRONGDOING?

KEIJSERS: Fraud, bribery and corruption are frequently exposed by whistleblowing. Recognising this fact, regulators are adapting new tools to encourage individuals to come forward. The Dutch government has just passed a bill on whistleblowers which aims to protect whistleblowers and assist companies in investigating the issues at hand. The Act will take effect on 1 July 2016. Therefore, it hasn't proven its value yet.

Q COULD YOU OUTLINE THE MAIN FRAUD AND CORRUPTION RISKS THAT CAN EMERGE FROM THIRD PARTY AND COUNTERPARTY RELATIONSHIPS? IN YOUR OPINION, DO FIRMS PAY SUFFICIENT ATTENTION TO DUE DILIGENCE AT THE OUTSET OF A NEW BUSINESS RELATIONSHIP?

KEIJSERS: Knowing with whom you are doing business is critical to managing regulatory and reputational risk, such as the violation of sanction and bribery regulations. The results of our EMEIA 2015 Fraud Survey shows that only 12 percent of Dutch respondents say their companies perform background checks on suppliers and only 5 percent agree that their company checks the ownership structure of third-parties. Only 10 percent of respondents say their company has audit rights or performs regular audits of third-parties. From this perspective, Dutch companies still have some work to do.

Q WHAT ADVICE CAN YOU OFFER TO COMPANIES ON IMPLEMENTING AND MAINTAINING A ROBUST FRAUD AND CORRUPTION RISK ASSESSMENT PROCESS, WITH APPROPRIATE INTERNAL CONTROLS?

KEIJSERS: Regular risk assessments are critical to defining the design of an integrity and compliance programme, and to evaluating the effectiveness of internal controls. Conducting a robust risk assessment should not be a one-time affair, but regularly updated. The design of the compliance risk assessment will vary from organisation to organisation, but should incorporate the opinions of different stakeholders and focus on the major risks in the company, including cyber crime. Other fundamental parts of the integrity programme should cover 'soft controls', such as codes of conduct and training, as well as other 'hard controls', such as supplier and employee screening, and clear policies and procedures.

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Angelique Keijsers leads EY's Dutch FIDS practice. She is a chartered accountant with more than 20 years of experience in investigation and compliance services in multiple industries. She specialises in corporate compliance policies covering anti-money laundering, anti-bribery and anticorruption. Furthermore, she specialises in 'Know Your Customer' remediation programmes for international banks, as well as conducting investigations with law firms and their clients. Engagements vary from investigations into misrepresentation of financial figures, breaches of policies, assisting trustees in bankruptcy cases and assisting in disputes, to policy and compliance programme reviews.

PORTUGAL

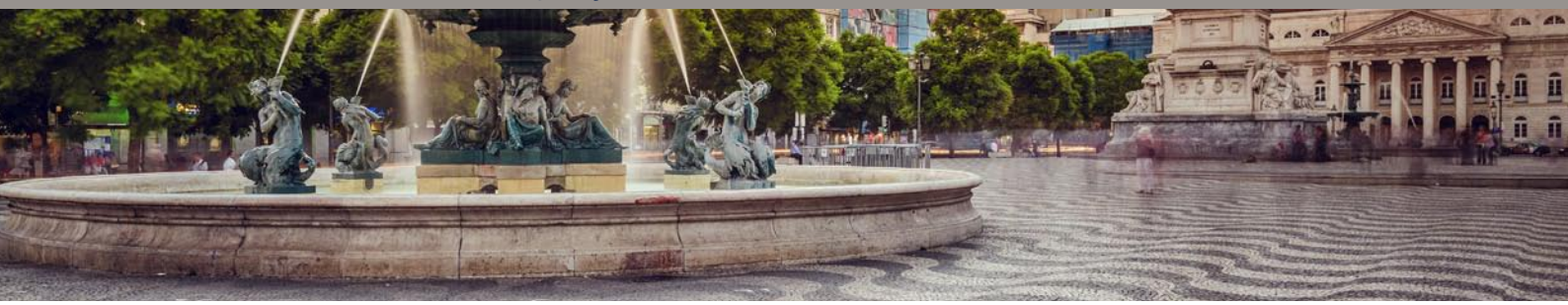
FILIPA MARQUES JÚNIOR
MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA & ASSOCIADOS

Q TO WHAT EXTENT ARE BOARDS AND SENIOR EXECUTIVES IN PORTUGAL TAKING PROACTIVE STEPS TO REDUCE INCIDENCES OF FRAUD AND CORRUPTION FROM SURFACING WITHIN THEIR COMPANY?

MARQUES JÚNIOR: Compliance is increasingly seen not only as a legal obligation but also as a business strategy. With increased media coverage and the interest of authorities in scrutinising companies' economic activities, companies need to arm themselves with mechanisms that allow them to anticipate risks and prevent situations where legal non-compliance may arise. Boards and senior executives in Portugal are now placing a greater emphasis on fraud and corruption, viewing it as a major concern, which leads to cautious preparation, implementation and maintenance of compliance policies and programmes in order to safeguard a company. In addition, in those companies where such programmes already exist, there has been scope for their enhancement and review. However, the action through these boards could be enhanced, since there is still some business resistance and a lack of ethical awareness.

Q HAVE THERE BEEN ANY SIGNIFICANT LEGAL AND REGULATORY DEVELOPMENTS RELEVANT TO CORPORATE FRAUD AND CORRUPTION IN PORTUGAL OVER THE PAST 12-18 MONTHS?

MARQUES JÚNIOR: 2015 saw a considerable change in the legal framework related to corruption, as penalties were raised. In addition, we have seen an increase in criminal investigations related to corruption in several business sectors and in politics, with the authorities adopting a more aggressive attitude in the fight against corruption. More recently, GRECO has issued a report addressing some recommendations to the Portuguese state which would reinforce the 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.



Q WHEN SUSPICIONS OF FRAUD OR CORRUPTION ARISE WITHIN A FIRM, WHAT STEPS SHOULD BE TAKEN TO EVALUATE AND RESOLVE THE POTENTIAL PROBLEM?

MARQUES JÚNIOR: Above all, anticipation and prevention are the most effective strategies to protect a firm in such cases. However, once detected, the suspicion must be handled with assertiveness and addressed as early as possible. The relevant risk or compliance department should set up a plan and take measures to ensure that, for example, the company's data information, most of which is currently 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 relevant departments. In the end, the reaction should be perceived as a translation of a strong commitment by the board to fight fraud and corruption. Disciplinary procedures, disclosure and cooperation with the authorities must be considered.

Q DO YOU BELIEVE COMPANIES ARE PAYING ENOUGH ATTENTION TO EMPLOYEE AWARENESS, SUCH AS TRAINING STAFF TO IDENTIFY AND REPORT POTENTIAL FRAUD AND MISCONDUCT?

MARQUES JÚNIOR: 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. A compliance programme is more than words laid down in codes of conduct and must be perceived by the entire organisation as a way of doing business. In order to achieve this organisational culture, employees must be part of the procedure and training them is mandatory. There is still room for improvement in the way companies are dealing with this topic as sometimes employees remain silent due to a 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 the entire procedure that is being set up, making them understand that they are an essential part of it.

Q HOW HAS THE RENEWED FOCUS ON ENCOURAGING AND PROTECTING WHISTLEBLOWERS CHANGED THE WAY COMPANIES MANAGE AND RESPOND TO REPORTS OF POTENTIAL WRONGDOING?

MARQUES JÚNIOR: Whistleblowing protection is still not a developed mechanism in Portugal, mainly because it is still seen as a reward to anyone anonymously reporting and not as a basic approach to a company's compliance programme. This situation also continues because there is limited legal protection for whistleblowers, which compromises a reaction to any suspicion of fraud or corruption, making it slower and less effective.

Q COULD YOU OUTLINE THE MAIN FRAUD AND CORRUPTION RISKS THAT CAN EMERGE FROM THIRD PARTY AND COUNTERPARTY RELATIONSHIPS? IN YOUR OPINION, DO FIRMS PAY SUFFICIENT ATTENTION TO DUE DILIGENCE AT THE OUTSET OF A NEW BUSINESS RELATIONSHIP?

MARQUES JÚNIOR: The main risks that may arise from third-party and counterparty relationships are legal, reputational and financial, as companies may find themselves involved in infractions related to, among others, bribery and corruption, money laundering, data protection and taxes. Companies are paying increasingly more attention to these issues, including due diligence not only at the outset of a new business relationship – namely if it involves different jurisdictions – but also in existing relationships.

