



ROUNDTABLE

KordaMentha

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# CRACKING DOWN ON CORPORATE FRAUD



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# ROUNDTABLE



## CRACKING DOWN ON CORPORATE FRAUD

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For multinational companies, recent regulatory changes have made it even more important to develop internal processes to stamp out bribery. US agencies have ramped up their enforcement of the Foreign Corrupt Practices Act while the UK's new Bribery Act has brought about arguably the toughest anti-corruption regime in the world. Whistleblowing mechanisms and effective investigations are a key part of detecting corruption within an organisation. But prevention is always best, utilising background checks, staff training and a strong governance culture. ►►



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Alex Lipman has nearly 20 years of experience both in private practice and government with a focus on securities litigation, regulation, and corporate governance matters. His practice focuses on defending individuals and organisations in SEC enforcement investigations relating to insider trading, corporate financial irregularities, and securities sales practice. Mr Lipman regularly advises financial institutions about risks of exposure to claims of violations of securities laws in connection with certain lending and structuring transactions.



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Matthew Cowie is counsel in the Corporate Investigations practice in the London office of Skadden. Prior to joining Skadden, Mr Cowie spent 11 years with the Serious Fraud Office. During this time he led the first significant prosecutions of overseas corruption. From 2004 Mr Cowie has worked exclusively on corruption investigations and prosecutions. He successfully brought the first two overseas corruption prosecutions of UK corporates.

**FW:** How would you describe the latest trends in corporate bribery and corruption over the last 12 months or so? Are you seeing a continued increase in white-collar crime?

**Shorrock:** I don't see that there are any major trends in bribery and corruption – it is more of the same as far as that goes. What has changed is the public perception of it and the detection rate. Outside of the bribery and corruption agenda, what is evident from recent cases is that the level of fraud through financial statement manipulation, lack of disclosure to investors and conflicts of interest is rising. One of the overriding features in the last 12 months is that there has been a proportionately greater focus on reducing costs rather than boosting revenues as this has been seen as a more fruitful avenue to increasing profitability. That is not to say that there have not been schemes which have been aimed at winning new business. However, the drive to reduce costs has an inevitable impact on corporates with the resources to prevent and detect bribery and corruption but there is sometimes an undue focus on cases which grab the headlines.

**Oldham:** We are seeing some very interesting situations in these difficult times. In one recent case, a large US bank was proposing to refinance a business and was visiting the prospect's corporate offices on a day when we found the CEO of the prospect company in jail awaiting charges for attempting to bribe his current lender – with cash. And to punctuate the undisclosed event, the CFO of the prospect company told the prospective lender that the CEO was not at the corporate offices that day because he was having Lasik eye surgery. Further investigation revealed that these charges were the result of the CEO allegedly slipping \$10,000 worth of \$100 bills into the briefcase of his current bank officer after a meeting, when the bank officer left the room that they were in. The banker discovered the cash when he returned to the bank and opened his briefcase, then reported the incident to bank security.

**Lipman:** We are seeing a continued increase in the number of bribery and corruption cases as well as a wider geographical dispersion of the origins of those cases. Unfortunately, as economic development moves into new areas and as industries expand in areas already under development, bribery and corruption tend to follow. We are also seeing some cases involving allegations of financial fraud by Chinese companies listed in the United States.

**Fleming:** Bribery and corruption has always been present and will continue to exist. Some opinions see the levels of bribery and corruption spike in good economic times, and others see a rise during downturns. Essentially most of the malfeasant transactions that occur as part of bribery and corruption are opportunistic and therefore exist randomly, so it is very difficult to compare trends to economic situations; however, what we do know is that during lean economic times, people and corporations are more accountable and therefore more circumstances of bribery and corruption are exposed. Some trends that we are seeing for example are trading frauds by brokers or agents using private funds or institutional funds and writing off illegitimate transactions, blaming the global financial crisis. We are seeing a lot of false ID and redemption fraud, with the use of stolen identification or computer generated documents, and fraud and corruption/kickbacks consistently surround procurement. Unfortunately 'white-collar' criminals are still perceived as rogues and in my view do not face the same level of scrutiny as perhaps your garden variety criminal, however their crimes are often more destructive and longer lasting.

