



INDEPTHFEATURE

# CORPORATE FRAUD & CORRUPTION

2024

**FINANCIER**  
WORLDWIDE Corporate Finance Intelligence



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**FINANCIER**  
WORLDWIDE corporate finance intelligence

**INDEPTH**FEATURE

**CORPORATE FRAUD  
& CORRUPTION**

March 2024



## Introduction

Corporate fraud and corruption continues to blight the business world, costing economies billions every year. From global conglomerates to small and medium-sized enterprises, every company is at risk.

There are many tools available to companies to help fight malfeasance, but perhaps the most valuable is robust corporate governance. Responsibility, accountability, awareness, impartiality and transparency should form the backbone of a robust corporate governance framework. Companies should clearly outline roles, maintain vigilant oversight and eliminate opportunities for circumvention. Good practices can help detect suspicious or irregular activity before it takes hold.

With fraud and corruption subjecting companies to significant financial loss and reputational damage, a concerted effort needs to be made to counteract it.

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

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# UNITED STATES

*J.S. Held*

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*J.S. Held*

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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?**

**A.** Over the past several years, there has been greater emphasis by boards and senior executives on taking proactive measures to combat fraud and corruption. This comes in various shapes and sizes but includes more prominent seats at the table for ethics and compliance departments and internal audit groups. Receiving direct feedback from frontline personnel who are focused on fraud and corruption daily is critical in understanding the prevalent issues, how the issues are being tested and ultimately how the company is mitigating risks. We have also seen senior executives become more comfortable with the use of data analytics and artificial intelligence tools that can better detect instances of fraud and corruption much earlier than could be done historically. The use of data analytics is an important component given the regulatory scrutiny in this area.

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**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?**

**A.** In early 2023, the US Department of Justice (DOJ) updated its guidance related to corporate compliance programmes. Although the update covered several areas, two key new takeaways included the need for appropriate compliance policies for use of personal communication devices and communication programmes, including ephemeral messaging, as well as clawback in compensation in cases, as appropriate. This guidance is critical for companies to consider in evaluating their compliance programmes. In late 2023, the DOJ introduced its Safe Harbor Policy for Voluntary M&A Self-Disclosures, marking a clearer delineation of current compliance standards for companies navigating mergers and acquisitions. While anti-corruption due diligence has been a familiar concept in compliance, the department's comprehensive policy now provides explicit guidance on when to report any misconduct. Further, the new policy emphasises the importance of companies promptly recognising significant risks associated with the target and performing transaction-level due diligence

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to assess the possibility of any potential breaches. The policy further enhances corporate expectations on how and when it should be conducting due diligence and further reinforces the regulators' commitment to enforcing ethical business practices.

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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?**

**A.** One critical step that should be taken by companies but is oftentimes overlooked is immediately securing data related to the potential problem. Initial data mapping for all relevant possible sources that could be used during an investigation is often key to successful investigations. Sometimes those critical hours immediately after a problem is identified are the most crucial in making sure there is as little spoliation as possible. Another critical step is engaging outside counsel and forensic personnel, including forensic accountants and forensic technology, at the outset of an investigation, even if only to brainstorm next steps and develop a sound investigation plan, including ensuring any

privilege issues are adhered to from the outset.

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

**A.** Although training has evolved over the years and become more dynamic, companies often still revert to training programmes that are stagnant and have not been updated to reflect a company's current business practices. More dynamic training involving case studies, demonstrations and real-life situations are oftentimes more effective in raising employee awareness. Companies also tend to stick with more formal web-based training which easily documents the training participants for tracking purposes, whereas more ad hoc and informal training that is administered throughout the year and in different forums, such as online, via email or in person, tends to be more impactful and successful. Customising training so that it is specific to an employee's job duties and position makes



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the training more real and focused, and increases effectiveness.

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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?**

**A.** With additional whistleblower protections and rewards that are being provided by regulators to whistleblowers, companies need to take all complaints more seriously than they have in the past. Recently, the DOJ announced a new whistleblower programme to further incentivise reporting of misconduct. Although this will mean more costs to organisations, the potential risks for not undertaking thorough investigations and protecting whistleblowers are extensive. The potential risks are not only financial in nature, but the reputational risks can be even greater if it is determined that companies are not investigating the root cause of the issues that are identified and remediating those issues timely by increased policies, procedures, internal controls and testing.



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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?**

**A.** An examination of some of the largest settlements and deferred prosecution agreements reflect that third-party relationships are often the highest risk areas of a company's risk profile. This is due to several factors, although the general lack of control over third parties' actions and lack of visibility into the inner workings and financial transactions are two key factors. Although we have seen an increased focus on third parties, more can still be done to adequately manage the risks. Two ways companies are mitigating this risk are through third-party audits, assuming audit rights have been built into the contracts and agreements, and conducting more robust due diligence and know your customer screening at the outset of the relationship. Further, it is important to not only conduct due diligence at the outset of the relationship, but also to have a system in place to risk

rank those third parties and update the diligence on a regular basis.

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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?**

**A.** The biggest piece of advice for companies is to be flexible in their approaches to managing risk. Fraud and corruption schemes change over time, and companies must be willing to think outside the box and adapt to evolving threats. Additionally, the business itself changes over time, as do the resulting risks. Maintaining the status quo when it comes to policies and procedures, or using traditional transaction testing and forensic auditing measures are typically not enough to maintain controls that will mitigate fraud and corruption risks as they evolve. Additionally, with the growth of data globally, companies need to lean into the use of alternative tools that can more quickly and efficiently mine that data for answers and uncover potential issues sooner. Following recommendations made by regulatory agencies as to compliance



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controls and procedures will help mitigate the risks and potential financial ramifications if an investigation does occur.

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*BDO Canada LLP*

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**Q. To what extent are boards and senior executives in Canada taking proactive steps to reduce incidences of fraud and corruption from surfacing within their company?**

**A.** Proactive risk management has become a higher priority for many Canadian companies in recent years, particularly with respect to cyber threats. Fraud risk and compliance effectiveness assessments are more commonly found on board agendas. However, in my experience, corporate risk registers tend to underestimate fraud risks. The impact of fraud may be assessed as ‘high’, but the probability of occurrence is assessed as ‘low’. Corporate governors and executives seem to take the view that their organisations are unlikely to encounter fraud. Unfortunately, in today’s environment, it is more likely a matter of ‘when’, and not ‘if’. Despite high-profile enforcement actions in recent years, corruption is not seen as a significant risk for Canadian businesses. However, even if domestic corruption risks are comparatively low, operating in foreign jurisdictions means exposure to local risks. Certain industries, such as global financial

institutions (FIs) and natural resources and mining companies, tend to have more mature anti-corruption programmes.

