



# Pulling together in complex investigations

The scale and sophistication of corporate fraud and corruption call for a multidisciplinary approach to investigations, say Chris Bailes and Ramin Tabatabai from Control Risks

The threat posed by fraud and corruption to multinational companies is growing as businesses expand into new territories and criminals devise increasingly sophisticated schemes to part organisations from their money or intellectual property.

The expansion of businesses into new and sometimes less-regulated markets and supply chains has left many more exposed to fraud. Without performing sufficient due diligence and properly

investigating new markets, subsidiaries, partners and suppliers, organisations can find themselves unwittingly open to bribery and corruption issues.

The UK's Bribery Act and the more rigorous application of the Foreign Corrupt Practices Act in the United States, as well as higher-profile anticorruption campaigns in many emerging markets, may pose significant financial and reputational risks for companies in the near future. So mistakes cannot be taken lightly.

Closer to home, a relatively new phenomenon is 'social engineering fraud', where members of a criminal gang gain temporary employment with a target company, with the aim of gathering information on the company's systems, culture and key personnel, as well as identifying the 'weak points' in its systems and staff. This information is then used to submit convincing fake invoices or to impersonate senior management members of a company in an attempt to authorise

irregular payments.

Complex computer-based fraud also continues to rise and evolve in complexity. There is a risk of potential disruption to companies as hackers and 'phishers' devise ever-more sophisticated and devious means to gain access to companies' IT systems. Data theft is also a growing threat to companies' reputations and, as the penalties for breaches escalate, bank balances and the corporate 'bottom line' will inevitably suffer.

### The right team and process

So, what effect does this have on professionals involved in investigating and combating fraud? Firstly, the range of professionals called on to assist with fraud and corruption investigations is wider than ever. In addition to the investigators and lawyers involved, a typical large-scale investigation would also involve forensic accountants, asset tracing specialists, data forensic specialists and legal technology professionals.

### “Mistakes cannot be taken lightly”

Not only are fraud investigations becoming more multidisciplinary, they are also becoming ever more multijurisdictional too as expert advice and skills need to be deployed in an even wider range of geographic areas. The role and remit of each of these professional groups is broadening; this is especially true of the lawyers involved in white-collar crime.

Traditionally, the task of lawyers in an investigation was to provide advice on the conduct of a criminal investigation and to secure freezing orders where required. However, lawyers are also increasingly being called upon to take a frontline leadership role in the gathering of evidence too.

The growth of complex (and divergent) privacy and data protection laws around the world means that legal advice is now an essential part of the information-gathering process if evidence is to be lawfully obtained and preserved. In some countries, a court order will need to be

obtained to access information from employees, while others have strict rules on the transfer of data beyond its jurisdiction, with severe penalties for transgression.

Another key asset to lawyers in the context of criminal and regulatory investigations (as well as in litigation) is their growing experience of locating, gathering and preserving evidence through the e-discovery process. The legal professional privilege that is attached to the information that lawyers obtain and handle has to be considered too in the context of disclosure of information to authorities or courts. In addition to the criminal investigation, there are often associated civil claims arising from the circumstances of the fraud and the collation and preparation of evidence.

Finally, if the lawyers involved in an investigation are also the affected company's regular outside legal counsel, they will be able to provide insights into the company's culture and procedures, which can be very helpful in advancing an investigation, particularly when time is of the essence.

The input of the in-house legal team is also very important. It is usually the role of the general counsel (GC) to provide the company's board with the information required in order for it to take properly-informed decisions. These decisions invariably relate to the corporate governance of the company which might arise from an investigation and will also include the GC working with other key leaders (such as the chief compliance and finance officers) to ensure that the lessons learned from an incident are put into practice.

### The common good

In an investigation, the key to ensuring a good outcome is for the respective groups of professionals to work together in a coherent and collaborative way (especially if a rapid response is required), which will, in turn, limit the financial and reputational damage to the client.

For this to be achieved, it is essential that one of the professional stakeholders takes the lead in setting the approach to the investigation and coordinating the activities of the other players. Depending on the context and any pre-existing relationships, this may be the lawyers,

accountants or financial investigators.

An early open dialogue is essential to produce an unambiguous protocol on how the investigation will be tackled and how the responsibilities and tasks will be divided. Professional turf wars can debilitate the progress of an investigation. But, by defining the role of each professional discipline from the outset, determining what the project is realistically intended to achieve and how this goal will be attained, many problems can be averted.

## “Professional turf wars can debilitate the progress of an investigation”

Agreement needs to be drafted in such a way that each of the specialist group considers themselves as full stakeholders in the project rather than just the 'hired help'. Once everybody takes ownership of their part of the process and professional courtesy kicks in, the constituent professionals are more likely to pool their knowledge and ideas for the greater good of the project. By collaborating in this way, the whole process becomes more than the sum of its professional parts. The end result is a better outcome for both the client and the professional advisers involved. <sup>mp</sup>

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