



■ **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.





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Respondents



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Karl Payeur has a wide range of experience in forensic investigation, compliance, regulatory, financial crime and forensic technology. He has led large corruption and fraud investigations for international corporations involving evidence gathering and analysis, complex data and analytics, and interviews. Over the years, he has been involved with helping French lawyers and their clients collect, process and analyse a significant volume of data for internal investigations or in response to regulatory requests with allegations of wrongdoing. He has also served as an expert witness on litigation and commercial dispute matters related to damages assessments.



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Cyril Naudin assists French and international companies and their counsel on strategic forensic and compliance topics. He leads regulatory and internal investigations in France and abroad, mainly dealing with allegations of fraud, bribery and corruption. He assists companies in the assessment or implementation of their compliance programme, mainly in the context of Sapin II and ISO 37001 requirements. He also provides clients with additional compliance expertise including corporate intelligence services, compliance audit and anti-bribery and anti-corruption due diligence in M&A. He assists organisations during investigations carried out by the French anti-corruption agency.

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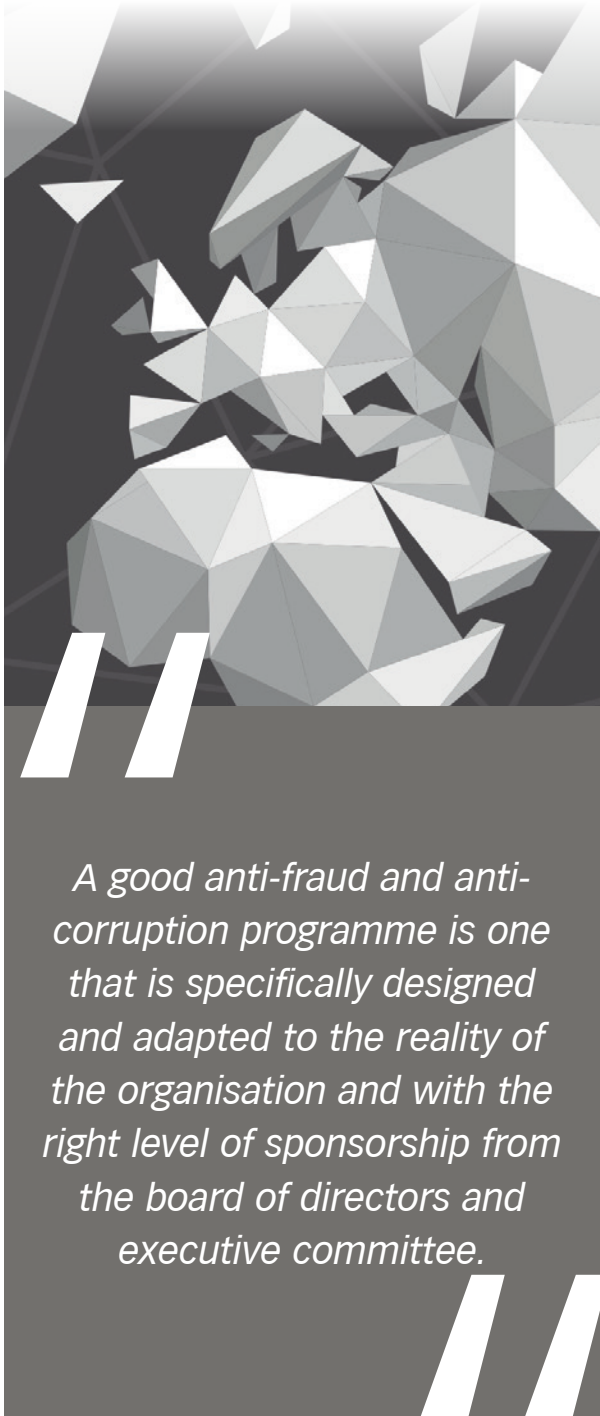
Q. To what extent are boards and senior executives in France taking proactive steps to reduce incidences of fraud and corruption from surfacing within their company?