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

**A.** From a regulatory perspective, the 2023 federal budget introduced various measures to strengthen reporting requirements for sanctions-related information and suspicious transactions. More types of businesses are required to report suspicious transactions and reporting obligations have been clarified. Additionally, requirements for criminal background checks and whistleblower protections were introduced. Most importantly, the Canadian regulatory regime now requires the disclosure of beneficial ownership of federally incorporated companies. The beneficial ownership information is recorded in a federal registry. This is a significant step toward greater transparency, allowing greater visibility into previously secretive networks of companies. There is still room for improvement, as provincial ownership

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*The main risk is supply chain fraud, including bribery, bid rigging, overpricing, breaches of labour standards or worse. In my experience, the risk is real and persistent.*

disclosure requirements are lagging behind.

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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?**

**A.** The first order of priority is to secure assets. Lock down the bank or trading accounts in which the suspected fraud occurred and disable access to accounts or authorisations of suspected bad actors. Once assets are secure, the next task is to preserve the evidence. With the assistance of forensic professionals, secure the business and accounting records related to the fraud. Physical and digital records should be copied, preferably forensically imaged, and safely stored. Companies should also engage legal and investigative professionals as soon as possible. Time is of the essence when recovering stolen funds. The odds of recovery are higher if funds can be quickly traced and involved FIs are put on notice. Similarly, timely notification is usually required by insurance policies related to financial crime. This urgency is one reason why

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having a well-designed fraud or cyber breach plan is so important.

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

**A.** Awareness and training are certainly strong in some respects, such as cyber security risks. Most companies have regular training for phishing and similar threats. Formal reporting frameworks, such as whistleblower programmes, are also common. However, training for other threats such as money laundering, corruption and modern slavery tends to be minimal. Even where robust policies and programmes exist, training may only be limited to certain departments within an organisation, such as finance. Broader awareness across the organisation is needed to ensure programme effectiveness.

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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?**

**A.** There is a greater awareness of the importance of whistleblower programmes, across companies and from the governance-level down. The importance of strong whistleblower programmes is reflected in a recent study of global trends by the Chartered Professional Accountants of Canada and the International Federation of Accountants. Organisations, including the federal government, have reviewed their policies and identified gaps in the protections offered to whistleblowers. The volume of complaints has also increased over time, causing companies to reconsider how reports are triaged. Initially, at least, third-party providers offering turnkey or white-label whistleblower programmes are often employed to manage and process complaints. Third-party providers can be a cost-effective solution that also creates a layer of independence from management. This independence can be a very important consideration for corporate governance.

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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?**

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**A.** The main risk is supply chain fraud, including bribery, bid rigging, overpricing, breaches of labour standards or worse. In my experience, the risk is real and persistent. Supply chain frauds often involve collusion between employees and suppliers or customers. They can involve kickbacks, diverted payments or products, and inflated invoices. Such fraud can occur at family-owned businesses and at multinational public companies. It is also a risk in the public sector, from universities to the federal government. Unfortunately, meaningful due diligence of business partners tends to be a limited and perhaps even uncommon practice in Canada. With certain exceptions related to regulatory requirements, such as lawyers or FIs, most companies do not conduct substantive background check verifications. The time and effort of due diligence is worth the price compared to the potential consequences of not knowing who you are dealing with.

**A.** The most important advice is to recognise the organisation is at risk of fraud and corruption. With that awareness, identify and prioritise the various types of risk to which the organisation is exposed. An organisation cannot protect itself against all risks, so efforts should be focused on designing controls to address risks in order of priority. Then, train staff so they are aware of their individual roles in the ‘fraud playbook’. Ongoing training, including periodic refreshers and compliance testing with feedback, is critical to ensuring that policies are effective. As a fraud investigator, there are few things more disheartening than to see a fraud scheme defeat a well-designed internal control because someone did not do their job. □

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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?**



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# COLOMBIA

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**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?**

**A.** In recent years, boards and senior executives in Colombia have become more conscious of fraud and corruption risks in their organisations. In our experience, and from what we have observed in the business community, organisations have implemented several proactive measures to safeguard their reputations, ensure regulatory compliance and mitigate financial losses due to fraud. The strategies include supporting documentation review, transaction monitoring, communications overview, detection of anomalies and the use of governance, risk and compliance (GRC) solutions.

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

**A.** Colombia has enacted the Transparency and Fight Against Corruption Act aimed at strengthening the prevention and

punishment of acts of corruption. This initiative, led by the National Commission of Moralization and coordinated by the nation's vice president, seeks to promote a culture of integrity and legality. The Act includes measures to identify the ultimate owners of companies doing business with the government and creates consolidated databases while promoting transparency. Regulations reinforce transparency by lifting the veil of secrecy and bringing to light a company's legal structure. By fighting corruption in this way, the government hopes to foster the population's trust in institutions.

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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?**

**A.** When an allegation of fraud or corruption arises in a company, prompt action is key. Building a multidisciplinary investigation team is essential, preferably with external experts to ensure objectivity and independence. Collecting evidence with due care to preserve the chain of custody is important, and a thorough investigation should include interviews

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and document review. Once fraud is confirmed, corrective measures should be implemented, and the results communicated to relevant parties. Additionally, it is crucial to strengthen internal control systems to prevent future incidents. A systematic approach to address the current situation will strengthen integrity and trust in the company for the long term.

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

**A.** In the context of Colombian businesses, raising employee awareness about identifying and reporting possible fraud and improper practices requires great organisational effort. A culture of regulatory compliance promoted by international compliance standards alone is not sufficient to effectively address fraud. It is key to implement training programmes covering every level of a company. Being proactive, in addition to strengthening internal control mechanisms and fraud prevention, fosters

a culture of integrity and responsibility among employees, contributing to the safeguarding of assets and corporate reputation.

