



■ ANNUAL REVIEW Reprint May 2020

Corporate fraud & corruption

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





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Gwynn Hopkins founded Perun Consultants in 2017 after spending more than 20 years working between Hong Kong, the Cayman Islands, the British Virgin Islands and the UK. Who's Who Legal: Consulting Experts recognised Mr Hopkins in the fields of both forensic accounting and quantum of damages. He has worked as an insolvency practitioner and forensic accountant on a wide range of local and cross-border engagements. He has extensive experience in forensic accounting assignments, including asset-tracing engagements, due diligence investigations, the preparation of valuation reports, and the liquidation and restructuring of companies involving complex litigation or with contentious matters to resolve.

Hong Kong ■

■ **Q. To what extent are boards and senior executives in Hong Kong taking proactive steps to reduce incidences of fraud and corruption from surfacing within their company?**

HOPKINS: Recent challenges across the region have led to a slowdown in economic growth which has created additional problems for multinational corporations (MNCs) operating in the area. In addition, more than 60 percent of organisations in China said they experienced fraud and corruption in the past two years, and senior management have increased spending on combatting fraud and economic crime by using advanced technologies and data analytics tools. In China and Hong Kong, setting up employee reporting systems, expanding existing whistleblower programmes and taking steps to keep senior management in the loop are among the most proactive steps taken by companies. At the same time, many companies not only implement and enhance policies and guidelines relevant to anti-fraud and corruption and other procedures for business units in preventing fraud during normal operations, but they also provide regular fraud awareness training to employees.

■ **Q. Have there been any significant legal and regulatory developments relevant to corporate fraud and corruption in Hong Kong over the past 12-18 months?**

HOPKINS: The legal and regulatory landscape in China is unique and ever-changing. New and evolving laws and regulations require careful navigation, particularly considering the risk of enforcement actions from a range of Chinese regulators in the current volatile geopolitical environment. MNCs in Greater China must comply with rapidly developing local rules relating to corruption, cyber security and trade, as well as manage risks relating to international laws such as the Foreign Corrupt Practices Act (FCPA), UK Bribery Act or the General Data Protection Regulation (GDPR). On 1 June 2019, China's Supreme People's Court issued a new guideline making it more difficult for people convicted of corruption-related crimes to get parole or a reduction of their sentence. In Hong Kong, the Independent Commission Against Corruption (ICAC) and the Securities and Futures Commission (SFC) entered into a Memorandum of Understanding on 19 August 2019, which sets out the framework for cooperation and collaboration between the two agencies, covering a wide range of matters including case referrals, joint investigations, exchange and use of information, the mutual provision of investigative assistance, as well as capacity building.

■ **Q. When suspicions of fraud or corruption arise within a firm, what steps should be taken to evaluate and resolve the potential problem?**

HOPKINS: When facing a potential fraud or corruption concern, independent non-executive

directors of companies should consider forming a special board committee to review the matter, in conjunction with legal counsel, and decide if the company should carry out an independent investigation through an external party. If there is an internal legal and compliance team in the company, the special committee should direct it to investigate the potential fraud to understand what the concerns are and where they come from. It is important to identify and address the affected business areas. Common issues are typically encountered in sales, procurement, expenses reimbursements, and cash and bank account management. If fraud concerns are raised by a whistleblower and reported to senior management, the senior management and compliance team should try to communicate with the whistleblower with suitable protection to further understand the issues, and identify any supporting evidence as soon as possible before any substantive damage is done or misconduct becomes public. They will also typically conduct interviews with key process owners and related individuals in the presence of legal counsel and human resource personnel. The process will include a review of financial books and records, electronic documents and other relevant documents to gather supporting evidence, evaluate potential losses and liaise with legal counsel to discuss document preservation requirements.

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

HOPKINS: In Hong Kong, financial crime compliance training is presented and delivered by compliance officers inside financial institutions



or with the assistance of external consultants as needed. Employees from senior management and back office staff are required to attend the training to understand the latest regulatory requirements. Also, more MNCs in China have been setting up local reporting compliance hotlines for employees to report potential fraud and misconduct. Proper training, incentives and protection for whistleblowers have also become more common to encourage employees to report improper behaviour.

■ **Q. How has the renewed focus on encouraging and protecting whistleblowers changed the way companies manage and respond to reports of potential wrongdoing?**

HOPKINS: An effective programme, one which incorporates whistleblower hotlines and which provides suitable protection for the whistleblower, enables companies to manage risks through handling reported undesirable behaviour and fraud concerns. It also further helps senior management to detect and rapidly resolve emerging issues. It is very important that whistleblowing reporting programmes are properly designed and communicated to be effective. Companies should conduct assessments to review the design and operation to establish a robust ‘speak up’ culture, including governance, training and technology. In many Chinese companies, even when employees are aware of compliance hotline availability, they are still not comfortable making anonymous reports. Beyond the need to maintain personal reputation or ‘save face’, there may also be more concerns about whether the hotlines have appropriate language options, whether the hotlines are staffed by

independent personnel and whether the reports will be handled confidentially.

■ **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?**

HOPKINS: As many companies rely heavily on third parties when doing business in China, a significant area of compliance risk is the use of dealers, distributors, agents and subcontractors. Third-party risk has increased in recent years due to enhanced scrutiny from a range of enforcement agencies. Issues are increasingly being brought to light by external factors, such as police arrests and tax authority investigations. Companies have less control over the conduct of third parties than that of their own employees. The proliferation of third-party arrangements and the evolving third-party landscape add to the challenge. Many Chinese companies start conducting third-party due diligence when forming a new business relationship, especially in those high-risk sectors.

■ **Q. What advice can you offer to companies on implementing and maintaining a robust fraud and corruption risk management process, with appropriate internal controls?**

HOPKINS: Companies are looking for ways to manage costs, while facing evolving compliance risks. Compliance controls and monitoring efforts often fail to keep up with the pace of change. Many companies are still addressing fraud prevention by using a reactive, defensive approach, and have failed to perform or update



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risk assessments in the last two years. The starting point for developing processes and controls to manage bribery and corruption risks should be conducting regular risk assessments. Companies should consider conducting a fraud health check, which is an evaluation aimed at proactively identifying and addressing an organisation’s vulnerability to fraud and corruption. This usually starts with the identification and prioritisation of risks in the industry and areas in which the organisation operates. In addition, companies could consider performing third-party compliance

assessments to identify and mitigate third-party non-compliance risks, performing whistleblower programme assessments to evaluate whether their programme supports a ‘speak up’ culture, performing an internal audit on the fraud risk management framework to assess the effectiveness of detecting and preventing fraud, and conducting thorough due diligence and continuous monitoring throughout the third-party lifecycle to mitigate the potential negative impact brought by exposure to such third parties. ■

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Perun Consultants is a boutique firm, with offices in Hong Kong and Singapore, which specialises in providing high-quality services in the areas of forensic accounting, corporate advisory, restructuring, turnaround and liquidation appointments. The firm’s multifaceted team of certified public accountants and finance professionals has the flexibility and institutional knowledge to take on a range of assignments and appointments as diverse as its clients and the industries in which they operate.

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