## Unfortunately, as economic development moves into new areas and as industries expand in areas already under development, bribery and corruption tend to follow.

ALEX LIPMAN

**Cowie:** There has been an upswing in white-collar crime enforcement in a number of different areas, including insider dealing investigations by the FSA and Civil Recovery actions brought by the SFO. In fact, the SFO has not brought a corporate case through the criminal courts since BAE. When UK Bribery Act cases come on stream, we can expect more criminal prosecutions. In addition, if the Solicitor General's proposal for the introduction of deferred prosecution agreements gains legislative support, there may be an upswing in corporate self reporting.

**Balsanek:** In the United States, enforcement of the Foreign Corrupt Practices Act (FCPA) by the Department of Justice (DOJ) and Securities and Exchange Commission (SEC) has sharply increased in recent years. This has been fuelled by voluntary disclosures and industry wide investigations, including oil and gas, pharmaceuticals, and telecommunications. Today, we also are witnessing a large number of individual prosecutions involving senior directors and managers, which can lead to significant prison sentences. The number of investigations will continue to increase with the new whistleblower provisions of the Dodd-Frank Act, passed by Congress in 2010. Under the Dodd-Frank Act, the DOJ and SEC will pay monetary awards of between 10 and 30 percent of any recovery over \$1m to persons who voluntarily provide the government with original information about violations that lead to successful enforcement actions. The large potential reward could increase incentives for whistleblowers to bypass a company's existing procedures for remedying potential problems.

**FW:** Are multinational companies taking potential FCPA violations seriously enough? To what extent have US regulatory authorities increased their monitoring and enforcement efforts on this front?

**Lipman:** Multinational companies appear to have gotten the message that the US regulators and the Justice Department were intensely focused on FCPA enforcement. The huge fines that the US authorities have obtained in recent years are serving their deterrence purpose well. We see senior management devote significant effort and resources to FCPA compliance. That is not always enough, however, because in a number of foreign jurisdictions, corruption is rampant and often employees find creative new ways to circumvent even the strictest codes of conduct and most intrusive internal monitoring efforts.

**Balsanek:** US enforcement agencies are using more aggressive investigative tactics in FCPA investigations such as undercover ►

officers, informants, search warrants, and wiretaps. With the recent trend of increased monitoring and enforcement efforts by US regulatory authorities, business executives recognise that violations of the FCPA place their business at risk. A greater number of companies are focused on having robust compliance programs that help to prevent and detect any potentially corrupt activity.

**Cowie:** Our recent experience is that companies are taking potential violations very seriously, not least because of the immediate legal risks that enforcement actions bring but also the management distraction, time and effort needed to effectively respond to regulatory interest. The recent upswing in fine levels and the Department of Justice's willingness to tackle whole sectors, as demonstrated by the Panalpina and Johnson & Johnson settlements, should not be underestimated. The SFO is a sophisticated regulator often working in partnership with the DOJ and we believe there would be similar structural focuses here.

**Fleming:** At present the US is investigating at least 70 live cases of possible breach under the FCPA legislation, with many dozens more awaiting investigation. The potency and effect of the Department of Justice in its pursuit of corruption has made the corporate sector very aware of its obligations and duties under the Act, and in turn companies are taking potential violations very seriously. There are too many avenues of reporting and exposure to violations for companies to ignore or be complacent about corruption. In fact the US Department of Justice has increased its pursuit threefold every year for the last 10 years, and there does not seem to be a limit to its increased potency.

**Shorrock:** There are three broad approaches that multinational companies can take to the FCPA. Number one is to bury their head in the sand and accept that if they are investigated and prosecuted for violations then that is a cost of doing business using a simple cost benefit analysis. Secondly, companies can decide to adopt a series of policies and procedures which looks on the surface to do the job but staff are never actually trained and nor is compliance monitored. We have all seen beautifully written policy and procedure manuals which have gathered dust after they have been commissioned. Thirdly, there is a proactive approach which sees the implementation of the policies and procedures. It is an arguable point, but the second option is probably the worst – money is spent and there is no real benefit. Given the increasing cost of FCPA violations multinationals are moving in the right direction but it is only when they have been caught out that they put in place the steps they should have done in the first place. Unfortunately, too many are lingering in the middle ground.