Q WHAT ADVICE CAN YOU OFFER TO COMPANIES ON IMPLEMENTING AND MAINTAINING A ROBUST FRAUD AND CORRUPTION RISK ASSESSMENT PROCESS, WITH APPROPRIATE INTERNAL CONTROLS?

MARQUES JÚNIOR: A robust fraud and corruption risk assessment process has, as a founding principle, a structured and adequate compliance programme, permeating the company's structure. This means, before anything else, acknowledging that any company, in any economic sector, is prone to legal and reputational risks that may hinder its own economic activity. Being compliant also means understanding that the best way to deal with risk, minimising and overcoming it, is relying on anticipation, prevention, detection and reaction techniques. Within this programme, the areas that are more risk sensitive should be prioritised. In what concerns fraud and corruption, special attention

"Companies must have detailed policies regarding, among others, gifts and courtesies, hospitalities, facilitation payments and sponsorships."

should be paid to the risk to the country where the business activity is taking place, namely by understanding where it stands in the corruption indexes as well as the applicable laws and regulations. In addition, companies must 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 the risk of fraud and corruption. 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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SWITZERLAND

ROMAN RICHERS
HOMBURGER

Q TO WHAT EXTENT ARE BOARDS AND SENIOR EXECUTIVES IN SWITZERLAND TAKING PROACTIVE STEPS TO REDUCE INCIDENCES OF FRAUD AND CORRUPTION FROM SURFACING WITHIN THEIR COMPANY?

RICHERS: The awareness of fraud and bribery as key risks to a company's business has clearly increased in recent years. This is particularly true with regard to corruption related risks where media coverage of the crackdown on bribery has led to a rethink in the corporate world. While most multinationals have been paying close attention to fraud and bribery risks for a number of years, we are increasingly seeing small and medium sized enterprises focus on these topics as well. Under Swiss criminal law, the board is responsible for compliance with anti-bribery laws, and this responsibility cannot simply be delegated to management. Unsurprisingly, therefore, the board and top management are taking active steps to prevent fraud and corruption from occurring in their company.

Q HAVE THERE BEEN ANY SIGNIFICANT LEGAL AND REGULATORY DEVELOPMENTS RELEVANT TO CORPORATE FRAUD AND CORRUPTION IN SWITZERLAND OVER THE PAST 12-18 MONTHS?

RICHERS: Switzerland has just revised its laws concerning bribery in the private sector, further tightening the prohibition of corrupt business practices. The recent scandals affecting international sports organisations such as FIFA have certainly contributed to this revision. As a consequence of the revision, bribery in the private sector will now be a crime under the Swiss Penal Code, not just the Unfair Competition Act as was previously the case, and it will be prosecuted by the authorities on their own motion. Prior to the revision, an injured party needed to request prosecution, which rarely happened in practice. Under the revised law, this request will only be needed in 'minor cases', and while it is not yet entirely clear how this will be defined, early indications are that only very small incidents will fall under this exception. As soon as the bribery in question exceeds a few thousand francs, or the health and safety of third-parties is at risk, or where repeated infringements occur, no 'minor case' would exist anymore. So, in summary, the revision has the potential to effectively impact the way bribery in the private sector is prosecuted.

Q WHEN SUSPICIONS OF FRAUD OR CORRUPTION ARISE WITHIN A FIRM, WHAT STEPS SHOULD BE TAKEN TO EVALUATE AND RESOLVE THE POTENTIAL PROBLEM?

RICHERS: The first and most obvious step is to ensure that suspicions are properly reported internally to enable the firm to take appropriate measures. The situation must then be assessed, so that necessary steps can be taken, including any immediate measures to stop ongoing wrongdoing, preserving evidence and, where required, handling any external aspects such as contact with authorities or the media. Obviously, the company also needs to organise its own internal investigation, so that it can decide on the basis of sufficient information how to resolve the situation with minimal adverse consequences.

Q DO YOU BELIEVE COMPANIES ARE PAYING ENOUGH ATTENTION TO EMPLOYEE AWARENESS, SUCH AS TRAINING STAFF TO IDENTIFY AND REPORT POTENTIAL FRAUD AND MISCONDUCT?

RICHERS: Generally, we have seen that training does indeed take place in many companies. Training can take many forms, including online training or group sessions with staff. In our experience, however, large training programmes can be less effective than is desirable, especially if rolled out electronically, and they are often considered by staff to be little more than an additional administrative nuisance. The most effective training consists, in our view, of tailor-made, interactive training programmes for small groups, in which the effective challenges in the daily business can be addressed from a practical perspective. Obviously, this is a more sophisticated approach which is therefore mainly practicable for training high-risk positions such as the sales department, as well as companies' top management. Through focused training, it is often possible to achieve a drastic reduction in risk exposure.

Q HOW HAS THE RENEWED FOCUS ON ENCOURAGING AND PROTECTING WHISTLEBLOWERS CHANGED THE WAY COMPANIES MANAGE AND RESPOND TO REPORTS OF POTENTIAL WRONGDOING?

RICHERS: First, it might be of interest to note that whistleblowing is seen somewhat more critically in Switzerland than in other jurisdictions. The change whistleblowing has had on compliance culture may therefore be less significant than in other places. Nonetheless, an increasing number of wrongdoings are discovered through whistleblowing, in particular in large multinationals where whistleblowing tends to be more established. While whistleblowing can put pressure on a company to review the reported concerns, we have in practice not seen a fundamental difference in how such reports are investigated and handled. In our experience, it is, for most enterprises, the standard proceeding to fully investigate any suspected wrongdoing, irrespective of the source of the initial information.

Q COULD YOU OUTLINE THE MAIN FRAUD AND CORRUPTION RISKS THAT CAN EMERGE FROM THIRD PARTY AND COUNTERPARTY RELATIONSHIPS? IN YOUR OPINION, DO FIRMS PAY SUFFICIENT ATTENTION TO DUE DILIGENCE AT THE OUTSET OF A NEW BUSINESS RELATIONSHIP?

RICHERS: Fraud and corruption must be distinguished, in my view. Regarding fraud, a key risk is that a third-party may defraud the company that engaged it, and this company therefore has an inherent interest in preventing this from occurring, including by taking the proper steps in the initial phase. With regard to bribery and corruption, the situation is more complex. While today corruption is widely recognised as a key business risk and enterprises take considerable efforts to ensure that only trustworthy third-parties are appointed, this view has not always been fully shared in the past, and in some geographic and business areas corruption was, for a long time, seen as effectively benefitting the company's business. Third-party due diligence efforts were therefore not always properly undertaken, or not done at all, and some companies still struggle with this legacy. In recent years, this perception has clearly changed, and the initial due diligence of third-parties has become considerably more important and thorough. However, we still see cases where more should be done in this respect, in particular as it mitigates compliance risks considerably.

"We still see far too often that a one-size-fits-all approach is taken where standard policies are issued."

Q WHAT ADVICE CAN YOU OFFER TO COMPANIES ON IMPLEMENTING AND MAINTAINING A ROBUST FRAUD AND CORRUPTION RISK ASSESSMENT PROCESS, WITH APPROPRIATE INTERNAL CONTROLS?

RICHERS: The key advice is, in my experience, that meaningful compliance can only result from a tailored approach. We still see far too often that a one-size-fits-all approach is taken where standard policies are issued, accompanied by generic training, often via electronic tools. The result is frequently underwhelming. Effective compliance results from addressing the specific risks that the business in question is most likely to face, and therefore always requires an individualised approach. When done properly, this also results in employees accepting compliance not only as a formality imposed by management, but as an integral part of the business culture of the company. This is by far the most effective outcome, but one that can only be achieved with a smart approach to compliance and internal controls.

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Roman Richers is a partner in Homburger's litigation arbitration practice team and a member of Homburger's white-collar investigations working group. He graduated from the University of Basel (lic. iur.) and the University of Cambridge (LL.M.) and is admitted to all Swiss courts. He specialises in complex international and domestic dispute resolution, regularly advising and representing businesses and individuals in relation to criminal investigations and proceedings and related judicial assistance matters, as well as internal investigations. His practice further focuses on complex international and domestic arbitration proceedings and commercial litigation.