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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?**

**A.** Despite the lack of a comprehensive legal framework for whistleblower protection, organisations in both the public and private sectors have implemented strategies such as ethical frameworks for employees to report complaints and irregularities. However, whistleblowers continue to face retaliation, including the possibility of suspension, dismissal, job demotion, coercion, intimidation and risks to their physical integrity. Extending whistleblower protection to other stakeholders is also crucial, as they may be subject to retaliation that affects their reputations and financial livelihoods. This change reflects an effort to promote a culture of safe and effective reporting in Colombian companies.



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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?**

**A.** Fraud and corruption risks mainly arise from relationships with third parties. These risks include influence peddling, bribery and money laundering. Additionally, there is a risk of compromising the financial integrity and legitimacy of third parties' business operations, as well as facing conflicts of interest that may negatively affect the business relationship. Companies often neglect the initial interactions necessary to get to know their partners. The due diligence process for third parties is essential to fostering ethical and sustainable business relationships, as well as to mitigating the risks of fraud and corruption, and should receive more rigorous attention from organisations.

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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?**



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**A.** The following recommendations can help organisations implement and maintain a robust fraud and corruption risk management process. First, establish and communicate a fraud risk management programme that reflects the ethical values of senior management. Second, conduct comprehensive fraud risk assessments to identify specific schemes and assess their likelihood and potential impact. Third, implement preventive and detective control activities to reduce the possibility of fraudulent events occurring with a third party. Fourth, establish a communication process to obtain information about possible fraud and carry out coordinated investigations and corrective actions. Lastly, conduct ongoing assessments and report deficiencies in the fraud risk management programme to take corrective action.

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*Kennedys*

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**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?**

**A.** The introduction of the Bribery Act 2010 heralded a significant shift in how boards and corporates approached their business' compliance policies and procedures. Suddenly, companies' compliance programmes were thrust into the spotlight and at risk of being severely tested if an associated person bribed an individual for the benefit of the company and the company had no procedures to prevent that conduct from taking place. More than 10 years later, senior executives and boards have made compliance the backbone of their business as regulatory oversight into their business practices has intensified, especially following the introduction of the Criminal Finances Act 2017, which criminalised a corporate if it was found to have failed to prevent the facilitation of tax evasion, whether in the UK or abroad, and, more recently, the new failure to prevent fraud offence contained in the Economic Crime and Corporate Transparency Act 2023.

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**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?**

**A.** The passing of the Economic and Corporate Transparency Act in 2023 was the biggest development in the UK's fight against corporate fraud and corruption in the last 10 years. Following years of consultation with experts, professionals and academics, the Act has introduced two significant changes to the UK's compliance landscape – a new failure to prevent fraud offence and an amendment to the 'directing mind and will' test, which plagued prosecutors when attempting to successfully prosecute corporates. The weaponry now available to law enforcement bodies could lead to an increase in investigations and prosecutions, something that boards should be acutely aware of when monitoring their business' conduct.

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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?**



## *Kennedys*

**A.** When faced with such a scenario, a corporate should consider whether to engage lawyers to assist it in understanding whether there is any merit to the allegations, and if so, the extent to which the allegation extends across the business. The board should seek to assemble a small internal investigative team, that is likely to pull in individuals from finance, IT and HR, to assist lawyers in their investigation of the issues. With the assistance of its legal team, the business should consider whether relevant individuals should be spoken to and the extent to which each individual's data needs to be interrogated to assess whether there is any evidence that points to or away from the suspicion. The investigation could take weeks if not months, and so the business must ensure that the investigation is not prejudiced through the inadvertent release of information.

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

**A.** Due to the significant regulatory and legal change across the UK corporate landscape in recent years, companies would be unwise not to pay due regard to how employees are onboarded, trained and supported for the simple fact that ignoring these integral compliance processes could result in the company itself being pulled into an investigation or prosecution which could highlight any deficiencies in its internal governance. Simply having a policy in place is not enough to extricate a business from any suggestion of wrongdoing, especially if the business' employees are clueless about what is expected from them, their employer and, crucially, the law.

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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?**

**A.** One change that a corporate may be faced with once a whistleblowing report is made about potential wrongdoing is that the corporate should, where possible, keep the whistleblower informed about the progress of any investigation, although

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*The weaponry now available to law enforcement bodies could lead to an increase in investigations and prosecutions, something that boards should be acutely aware of when monitoring their business' conduct.*

care should be taken not to take any steps that might result in a loss of privilege or confidentiality. The whistleblower's expectations should be carefully managed, particularly when they have expectations that may not be deliverable.

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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?**

**A.** The role of third parties has been a thorn in the side of some businesses, particularly where those third parties are located in high-risk jurisdictions. In furthering the interests of a corporate, the business may become entangled with the conduct of the third party, in some cases unwittingly. Risks may come in the form of facilitation payments to individuals to speed up certain processes or payments to public officials in a jurisdiction that the business does not yet have a foothold in. With criminal liability now attaching to a corporate because of the conduct or actions of its 'associated person', businesses are now acutely aware that



### *Kennedys*

onboarding third parties is of paramount importance in the due diligence process, particularly with the expansion of the failure to prevent offence, which now applies to bribery as well as the facilitation of tax evasion and fraud.

the risks in the business in year five, particularly if the business has expanded in size and scope. □

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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?**

**A.** Implementing policies and procedures that are designed to protect the business is one thing, but the key is to ensure that not only have those documents been informed through a risk assessment, identifying areas of weakness for the business, but that those policies and procedures are filtered across the business to ensure that all employees are fully aware of the company's stance. Training employees on those policies ensures a seamless process from paper to practice, reminding each business partner of the role they play in safeguarding the business' interests. Monitoring policies and procedures is also key, for the simple fact that what may be relevant in year zero may not address

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**Q. To what extent are boards and senior executives in the Republic of Ireland taking proactive steps to reduce incidences of fraud and corruption from surfacing within their company?**

**A.** In Ireland, company directors are usually appointed by the members to manage the affairs of the company on their behalf. The main legislative provisions concerning company directors are set out under part 4 in sections 128 to 167 and under part 5 in sections 219 to 255 of the Companies Act. The primary responsibility of directors is to ensure compliance with the Companies Act, which includes acting honestly and responsibly and maintaining proper books and records. Directors must sign a statutory declaration each year that the company is in compliance with its obligations. This legislative framework ensures boards and senior executives proactively reduce incidences of fraud and corruption by implementing anti-fraud and anti-corruption policies, by providing staff training, and by operating dedicated protected disclosure reporting channels in accordance with the legislation in Ireland.