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MATTHEW FLEMING

**FW: The UK's Bribery Act, introduced earlier in 2011, is widely regarded as the toughest regime of its kind in the world. What are the potential implications of this Act for domestic and foreign companies?**

**Balsanek:** There has been an increased focus on anti-corruption programs in response to the passage of the UK Bribery Act and the recent guidance issued by the UK Ministry of Justice. Although the UK Bribery Act is similar to the FCPA, there are significant differences which cannot be ignored. One of the most significant differences is that the Bribery Act extends beyond foreign government officials to include all acts of bribery involving private individuals. In addition, the UK Bribery Act prohibits facilitation payments. As a result, companies need to reevaluate their anti-corruption programs to ensure compliance with the UK Bribery Act.

**Fleming:** The UK Bribery Act is not restricted to bribery or corruption of public bodies or persons and therefore the Act contemplates pursuit of bribery or corruption in any form of business transaction. Here the Act opens up the possibility of investigation on companies that spend lavishly on private clients, who sponsor events and who donate assistance. The Act also includes both sides of the transaction and even the consideration of an act. The four primary offences are far reaching and designed to holistically deter bribery and corruption. First, bribing of another person (giving or offering of any "financial or other advantage" with the intention to induce or reward someone for "performing a relevant function improperly"). Second, receipt of bribes. Third, bribery of foreign public officials intended to influence an official in that capacity and obtain/retain business or secure a business advantage. Finally, failure of commercial organisations to prevent bribery. The fourth offence, perhaps the most far reaching, will likely see the implementation of robust anti-bribery/corruption campaigns and tests throughout UK companies. The greatest implication for affected companies will be cultural change, especially in developing economies.

**Lipman:** The first obvious implication is that this is no longer just a US-related concern; other countries are now also very focused on eradicating bribery and corruption. Often, in the past, Europeans thought that the US was overreaching with aggressive FCPA enforcement – in effect, telling others how to conduct their commercial affairs – and there was some resentment in Europe relating to that. A tough anti-bribery act with a very broad jurisdictional reach coming out of the UK is the clearest indication of a change in that sentiment and a display of an emerging international consensus and political will among the developed countries to tackle corporate corruption and bribery. The second important implication is, of course, the breadth of the Bribery Act, which, among other things, covers commercial bribery in addition to bribery of foreign officials.

**Shorrock:** The implications of the UK Bribery Act have far reaching implications and go beyond the US's FCPA, such as not exempting facilitation payments. It utterly transforms the English law of bribery – it redefines the nature of bribery itself, expressly criminalises the bribery of foreign public officials, creates a new corporate offence by virtue of which companies will become criminally liable if bribes are paid by its employees or agents, widens UK jurisdiction over offences committed abroad in ways which extend the usual bases of legal jurisdictions and increases penalties to a 10 year maximum. Personal liability is certain to be of important effect – an analogous position is that with the

Siemens case where executives had to repay millions of dollars to the company. As many have commented with respect to the decisions taken which led to the current financial crisis, had personal liability been in issue the decisions taken might well have been different, and so it is hoped that the UK Bribery Act will have similar effects. But it is not just the technical provisions of the Act which are important; there also needs to be political will to follow through and implement and police it. Without it, the Act will be seen to have no teeth.

**Cowie:** The Bribery Act certainly promotes the importance of compliance because without effective or adequate compliance procedures, companies will be without a defence to the 'failure to prevent bribery' offence. US companies with a presence in the UK are seeking to tweak already properly functioning compliance regimes, making a few adjustments without too much difficulty. Many British companies have not intentionally raised compliance as a corporate priority and consequently have more work to do in a short period of time.

**FW: To what extent are governments in emerging markets taking steps to tackle perceived problems with corruption in their countries? What legal reforms have been introduced in these jurisdictions?**

**Cowie:** The BRIC countries are a focus right now – Brazil is already a member of the OECD. Following recent legislative reform in both China and Russia in the corruption area, accession is a distinct possibility for both countries. In India the telecoms scandal has seen the judiciary take a greater constitutional role in investigating grand corruption as well as grassroots demands for legislative change and enforcement outcomes.