ITALY

FABRIZIO SANTALOIA
EY

Q TO WHAT EXTENT ARE BOARDS AND SENIOR EXECUTIVES IN ITALY TAKING PROACTIVE STEPS TO REDUCE INCIDENCES OF FRAUD AND CORRUPTION FROM SURFACING WITHIN THEIR COMPANY?

SANTALOIA: The boards of Italian private companies began several years ago managing fraud and corruption risks through the adoption of compliance programmes according to Legislative Decree 231/01. The compliance framework usually provides for a fraud and corruption risk assessment, the design and implementation of a programme – including the development of policies and procedures and employee training – and a monitoring phase with periodical reassessment and programme modification.

At present, compliance programmes are more sophisticated and new processes have been implemented by the senior executives of big players including compliance steps such as third-party due diligence and whistleblowing management. Smaller players are still far from implementing these kinds of instruments. More and more, the involvement of senior executives – from the risk assessment phase to the final definition of the compliance programme and their commitment – represent a key success factor in the implementation of the compliance programme.

Q HAVE THERE BEEN ANY SIGNIFICANT LEGAL AND REGULATORY DEVELOPMENTS RELEVANT TO CORPORATE FRAUD AND CORRUPTION IN ITALY OVER THE PAST 12-18 MONTHS?

SANTALOIA: In the period 2012-2015, in Italy we contributed to many significant legal and regulatory developments, both in the private and public sectors. The latest relevant law, Law No. 69/2015, took effect on 14 June 2015. Its cornerstones are, firstly, an extension of the scope of application of certain crimes of corruption, and an increase in the sanctions and the statute of limitations regimes for such crimes, secondly, the reform of false accounting rules, and thirdly, an additional impulse to the powers and role of the Italian National Anti-Corruption authority (ANAC). Another recent significant piece of legislation refers to the new public contracts code approved on March 2016 with the aim of making public procurement simpler and more transparent. The new code brings Italy in line with three EU directives and contains 217, rather than the previous 600, articles. One of the newest and most relevant introductions, among others, is that the code puts an end to the practice of awarding contracts to the lowest bidder, which has been misused in the past.

Q WHEN SUSPICIONS OF FRAUD OR CORRUPTION ARISE WITHIN A FIRM, WHAT STEPS SHOULD BE TAKEN TO EVALUATE AND RESOLVE THE POTENTIAL PROBLEM?

SANTALOIA: First of all, the use of a standard process to review and filter allegations in order to develop an initial response plan. Based on the analysis of each issue, companies must establish their investigation team, determine any needs for outside counsel and take the necessary steps to discover and preserve evidence. At the same time, they must also ensure appropriate oversight and disclosure as the process continues. Each investigation must be considered unique; the facts and circumstances will dictate how specific procedures should be performed within data analytics, document review and conduct interviews. For example, a forensic accounting review is critical to understand how transactions are captured in the accounting system, the flow of funds and the internal control environment. Email and document review helps to better understand troubling transactions. At the end of the investigation, a report with formalised conclusions, recommendations and remediation should be formalised.

Q DO YOU BELIEVE COMPANIES ARE PAYING ENOUGH ATTENTION TO EMPLOYEE AWARENESS, SUCH AS TRAINING STAFF TO IDENTIFY AND REPORT POTENTIAL FRAUD AND MISCONDUCT?

SANTALOIA: Employees, in a targeted way in accordance with their role in the company, are usually trained on fraud and corruption risks that are applicable to the company, on the potential liabilities arising from non-compliant behaviour, and on the specific policies and procedures implemented by the company to manage high risk processes. Training protocols, including how training is monitored and assessed, as well as its method of delivery, frequency and content, are usually part of an effective training plan. The reporting of fraud and misconduct is known as one of the key elements of an effective compliance programme, but due to a complex data protection and privacy law, and the lack of Italian-specific legislation dealing with fraud reporting and, in particular, with the protection of employees from retaliation, Italian companies usually do not stress this process.

Q HOW HAS THE RENEWED FOCUS ON ENCOURAGING AND PROTECTING WHISTLEBLOWERS CHANGED THE WAY COMPANIES MANAGE AND RESPOND TO REPORTS OF POTENTIAL WRONGDOING?

SANTALOIA: Italy does not have a comprehensive whistleblower law. In October 2012 for the first time, a broader topic like whistleblowing was discussed by lawmakers and an anti-corruption law, including a provision intended to legally protect public sector whistleblowers from retaliation, was introduced. There is no specific legislation on whistleblowing for the private sector. Individuals can only get general protection from general laws such as the constitution, the Civil Code, the Criminal Code, the Workers' Statute and the Data Protection Act and the applicable collective bargaining agreement. It is automatically unfair to dismiss or victimise an employee because he or she made a disclosure if in doing so he or she did not breach the law or contract. The remedies depend on the worker's collective agreement and, in the event of an unfair dismissal, on the individual judge's decision. In some cases an individual can be entitled to reinstatement, payment in lieu of reinstatement or damages. There is no policy that an employer should set up internal whistleblowing procedures. But increasing awareness that these arrangements can help the companies to deal with the issues internally, and mitigate the risk of reputational damage, is encouraging them to adopt these arrangements.

Q COULD YOU OUTLINE THE MAIN FRAUD AND CORRUPTION RISKS THAT CAN EMERGE FROM THIRD PARTY AND COUNTERPARTY RELATIONSHIPS? IN YOUR OPINION, DO FIRMS PAY SUFFICIENT ATTENTION TO DUE DILIGENCE AT THE OUTSET OF A NEW BUSINESS RELATIONSHIP?

SANTALOIA: The main risks that can emerge from a counterparty relationship concern the corruption to obtain or retain business and the reputational damages deriving from the unethical behaviour of the third-party. A tiered, risk-based approach in which higher risk third-parties are subject to a more stringent review – while lower risk third parties undergo a less comprehensive review – makes it necessary to perform a more in-depth due diligence on entities and individuals that act on an enterprise's behalf, including agents, business development consultants, sales representatives, customs agents, general consultants, resellers, subcontractors, franchisees, lawyers, accountants or similar intermediaries. The common factor is that such third-parties are subject to the control or determining influence of the enterprise and thus within its proper sphere of responsibility. Recent data show that companies in Italy are doing less due diligence than before and that many other European and non-European countries perform better in this area. One potential explanation could be related to the cost of the due diligence process, which could be relevant in case companies are not able to apply a consistent tiered, risk-based approach.

"Recent data show that companies in Italy are doing less due diligence than before."

Q WHAT ADVICE CAN YOU OFFER TO COMPANIES ON IMPLEMENTING AND MAINTAINING A ROBUST FRAUD AND CORRUPTION RISK ASSESSMENT PROCESS, WITH APPROPRIATE INTERNAL CONTROLS?

SANTALOIA: First of all, for a fraud and corruption risk assessment to be effective, management should be the true owner of the fraud and corruption risk assessment and have significant input into it. That being said, the key approach in conducting an effective fraud and corruption risk assessment starts from the evaluation of fraud risk factors and the identification of possible fraud schemes and scenarios, related to the company structure, its business, its location and the location of its main customers. Fraud schemes should then be prioritised by comparing the level of risk against predetermined target risk levels and tolerance thresholds and an evaluation of whether mitigating controls exist and how effective they are must be undertaken. The entire process and related conclusions shall be documented and periodically reviewed.

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Fabrizio Santaloia has over 13 years' experience on FIDS market, serving large multinational corporations and financial institutions both in Italy and abroad. Mr Santaloia has an extensive investigation experience in main fraud cases for industrial companies, and main Italian financial institutions (banks and insurances companies) in investigating employees malpractices, asset misappropriation cases, violation of Legislative Decree 231/07 (AML), and cyber fraud. Mr Santaloia also led a number of continuous monitoring fraud dashboard implementation projects assisting industrial and financial clients.

RUSSIA

DMITRY ZHIGULIN
EY RUSSIA & CIS

Q TO WHAT EXTENT ARE BOARDS AND SENIOR EXECUTIVES IN RUSSIA TAKING PROACTIVE STEPS TO REDUCE INCIDENCES OF FRAUD AND CORRUPTION FROM SURFACING WITHIN THEIR COMPANY?