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

**A.** In 2018, Ireland introduced the Criminal Justice (Corruption Offences) Act 2018, which requires a company to demonstrate it “took all reasonable steps and exercised all due diligence to avoid the commission of the offence” when faced with prosecution for bribery and corruption. This is considered by many to be a higher bar than the equivalent provisions in the UK Bribery Act, which requires companies in the UK to have adequate procedures in place, and the Foreign Corrupt Practices Act (FCPA), which requires companies to maintain an adequate system of internal accounting controls. More recently, all Irish companies with more than 50 employees are required by law to implement a protected disclosures reporting channel, which must be made available to all ‘workers’, which includes within its definition all current and former employees, volunteers, independent contractors, trainees and job candidates.



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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?**

**A.** A robust process, in accordance with fair procedures and the laws of natural justice, is crucial when suspicions of fraud or corruption are raised. Conduct a thorough investigation into the allegations, ensuring objectivity and confidentiality. Secure relevant documents, emails, financial records and any other evidence that may support the investigation. Interview employees, stakeholders or any individuals associated with the suspected wrongdoing to gather information and insights. Take appropriate action based on the investigation findings, which may include disciplinary actions, policy revisions or legal proceedings. Strengthen internal controls and monitoring mechanisms to prevent future occurrences of fraud or corruption. Keep stakeholders informed about the investigation process and outcomes while complying with legal and regulatory reporting requirements. And establish ongoing monitoring and auditing processes to detect and deter fraudulent activities in the future.



*Developing a 'speak up' culture can contribute to a more resilient and trustworthy business environment.*

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

**A.** Irish companies vary in their attention to employee awareness regarding fraud and misconduct. While some companies prioritise training programmes to educate staff in identifying and reporting potential issues, others may not allocate sufficient resources to this aspect of risk management. There is a growing recognition of the importance of having an ethical culture within organisations, but implementation may vary based on factors like company size and resources. There is room for improvement across Irish companies to ensure that all employees are equipped with the knowledge and tools to speak up about fraudulent or unethical behaviour. Developing a ‘speak up’ culture can contribute to a more resilient and trustworthy business environment.

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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?**

**A.** The European Commission has been the driving force for change and standardisation across the European Union, including Ireland, with respect to whistleblowing. The EU Directive on Whistleblowing – which has been transposed into Irish law by the Protected Disclosures (Amendment) Act 2022 – has made it a requirement for all companies with over 50 employees to implement a reporting channel. This is a significant change to Irish companies’ attitudes toward identifying and reporting potential fraud and misconduct. The new laws have brought about a renewed focus to update policies and procedures in relation to fraud, bribery and corruption, and have led to increased awareness across Irish companies about compliance with the legislation and enhancing corporate governance.

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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**

*BDO***diligence at the outset of a new business relationship?**

**A.** Third-party relationships pose various fraud and corruption risks to firms, including bribery and corruption such as kickbacks, conflicts of interest and data breaches. These risks arise when companies engage with suppliers, vendors, agents or contractors who may operate with different ethical standards or engage in illicit activities. Insufficient due diligence at the outset of a new business relationship heightens these risks, potentially exposing firms to financial losses, reputational damage and criminal offences under Irish law. While some companies prioritise robust third party due diligence processes, including background checks and risk assessments, others may overlook these measures due to time constraints or cost considerations. Overall, firms should pay careful attention when entering third-party relationships to mitigate fraud and corruption risks. Furthermore, all companies involved in the cross-border movement of goods and services must have robust trade compliance programmes with comprehensive internal controls and

processes for managing import and export compliance and sanctions obligations.

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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?**

**A.** Effective management of fraud and corruption risks should focus on prevention, detection and response. Robust anti-fraud and corruption policies should be clearly communicated to all employees. Supplier vetting should include stringent verification measures and suppliers should be required to adhere to the organisation's code of conduct, conflict of interest policy, gift policy, and anti-bribery and corruption requirements. Pre-employment screening can ensure new employees have not falsified or exaggerated qualifications. Early detection of fraud and corruption may be achieved through forensic data analytics. Conflicts of interest and gift registers need to be implemented through a declaration process, where declarations can be assessed and verified, and exceptions investigated. Responding to allegations of fraud, bribery or corruption

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in a timely and transparent manner in accordance with the laws of natural justice is crucial. A strong fraud response programme can help protect the reputation of the company and mitigate the associated financial, reputational and legal risks. □

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# GERMANY

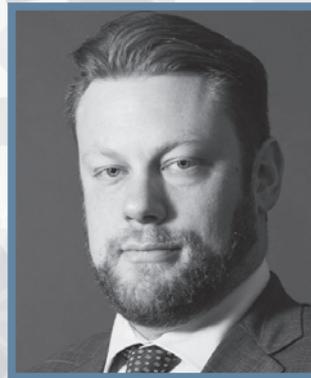
## *Alvarez & Marsal*

### *Respondents*



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Raphael Kiess leads Alvarez & Marsal's disputes and investigation practice in Germany and brings 15 years of experience in forensic investigations and forensic technology projects. He has coordinated forensic investigations including cases of corruption, fraud, money laundering, balance sheet manipulations and embezzlement of building cartels. He has worked with clients from different sectors, including financial services, asset management, food and beverages, industrial engineering, energy, telecommunications and healthcare. He has worked with international teams within Europe, the US, Africa and Asia. He also oversees the firm's forensic technology practice in Germany and is an expert on digital investigations and cross-border e-discovery matters.

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**Q. To what extent are boards and senior executives in Germany taking proactive steps to reduce incidences of fraud and corruption from surfacing within their company?**

**A.** Through corporate compliance functions, companies are putting a clear focus on measures to address fraud and corruption risks. This focus is usually accompanied by a tone from the top directed by senior executives who emphasise the importance of compliance and integrity. Taking proactive steps to reduce incidents of fraud and corruption is one of the key aspects of every standard compliance programme. Companies need to continuously monitor their risk exposure, depending on the types of business and geographies in which they operate, and should regularly check and reinforce awareness within the workforce too. As efforts to fight fraud and corruption are seen as the minimum requirement to meet compliance standards, every incident in this sphere can cause huge reputational damage.

