

Fraud checklist

In times of crisis, incidences of fraud invariably increase. The current crisis and the inevitable recession will sadly be no exception. It is therefore imperative for firms to be vigilant to mitigate fraud risks.

Dentons has prepared a simple checklist of matters that firms should consider when evaluating their fraud prevention controls.

Systems and controls to identify fraud

FRAUD RISK ASSESSMENT:

Does the business have in place a regularly updated fraud risk assessment to identify the specific risks to which the business is susceptible?

Has the business designed control mechanisms to mitigate identified risks?

CODE OF CONDUCT/ETHICS POLICY:

Has the company set a strong "tone from the top" by way of a formal ethics policy or code of conduct?

Has management taken steps to emphasise the company's values of honesty and integrity notwithstanding the difficult economic climate?

GOVERNANCE:

Does the company's internal governance address fraud risk?

Does the company stress-test its fraud assurance processes?

Is fraud a standing item on the agenda for board meetings, or the audit and risk committees?

Is senior management provided with meaningful and digestible management information on fraud risks?

EMPLOYEES:

Are employees subject to any form of screening or due diligence upon recruitment?

Are relevant staff trained in spotting and preventing fraud?

THIRD PARTIES:

Does the business address fraud risk relating to customers or suppliers?

Has due diligence been undertaken on third parties in the supply chain?

Does the business ensure that third parties such as customers or suppliers are able to raise concerns over the conduct of company employees or representatives where appropriate?

Whistleblowing

Does the business have whistleblowing procedures?

Does the business understand its legal obligations to support employees who wish to make whistleblowing disclosures?

Whistleblowing arrangements may vary from country to country and our comparative guide to whistleblowing regimes internationally is available at <https://www.whistleblowerguidelines.com/>

Fraud response plan

Does the business have in place a fraud response plan which sets out clearly the procedures to be followed when a fraud occurs?

It is often necessary to act quickly upon discovery of a fraud. For example, it may be necessary to lock down payment systems or take urgent steps to recover payments previously made. Our comparative guide to the options available when obtaining urgent freezing orders and other forms of injunctive relief from courts internationally is available at <https://www.globalinjunctions.com/>

Does the fraud response plan set out:

- the formation of the investigation team;
- the steps to be taken to preserve evidence, both electronic and hard copy, which might be relevant in identifying wrongdoers within the business;
- whether staff can and should be suspended;
- the extent to which matters should be reported to law enforcement/regulators;
- how to undertake witness interviews?

Retain external legal counsel, where appropriate, so that the investigation might be conducted with the benefit of legal professional privilege, with the effect that findings which might otherwise need to be disclosed in future legal or regulatory proceedings may remain confidential.

Further discussion of the law relating to privilege in internal investigations can be found at <https://www.dentons.com/en/insights/articles/2019/february/27/appeal-court-upholds-privilege>

Insurance

Does the business carry insurance that might respond to losses caused by employee fraud?

If so, consider the notification obligations applicable under the policy. These will often require that matters are brought to the insurer's attention as soon as possible, and it will be prudent to get its buy-in to the business's response to avoid any later disputes over coverage.

PR and external communications

Does the business have a clear internal and external communications strategy to help keep any reputational damage to a minimum?

Liaising with law enforcement/regulators/third parties

Does the business understand the nature of any requests made to it by law enforcement and the potential implications of those for both the company and the relevant personnel?

Regulated financial services firms should also bear in mind their notification obligations to the FCA (and/or PRA) under Principle 11 and SUP 15.3, as well as the potential need to make a Suspicious Activity Report to the National Crime Agency under the Proceeds of Crime Act.

If the fraud involves the loss of personal data, there may also be a duty to report it to the relevant supervisory authority, such as the Information Commissioner's Office, within 72 hours.

Discovery of a fraud might also trigger obligations to report under contracts with counterparties, customers or suppliers. These documents should be consulted to ensure that relevant duties are fulfilled and key relationships preserved.

Dentons has created a fraud hub (<https://www.dentons.com/en/issues-and-opportunities/fraud-prevention-and-response-hub>) to keep clients up to date with fraud-related developments.

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