ZHIGULIN: Historically, large companies in Russia relied on their internal economic security departments to address fraud and corruption risks; boards and senior executives were not seen to be proactively involved in addressing these issues. Today, boards and senior executives of large public companies listed on foreign stock exchanges and subsidiaries of multinational companies are taking more proactive steps and are assuming greater responsibility for countering fraud and corruption. They do realise that an effective and sustainable integrity and compliance programme requires significant investment, and compliance is not perceived as a barrier to growth. However, those companies that are less exposed internationally still see compliance as a burden, thinking that monitoring and enforcement of anti-bribery policies would harm their competitiveness.

Q HAVE THERE BEEN ANY SIGNIFICANT LEGAL AND REGULATORY DEVELOPMENTS RELEVANT TO CORPORATE FRAUD AND CORRUPTION IN RUSSIA OVER THE PAST 12-18 MONTHS?

ZHIGULIN: Russia has continued to develop and extend the scope of its anticorruption legislation with an increased number of government officials now required to disclose their personal income and potential conflicts of interest. Russia has also maintained a focus on fighting corruption both at a regional level, with several governors and officials under criminal investigation, and also at a multinational level, attempting to repatriate several well-known businessmen whose fortunes are alleged to have been accumulated through fraudulent schemes.

Q WHEN SUSPICIONS OF FRAUD OR CORRUPTION ARISE WITHIN A FIRM, WHAT STEPS SHOULD BE TAKEN TO EVALUATE AND RESOLVE THE POTENTIAL PROBLEM?

ZHIGULIN: When suspicions or allegations of fraud or corruption arise, the first and immediate step management should take should be to assess the veracity of the allegations, which should be done by suitably qualified persons in a confidential manner. If the decision is that an investigation is merited, then an action plan, which includes clear objectives of the investigation, should be developed together with identification of the respective human and financial resources allocated to support it. The procedures should include data preservation, collection and analysis, conducting interviews and the reporting of findings. The ultimate outcome of the investigation should be the completion of a remediation plan aimed at reducing risks and weaknesses in the system of internal controls. Usually, we recommend that companies develop internal guidance as to how to appropriately respond to suspicions of fraud and corruption, through a fraud response plan. This has an advantage in attempting to mitigate the negative consequences of investigations being initiated by unqualified persons.

Q DO YOU BELIEVE COMPANIES ARE PAYING ENOUGH ATTENTION TO EMPLOYEE AWARENESS, SUCH AS TRAINING STAFF TO IDENTIFY AND REPORT POTENTIAL FRAUD AND MISCONDUCT?

ZHIGULIN: Anti-bribery training is commonly practiced in leading Russian public companies and the subsidiaries of multinational companies, while other companies are starting to incorporate training in their corporate culture. In our experience, Russian pharmaceutical companies are at the leading edge in their development toward best global practices and, therefore, in that sector employees are relatively better trained and more exposed to effective anticorruption practices. The financial services industry also pays significant attention to employee awareness resulting from tighter regulations. Federal laws on anti-money laundering and combating the financing of terrorism require financial institutions to conduct mandatory training for a wide group of their employees. Certain pressure on companies to increase employee awareness comes from the exposure of dealing with foreign

counterparts. Based on our experience, we are observing a growing trend in Russian companies requesting fraud and anticorruption training on an ad hoc basis.

Q HOW HAS THE RENEWED FOCUS ON ENCOURAGING AND PROTECTING WHISTLEBLOWERS CHANGED THE WAY COMPANIES MANAGE AND RESPOND TO REPORTS OF POTENTIAL WRONGDOING?

ZHIGULIN: Currently there is no established legal and institutional framework for whistleblower protection in Russia. This continues to be an underdeveloped area. Existing legislation and drafts of new legislation focus primarily on the protection of whistleblowers among state officials, while no legal act regulates whistleblower protection specifically in the corporate environment. However, Russia ratified the United Nations Convention Against Corruption (UNCAC) in 2006 by which it committed to consider UNCAC provisions as a basis for whistleblower protection. So, this area requires further development in order to be in line with best international practices.

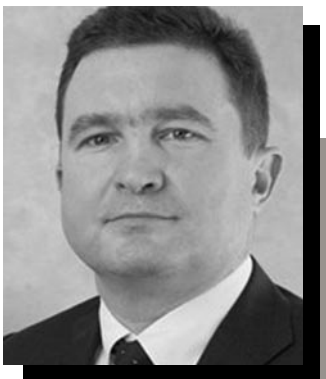
Q COULD YOU OUTLINE THE MAIN FRAUD AND CORRUPTION RISKS THAT CAN EMERGE FROM THIRD PARTY AND COUNTERPARTY RELATIONSHIPS? IN YOUR OPINION, DO FIRMS PAY SUFFICIENT ATTENTION TO DUE DILIGENCE AT THE OUTSET OF A NEW BUSINESS RELATIONSHIP?

ZHIGULIN: Third-party and counterparty relationships are accompanied by legal, financial and reputational risks. For example, FCPA risks arise when a government official may have a concealed interest in a third-party, so that the payments to that party could be viewed as a bribe. Financial losses can also be caused by false or inflated claims for payments by third-parties or fraudulent variations in the original contract terms. Reputational risks arise when illegal payments are made by a third-party on the behalf of a company. Based on our experience, sufficient due diligence is performed by Russian public companies and subsidiaries of multinational companies. Other companies perceive due diligence as optional at the outset of a new business relationship, and commonly do not perform in-depth analysis of their counterparties, which exposes those companies to a higher risk of fraud and corruption. Based on our most recent Global Fraud Survey, the scope of forensic and anticorruption due diligence in Russia is broadly consistent with respondents from all markets.

"We are observing a growing trend in Russian companies requesting fraud and anticorruption training on an ad hoc basis."

Q WHAT ADVICE CAN YOU OFFER TO COMPANIES ON IMPLEMENTING AND MAINTAINING A ROBUST FRAUD AND CORRUPTION RISK ASSESSMENT PROCESS, WITH APPROPRIATE INTERNAL CONTROLS?

ZHIGULIN: Our general advice to companies is to instil a culture where business is conducted with integrity, improving their processes and controls in this area. Practically, companies should focus on the development and implementation of a clear and robust framework of internal regulations accompanied by the right tone and behaviour from the top of the organisation. Regular fraud and corruption risk assessments, along with visible monitoring of business activities should be performed by professional and experienced employees that have a deep and solid understanding of both the core and peripheral business activities of the company. It is also critical to know the counterparties with whom business is conducted to help preserve the interests and values of the company.



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Dmitry Zhigulin has over 20 years of professional experience providing assurance and advisory services to clients in the industrial products, automotive and consumer products sectors. He is experienced in conducting audits of financial statements prepared under Russian accounting principles, US GAAP and IFRS. He provides advisory services on accounting issues, due diligence and capital market transactions. He has led transaction advisory services on initial public offerings and capital market transactions of Evraz and TMK. Mr Zhigulin has also led a number of investigations, corporate intelligence and fraud risk management assignments in various industries.

INDIA

R.N. KARANJAWALA
KARANJAWALA & CO.

Q TO WHAT EXTENT ARE BOARDS AND SENIOR EXECUTIVES IN INDIA TAKING PROACTIVE STEPS TO REDUCE INCIDENCES OF FRAUD AND CORRUPTION FROM SURFACING WITHIN THEIR COMPANY?

KARANJAWALA: The participation of independent directors in fraud risk management has increased because of the introduction of the new corporate governance requirements mandated under the new Companies Act, 2013. As per Schedule IV of the new Companies Act, independent directors are required to assist the company in implementing the best governance practices. Companies are now obligated under law to satisfy themselves as to the integrity of the financial information they provide and to ensure that their systems for anti-fraud mechanisms are robust and effective. Also, the statutory auditors of the company are now obliged to report to the central government, within a prescribed time limit, any offences involving fraud being committed against the company by its officers or employees.

Q HAVE THERE BEEN ANY SIGNIFICANT LEGAL AND REGULATORY DEVELOPMENTS RELEVANT TO CORPORATE FRAUD AND CORRUPTION IN INDIA OVER THE PAST 12-18 MONTHS?