**Lipman:** The jury is out on whether governments in emerging markets are serious about tackling corruption in their countries or perpetrated by their citizens abroad. The issue is not whether they have anti-corruption laws on the books; FCPA, for example, does not reach payments that are explicitly permitted by the written laws of the host country. But while many countries say they are addressing bribery and corruption – as Russia did this year with the adoption of its own version of the FCPA – the question remains whether these countries are willing, or even capable, of changing the culture of how business is done by their citizens, both at home and abroad. So far, for the most part, their record has been spotty.

**Shorrock:** Historically emerging markets have been associated with business practices where the giving and receiving of gifts is taken as the norm and where, because of the lack of established institutions which have an anti-corruption mandate, corruption is seen as more prevalent. Whilst theft of physical assets and misuse of information tend to be the most common types of fraud, there is no doubt that corruption has a stronger hold in emerging markets. That said, emerging markets are gradually realising that in order to be a player on the world stage there are certain non-negotiables which are a prerequisite, and one of those is a commitment to address corruption. However, it is an interesting point to note that the 'developed' countries are in the grip of one of the worst financial crises in a generation and that the only engine of real growth is coming from emerging markets. This may downgrade corruption in terms of the importance of addressing it.

**Fleming:** We are seeing more effort in emerging markets to at

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MATTHEW COWIE

least start to combat corruption. As examples, Indonesia has a corruption body KPK, India is into its second year of the anti-corruption drive, China has a mandate to prosecute public official corruption, Vietnam has developed legislation specifically for corruption and Papua New Guinea has committed to implementing an independent commission against corruption. Moreover, the sense is that corruption will no longer be tolerated and cultural norms are beginning to change.

**Balsanek:** Many leaders recognise the devastating effect that corruption can have on a country's economy. As a result, a number of countries either recently passed or are considering laws to combat corruption. Earlier this year, Russia passed legislation prohibiting foreign bribery and raising fines for bribery violations. China also recently enacted a new law prohibiting bribery of foreign officials, and is increasing cooperation efforts with the United States. Brazil is considering legislation to increase corruption prosecutions of corporations (individual liability already exists). In India, an anti-corruption law was recently introduced aimed to create an independent anti-corruption body. In addition, global enforcement is increasing, particularly in Europe, Asia, and Latin America.

**FW: In your opinion, what are the crucial aspects of detecting fraud and corruption within an organisation? How important are factors such as whistleblowing mechanisms and carrying out effective internal investigations?**

**Oldham:** The most important element for effectively controlling corporate fraud and corruption internally is establishing a zero tolerance policy, one where any employee suspecting fraud is encouraged to report it to the appropriate persons within the company. This includes making it clear at every level within the organisation who within the organisation the appropriate party is to talk to if someone suspects such malfeasance.

**Fleming:** The crucial aspects are robust systems and controls with avenues of reporting. There needs to be a tone from management that encourages reporting, and follows up with swift and decisive action. A company needs to develop a culture that not only encourages reporting of suspicious activity but also supports and has the courage to investigate objectively. Objectivity is the key to carry out effective internal investigations. Mistakes are made when companies get too close to the investigation and it becomes emotive to the investigator or to the company. The ideal situation is to have a member of the company who has experience ►

in investigation, evidence and procedure that has no ties to the investigation players, conducting the investigation. Unfortunately this is not a luxury most companies have and it is left to HR or in-house counsel, or even the CFO to investigate, therefore losing crucial objectivity needed to undertake an effective investigation. A whistleblowing investigation should be carried out with as much discretion as possible to protect all parties, it is best therefore in these cases to have as much objectivity and segregation of parties as possible.

**Balsanek:** An anti-corruption compliance program is vital to detecting fraud and corruption. A well-designed and robust compliance program should promote an organisational culture that encourages ethical conduct and a commitment to compliance with the law. In order to ensure compliance with the program, a company must monitor and audit the effectiveness of the program on a periodic basis. Mechanisms for reporting compliance concerns to senior management, particularly on an anonymous basis and without fear of retaliation, are also necessary for uncovering any wrongdoing.

