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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.





CHINA & HONG KONG

Alvarez & Marsal Disputes and Investigations Limited

Respondents



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Frankie Leung is a managing director with Alvarez & Marsal disputes and investigations in Hong Kong and Shanghai with more than 20 years of experience in forensic and investigative accounting experience. His primary areas of concentration are corporate investigations, Foreign Corrupt Practices Act (FCPA) reviews, compliance framework assessments, and distributor and supplier audit reviews. He has undertaken investigations involving commercial bribery, employee fraud and kickback schemes, financial statements manipulation, management fraud and asset misappropriation, and internal control reviews on behalf of multinationals with business operations in China.



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Chris Fordham is a managing director with Alvarez & Marsal's disputes and investigations team in Hong Kong and China. He brings 30 years of forensic and related accounting experience, specialising in investigations of fraud, bribery and corruption (including US FCPA and UK Bribery Act), financial crime and regulatory issues, including anti-money laundering and sanctions risk consulting, fund flow and asset tracing, cyber response and investigations, as well as litigation support and expert witness services in both criminal and commercial proceedings at court or before arbitration tribunals.

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Q. To what extent have you seen a notable rise in the level of corporate fraud, bribery and corruption uncovered in China & Hong Kong?

A. We are seeing previously concealed fraud, bribery and corruption issues rising to the surface as companies continue to recover from the effects of the pandemic and we expect this trend to continue as we enter the financial reporting season. Authorities in mainland China and Hong Kong have both taken a firm stance on the fight against corruption in recent times, in the process revealing many bribery and corruption cases. We foresee this stance being maintained, especially recognising the increased risks brought about by the pandemic, with cases being revealed over the next few years, which is the typical length of time it takes for these fraudulent issues to come to light.

Q. What enforcement trends to combat fraud and corruption are you seeing in China & Hong Kong? Do you expect any changes to enforcement measures? What penalties do companies face for failure to comply?

A. We are already witnessing a strengthening in enforcement activities in both mainland China and Hong Kong, while the authorities are also considering new regulations to combat emerging threats. Heavier penalties continue to be imposed, with particular emphasis on criminal and individual accountability. Authorities are also encouraging a more proactive stance from companies. For example, in China supplemental corporate compliance framework guidelines had initially been rolled out in Shenzhen and have now been followed by similar guidelines in Shanghai. As with the US Department of Justice's (DOJ's) 2020 guidance on the evaluation of corporate compliance programmes, the new China guidelines may allow for penalty reductions if companies can adequately demonstrate that they have an effective ongoing compliance framework, with periodical monitoring and reviews in place, to minimise fraud risks.

Q. In your opinion, are businesses prepared for upcoming regulatory enforcement trends? What can businesses do to ensure they are well-prepared?

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It is important in the fight against corruption and fraud for companies to get their culture right and find ways to measure and strengthen their ethical culture.

A. Despite the challenging economic times brought about by the pandemic, it is clear that regional regulators are not minded to allow businesses an enforcement reprieve and, if anything, are introducing stronger enforcement measures in response to the perceived risks to protect markets and stakeholders. Consequently, businesses in the region may face a tougher year of regulatory enforcement than they had anticipated and budgeted for. Those companies that realise the importance of proactively implementing effective compliance frameworks, in part due to encouragement from recently issued compliance guidelines, will be in a better place than those that languish behind.

Q. How should companies handle investigations differently during pandemic times or post-pandemic in China & Hong Kong?

A. Business use of mobile chat apps such as WeChat was already on the rise and with the shift toward remote working during and post-pandemic, employees have continued to increase the frequency of their communications through these channels. Companies need to plan and

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consider the challenges of collecting employees' chat data for the purposes of investigations into fraudulent or other unethical behaviour. For example, companies can familiarise themselves with the new methodologies being developed that can capture and import chat data, including images, audio and video files, and display them in near native formats for review, enabling legal teams and investigators to cope better with chat discovery in investigations and compliance assessments.

Q. What role are whistleblowers playing in the fight against corporate fraud and corruption? How important is it to train staff to identify and report potentially fraudulent activity?

A. An effective whistleblower hotline is critical to a corporate compliance programme as it plays an instrumental role in the fight against corporate fraud and corruption by getting first-hand knowledge and evidence of misconduct to assist with investigations. Employees may not be fully aware of what constitutes unethical misconduct, so periodic training on the latest trends and how to report suspected

cases internally through whistleblowing hotlines is necessary. The effectiveness of whistleblowing hotlines heavily depends on whether the company's corporate compliance culture is shaped in a way that encourages whistleblowers to speak up anonymously without fear of retaliation.

Q. What advice can you offer to companies on conducting an internal investigation to follow up on suspicions of fraud or corruption?

A. With any investigation, companies must review and consider all available information or data and immediately prepare an investigative plan. Companies need to ensure all relevant data is secured and preserved in a forensically sound manner. Taking account of the size and complexity of the issues, resources should then be allocated accordingly. Companies can consider engaging experts with the technical know-how early in the process, particularly if the suspected issues may be regulatory violations. Furthermore, companies may not be equipped with forensic technology tools to handle data collection and analysis, risk profiling and

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deep-dive forensic investigations without the help of experts.

Q. What general steps can companies take to proactively prevent corruption and fraud within their organisation?

A. Companies should maintain an effective corporate compliance programme and monitor, measure and assess it continuously to ensure its effectiveness. Companies should also build a strong compliant and ethical culture. This can be challenging in a region where business practices and norms such as ‘*guanxi*’ relationships may blur ethical lines and are subject to abuse by employees. Companies need to take these regional practices into account in their culture-building efforts. As culture influences the behaviours, values and decisions employees make, it is important in the fight against corruption and fraud for companies to get their culture right and find ways to measure and strengthen their ethical culture. □

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