KARANJAWALA: Although the Companies Act, 1956 provided for a broad set of provisions for corruption and fraud, the new Companies Act provides for more specific provisions relating to fraud and the reporting thereof. Section 447 has been enacted under the new Act, which extends the definition of fraud and also makes extensive provisions for penalising such fraudulent activities. Any person who is found guilty of fraud shall be punishable with imprisonment which shall not be less than six months but which may extend to 10 years and shall also be liable to a fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. Moreover, the scope of the liabilities of the auditor has been made more stringent and the auditors are now subject to imprisonment, monetary penalties, debarring from the auditor and the firm, among others. The Companies Act, 2013 also requires the auditor to report any irregularity or fraud that comes to light while performing his duty as an auditor to the central government. Failure to comply can make the auditor liable for a fine which shall not be less than Rs.1 lakh, but which may extend to Rs. 25 lakh. Likewise, in a groundbreaking judgment, while broadening the liabilities and accountability of companies,

the Supreme Court of India on 23 February 2016, in the case of *Central Bureau of Investigation, Bank Securities & Fraud Cell vs. Ramesh Gelli and Others*, held that a chairman, managing director, director, auditor, liquidator, manager or any other employee of a banking company is deemed to be a public servant for the purposes of the Indian Penal Code.

Q WHEN SUSPICIONS OF FRAUD OR CORRUPTION ARISE WITHIN A FIRM, WHAT STEPS SHOULD BE TAKEN TO EVALUATE AND RESOLVE THE POTENTIAL PROBLEM?

KARANJAWALA: Entities that suspect or experience fraud should undertake a series of steps to maintain their credibility and demonstrate good corporate practices. As soon as a potential fraud is suspected, the company should, without delay, conduct a forensic investigation or audit to enable them to reach a logical conclusion. The investigative findings should form the basis of any internal actions taken, such as suspension or dispensation and external acts against the guilty parties. Part of the response phase is also to recover monetary losses due to fraud.

Q DO YOU BELIEVE COMPANIES ARE PAYING ENOUGH ATTENTION TO EMPLOYEE AWARENESS, SUCH AS TRAINING STAFF TO IDENTIFY AND REPORT POTENTIAL FRAUD AND MISCONDUCT?

KARANJAWALA: Section 177 (9) of the Companies Act, 2013 calls for the establishment of a mechanism whereby every listed company, or such classes of companies as may be prescribed, are mandatorily required to establish a vigil mechanism for directors and employees, and accordingly categorises companies in that regard. Clause 49 of the recently enacted Listing Agreement requires all listed companies to establish a 'whistleblower policy' for directors and employees to report concerns of unethical behaviour, actual or suspected, as well as fraud or violation of the company's code of conduct or ethics policy. In view of these developments, companies are more focused on compliance with such provisions, introducing in-house mechanisms and codes of practice for their employees across the board to incorporate mandates and measures. Accordingly, they seek the aid and assistance of legal professionals, in-house representatives, as well as outsourced assistance and guidance from agencies and firms

possessing specialised skill and knowledge in this regard, thereby making their employees aware and proficient in identifying and reporting deviant practices.

Q HOW HAS THE RENEWED FOCUS ON ENCOURAGING AND PROTECTING WHISTLEBLOWERS CHANGED THE WAY COMPANIES MANAGE AND RESPOND TO REPORTS OF POTENTIAL WRONGDOING?

KARANJAWALA: The majority of frauds within companies are generally detected only due to the tip offs or complaints of a whistleblower. Though companies have come to realise that one of the most effective ways of detecting and preventing incidences of fraud and corruption is to put in place a robust whistleblowing mechanism, various Indian companies have failed to do so. As such, their employees are reluctant to disclose any fraudulent or corrupt activity within the organisation. It is therefore important, in our view, to increase awareness about anonymity and provide assurances to employees of their safety and to prevent unfair treatment and harassment. The Companies Act also recognises whistleblower mechanisms and mandates their use by listed companies.

Q COULD YOU OUTLINE THE MAIN FRAUD AND CORRUPTION RISKS THAT CAN EMERGE FROM THIRD PARTY AND COUNTERPARTY RELATIONSHIPS? IN YOUR OPINION, DO FIRMS PAY SUFFICIENT ATTENTION TO DUE DILIGENCE AT THE OUTSET OF A NEW BUSINESS RELATIONSHIP?

KARANJAWALA: The main risks emerging from third-party or counterparty relationships include bribery of government officials to obtain licences and contracts, interference with public or private tenders though illicit conduct, such as bid rigging by way of illegal gratification, diversion of business assets or profits, and lastly reputational risk. Over the last few years, the emergence of a number of high profile scandals has put India in the spotlight. Most of these scandals involved allegations of illegal payments and underpayments in issuance of certain licences resulting in the alleged loss of millions of dollars to the Indian government as well as foreign companies. The Indian government has continued its aggressive implementation and enforcement of the Prevention of Corruption Act, 1998. The judiciary too, in the recent past, has been vigilantly overseeing various instances of economic fraud and has not resisted lifting the corporate veil to identify the real offenders, who in general circumstances are cloaked behind shell companies. Generally, all third-party and counterparty relationships have the potential to present significant risk.

"The majority of frauds within companies are generally detected only due to the tip offs or complaints of a whistleblower."

Q WHAT ADVICE CAN YOU OFFER TO COMPANIES ON IMPLEMENTING AND MAINTAINING A ROBUST FRAUD AND CORRUPTION RISK ASSESSMENT PROCESS, WITH APPROPRIATE INTERNAL CONTROLS?

KARANJAWALA: Management should adopt a proactive, diligent, strict and structured approach toward managing the risk of fraud and corruption. Companies should have clearly defined internal bylaws, codes of conduct and ethical guidelines. Thiis system should be further supported by detailed guidance given to employees regarding fraud control policy and anti-bribery and corruption policy. These policies should be approved by the board and the audit committee, which should be implemented by the management, along with its compliance status being monitored regularly. Companies should appoint a committee, consisting of the management, independent directors and auditors in order to ensure minimal fraud and corruption risks and for keeping a regular check on the governance and management of the company. Moreover, the committee should be committed to zero tolerance of any fraudulent practices, irrespective of the position of the perpetrator in the company.

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HONG KONG & CHINA

ELIZABETH FITZPATRICK
FTI CONSULTING

Q TO WHAT EXTENT ARE BOARDS AND SENIOR EXECUTIVES IN HONG KONG & CHINA TAKING PROACTIVE STEPS TO REDUCE INCIDENCES OF FRAUD AND CORRUPTION FROM SURFACING WITHIN THEIR COMPANY?

FITZPATRICK: Since the launch of China's anticorruption campaign in 2012, there has been a heightened focus by boards and senior leadership on understanding key fraud vulnerabilities affecting their operations and ensuring that a robust compliance programme is in place to mitigate these risks to the fullest extent possible. While tone at the top continues to be a key proactive measure, boards and senior executives are increasingly becoming more engaged in understanding what their organisations are doing to support their zero tolerance messaging. We have seen boards and senior executives become more interactive with management, requiring key information and metrics about compliance programme elements and regularly engaging in dialogue about the information provided, such that they are an integral part of creating and promoting a sound corporate governance culture.

Q HAVE THERE BEEN ANY SIGNIFICANT LEGAL AND REGULATORY DEVELOPMENTS RELEVANT TO CORPORATE FRAUD AND CORRUPTION IN HONG KONG & CHINA OVER THE PAST 12-18 MONTHS?

FITZPATRICK: In April 2016, the Chinese government released interpretative guidance to the 9th Amendment to the PRC's Criminal Law, which went into effect in August 2015. The amended law and related guidance increases penalties for individuals implicated in corruption, including those who give bribes as well as those who receive them, makes it a crime to provide bribes to close relatives and associates of government officials and narrows the leniency provided to bribe-givers who provide pre-prosecution confessions. The general anti-corruption drive has also continued, with focus shifting to state-owned enterprises (SOEs). In October 2015, following the decline in the Chinese stock market, the Commission for Discipline of the Communist Party of China announced its intention to inspect approximately 30 SOEs. Meanwhile in Hong Kong, the new Competition Ordinance, effective December 2015, now includes provisions which seek to combat bid-rigging in construction contracts – a significant issue in recent years.

Q WHEN SUSPICIONS OF FRAUD OR CORRUPTION ARISE WITHIN A FIRM, WHAT STEPS SHOULD BE TAKEN TO EVALUATE AND RESOLVE THE POTENTIAL PROBLEM?