**Shorrock:** It goes without saying that you can't detect something if you don't know what you're looking for. Therefore the crucial aspects for detecting fraud start with educating staff about what fraud and corruption are, both in terms of the legal aspects but also how it manifests itself, i.e., looking for behaviours and the tell-tale signs of fraud. This starts from the top of an organisation and should be reinforced by senior management through committing to an anti-fraud programme. Bolted on to this should be a robust risk assessment which identifies where an organisation could be susceptible to fraud and corruption. This enables appropriate policies and procedures to be targeted at specific weak spots. An effective internal audit programme which proactively tests the operation of controls which are designed to address higher risk areas also ensures that everyone is aware that there is effective implementation. But this should never be a substitute for proper training. Given that fraud is usually carried out by individuals who know how the system works and who will therefore seek to find ways around controls, the most effective policemen are staff themselves who can identify red flags in real time. Many frauds are identified by staff members who are actively involved in client facing roles and that is why whistleblowing, either through internal systems or directly to governmental authorities, is so effective in identifying fraud. It is no coincidence that the Dodd-Frank Act provides incentives to external whistleblowers.

**Lipman:** Companies should definitely encourage their employ-

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KRISTY BALSANEK

ees to report violations of law and they should implement procedures aimed at generating and quickly following up on credible whistleblower reports. That said, whistleblowing is not a panacea; there are many false reports by disgruntled employees and the really culpable people, the ones who have good information about wrongdoing, have good reasons to keep quiet. It is more important, in my view, to think through and implement good internal controls and monitoring procedures, including regular and frequent internal audits. In addition, to the extent possible, companies should give consideration to rotating their employees, especially those with oversight over internal controls and monitoring, among countries and within the organisation. Such efforts increase the probability of detection, thereby increasing deterrence.

**Cowie:** Both whistleblowing and internal investigations are after the fact. It is important to focus also on strengthening systems and controls, proactive compliance and audit measures. An ounce of prevention has always been both cheaper and less invasive than a pound of cure.

**FW: What is your general advice to companies that find themselves facing a governmental investigation or dawn raid? Are there any immediate response procedures that should be followed?**

**Fleming:** Companies should assist but resist with good legal advice where possible. A company should have risk strategies and protocols in place to deal with such an issue, and whether that means just having in-house counsel present during such an issue or a full team to assist and negotiate through the raid, it needs a response – otherwise these types of raids will get out of control and become exhausting fishing expeditions. In some circumstances critical sensitive information not subject to a raid may be disclosed without the absolute need for this to occur. Know your rights in all the jurisdictions that you operate in.

**Shorrock:** Plans to deal with governmental investigations or dawn raids should be viewed in a similar light to the way companies plan for disaster recovery. Although it is clearly impossible to cope with every eventuality, there are some key considerations. Firstly, companies should actually have a plan and not respond in an unmeasured, chaotic fashion. The early stages of investigations are often key and lining up advisers who have experience handling these situations is critical. This includes not only the right legal advice but also making sure other advisers such as accountancy, IT and HR professionals can react swiftly. That said, establishing legal privilege for the company and its directors via counsel is a major plank to an effective response. This may involve reviewing insurance policies to ensure that such situations are covered – insurance is a complex and often highly technical area but it is well worth ensuring that costs can be met and controlled. Aside from this, immediate responses should include ensuring there is, as far as possible, a single point of contact so as to control the flow of information, preserving the evidence and making sure that there is no ongoing risk of the same problem arising again.

**Lipman:** That depends on the investigation and the nature of the company. Often, companies can benefit greatly from cooperating with the government's investigation, but that is not always the case. So any response must be tailored to the situation. The only advice that cuts across all situations is that companies under investigation must secure all relevant documents, including all ►►

electronically-stored documents, as quickly as possible. Whatever the problem, companies should be careful not to compound it with allegations of a cover-up or obstruction of justice. To the extent that there are individual employees who have engaged in misconduct, companies must make sure that those employees do not destroy evidence as soon as they learn of an investigation because any such destruction will inure to the detriment of the company.

**Cowie:** Companies should have a dawn raid memorandum from their legal advisers as a standard part of their portfolio of procedures for dealing with external legal risk. The first response should always be – do no harm. There are avenues for immediate legal challenge and we have seen this recently in the Alstom and Tchenguiz cases. You need to have knowledgeable persons on site to supervise the conduct of a search both as to relevance of material seized and to protect legal privilege.