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**Q. Have there been any significant legal and regulatory developments relevant**

**to corporate fraud and corruption in Germany over the past 12-18 months?**

**A.** Last year the European Commission proposed a new anti-corruption guideline to modernise the current legal framework. The guideline proposed that the focus should be placed on prevention and the creation of a culture of integrity. The definition of corrupt action is planned to be harmonised within member states and sanctions based on criminal law should be intensified. All member states are then requested to ensure effective measures for investigating and prosecuting corruption. The European Commission also proposed to extend sanctions instruments, that are based on common foreign and security policy, to fight severe corruption regardless of where it occurred.

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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?**

**A.** Firms must have relevant and effective controls in place to detect potential corruption and need to make sure that all stakeholders, including employees,



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customers, suppliers and the public, can report on potential incidents. After performing an early case assessment regarding any reported allegations, the company must also investigate all relevant flow of funds or goods. Corruption does not necessarily mean the transfer of money, but also could be built on granting other types of benefits or advantages such as invitations, favours to family members, and so on. In cases where corruption is identified, companies should undertake a ringfencing exercise to check for any additional incidents, since corrupt activities are often not a one-time event.

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

**A.** In recent months, we have seen many companies take significant steps to make staff and other stakeholders aware of existing reporting channels and have encouraged them to use existing whistleblowing tools. Training sessions should focus on helping people to identify and understand potential corrupt actions.

Fraud and corruption is more than just brown envelopes filled with cash. Advantages offered to business partners can be in the form of a benefit that is provided in a more sophisticated or subtle way. Companies should never tolerate any attitudes or assumptions that corruption is just part of doing business in certain sectors or geographies.

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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?**

**A.** Companies are putting a lot of effort into implementing required whistleblowing processes and increasing awareness. Now they must also demonstrate that reported incidents are being investigated thoroughly and – in the case of identified misconduct – that underlying activities are also sanctioned. Most importantly, the individual or group that reported the incident cannot suffer from any disadvantage, retribution or exposure, even if the reported incident caused major damage to the company. Every incident that is detected and remediated is better

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than an ongoing, uncovered or even tolerated compliance breach.

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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?**

**A.** Fraud and corruption risks always increase if a company does not directly deal with its business partner but instead goes through a third party. Business partners require significant attention when they are onboarded, and throughout the relationship intense and continuous monitoring needs to be applied. In general, firms should ask themselves the reasons for involving an intermediary instead of interacting directly with the business partner. Transparency is key. Companies must be diligent about assessing the activities of the third parties they are doing business with. In this context, companies really need to understand the structure and business conduct of their partners. Simple ‘tick box’ exercises are not sufficient as they will not provide enough transparency.



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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?**

**A.** A robust fraud and corruption risk management programme must be regularly maintained and be dynamic to address and mitigate evolving threats. Employees should scrutinise business conduct, market opportunities or deals that they do not understand, or those which seem to be at odds with market or sector standards. In this context, artificial intelligence can offer some guidance, as active learning algorithms can be based on the historical circumstances in which business relationships were formed. Hence, any new or hard to understand situation at least could be flagged with an alert, which then would require increased attention by the compliance function. □

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# SWITZERLAND

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**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?**

**A.** As in other parts of the world, in Switzerland effective leadership starts with good corporate governance, a culture of compliance and suitable control processes. Beginning by setting ‘the tone from the top’, there are clear instructions and training programmes in place for employees, backed by rigorous control processes. There are transparency and authorisation requirements, like the obligation to disclose gifts or non-cash benefits that exceed a certain value. For credit and other financial institutions higher standards apply when it comes to disclosures, power of attorney and other banking services. In addition, the culture of compliance also contains an established whistleblower policy and process.

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

**A.** According to Transparency International Switzerland, the most egregious forms of corruption are prohibited under criminal law. And despite the corresponding criminal offences having been in force in Switzerland for many years now, there have been relatively few convictions. This is unacceptable with respect to combatting corruption, as well as from a social and constitutional perspective, particularly when one considers the criminal liability of companies and other legal entities for serious offences such as corruption or money laundering, according to article 102 of the Swiss Criminal Code. While the financial markets authority aims to take account of advancing technical developments and concretise its supervisory practice, no significant legal and regulatory developments relevant to corporate fraud and corruption were implemented in Switzerland over the past 12-18 months.

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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?**

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**A.** There are steps a firm should take even before an incident of fraud or corruption occurs. First, create a plan to handle such a crisis and test it with your employees. Second, set a clear IT and mobile phone policy for the firm. Third, invest in fidelity insurance to cover financial losses from white-collar crime committed by the firm's staff. Fourth, if you suspect fraud or corruption, do not start the investigation yourself. The risk of destroying evidence is too high and you may tip off the fraudster. Fifth, use professional investigative resources, either from within the firm or externally. Do not jeopardise any subsequent investigation by the authorities by stepping in yourself. Sixth, once the investigation is underway, evaluate the evidence of fraudulent behaviour, and what evidence must be collected and secured. Seventh, do not interview the suspect until the end of an investigation. Lastly, once you have the final investigation report, you can either try to reach a private settlement with the suspect, which is not recommended, or hand over the file to the relevant authorities.

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**Q. Do you believe companies in Switzerland are paying enough attention**

**to employee awareness, such as training staff to identify and report potential fraud and misconduct?**

**A.** Philosophically speaking, you can never say it is enough. Companies operating in industries that are highly regulated, such as financial services or pharmaceuticals, or companies that are heavily export-oriented, such as manufacturing, place a lot of emphasis on employee awareness and training. In recent years, other industries have had to catch up, due to increased regulatory attention in Switzerland and also thanks to employees themselves, who are now much more aware of these topics and request training for their own protection. So, generally speaking, Swiss companies are well aware of their duties and requirements.

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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?**

**A.** Due to the lack of an actual specific legal basis, the protection of whistleblowers in Switzerland does not



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come close to the protection afforded to whistleblowers by the European Union (EU) via member states. A whistleblower law has been under consideration in Switzerland for many years. However, in September 2015, the Swiss Parliament passed the ball back to the Federal Council. The upshot was that any punitive dismissal of a whistleblower would have to be covered under the regulations of the Swiss Code of Obligations for labour law. Despite the lack of a formal legal basis or requirement, many companies in the banking sector, insurance companies and industrial companies – often with a connection to the EU – with a strong corporate governance structure and culture of compliance have whistleblower policies and associated processes in place.