FITZPATRICK: The firm needs to conduct an appropriately responsive investigation. To ensure that an appropriate and organised response is undertaken, many companies have given thought to the types of allegations that could have an impact on their organisation and have developed responsive protocols to guide future investigations. As a result, they are nimble in their ability to apply early case assessments to determine the course of investigation that is required and to adapt the investigative process as facts are uncovered. This means that guidance on making key decisions, such as whether to engage outside counsel and forensic specialists and how to ensure proper evidence preservation and maintenance of privilege, already exists, allowing the overall response to be more effective and efficient.

Q DO YOU BELIEVE COMPANIES ARE PAYING ENOUGH ATTENTION TO EMPLOYEE AWARENESS, SUCH AS TRAINING STAFF TO IDENTIFY AND REPORT POTENTIAL FRAUD AND MISCONDUCT?

FITZPATRICK: While raising awareness about corruption and bribery continues to be a focus for companies doing business in China, many employees have not received adequate training to prepare them for the corruption issues confronting them in their day to day roles. Although training specific to codes of conduct and ethics is becoming more common, training on fraud, as a specific topic, is less common within organisations. The most effective training programmes comprise training when an employee joins the company, as well as ongoing training and messaging, that is appropriately tailored to the risk faced by the employee and localised for the unique risks in their market. We also see a trend toward training business partners and third-parties on codes of conduct, ethics and anticorruption compliance.

Q HOW HAS THE RENEWED FOCUS ON ENCOURAGING AND PROTECTING WHISTLEBLOWERS CHANGED THE WAY COMPANIES MANAGE AND RESPOND TO REPORTS OF POTENTIAL WRONGDOING?

FITZPATRICK: The growing prevalence of whistleblowing hotlines and the rewards and protection offered to whistleblowers by both the US and Chinese governments have led to an increase in whistleblowing reports. Whistleblowers from China provided the third highest number of whistleblower tips through the SEC's whistleblower programme in 2015, behind Canada and the UK. While encouraging and protecting whistleblowers may be responsive to legal requirements in China and other jurisdictions, companies are also recognising that information provided by whistleblowers has allowed them to detect information that may otherwise have been missed, and the information itself can be critical to a successful investigation. This realisation on the role of the whistleblower is consistent with an increased focus within organisations on ethics and dealing with potential wrongdoing as soon as it is known.

Q COULD YOU OUTLINE THE MAIN FRAUD AND CORRUPTION RISKS THAT CAN EMERGE FROM THIRD PARTY AND COUNTERPARTY RELATIONSHIPS? IN YOUR OPINION, DO FIRMS PAY SUFFICIENT ATTENTION TO DUE DILIGENCE AT THE OUTSET OF A NEW BUSINESS RELATIONSHIP?

FITZPATRICK: When third-parties are permitted to act on behalf of a company as an intermediary, they can expose the company to liability under the FCPA, UK Bribery Act and other anticorruption statutes in much the same way as an employee can. The risk from third-parties is increased when companies do not engage them in the same manner as they engage their employees in terms of education about and adherence to the company's compliance programmes. Since the GSK matter, which involved third-party travel providers, third-party due diligence has been one of the key focus areas for companies operating in China. Companies are paying more attention to due diligence at the outset of a new relationship, but that's not enough. Best practices include fully vetting the business partners at the beginning of the relationship, ensuring that they adhere to the company's anticorruption policies and procedures and conducting monitoring on a regular basis and throughout the relationship.

"Best practices include fully vetting the business partners at the beginning of the relationship."

Q WHAT ADVICE CAN YOU OFFER TO COMPANIES ON IMPLEMENTING AND MAINTAINING A ROBUST FRAUD AND CORRUPTION RISK ASSESSMENT PROCESS, WITH APPROPRIATE INTERNAL CONTROLS?

FITZPATRICK: Companies should implement a risk assessment process that seeks to determine the actual fraud risks to which they are exposed. This means going beyond the consideration of possible risks by corporate governance functions, and engaging the business in an active discussion to determine which possible risks are likely and could have a significant impact on the business. Fraud risk management resources are not infinite, so application of internal controls should be commensurate with the risk to the organisation that a particular fraud may occur.

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VIETNAM

SAMAN BANDARA
EY VIETNAM

Q TO WHAT EXTENT ARE BOARDS AND SENIOR EXECUTIVES IN VIETNAM TAKING PROACTIVE STEPS TO REDUCE INCIDENCES OF FRAUD AND CORRUPTION FROM SURFACING WITHIN THEIR COMPANY?

BANDARA: The lack of senior management commitment has been the biggest problem in fraud and corruption management in this part of the world. Only a limited number of companies – primarily US multinationals due the strictness of FCPA and UK Bribery Act – have the processes in place to ensure they can pass the checks required by legislation. So the lack of senior management commitment has had a negative impact on companies' ability to manage their progress in these environments. Only a small number of local companies are able to formally manage instances of fraud compared to other, more developed countries, because there are no proactive measures being taken and only minimum action to cover the regulatory aspects of risk management. On a sector basis, the banking industry in this jurisdiction experienced a significant credit crisis driven primarily by fraud-related issues. Since the banking industry is vital to the economy, regulators became involved and drafted stricter regulation for companies to comply with. Nevertheless, from experience, the actual involvement of senior management in these processes remains very limited.

Q HAVE THERE BEEN ANY SIGNIFICANT LEGAL AND REGULATORY DEVELOPMENTS RELEVANT TO CORPORATE FRAUD AND CORRUPTION IN VIETNAM OVER THE PAST 12-18 MONTHS?

BANDARA: One area of significance is the changes made to regulations to prevent insurance fraud, in response to a large number coming to light. Also, the banking sector has seen risk management initiatives such as the implementation of Basel II in Vietnam, although the rest of the world is now talking about Basel III. In addition, regulations are being drafted to cover operational risk management, which includes managing corporate fraud. A number of banks are beginning to talk about anti-fraud frameworks to manage online, real-time fraud management systems, for example, but this is at an early stage, mainly centred on liability changes. There is much to be done, although we are on the right track.

Q WHEN SUSPICIONS OF FRAUD OR CORRUPTION ARISE WITHIN A FIRM, WHAT STEPS SHOULD BE TAKEN TO EVALUATE AND RESOLVE THE POTENTIAL PROBLEM?

BANDARA: In our anecdotal experience, senior managers are admitting that there are allegations and rumours circulating around their company. For example, someone is taking money, someone is offering kickbacks, someone has a conflict of interest. Instead of only talking about it, what they should be doing is initiating a formal inquiry or investigation to determine whether there is any truth behind such rumours. Instead, they prefer to believe that such talk is purely rumour, or that certain kickbacks are part of doing business and not a form of fraud. Or they say wrongdoing might be occurring at other companies, but not their company. This inability to face facts and take action is the biggest factor in trying to manage the risk of fraud.

Q DO YOU BELIEVE COMPANIES ARE PAYING ENOUGH ATTENTION TO EMPLOYEE AWARENESS, SUCH AS TRAINING STAFF TO IDENTIFY AND REPORT POTENTIAL FRAUD AND MISCONDUCT?

BANDARA: A lack of fraud awareness and a lack of education about how to respond to it has created a serious risk environment. Even multinational companies, which usually have strong ethical guidance and zero tolerance policies, are no exception. Not enough attention is being paid to fraud awareness training. When awareness training is conducted, it should be done in the local language, by people that truly understand the local market. Trainers need to fully articulate what fraud means, rather than just rely on the same slides or presentations used elsewhere. It should be based on evidence of what is happening on the ground. People don't need to hear about Enron and WorldCom – there are enough local reported cases to use as examples to explain what should and shouldn't be done in Vietnam. This will go to the hearts of the people, because it is more relevant to them than events at multibillion-dollar businesses such as Enron and WorldCom.

Q HOW HAS THE RENEWED FOCUS ON ENCOURAGING AND PROTECTING WHISTLEBLOWERS CHANGED THE WAY COMPANIES MANAGE AND RESPOND TO REPORTS OF POTENTIAL WRONGDOING?

BANDARA: There is no black-and-white regulation on whistleblower protection in Vietnam. Employees are reluctant to report even if they know something is not right. They tend to turn a blind eye, sometimes because they fear retaliation. In my experience, some companies and senior management focus on discovering the identity of the whistleblower rather than whether the allegations they have reported are true or not. This mentality discourages whistleblowers from coming forward with information about potential wrongdoing.

