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CORPORATE FRAUD & CORRUPTION

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

UNITED KINGDOM

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Respondents

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Hitesh Patel, a partner with StoneTurn, brings nearly three decades of cross-sector and cross-border experience in uncovering fraud and misconduct, regulatory compliance and litigation support, as well as third-party risk management. He is engaged in assisting multinational organisations in the design and implementation of effective fraud risk management prevention and detection strategies typically involving the application of advanced forensic technology and data analytics. Prior to StoneTurn, he was a partner in the forensic practice at KPMG, where he focused on investigations and compliance. He is a fellow of the ICAEW and formerly a director of the Fraud Advisory Panel in the UK.

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Annabel Kerley, a partner with StoneTurn, has over 18 years' experience in forensic accounting leading international investigations into matters involving fraud, bribery and corruption. Before joining StoneTurn, she was a director in the fraud investigation & dispute services practice at EY. Prior to this, she was with the Financial Conduct Authority, where she led regulatory investigations into market abuse and criminal investigations into insider dealing and misleading statements. Ms Kerley is a chartered accountant, a certified fraud examiner and has completed the Graduate Diploma in Law. She is also the chair of the Private Prosecutors' Association.

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Q. In these turbulent times, 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. Over the past 15 years, key legislation, such as the Fraud Act 2006, Bribery Act 2010 and Criminal Finances Act 2017, have increased the focus of boards and senior executives on taking proactive steps to reduce incidents of fraud and corruption. The scale and pace of change due to the coronavirus (COVID-19) pandemic has injected new fraud and corruption vulnerabilities into business operations due to the rapid shift to digital channels, reduced management proximity and governance. Untested processes have been introduced and internal controls have had to be relaxed to accommodate the 'new hybrid normal'. All of which have served to amplify the risks which have been further exacerbated by fractured supply chains. The growing threat level, as evidenced by the constant drumbeat on the scale of fraud in the UK – £2.5bn in 12 months to November 2021 – have renewed board and senior executive attention on managing reputational, regulatory and financial risks resulting from incidents of fraud and corruption.

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. Ongoing challenges caused by COVID-19 and Brexit are placing significant pressure on already overstretched law enforcement agencies and regulatory bodies. The strain is likely to continue as further crimes are uncovered. Meanwhile, there has been a trend towards strengthening the enforcement of anti-corruption regulations and improving cooperation across jurisdictions. In April 2021, the UK government announced a new sanctions regime specifically targeting corruption. The Global Anti-Corruption Sanctions Regulations 2021 represent a significant extension of the government's sanctioning powers, enabling the prevention of designated persons from entering the UK, and to freeze funds and economic resources of persons and entities involved in serious corruption. The Serious Fraud Office (SFO) has signalled that it will

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continue to prioritise cooperation with its international counterparts in future investigations and enforcement actions. Since 2016, financial institutions in the UK, captured by the Senior Managers and Certification Regime (SM&CR), have had to appoint a whistleblowing champion to make sure there is senior management oversight of the integrity, independence and effectiveness of the firm's arrangements. To build on that initiative, in March 2021 the Financial Conduct Authority (FCA) launched its 'In confidence, with confidence' campaign to encourage those working in financial services to report potential wrongdoing. The campaign reach is broad and extends to individuals outside of the organisations to report potential wrongdoing. It is likely that the acute impact of the pandemic and operational changes, such as remote working, would have played a part in the decision to make the campaign as far reaching as possible.

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. Actions at the outset of an investigation have a significant impact on its eventual outcome. Having a structured plan in place is key to enabling management to respond in a systematic and controlled manner. Without this, the time and effort required to address the issues could be excessive and impact a successful outcome, mitigation of the potential loss and reputational damage, increase the risk of vital information being rendered inadmissible or being lost as well as tipping off the suspects. Some of the key facts that need to be established include clarity on what has happened, the scale of the issue, the timelines involved, value at risk, potential subjects of enquiry, sources of information to be secured and if it is multijurisdictional, as well as whether any third parties may have been impacted or need to be informed. A typical investigation would ordinarily involve document reviews, data analysis, e-discovery, background intelligence gathering on subjects using publicly available information as well as interviews. At the planning stage, it is vital to verify that the business has the relevant skills and capabilities to undertake the investigation in-house or consider the need to seek external specialist forensic support.

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

A. Scrutiny of environmental, social and governance (ESG) issues is growing by company stakeholders, including an increasingly savvy workforce. The significant overlap between ESG issues and financial crime risks is prompting companies to pay more attention to ethical conduct, which includes employee awareness of fraud and potential misconduct. However, employee training is an area in which companies can always do more. Human resource (HR) and compliance functions play a critical role in implementing clear and robust anti-fraud policies and procedures, which must be widely communicated and easily accessible by all relevant personnel. The implementation of anti-fraud policies and procedures is most effective when the company also provides relevant fraud awareness training with tailored case studies to employees on a periodic basis.

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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 whistleblowing landscape has changed significantly in recent years. There has been a global awakening regarding the importance of establishing effective whistleblowing channels available for employees, suppliers and other third parties to raise concerns confidentially. Momentum generated by high-profile campaigns, such as #MeToo and #BLM, and the impact on businesses of employee activism cannot be underestimated. Companies have been driven to re-evaluate their reporting systems and are making tangible changes to the way in which they respond to reports of potential wrongdoing, because employees can air their grievances in public, via social media. There is a greater emphasis placed on companies to foster a 'speak-up' culture and protect whistleblowers. Whistleblowers need to be made aware of what constitutes wrongdoing and how they can raise their concerns in confidence, by the various channels available to them, such as in person, by phone, online or via a mobile application.

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. It is vital that companies take ownership of the risks associated with third parties who are often instrumental to fraud and corruption offences, either committed on behalf of a company or targeted against a company. The risks can vary by geography and sector, transaction type and other factors but the common threats include interference with public tenders, diversion of business assets and business opportunities, bribery, reputational risk and harm and insufficient transparency regarding their attitude to ethical business conduct.

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. Strong governance, an ethical culture and leadership by example are critical components of ensuring that the risk of fraud and corruption, among other corporate misconduct, remains in check. Employees look to those in positions of governance for direction – if the 'tone at the top' upholds ethics and integrity, employees will be more inclined to uphold those same values. To set the right tone, the company should establish a zero-tolerance stance against fraud and corruption across the whole organisation, reinforced by an ethical code of conduct, which all employees must adhere to. Additionally, management can conduct ethical audits to monitor compliance with the code of conduct. ❑

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STONETURN, a global advisory firm, assists companies, their counsel and government agencies on regulatory, risk and compliance issues, investigations and business disputes. The firm serves its clients from offices across the US, the UK, Germany, Brazil, South Africa and Singapore, assisted by a network of senior advisers around the world. StoneTurn's leaders, including partners and alumni of international public accounting and consulting firms, industry and government agencies, opted for a different professional services model. The firm's vision is to create a highly collaborative team of professionals who prefer 'hands-on' client service and focus on forming long-term, trusted relationships.

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