

# ANNUAL REVIEW

## Corporate fraud & corruption

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# Portugal

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

■ **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?**

**JÚNIOR:** Boards and senior executives in Portugal are more aware and see fraud and corruption as a major concern. This leads to cautious preparation, implementation and maintenance of compliance policies and programmes to safeguard their companies. Attention is also paid to risks that exist in the country where business is conducted, to diligence on third-party relationships and on transactions. In this respect, we see boards and senior executives paying more attention to codes of conduct and internal policies regarding, among others, gifts and courtesies, hospitality, facilitation payments and sponsorships, as these are relevant areas of fraud and corruption risk. However, there is still room for improvement, as there is still some business resistance to setting up a robust, adequate and tailor-made compliance programme. We still see a reactive approach, rather than a proactive and preventive one.



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■ **Q. Have there been any significant legal and regulatory developments relevant to corporate fraud and corruption in Portugal over the past 12-18 months?**

**JÚNIOR:** The most recent relevant change in the legal framework occurred in 2015, when penalties regarding corruption-related crimes were raised. In 2017, a new anti-money laundering (AML) and terrorism financing legislation was enacted, in transposition of the Fourth EU Directive.

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■ **Q. When suspicions of fraud or corruption arise within a firm, what steps should be taken to evaluate and resolve the potential problem?**

**JÚNIOR:** Above all, anticipation and prevention are the most effective strategies for protecting a firm. When detected, suspicion must be handled with assertiveness and as early as possible, with the setting up of a plan and adequate measures taken, for example to protect the company's data information, in order to allow its analysis. It is important to consider internal investigations and work with external consultants, advisers and experts so that the

internal investigation phase is pursued in a more independent environment, but always with the cooperation of the relevant departments. In the end, reaction should be perceived as a translation of the strong commitment of the board in the fight against fraud and corruption. Disciplinary procedures and disclosure or cooperation with the authorities should also be considered.

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■ **Q. Do you believe companies are paying enough attention to employee awareness, such as training staff to identify and report potential fraud and misconduct?**

**JÚNIOR:** Training staff at all levels is an important strategy toward identifying and reporting possible fraud and misconduct, and should be part of any compliance programme. 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 possible 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 procedure that is being implemented, and making them understand that they are an essential part of it.

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■ **Q. How has the renewed focus on encouraging and protecting whistleblowers changed the way companies manage and respond to reports of potential wrongdoing?**

**JÚNIOR:** Whistleblowing protection is still a largely underdeveloped mechanism in Portugal, mainly due to it being seen as a ‘reward’, not as a component of a company’s compliance programme. This situation continues because there are limited legal protections for whistleblowers, which compromises the reaction to any suspicion of fraud or corruption, making it slower and less effective. It is therefore necessary to improve the relationship between employees and companies – ensuring their trust and participation in the implementation of compliance programmes, while making them understand that they are an essential part of such programmes. In the recent AML prevention law, there are specific provisions regarding the protection of whistleblowers and the setting up of channels dedicated to the disclosure of wrongdoing.

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■ **Q. Could you outline the main fraud and corruption risks that can emerge from third-party relationships? In your opinion, do firms pay sufficient attention to due diligence at the outset of a new business relationship?**

**JÚNIOR:** The main risks that can 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 tax. Companies are paying more attention to the issue, including due diligence, not only at the outset of a new business relationship – particularly if it involves different jurisdictions – but also in existing relationships.

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■ **Q. What advice can you offer to companies on implementing and maintaining a robust fraud and corruption risk management process, with appropriate internal controls?**

**JÚNIOR:** A robust fraud and corruption risk assessment process has, as a founding principle, a structured and adequate compliance programme, which translates company culture. This means acknowledging that any company, in any economic sector, is prone to legal and reputational risks that may hinder its economic activity. Being compliant also means understanding that the best way to deal with risk, minimising and overcoming it, is in utilising anticipation, prevention, detection and reaction techniques. Within such a programme, the areas that are more risk sensitive should be prioritised. In terms of fraud and corruption, special attention should be paid to the risks posed by the country where business is conducted and where it stands in corruption indexes, as well as applicable laws and regulations. Moreover, companies should be particularly concerned with some types of transactions and have detailed policies regarding, among others, gifts and courtesies, hospitality, facilitation payments



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and sponsorships, as these are relevant areas of fraud and corruption risk. Understanding the 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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