Q COULD YOU OUTLINE THE MAIN FRAUD AND CORRUPTION RISKS THAT CAN EMERGE FROM THIRD PARTY AND COUNTERPARTY RELATIONSHIPS? IN YOUR OPINION, DO FIRMS PAY SUFFICIENT ATTENTION TO DUE DILIGENCE AT THE OUTSET OF A NEW BUSINESS RELATIONSHIP?

BANDARA: Typically when multinational companies select distributors, they pay due attention to ensuring those third-parties are clean, free from underlying problems or negative publicity, for example. FCPA or UK Bribery Act obligations encourage them to do this. Unfortunately, local companies in Vietnam do not pay any attention to these issues.

Q WHAT ADVICE CAN YOU OFFER TO COMPANIES ON IMPLEMENTING AND MAINTAINING A ROBUST FRAUD AND CORRUPTION RISK ASSESSMENT PROCESS, WITH APPROPRIATE INTERNAL CONTROLS?

BANDARA: Companies need to develop an investigative culture. This is practically nonexistent in Vietnam. If they don't want to cultivate an investigative culture, then they have to take measures to create a preventative environment. For example, conduct awareness training, create a proper code of conduct, ensure senior management is fully involved in the process. In the financial services industry, regulations require that internal auditors should be in place. As a result, some companies recruit an internal auditor just to satisfy the minimum requirement, but they do not go further in educating these auditors

"Employees are reluctant to report even if they know something is not right. They tend to turn a blind eye, sometimes because they fear retaliation."

or even ensuring that the individual completely understands internal auditing. When companies recruit for the purposes of fraud management, they need people who have the skills to do what they claim and then give them a budget that allows them to implement the tools for efficient fraud identification. If this is achieved, and the company conducts regular internal audits and risk assessments, at the end of the day it could help those companies save millions of dollars.

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UNITED ARAB EMIRATES

ZAFAR ANJUM
CORPORATE RESEARCH AND INVESTIGATIONS LLC

Q TO WHAT EXTENT ARE BOARDS AND SENIOR EXECUTIVES IN THE UAE TAKING PROACTIVE STEPS TO REDUCE INCIDENCES OF FRAUD AND CORRUPTION FROM SURFACING WITHIN THEIR COMPANY?

ANJUM: The business climate in general seems much more attuned to the risk of fraud, and the damage it can do, than was the case just a few years ago. High-profile corruption scandals have dominated news cycles and encouraged executives and directors to be more vigilant in protecting their profits and investments from fraud. However, most companies can still do better – from implementing an ethical code of conduct, training their employees on fraud and corruption, instituting an anonymous reporting method – all of these methods can help defend a company from fraud. Audits are important, but they aren't the end of the story. The latest research shows that more fraud is discovered through employee tips than through other methods, including audits. So, it is a matter of educating employees and creating a zero-tolerance atmosphere from top to bottom that will help the company detect and prevent more fraud.

Q HAVE THERE BEEN ANY SIGNIFICANT LEGAL AND REGULATORY DEVELOPMENTS RELEVANT TO CORPORATE FRAUD AND CORRUPTION IN THE UAE OVER THE PAST 12-18 MONTHS?

ANJUM: Here in the UAE, a draft of a new Anti-Commercial Fraud Law was approved two years ago by the National Federal Council (FNC), but it still requires review at the ministerial level before it is passed into law. The proposed action basically targets counterfeit goods as well as services fraud. Overall, the UAE is still ranked by Transparency International as the least fraudulent country in the Middle East, which is obviously welcome news. That is not to say, however, that more cannot be done. Fraud is constantly changing and evolving, and in our increasingly connected international markets, every government has a responsibility to enforce regulatory and compliance measures, including those aimed at combating fraud. Our economy depends on it, as does our trust in financial systems and the integrity of every business transaction.

Q WHEN SUSPICIONS OF FRAUD OR CORRUPTION ARISE WITHIN A FIRM, WHAT STEPS SHOULD BE TAKEN TO EVALUATE AND RESOLVE THE POTENTIAL PROBLEM?

ANJUM: Call in the experts. Larger companies will sometimes have fraud investigators on staff, but if they don't – or if it is a smaller firm – it is crucial to enlist the help of a third party that specialises in fraud and corruption investigations. They will use their knowledge of gathering evidence, interviewing witnesses and reviewing the facts of a case – ultimately providing the owners or board of directors with their findings and recommendations for resolving the situation. Trained experts also know the law and will follow all legal requirements as they conduct an investigation. A company that ignores this reality could expose itself to lawsuits, not to mention risking a failed or ineffective investigation.

Q DO YOU BELIEVE COMPANIES ARE PAYING ENOUGH ATTENTION TO EMPLOYEE AWARENESS, SUCH AS TRAINING STAFF TO IDENTIFY AND REPORT POTENTIAL FRAUD AND MISCONDUCT?

ANJUM: We are seeing more companies take the initiative to train their employees on what constitutes fraud, misconduct and unethical behaviour. It is also encouraging to see a large number of organisations worldwide supporting awareness initiatives like International Anti-Corruption Day and International Fraud Awareness Week. Such movements promote the need to have a knowledgeable workforce when it comes to fraud, because ultimately, your own employees are your first line of defence. If staff don't know or cannot recognise fraud – or think that such behaviour is condoned – then there is little doubt the organisation will be victimised, if it hasn't been already.

"Weaknesses that weren't there at one point can pop up as a company grows or goes through transitions."

Q HOW HAS THE RENEWED FOCUS ON ENCOURAGING AND PROTECTING WHISTLEBLOWERS CHANGED THE WAY COMPANIES MANAGE AND RESPOND TO REPORTS OF POTENTIAL WRONGDOING?

ANJUM: There has been a major emphasis over the past several years on encouraging and protecting fraud whistleblowers, but recent cases in which whistleblowers have been ostracised or faced retribution within their own company remind us that there is still some way to go. The fraud case involving Olympus Corp. in Japan is one example. Michael Woodford was the company's president and CEO when he turned whistleblower and exposed a huge financial scandal in which the company was trying to hide losses. His reward was to first be shunned by the company, and then dismissed. If such a high-place executive can receive such treatment, what does that say to would-be whistleblowers further down the chain? But the situation for whistleblowers is getting better. A changing culture, anonymous reporting systems and even whistleblower incentives and rewards are helping to encourage more fraud tips.

Q COULD YOU OUTLINE THE MAIN FRAUD AND CORRUPTION RISKS THAT CAN EMERGE FROM THIRD PARTY AND COUNTERPARTY RELATIONSHIPS? IN YOUR OPINION, DO FIRMS PAY SUFFICIENT ATTENTION TO DUE DILIGENCE AT THE OUTSET OF A NEW BUSINESS RELATIONSHIP?

ANJUM: It seems that every day we hear another story about a company falling victim to corruption or scandal. Unfortunately, this scenario can be caused by something seemingly out of a company's control and outside of their own offices when it comes at the hands of a third-party partner. The risk is at its highest when a company is conducting mergers or acquisitions, engages new clients and employs, contracts or retains foreign business partners. These are vulnerable times for any firm, and such instances require thorough third-party due diligence – or the company will risk consequences that include a damaged reputation, lost profits and even legal ramifications. A company's relationship to third-party partners can be an extreme risk factor if these relationships aren't vetted fully and monitored regularly.

Q WHAT ADVICE CAN YOU OFFER TO COMPANIES ON IMPLEMENTING AND MAINTAINING A ROBUST FRAUD AND CORRUPTION RISK ASSESSMENT PROCESS, WITH APPROPRIATE INTERNAL CONTROLS?

ANJUM: Risk assessments should be conducted by fraud prevention experts, and they should be thorough. Fraud risk assessments look for weaknesses that can lead to fraud, corruption, compliance issues or other problems. Areas of concern include hiring and screening practices, accounting procedures and separation of duties, the company's fraud reporting process and due diligence and compliance measures. Every organisation should conduct fraud prevention check-ups at regular intervals, because weaknesses that weren't there at one point can pop up as a company grows or goes through transitions. Most importantly, the results of the check-ups and any fraud risk assessments need to be reported clearly to owners and directors, with guidance on how to reduce the risk factors. This process is just part of a robust system of internal controls that includes an ethical code of conduct, an anonymous reporting system and frequent audits.