**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?**

**A.** Relationships with third parties harbour a variety of fraud and corruption risks for companies. Third parties, such as



*Due to the lack of an actual specific legal basis, the protection of whistleblowers in Switzerland does not come close to the protection afforded to whistleblowers by the European Union (EU) via member states.*

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suppliers, distributors or consultants, could offer or demand bribes or improper favours to influence business relationships or obtain contracts. Third parties could attempt to financially harm the company through inflated invoices, falsified shipments or other means. Undisclosed personal relationships of employees or other stakeholders could influence business decisions. Business relationships could violate applicable trade sanctions, embargoes or export control laws. Third parties could also gain access to sensitive company data and misuse or share it. A careful due diligence and ‘know your customer’ process at the beginning of a new business relationship, including background checks, can help companies properly assess risk. We see varying degrees of such assessments undertaken by corporates during their third party onboarding processes.

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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?**

**A.** Companies looking to implement and maintain a robust fraud and corruption risk management process should consider the following actions to strengthen resilience and maintain the integrity of their business operations. First, foster ethical behaviour in the workplace anchored in a strong corporate culture. Second, outline and communicate clear policies and procedures for accountability. Third, undertake regular risk assessments and identify vulnerabilities. Fourth, provide regular training sessions and develop awareness of internal policies and procedures, as well as fraud and corruption risks in the particular industry. Fifth, institute a whistleblower programme that allows employees to confidentially report concerns about fraud or corruption without fear of reprisal. Sixth, develop internal monitoring mechanisms to identify and investigate suspicious activities. Lastly, engage external reviews on the effectiveness of internal controls and recommendations for improvement. □



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## *BDO India*

### *Respondent*



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**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?**

**A.** Over the last decade, India has witnessed an unprecedented increase in the volume of corporate fraud cases, leading to a greater recognition of the importance of addressing fraud and corruption. While Indian companies are becoming more conscious of these risks, their proactivity in mitigating these incidents varies based on factors such as size, structure, operations and industry. With evolving business dynamics, increasing regulatory enforcement, higher costs of investigation and litigation, and greater reputational risk, boards and senior executives are taking proactive measures to mitigate these fraud and corruption risks. Their focus has shifted from simply putting policies in place to adopting a top-down approach that fosters a culture of ethics and integrity throughout the organisation, with a strong emphasis on effectively implementing policies, promoting a ‘speak up’ culture, developing ongoing training, and leveraging advanced

technologies like control monitoring and AI-driven red flagging tools to proactively identify potential risks.

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

**A.** India has recently amended the Prevention of Money Laundering Act, broadening the range of reporting entities to include professionals such as chartered accountants and company secretaries who handle financial transactions for their clients. According to the new regulations, accountants must complete the ‘know your client’ process before commencing any work for their clients, conduct thorough due diligence on their clients’ ownership and financial status, verify the sources of their funds, and document the purpose of the transactions. Additionally, the National Financial Reporting Authority (NFRA), an independent regulatory body overseeing the quality of financial reporting by specific types of companies, has issued a directive requiring auditors to report any instances of fraud directly to the NFRA if it exceeds a certain financial threshold,

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*Engaging with sanctioned third parties can lead to regulatory violations. Despite these looming hazards, some firms fail to prioritise due diligence when forging new partnerships, often paying a high price for this negligence down the line.*

regardless of whether they come across it directly or indirectly.

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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?**

**A.** Fraud investigations are complex and multifaceted processes that warrant a comprehensive approach. Many companies and owners find themselves in unfamiliar territory when faced with suspicions of fraud, unsure of the appropriate course of action. Initially, it is crucial to preserve all relevant information and inform key stakeholders such as the board, management, the legal department and compliance teams about any suspicions of fraud. Next, an initial assessment of the incident should be conducted to ascertain whether the suspicions are valid. If a thorough investigation is deemed necessary, an independent investigator with expertise in fraud or corruption cases should be engaged. This will ensure impartiality and help avoid potential conflicts of interest. Following the conclusion of the investigation, appropriate next measures should be



## *BDO India*

taken, including implementing disciplinary measures for those involved, enhancing internal controls to prevent future incidents, and reporting the matter to law enforcement authorities.

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

**A.** In India, while many corporations recognise the significance of fostering employee awareness to mitigate fraud and misconduct, there is still room for improvement. While certain organisations have implemented robust training initiatives, others have yet to make such measures a priority. Effective training should encompass the dissemination of ethical principles, offer practical guidance on detecting fraudulent activities, and cultivate a culture of transparency and accountability, where employees feel empowered to report suspicious behaviour without fear of reprisal. Regular evaluations of training efficacy are vital to ensure alignment with evolving risks.

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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?**

**A.** The growing emphasis on safeguarding individuals who expose misconduct is redefining how businesses react to potential wrongdoing. This transition is predominantly driven by heightened regulatory mandates, increased public consciousness, and the acknowledgement of the pivotal role whistleblowers play in uncovering and preventing unethical behaviour. Organisations are aware that the focus on whistleblower protection not only encourages more disclosures but also enhances accountability, strengthens trust and improves early detection of misconduct, ultimately fostering ethical corporate cultures and regulatory compliance. Accordingly, stakeholders are demonstrating commitment and spreading awareness among employees about the benefits of a robust whistleblowing mechanism. Many organisations provide anonymous reporting channels, such as hotlines or online platforms, to encourage employees

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who might be hesitant to come forward due to fear of retribution. Additionally, organisations are allocating resources toward conducting comprehensive and impartial investigations, often involving external third parties to ensure objectivity and credibility.

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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?**

**A.** Third parties are a primary conduit to bribery and corruption. The involvement of external parties introduces considerable hazards such as corruption, collusive bidding, misappropriation of assets and illicit financial activities. These risks have the potential to damage a company's reputation and jeopardise its ethical standing and financial stability. Furthermore, engaging with sanctioned third parties can lead to regulatory violations. Despite these looming hazards, some firms fail to prioritise due diligence when forging new partnerships, often paying a high price for this negligence

down the line. Implementing thorough third party due diligence and risk evaluation from the outset of new business relationships can be advantageous for companies in the long term, serving as a cost effective and efficient way to manage inherent risks associated with third parties.

