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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.





China & Hong Kong ■

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Mavis Tan is a senior partner at Control Risks, based in Hong Kong. She leads Control Risks' forensics practice for Greater China and North Asia. She has specialised in forensic accounting, litigation support and insolvency for more than 15 years, and has extensive experience in leading high-profile and confidential investigations in the Asia-Pacific region. She has also managed hundreds of company liquidations, restructurings and receiverships. Ms Tan's clients include high net worth individuals and listed multinational companies and she has assisted them in responding to complex financial disputes and whistleblower allegations of fraud and corruption.

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

TAN: In the past two years, we have seen a steady increase in corporate fraud cases, both among multinational companies (MNCs) and private Chinese companies. Slower economic growth is likely a contributing factor, causing more people to resort to illicit means to generate more income. Also, thanks to the increasing popularity of social media mobile app WeChat, private peer-to-peer communications and financial transactions are now literally at everyone's fingertips, making white-collar crimes in China harder for companies to detect and pursue than ever before. Moreover, recent fraud cases have become more sophisticated. In one case in 2018, we saw an average salesperson working for an MNC pocket more than US\$250,000 over 12 months by colluding with a state-owned client company to set up an offshore trading company and then manipulating company purchase orders and invoices.



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

TAN: In China, the anti-corruption campaign, started in 2012, is still going strong. From government statistics, 621,000 officials were punished in 2018, up from 527,000 in 2017. In March 2018, China passed the new Supervision Law and established a new anti-corruption regulator: the National Supervisory Commission (NSC). The NSC further institutionalises the government's anti-corruption work. In 2018, we also noticed an increase in anti-bribery enforcement by a range of regulators focusing on the pharmaceutical and medical devices sectors, resulting in more frequent regulatory investigations into potential bribery. Investigations have targeted additional market participants, such as hospital procurement departments and physicians. Penalties include fines for the company and imprisonment for executives. For example, in 2014, a China court fined GlaxoSmithKline (GSK) RMB 3bn – approximately US\$442.5m – and sentenced its legal representative to three years in prison.

This was the first time an MNC in China was found guilty of corporate bribery. Other MNCs that have been punished for corruption in recent years include Nestle, IBM, Pfizer and Morgan Stanley.

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

TAN: Increased rates of enforcement, and by different regulatory agencies, show resources are used effectively. The newly founded NSC has beefed up its efforts against corruption in the public sector, working alongside the Communist Party of China's Central Commission for Discipline Inspection and law enforcement. Moreover, more advanced investigative techniques, including IT forensic imaging, have increasingly been used by Chinese regulators investigating MNCs. However, in the private sector, our experience is that China's law enforcement agencies are rarely interested in pursuing cases of employee misbehaviour. MNCs must thoroughly investigate and present credible evidence before the police will open a case file. So, it is difficult for MNCs to use the threat



of criminal charges to ensure more compliant behaviour.

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

TAN: MNCs in China must be prepared for dawn raid scenarios. In recent years, the risk of regulatory enforcement has increased for many MNCs in China. The aim of a dawn raid is for a regulator to catch you by surprise. Raids are designed to generate anxiety and encourage prompt admissions of wrongdoing. How you respond in those first minutes, hours and days is critical to ensure the right outcome and a quick path to recovery. The top three things companies should do to prepare for a dawn raid are: know your regulators, treat whistleblowers, disgruntled employees and third parties very seriously, and have a response plan in place.

■ **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?**

TAN: According to numerous annual surveys conducted by the Association of Certified Fraud Examiners, a substantial proportion of illegal activity is identified by employees. Our experience demonstrates China is no exception. Encouraging employees to report improper behaviour is in a company's best interest, and incentivising appropriate reporting often allows the company to address the problem before substantive damage is done or misconduct becomes public. In recognising the importance of independent reporting, many MNCs in China are

setting up local hotlines with Chinese-language support to supplement traditional mail and email boxes. MNCs are also conducting periodic face-to-face training using practical scenarios that resonate with local employees. However, just having a process for reporting is not enough. Employees must be encouraged to report suspicions and their reports must be properly handled. This includes having robust processes to triage, prioritise and investigate reports, particularly in the face of rising whistleblower activity in China.

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

TAN: In China, it is very important for MNCs to realise that the traditional linear investigative approach – that starts with a suspicion, leading directly to an internal investigation to gather evidence and make findings support remedial action – is increasingly going wrong, exacerbating financial and reputational damage. The traditional approach fails because it sidesteps some unique features of China's business and legal environment, including general tolerance of conflicts of interest, a culture of trading favours, labour laws that strongly favour employees, high thresholds for intervention by the authorities, and the need to maintain personal reputation or save face. So, rather than taking a linear approach, MNCs should use a recovery-led approach to internal investigations. A recovery-led approach should focus on business continuity, take account of the unique challenges in China and add a few critical steps to the linear equation. These steps include scenario planning before conducting



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the investigation, conducting external enquiries concurrent with the internal investigation and assessing risk before confronting the subject.

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

TAN: Enforcement agencies around the globe, including in China, continuously stress the importance of companies having strong compliance programmes as a starting point. Companies should therefore continually assess whether their compliance programmes – both global and local – demonstrate best practice, including strong tone from the top, clear,

practical and accessible policies, designated compliance responsibility and oversight, effective communications and training, periodic fraud and corruption risk assessment and testing, confidential reporting, robust investigations and remediation. We see MNCs in China, particularly those operating in high-risk sectors, such as pharmaceuticals and medical devices, increasingly investing in proactive compliance monitoring activities, including comprehensive third-party due diligence programmes, partner audits and leveraging data analytics for real-time expense monitoring. ■

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