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SOUTH AFRICA

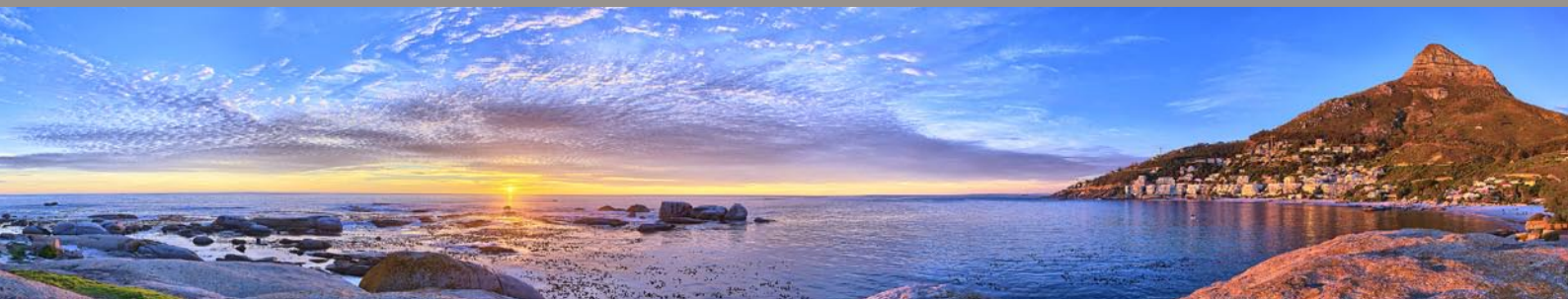
VERNON NAIDOO
GRANT THORNTON

Q TO WHAT EXTENT ARE BOARDS AND SENIOR EXECUTIVES IN SOUTH AFRICA TAKING PROACTIVE STEPS TO REDUCE INCIDENCES OF FRAUD AND CORRUPTION FROM SURFACING WITHIN THEIR COMPANY?

NAIDOO: Boards and senior executives in South Africa have increasingly been taking proactive steps to reduce incidents of fraud and corruption. Tough economic conditions have admittedly also been a catalyst to reinforce the focus on fraud and corruption reduction and to take proactive steps. The extent to which proactive steps have been taken differs on the one hand between the private and public sector and also across different sectors and sizes of businesses. The private sector appears to have been more committed and successful than the public sector, primarily due to the fact that we have greater challenges with ethical leadership in the latter. Proactive steps taken by boards and senior executives range from implementing tip off facilities, more robust recruitment procedures, adopting and executing a combined assurance approach, taking fraud risk assessments more seriously and enhancing internal audit and compliance capacity.

Q HAVE THERE BEEN ANY SIGNIFICANT LEGAL AND REGULATORY DEVELOPMENTS RELEVANT TO CORPORATE FRAUD AND CORRUPTION IN SOUTH AFRICA OVER THE PAST 12-18 MONTHS?

NAIDOO: There have not been any significant legal and regulatory developments relevant to corporate fraud and corruption in South Africa over the past 12-18 months. However, there has been a marked increase in civil society activism and speaking out against fraud and corruption, which is encouraging, and a critical component of safeguarding a hard earned democracy and building an ethical and moral culture. South Africa's anticorruption legislation is among the best in the world and our focus now is on implementation and enforcement. Although various pieces of legislation have placed reporting obligations on certain persons and institutions, this is not being complied with. Regrettably, existing frameworks and capacity is ineffective and inadequate in detecting failure to report. If we are to stem the tide of fraud and corruption and build an ethical and moral culture, full compliance with the reporting duty is a must.



Q WHEN SUSPICIONS OF FRAUD OR CORRUPTION ARISE WITHIN A FIRM, WHAT STEPS SHOULD BE TAKEN TO EVALUATE AND RESOLVE THE POTENTIAL PROBLEM?

NAIDOO: Companies should have an approved and communicated policy and procedure to guide their immediate, decisive and consistent responses to suspected fraud or corruption. The first step is to gather sufficient information to understand the what, when, where, how and by who, in a legal manner. The second step is to take possession of available evidence in a legal manner for safekeeping. In relation to digital media, IT forensic experts should be called upon to assist with taking possession, securing and mirror imaging those devices. Once this is done you should consult with the legal advisers of the company and forensic investigators to obtain advice on the legal aspects of the case and comprehensively investigate the matter respectively. All potential evidence seized should be properly recorded in a register by location. Suspension of the accused should be considered to mitigate against the destruction or tampering of evidence and interfering with potential witnesses.

Q DO YOU BELIEVE COMPANIES ARE PAYING ENOUGH ATTENTION TO EMPLOYEE AWARENESS, SUCH AS TRAINING STAFF TO IDENTIFY AND REPORT POTENTIAL FRAUD AND MISCONDUCT?

NAIDOO: Although companies are increasingly introducing fraud prevention measures, not enough has been done to improve employee awareness and training to identify and report on potential fraud and misconduct. One of the areas where this is clearly evident is in the drastic reduction in the number of calls received on fraud hotlines from the date of implementation and over time. Our experience shows that unless there are regular refresher and training sessions held and regular feedback is provided at a high level, to all staff on what is being reported and how tip offs have been acted upon, staff lose interest and trust in these fraud prevention tools and measures. In our opinion, regular training and awareness is a critical pillar in the implementation of a successful and sustainable fraud prevention strategy and in reinforcing an anti-fraud culture. There is most certainly significant room for improvement.

Q HOW HAS THE RENEWED FOCUS ON ENCOURAGING AND PROTECTING WHISTLEBLOWERS CHANGED THE WAY COMPANIES MANAGE AND RESPOND TO REPORTS OF POTENTIAL WRONGDOING?

NAIDOO: We are aware of several cases where the legislation and structures aimed at offering protection to whistleblowers have failed them. Although many companies do walk the talk of encouraging and protecting whistleblowers there is still a significant opportunity to demonstrate that there is one set of rules within a company used to respond to reports of potential wrongdoing, irrespective of rank or position. Some companies appear less enthusiastic and decisive when it comes to responding to reports relating to top management and this, sadly, is the quickest way to erode trust and commitment with whistleblowers and staff. Some companies also fail to allocate the requisite resources to respond to the volume of reports received in a timely manner, which again, wanes the interest of whistleblowers and staff. On a positive note, we have seen companies starting to analyse reports received over time for trends and predictive purposes.

Q COULD YOU OUTLINE THE MAIN FRAUD AND CORRUPTION RISKS THAT CAN EMERGE FROM THIRD PARTY AND COUNTERPARTY RELATIONSHIPS? IN YOUR OPINION, DO FIRMS PAY SUFFICIENT ATTENTION TO DUE DILIGENCE AT THE OUTSET OF A NEW BUSINESS RELATIONSHIP?

NAIDOO: Some of the main fraud and corruption risks that can emerge from third-party and counterparty relationships are money laundering, kickbacks, bribery, bid rigging, cover quoting, identity theft and forgery. There is most certainly a significant opportunity to improve the robustness of due diligence conducted at the outset of a new business relationship. Apart from the costs to be incurred for due diligences one of the most common challenge is 'deal anxiety' and the existence of competing interests within organisations at the start of a new business relationship – for example, between a salesman who simply wants to make his sale immediately and the credit controller first wanting to get the due diligence and vetting done. In these tough economic conditions, due diligence should become the norm and not the exception to mitigate against fraud and corruption risks, credit risks and reputation risks, among others.

"We are aware of several cases where the legislation and structures aimed at offering protection to whistleblowers have failed them."

Q WHAT ADVICE CAN YOU OFFER TO COMPANIES ON IMPLEMENTING AND MAINTAINING A ROBUST FRAUD AND CORRUPTION RISK ASSESSMENT PROCESS, WITH APPROPRIATE INTERNAL CONTROLS?

NAIDOO: Fraud risk management is often not approached in an integrated, holistic, orderly and structured manner. To achieve sustainable success in preventing and detecting fraud and corruption, companies should adopt a combined assurance approach, examine their systems, processes, policies and culture and include the entire organisation and not just their senior management in the process. This will not only educate staff across the organisation but will also increase buy-in and commitment to the process and shift staff from simply being involved from a compliance perspective. The fraud risk assessment process and outcomes should be documented, communicated throughout the organisation, resourced, actively monitored and managed – it must become everybody's responsibility. Proper after-care and management is critical and this should include a regular review – at least annually – to ensure that the effects of a changing business environment are considered.

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