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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 and corruption.





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Stephen Crowe is a managing director based in Dubai. Leading the forensic and investigative services for Nardello & Co's Middle East and North Africa region, he has over 30 years' experience in complex and sensitive engagements, including Foreign Corrupt Practices Act (FCPA) and fraud investigations, integrity due diligence, data analysis and visualisation assignments, fraud risk assessments, and ethics and corporate governance programmes. He has worked in the Middle East since 2010 and has over 10 years of 'Big Four' forensic experience in the Middle East and Southeast Asia.

United Arab Emirates ■

■ **Q. To what extent have you seen a notable rise in the level of corporate fraud, bribery and corruption uncovered in the UAE in recent years?**

CROWE: A few years ago, words such as fraud, bribery and corruption were not openly discussed in the boardrooms and C-suites of Middle East companies. The increase in these types of offences in the region in recent years perhaps runs parallel to the progressive elevation of these topics globally. Local and regional governments, as well as companies, are looking internationally for investments or partners, which themselves are required to demonstrate their network compliance with conventions such as the US Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act. This, in combination with enhancements to penal codes and regulatory provisions, has placed a spotlight on fraud, bribery and corruption risks generally in the region, and has translated to a rise in discoveries.

■ **Q. Have there been any legal and regulatory changes implemented in the UAE designed to combat fraud and corruption? What penalties do companies face for failure to comply?**

CROWE: The UAE has implemented a number of recent legislative changes, including a new anti-corruption law which covers foreign and domestic bribery in both the public and private sectors, and also applies outside UAE territory. It is applicable where the criminal or victim is a UAE citizen, or if the crime is committed by a public or private sector employee, or if it involves public property. Amendments were also made to the penalty provisions in the UAE 1987 Penal Code which increased punishments for bribery and corruption. Contemporaneously, Dubai formally established the Financial Audit Authority (FAA), which has the role of detecting illegal activities related to public funds and investigating reports of embezzlement, corruption, illegal use of official documents and tax evasion. The FAA's powers include having the authority to enter into international agreements in collaborative efforts to combat the flow of illicit funds. The FAA targets both private and publicly owned companies. Further, the UAE has just enacted a new anti-money laundering (AML) law in response to the codified 2012 recommendations of the Financial Action Task Force (FATF).

■ **Q. In your opinion, do regulators in the UAE have sufficient resources to enforce the law in this area? Are they making inroads?**

CROWE: The UAE has been very active in continuing to build a robust regulatory framework at both the federal and local level. This includes the UAE Central Bank which houses the Financial Intelligence Unit (FIU) that investigates reports of suspected illicit financial activity in the UAE, the Securities and Commodities Authority that regulates the

UAE capital market and the FAA in Dubai. Additionally, there are industry and zone-based regulatory frameworks which overlap and complement one another, such as the Dubai Financial Services Authority (DFSA), which regulates financial services housed within the Dubai International Financial Centre (DIFC) free zone and the Financial Services Regulatory Authority (FSRA), which performs a similar function in the Abu Dhabi Global Market (ADGM).

■ **Q. If a company finds itself subject to a government investigation or dawn raid, how should it respond?**

CROWE: The immediacy of a 'dawn raid' on a business would typically involve the seizure of documents and computer equipment, and potentially the questioning or arrest of company personnel. The initial response is to ensure that an appropriately approved company representative is present and provided with the applicable warrant or instrument under which the raid is being conducted. Additionally, that company representative should be properly advised as to the purpose of the raid and appropriate legal advice should be obtained. In the event that the company is subject to a government investigation, making a formal request to the relevant agency would typically be advisable. In most cases, the company would have some indication as to the topic of investigation, which may already be subject to internal measures. Any ongoing activities must be considered in terms of whether such activities should be disclosed to the agency, or whether they could later be construed as being obstructive to the government investigation.



■ **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?**

CROWE: As is evidenced through surveys, such as the ACFE 2018 Global Study on Occupational Fraud and Abuse, most initial reports of fraud are made through a whistleblower or other interested party. It is critical that organisations provide employees with mechanisms to report such matters within the company, so that leadership can be made aware and deal with them swiftly and decisively through internal controls. A common mistake companies make is to focus reporting on the whistleblowing mechanism, rather than reinforcing the central employee obligation of reporting. Promoting confidence in reporting through normal management channels is important. An internal communication and awareness programme that educates employees on what to report, how to report it and what protections are provided is critical. Additionally, high risk roles and functions should be subject to specific training to address identified vulnerabilities and promote the ‘four eyes’ principle where needed, and again promote the reporting or escalation of matters that raise red flags.

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

CROWE: Quick, informed and decisive action is important. The company should have a defined detection and response strategy

that includes the responsibility points on the reporting, assessment, and subsequent escalation of allegations of serious misconduct to an investigation. Part of the assessment is in determining whether the matter could or should be conducted as a purely internal investigation, whether an external and independent investigation is merited, and whether that needs to be done under legal privilege. Other considerations would include whether there are external or regulatory reporting obligations, the potential involvement of external persons, legal implications to customers or partners, and, importantly, whether the company has the requisite internal skills, tools and knowledge to investigate and report on the matter at hand. It is also important to assess whether the alleged activities are contained, completed or ongoing, whether the offenders are likely aware that the matter is reported, what immediate actions may be required to cease or reduce harm and what needs to be preserved to facilitate best-evidence fact finding.

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

CROWE: The cornerstones to prevention are properly articulated positions on integrity, accountability and transparency within the company core values and code of business conduct. These principles then need to flow down through the business in its policies and procedures, whistleblower protection and business instruments to customers and suppliers. It is also important to have someone inside the business who is responsible for the design and delivery of ethics training and awareness programmes, including reinforcement



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of employees’ obligation to report matters of concern or observations of misconduct to either their line supervisor, or to an established whistleblower mechanism. Other employee obligations would include annual acknowledgement of the code of conduct. Separately, conducting a fraud and corruption risk assessment would highlight specific vulnerability points that the business can address to reduce opportunities for high-risk scenarios eventuating. ■

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Nardello & Co is a recognised leader in the global investigative sector. With offices in New York, London, Washington DC, Atlanta, Hong Kong, Tokyo, Milan and Dubai, Nardello & Co is a global investigations firm with experienced professionals handling a broad range of issues including the FCPA/UK Bribery Act and other corruption-related investigations, civil and white-collar criminal litigation support, asset tracing, strategic intelligence and political risk assessment, computer forensics and reputational due diligence.

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