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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?**

**A.** For a robust fraud and corruption risk management process, it is imperative to have top-level commitment, reflecting an overall company-wide pledge to ethics and integrity. The essential steps to implement such a programme include establishing effective policies and procedures, conducting regular fraud risk assessments to identify vulnerabilities, providing ongoing training, promoting awareness of fraud, implementing required internal controls, and staying informed about changes to relevant laws and regulations. This process should encompass a thorough review of all business processes, transactions and relationships with



## *BDO India*

third parties. Continuous monitoring of potential fraud red flags and updating fraud detection methods are essential for staying ahead of evolving threats and safeguarding companies from the damaging consequences of fraud and corruption. It is also advisable to undergo periodic independent assessments to gauge the efficacy of fraud and corruption prevention efforts. □

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# PEOPLE'S REPUBLIC OF CHINA

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Tim Klatte is a multilingual DBA graduate leading the forensic advisory services business for Grant Thornton Shanghai. He has 30 years of China-related experience, of which over 18 years has been working in Shanghai advising clients on complicated compliance investigations and developing, managing and enhancing ethics programmes. Dr Klatte is a certified fraud examiner, certified forensic interviewer and project management professional. He is an active speaker and author on corporate compliance strategies and serves as an adjunct instructor at NYU Shanghai, teaching organisational ethics and project management courses. Dr Klatte speaks fluent Mandarin and conversational Japanese.

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**Q. To what extent are boards and senior executives in the People's Republic of China taking proactive steps to reduce incidences of fraud and corruption from surfacing within their company?**

**A.** Since China's post-coronavirus (COVID-19) reopening in December 2022, headquarters-based senior executives have been returning in increased numbers for short visits. Some are on project-related matters, while others just want to reconnect with the China subsidiary on the business climate and see for themselves the changes made since 2019. Being present is important to show support and commitment, which is an approach that can also be applied to fraud prevention strategies. In addition, a recent trend is the increased budget allocation for corporate compliance investigations. Multinationals in China are redirecting their attention to training, risk assessments and improving the overall compliance culture across their subsidiaries. COVID-era fraud has only recently been detected, and I am pleased to observe that it coincides with the timing of companies' increasing investments in fraud mitigation. This is not a coincidence, as the Chinese

divisions of many multinational businesses remain a critical component of global strategies.

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**Q. Have there been any significant legal and regulatory developments relevant to corporate fraud and corruption in the People's Republic of China over the past 12-18 months?**

**A.** Navigating the compliance landscape in China is a challenging but achievable task. It is critical to follow the local laws, while paying close attention to revisions of existing laws. Over the past two years, numerous laws have been either introduced or revised in China, which supports a more level playing field. For example, on 26 April 2023, China's legislature approved revisions to the PRC Counter-Espionage Law. A draft version of the law was released for public comment in December 2022, and the revised law became effective on 1 July 2023. Additionally, on 10 May 2023, the Chinese National Health Commission and 13 other Chinese government agencies jointly issued a notice on its priorities for rectifying unethical practices relating to services and procurement in the healthcare

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sector. These government agencies include ministries and healthcare regulators, as well as criminal and civil enforcement agencies. New whistleblowing channels have also been introduced. Regulations regarding interactions between healthcare professionals and healthcare companies have also been issued across various Chinese provinces and government hospitals. Whether the newly introduced laws cover an umbrella of regulations or focus on specific industries, multinationals must appreciate the complexity of the environment and ensure there is adequate investment to mitigate all corruption present.

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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?**

**A.** First, it is essential to move quickly and to not allow the issue to sit on the back-burner for weeks or months at a time. More than once, we have seen a whistleblower allegation being investigated several months after it has been raised, making it mostly obsolete. Fraud's impact spreads well beyond the immediate circle

raised in the allegations and infiltrates the entire company, one way or another. Accordingly, quick action is critical to demonstrate to employees that the company has a zero-tolerance policy in place. Second, firms must conduct a damage assessment analysis to appreciate the complications and effects the fraud has within the organisation. Only then will you know how to approach it. Also, companies must consider stakeholder communication but treat all allegations with the highest levels of confidentiality. Companies must know how and to whom the communications should be shared. Finally, never forget the importance of creating a culture of continuous improvement.

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**Q. Do you believe companies in the People's Republic of China are paying enough attention to employee awareness, such as training staff to identify and report potential fraud and misconduct?**

**A.** Over the past year, we have witnessed first-hand an increase in offline compliance training sessions at the local level and in the local language. Many organisations have now launched a 'compliance week' to raise awareness of this strategy and



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address critical related issues. Whether these awareness campaigns are a reactive move from senior management, or a proactive decision made by the local management team is yet to be determined. It is still refreshing to see a targeted approach to empower staff to speak up. I often cite the example that when you observe a burned-out lightbulb or an exposed live wire in the office, it will be naturally reported. The same example can be applied when unethical behaviour is observed. If you see something, say something. Compliance is everyone's responsibility, and you have a duty to act.

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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?**

**A.** Companies have become more sensitive to whistleblowers' requests in terms of taking action and communicating with them. For example, instead of making it a priority to try to identify the whistleblower, it is now crucial to protect them from potential blowback while at the same time vetting the reliability of the information



*Whether the newly introduced laws cover an umbrella of regulations or focus on specific industries, multinationals must appreciate the complexity of the environment and ensure there is adequate investment to mitigate all corruption present.*

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being reported. Response time, on average, remains quick, but the company must encourage cooperation beyond the initial communication. Earning trust through a quick response that outlines a timeline and plan may allow the whistleblower to provide continuous support. Also, always remember to ask who else knows about the allegations, as this can alleviate the whistleblower's pressure to report if others may be willing to provide actionable information to the case. Asking the right questions right out of the gate will position the company to develop faster rapport and substantial trust with the reporter.

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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?**

**A.** There are five main fraud and corruption risks to consider from third-party relationships, including bribery and kickbacks, money laundering, fraudulent financial reporting, conflict of interest and data breaches. Firms do not always pay sufficient attention

to due diligence at the outset of a new business relationship. While many firms understand the importance of conducting due diligence, particularly with high-risk third parties, we have seen in China some who may prioritise immediate business gains over thorough assessments. Paying insufficient attention to due diligence often leads to a lack of awareness of the risks involved, making them more susceptible to fraud and corruption. Finally, ongoing monitoring of third-party relationships is equally crucial to identify and address any emerging risks.