**Balsanek:** In the age of increasing law enforcement, it is advisable for companies to have a plan in place to respond to government investigations, whether in the context of a raid or subpoena. With regard to the government showing up in a raid situation, there should be a chain of command so the relevant persons are notified and outside counsel is brought in as soon as possible. In addition, it is particularly important if a company is subject to an investigation that the company not be reactive to the government, but be proactive by taking remedial measures and in determining the scope of any wrongdoing.

**FW: What are some the key issues that need to be addressed by companies in fraud-related litigation?**

**Shorrock:** The answer here often comes back to five central points. Who is involved? What is the underlying nature of the fraud? Where was it committed (often difficult to assess in an electronic age)? When was it committed – the time span and whether it is ongoing? And finally, how was it committed? This final point usually highlights weaknesses in a company's control environment but it may also answer the first question of who was involved. Fraud is often a result of collusion between two or more parties, whether internal to a company or a combination of internal and external parties. Identifying the extent to which outsiders might be involved is important as it might limit the extent of control which a company can exercise over proceedings. The 'who' question is also crucial in so far as the seniority of the individuals is concerned – a general rule of thumb is that the more senior the personnel, the more serious the implications. A director or senior manager involved in fraud is likely to be far more damaging than a lowly clerk, as it speaks to the very fabric and culture of an organisation. Isolating and ring-fencing senior personnel is often the first step taken in fraud-related litigation.

**Fleming:** Evidence continuity is key. When required it must be shown that assistance and not resistance was offered and there must be a plan to remedy the failing of the past.

**Oldham:** If you are the accuser, make sure you know all the facts before bringing any action against the accused and get all the facts as quickly as possible if you are the one being accused.

**Lipman:** Issues vary by case but the one constant concern is an ability to learn facts quickly and have confidence that what you have learned is the truth. As to that, evidence preservation and

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ED SHORROCK

a timely effort to learn the facts before evidence disappears and memories fade, or reliance on memory loss can become plausible, are key.

**FW: Is there a rising demand for asset tracing and recovery in corporate fraud-related cases? How difficult is it to accurately trace the movement of cash in these situations?**

**Oldham:** In the business of corporate finance, asset tracing and location is a customary procedure in a workout, restructure, bankruptcy or collection action so as to determine if assets have been transferred from a collateral base to another entity or converted to cash, and/or moved off the balance sheet in some other way, to the detriment of the lender.

**Lipman:** We do not encounter too many significant asset-tracing concerns; they are not all that common when dealing with companies of substantial size. As to the tracing itself, it is becoming easier and there are many very capable investigative firms that can be very effective in the hardest cases.

**Fleming:** Everyone wants to know where the money went and if they can get it back. Asset tracing becomes difficult across borders and when the assets have been dissolved or broken up.

**Shorrock:** The reason for rising demand for asset tracing and recovery is that companies (and prosecutors) are keener to recover stolen funds, especially in the current financial climate. This chimes with the US approach to financial crime where there is not only an interest in 'getting their man' but also depriving the culprits of the fruits of their crime. There are echoes of the shift in the anti-money laundering world where there was a realisation that putting criminals behind bars was only half the job – if they retained the money they still benefitted. Civil claims for the return of assets are on the increase. That said, the international nature of business means that recovery has become a more complex job as different jurisdictions' legal systems need to be navigated in order to mount a claim and succeed. It goes without saying that tracing cash in fraud investigations does pose a headache – wire transfers and bank accounts provide more fertile evidence.

**FW: In terms of preventative measures, what overarching strategies can companies adopt to mitigate instances of fraud and corruption occurring within their walls? Are background checks, staff training and creating a culture of governance paramount?**



**Balsanek:** It is particularly important that companies create an anti-corruption culture internally through strong compliance measures. In order to ensure that the compliance program is designed and implemented to reduce the risks of improper conduct, a company should periodically conduct risk assessments. A strong compliance policy should, among other aspects, include internal control procedures and policies governing gifts, hospitality, and travel expenditures and due diligence over third parties, joint ventures, and mergers and acquisitions. Companies also must provide both online and face-to-face training as well as obtain annual compliance certifications in order that employees understand company policy and procedures in their day-to-day operations.

