



■ **INDEPTH FEATURE** Reprint March 2022

CORPORATE FRAUD & CORRUPTION

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





GERMANY

StoneTurn

Respondents



JULIA ARBERY

Partner
StoneTurn

+49 175 683 8679

jarbery@stoneturn.com

Julia Arbery has more than 15 years of experience in ethics and compliance. She assists multinational organisations with the development and implementation of effective compliance programmes across global operations ensuring regional divisions meet global corporate compliance and ethics standards. She specialises in the establishment of whistleblower frameworks and investigative protocols that comply with global regulations. She holds an advanced certificate in anti-money laundering from the ICA (in connection with the University of Manchester). In 2019, she co-founded the German Chapter of the Women's White Collar Defense Association (WWCDA) working to promote diversity and advancement for women in white-collar defence.



KRISTOF WABL

Partner
StoneTurn

+49 (0) 69 710 455 457

kwabl@stoneturn.com

Kristof Wabl brings over 15 years of experience advising multinational organisations in the prevention, detection and investigation of white-collar crime. Prior to his work with StoneTurn, he was the head of forensic for PwC in Austria and specialised in advising regulatory agencies and financial institutions on anti-money laundering (AML) and sanctions matters. He began his career with the Federal Ministry of Justice in Austria and is an expert in compliance, forensic investigations and financial crime. In addition to his work with StoneTurn, he leads the task force focused on whistleblowing for the Austrian chapter of Transparency International.

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Q. In these turbulent times, 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. Continuing economic uncertainty and pressure at both a personal and corporate level remains intense due to the coronavirus (COVID-19) pandemic, and the circumstances have lent themselves to a surge in fraud and corruption. During the pandemic, the German government spent billions of euros on providing complimentary lateral flow tests. Dozens of criminal proceedings against operators of COVID-19 test centres are in progress. Another high-profile corruption scandal involves members of the German federal parliament and the procurement of face masks during the pandemic.

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. In Germany, the scope of the criminal offence of money laundering was expanded in March 2021. German companies

are now required to provide detailed information on their ultimate beneficial owners to the German Transparency Register. Additionally, German lawmakers enacted a Supply Chain Due Diligence Act, which will come into force on 1 January 2023. Companies registered in Germany with more than 3000 employees will be obliged to review their supply chains and to enact a supply chain-related compliance management system. The new German government has confirmed that it will readopt fragmentary legal initiatives which comprise both the Corporate Sanctions Act and the Whistleblower Protection Act. Whereas the Corporate Sanctions Act was intended to introduce more severe fines and new guidelines for internal investigations, the Whistleblower Protection Act was supposed to be transposed into German law by 17 December 2021, as required by the underlying European Union (EU) Directive. Under the EU Directive, private and many public sector organisations in EU member states, with more than 250 workers, are now required to establish reporting channels for internal and external stakeholders. Smaller entities have until December 2023 to comply.

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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. Initial actions are crucial to the eventual outcome of an investigation. It is critical that firms have a plan to enable management to respond in a systematic and efficient manner. In the absence of any structured response plan, the amount of time and effort required will be excessive, negatively impacting business activities and increasing the potential losses. In some situations, the firm may only have a few hours to freeze funds which have been illicitly transferred. Furthermore, without clear procedures for handling evidence, there is a risk of vital information being rendered inadmissible and the possibility of inadvertently tipping off a suspect. It is crucial that all suspicions of fraud and corruption are treated seriously, and firms should keep in mind that the problem may be more serious than initially thought. Every effort should be made to obtain as much information as possible to understand what has happened and the extent of the problem. This process may involve document review, data

analysis, e-discovery and interviews. If further investigative work is required, the company should assess whether it has sufficient qualified resources available in house, or if it would be appropriate to engage external professionals.

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. With the growing scrutiny of environmental, social and governance (ESG) issues by company stakeholders, including an increasingly savvy workforce, and the significant overlap between ESG and financial crime risks, companies are paying more attention to employee awareness of fraud and potential misconduct. However, employee training is an area in which companies can always do more. Compliance and HR functions play a critical role by 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



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awareness training to employees. The training should include specific examples of fraud risks for the relevant industry or, better still, case studies tailored to the organisation, thereby helping employees identify potential wrongdoing in the future. However, raising employee awareness does not end on completion of a training programme. Management should reinforce key messages from the training via regular communications to employees.

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 for employees, suppliers and other third parties to raise concerns confidentially. This has, in part, been driven by an endless stream of corporate scandals, as well as operational dislocation caused by the pandemic. Companies have been driven to re-evaluate their reporting systems and are



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making tangible changes to the way in which they respond to reports of potential wrongdoing, aware of the damage to their brand's reputation and knowing they will be judged both in court and on public platforms by their customers, stakeholders, suppliers and employees alike. Companies are placing greater emphasis on fostering a 'speak-up' culture and protecting whistleblowers. Would-be whistleblowers need to understand what constitutes wrongdoing and how they can make a whistleblowing report. Often, companies communicate the channels for raising concerns as part of the employee onboarding process. However, it is even more important that individuals have the confidence to blow the whistle, without fear of reprisal, such as jeopardising their job security or future career progression.

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 often central to fraud and corruption offences, either committed

on behalf of a company or targeted against a company. It is vital that companies take ownership of the risks associated with third parties. Although risks vary by sector, geographical location, transaction type and other factors, common threats include insufficient transparency regarding a third party's policies and processes, bribery of government officials to obtain or retain business, interference with public tenders, diversion of business assets and business opportunities, and reputational risk and harm. Conducting appropriate due diligence is critical to mitigating third party fraud and corruption risks. With the increasingly global business environment, companies are carrying out more robust due diligence procedures.

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. An ethical culture and good governance are critical components to ensure that the risk of fraud and corruption remains in check. Employees look to those in positions of governance for direction – if



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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, which is communicated to the whole organisation and 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. Companies need to have a robust fraud and corruption risk management strategy to deal with the evolving fraud landscape. The board must take ownership and be accountable for anti-fraud activities, challenging management on the identification of fraud risk and the effectiveness of internal controls. □

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JULIA ARBERY Partner
+49 175 683 8679
jarbery@stoneturn.com

KRISTOF WABL Partner
+49 (0) 69 710 455 457
kwabl@stoneturn.com

HITESH PATEL Partner
+44 (0)20 7898 3422
hpatel@stoneturn.com

ANNABEL KERLEY Partner
+44 (0)20 7427 0401
akerley@stoneturn.com

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