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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?**

**A.** There are many best practices, but among them all, three stand out from the rest. First, consistency in policies, procedures, communication and monitoring. Without a steady approach that stands the test of time, it will be challenging to incorporate a true world-class culture of compliance in the organisation. Second, transparency in



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performance incentives and disciplinary actions. Taking no action to reward ethical conduct or ignoring fraudulent activities sends a clear signal to the staff that it is acceptable to stay silent, thus possibly creating a poisonous culture. Lastly, accountability in making compliance a shared responsibility among all. Staff must feel a sense of ownership of a compliance programme for it to work effectively and actively participate in training and reporting. While a robust compliance programme contains more than 20 elements, a programme with consistency, transparency and accountability will elevate this strategy to the next level. 

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*PwC Risk Advisory LLC (PwC Japan Group)***Q. To what extent are boards and senior executives in Japan taking proactive steps to reduce incidences of fraud and corruption from surfacing within their company?**

**A.** Fraud occurs when pressure, opportunity and rationalisation – collectively known as the ‘fraud triangle’ – converge. While companies have historically mitigated fraud by bolstering internal controls to eliminate opportunities, the aspects of pressure and rationalisation have been largely treated as individual ethical concerns. Recent fraud cases have sparked a demand for senior executives to reshape organisational culture to deter fraud. Leadership actions significantly impact creating an ethical workplace, with leaders exemplifying anti-fraud commitment influencing company ethos. Case studies show that regular, clear demonstrations against fraud, alongside sufficient empowerment and resources, such as budget, personnel and so on, for responsible departments underscore a comprehensive organisational stance against malpractice. Since 2015, the trend of forming a company with an audit and supervisory committee, mainly

comprising external directors with a role of overseeing management performance of duties, signifies a shift toward enhanced governance.

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

**A.** In 2023, Japan amended the Unfair Competition Prevention Act to reinforce the enforcement against the bribery of foreign public officials, aligning with the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention. Effective from 1 April 2024, the revisions to the Act increase penalties and broaden its scope. For individuals, the penalty for bribing foreign officials escalates from a maximum of five years in prison or a ¥5m fine to up to 10 years or a ¥30m fine. The maximum fine for corporations increased from ¥300m to ¥1bn, marking bribery of foreign officials as one of Japan’s most severely punished economic crimes. Furthermore, the amendments ensure that not only Japanese employees but also foreign employees of Japanese companies engaging in bribery

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*To bolster misconduct prevention, firms are revamping their organisational culture and rolling out comprehensive compliance training, to ensure that employees comply with laws and regulations.*

abroad are punishable. Under the dual punishment provision, a corporation to which the employee belongs could be subject to fines up to ¥1bn, regardless of the employee's nationality.

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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?**

**A.** Responding to suspicions of fraud involves three critical stages: the initial response, a detailed investigation, and implementing preventive measures to avoid recurrence. Initially, a dedicated internal team, supplemented by external assistance when necessary, gathers facts, conducts a preliminary inquiry, communicates with customers and regulatory bodies, assesses the need for public disclosure, and secures evidence. This stage is crucial as mishandling can lead to evidence loss and suspicion of a cover-up, causing further damage. Following the initial findings, the scope of a detailed investigation is defined, including document analysis, digital forensics, on-site inspections, interviews and surveys. The investigation aims to



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understand the fraud's specifics, check for similar cases, and uncover root causes. The final phase involves implementing sustainable actions to prevent future fraud, ensuring these measures are regularly monitored and updated as necessary.

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

**A.** To bolster misconduct prevention, firms are revamping their organisational culture and rolling out comprehensive compliance training, to ensure that employees comply with laws and regulations. The spread of online training has made it essential to incorporate real-world fraud case studies and include comprehension checks to improve relatability and effectiveness. However, despite these efforts, various corporate fraud investigation reports have revealed a gap in employees' awareness of internal reporting mechanisms. This highlights the need for not just disseminating information but actively promoting the use of reporting systems by management, fostering a culture where

feedback is encouraged and valued. Lately, companies that receive a high volume of whistleblowing reports are being viewed favourably as evidence of a trusted reporting system. Leading companies are not only improving internal channels but are also introducing external ones, showing that multiple reporting channels can signify an accessible system.

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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?**

**A.** Since the revised Whistleblower Protection Act of 2022, companies with over 300 employees must have systems in place to respond to whistleblowing reports and appoint specific personnel for this task. Despite the Consumer Affairs Agency's efforts to enforce this law, a 2023 survey revealed that less than 20 percent of 27,000 domestic firms have fully complied. Many companies are struggling with the practical application of these systems, despite having them formally in place. In response, innovative measures are emerging to enhance whistleblower

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protections and system effectiveness. Firms are adopting external reporting channels to maintain anonymity, training staff in handling sensitive information, and integrating monitoring by external directors or audit bodies to reduce bias during investigations. Furthermore, to support those who report misconduct, educational initiatives on unfair treatment are expanding, and expert consultations are offered to ensure compliance and system improvement.

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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?**

**A.** In Japanese companies, key fraud and corruption risks in third-party relationships include entertaining public officials, bribing foreign officials during international expansion, and providing illegal incentives to partners. While more firms now vet high-risk third parties like agents and consultants prior to entering a contract, largely relying on publicly available data, such due diligence often

lacks depth and ongoing monitoring. It is advisable for companies to assess the risk of using agents, considering certain factors such as the operating country, business activities and business conduct. For high-risk scenarios, deeper due diligence is recommended, involving local visits, management interviews and stakeholder information gathering, possibly with local expert help.

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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?**

**A.** In Japanese companies, the internal audit department frequently reports directly to the president, emphasising a risk-based approach to optimising limited resources. Audit targets are chosen through risk assessments, considering the operational country, business activities and government interactions, rather than a simple and routine rotation. A thorough understanding of the targets' internal controls and transaction cycles informs the audit procedures, with increased attention to high-risk areas that require



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in-depth and expanded assessments, such as expense claims and contractor selection. In addition to internal audits, implementing a whistleblowing system and employing technology for email monitoring contribute to a comprehensive risk management approach. It is equally important to develop internal audit talent, to ensure staff understand the company's strategic goals and operational context, and to maintain diversity and generational balance within the team. □

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**CORPORATE FRAUD & CORRUPTION**

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