**Cowie:** Actions such as background checks, staff training and creating a governance culture are important in themselves but they will be far more effective if implemented as part of a planned and fully implemented risk assessment. It is surprising to see companies that have been the subject of regulatory interest either having problems elsewhere in the business or not reacting when they observe others in trouble with regulators.

**Oldham:** Creating a culture of zero tolerance, top down, is the most important factor in preventing internal fraud. Training is paramount as well, and it should be consistent and often, covering all aspects of fraud and corruption. Employees should be encouraged and be made to feel comfortable in coming forward if they suspect fraud, theft or corruption. A majority of internal frauds are discovered by employees that suspect something and come to management with their suspicion. This is an undeniable truth.

**Shorrock:** The first strategy to have in place is to conduct a risk assessment of fraud in the business. Some businesses are inherently riskier than others – the usual suspects apply here such as the arms industry, government contracts, cash based businesses and those industries where there is a reliance on agents to conduct business. Whilst it is not possible to mitigate all risk, the first step is to recognise that there are risks and then prioritise them. However, where most businesses fall down is how they manage the risk – most people can come up with a list of generic risks, but then fail to adequately manage them. Background checks and staff training flow from this approach but without a governance and control culture (which doesn't overly inhibit the conduct of business) then detailed procedures are likely to have minimal impact.

**Fleming:** Prevention is always better than cure, however companies must be prepared to respond.

**Lipman:** Training and fostering a culture of compliance and good governance are very important. Corrupt organisations tend to be corrupt thoroughly because, typically, it takes a number of people acting together to circumvent internal controls or implement any other type of a fraudulent scheme. That is more difficult to do in a company in which an ethos of honesty prevails, such that any dishonest employees could expect to be socially ostracised in addition to being fired.

**FW: Looking ahead, what types of corporate wrongdoing do you expect to remain prevalent within companies?**

**Lipman:** We have not seen many large financial fraud cases recently. Given the state of the world economy, that is a bit surprising; there is more incentive to commit fraud to make your numbers during tough economic times. I think we are overdue.

**Shorrock:** Each generation of business leaders and managers tends to believe that fraud and other forms of corporate wrongdoing are more widespread these days than in the past. I just think the mix changes over time. We will always see low level fraud and corruption – stealing stock and paying off an official to get something done for a few hundred dollars – and that won't change. The one disturbing feature I see being far more common is that the sheer scale of some of the frauds is becoming ever larger – Madoff, the Siemens case, the UBS rogue trader incident to name but a few – and the fact that one or two individuals are capable of carrying out such acts. Coupled with that is the greater international dimension to corporate wrongdoing and its capacity to undermine not only the immediate bystanders but people spread across the globe. An interesting question is whether there will be an attempt to label the current financial crisis as an example of collective corporate wrongdoing – even if they do, it is unlikely anyone will be made to put their hands in their pocket, except taxpayers.

**Oldham:** It is hard to predict the future, but one thing is certain: we should always expect some desperate people in difficult situations to attempt to do desperate things. I like the saying "everything old becomes new again – only the methods change".

**Fleming:** As the world gets more materialistic, people will continue to take the risk and the opportunity to commit fraud. We are seeing fraud committed to hide errors in trade, habits and addictions or just opportunistic people seizing a chance. This includes trading fraud, front running, ghost companies/employees and identity theft.

**Cowie:** In the fraud area, because of the recession and the number of distressed companies, I would anticipate more insolvency offences if not fraud committed against banks and other lenders. Equally, the pressures to either gain business or retain market share will continue to be a cause of corporate corruption for corporate gain.

**Balsanek:** Companies face a multitude of corporate wrongdoing in today's environment. Such conduct will likely continue to include fraud and corruption related cases, particularly as the ongoing downturn of the global economy imposes additional pressures on firms. With the ever-increasing enforcement focus in these areas, companies will need to strengthen their commitment to compliance and maintain robust compliance programs to deter such wrongdoing. ■

**Employees should be encouraged and be made to feel comfortable in coming forward if they suspect fraud, theft or corruption.**

JERRY OLDHAM