A. In recent years, regulatory developments in France and Europe have led many boards and senior executives to adopt a proactive approach to fraud and corruption risk within their companies. Since the adoption of the French anti-corruption Sapin II Act in 2016, companies falling within the scope of the act are required to perform a detailed and regular corruption risk assessment. As the law requires companies to assess corruption risk, they often integrate fraud risk into their risk-mapping exercises to address these in a global, comprehensive, proactive manner. Boards and senior executives are usually involved in conducting these exercises. They validate the result of the risk assessment and outline the roadmap which serves as the basis for implementing or adjusting the company's anti-fraud and anti-corruption programme.

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

A. Since the adoption of Sapin II, companies with at least 500 employees and whose turnover or consolidated turnover exceeds €100m are required to implement a programme to prevent and detect corruption. In this context, a public anti-corruption agency has been created: the Agence Française Anticorruption (AFA). The main role of the agency is to assess if companies' anti-corruption programmes have been correctly implemented. The AFA also issues recommendations to help companies understand the expectations placed upon them and build an effective programme. Over the last 18 months, the AFA has published many recommendations for implementing a global anti-corruption programme. On 16 February 2022, the French parliament voted to transpose the whistleblowing European Directive 2019/1937 into national legislation with two new laws that came into force in March 2022.

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A good anti-fraud and anti-corruption programme is one that is specifically designed and adapted to the reality of the organisation and with the right level of sponsorship from the board of directors and executive committee.

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

A. When suspicions of fraud or corruption arise within a company, it is important to assess whether an internal investigation is required and, if so, to what extent. The investigation will attempt to shed light on the situation, the allegations, the risks and the responsibilities. In those circumstances, certain questions should be raised: Who will investigate? Who are the stakeholders? What is the scope of the investigation? What expertise is needed to perform the investigation? Should the investigation be placed under legal privilege? Is there any risk of data or evidence destruction? Do security measures need to be put in place urgently? It is crucial for the company to correctly assess the situation once any suspicions arise and to take the time to organise the investigation so that appropriate actions can be executed.

Q. Do you believe companies are paying enough attention to employee awareness,

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A. Since 2016 and the adoption of Sapin II, employee awareness of corruption has increased significantly. In that context, and with the emergence of various #MeToo scandals, many public and private organisations have taken the opportunity to increase employee awareness of broader risks such as fraud, misconduct, antitrust, harassment and so on. On-site training is available to managers and staff who are most exposed to those risks. In most cases, other employees undergo training through e-learning. Over the past few years, there has been an increase in allegations raised through different whistleblowing systems, however identifying and reporting misconduct is still a sensitive topic in France. Broader and consistent training is required to improve employee awareness at every level.

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

A. Since the adoption of the French Sapin II Act in 2016 and the transposition of the whistleblowing European Directive 2019/1937 into national legislation, France has demonstrated its willingness to go beyond the obligations imposed by the European Directive and reinforce its existing whistleblowing protection status. While it is still too early to comment on the effectiveness of these new measures, French companies are taking the need to manage and respond to reports of potential wrongdoing seriously and have invested in building and organising internal teams to manage the increased volume of whistleblowing reports.

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. Companies regularly partner with third parties, such as agents, intermediaries, consultants, distributors, subcontractors and so on, as part of their operations, to expand internationally or benefit from dedicated expertise. Third parties

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represent one of the greatest risks from a corruption and bribery perspective. The actions undertaken by these third parties could put a company at risk if they are not in compliance with local or international anti-corruption regulations. In addition, this can lead to enforcement and legal actions led by authorities, significant costs and fines, and serious reputation damage to organisations. Sapin II requires companies to conduct due diligence on their third parties to enter or maintain a business relationship. From our experience, although companies are more systematically including due diligence procedures as part of their processes, they are often limited to public source searches in databases which are not always sufficiently adapted to the profile of risks associated with these third parties.

A. It is critical to continuously evaluate and improve fraud and corruption risk management processes and relevant internal controls. Too often companies believe that once these are implemented, they can turn their attention to the next urgent issue. Fraud and corruption risks continuously evolve as new ways of circumventing controls are identified by those individuals responsible for defrauding companies, as well as when companies expand into new markets, new offerings or new ventures through acquisitions. A good anti-fraud and anti-corruption programme is one that is specifically designed and adapted to the reality of the organisation and with the right level of sponsorship from the board of directors and executive committee. □

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



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