



Trends, Tips and Lessons Learned

September 2009

In This Issue

The Portfolio Problem Parry
Trying to Locate Hidden Assets
Corporate Challenges in Asia
The Best Defense is a Good Anti-Fraud Fence

Trends

In The News: Visit our website to see recent media through WSJ, Investors Business Daily, Reuters and the MFA Reporter, to include comments on Fox Business News and CNBC related to the Madoff Sentencing.

www.corporateresolutions.com

Letter from the President

Greetings!

The news that the SEC overlooked some glaring red flags with Bernie Madoff was yet another example of how proper due diligence must be implemented at all levels. You cannot rely on others to meet your standards. This edition of the newsletter focuses on how to effectively protect your investments, both in the US and abroad, from implementing appropriate ethics policies to common themes of fraud we have seen. All of these topics serve to raise awareness about what can happen and what to avoid in your business.

Kenneth S. Springer, President
Corporate Resolutions Inc.

Corporate Resolutions Upcoming Events:

Taft-Hartley Pension Summit 2009

Presented by Financial Research Associates, LLC

September 23-25, 2009 — The Loews New Orleans Hotel, New Orleans, LA

Geared toward pension managers, Ken Springer, president of Corporate Resolutions, will lead a break-out session examining best practices for detecting fraud.

Midwest Chapter Meeting for the Private Equity CFO Association

Presented by Charter One Bank

October 27, 2009 — Chicago, IL

Ken Springer, president of Corporate Resolutions will lead a panel discussion on Responding to Allegations of Corporate Misconduct and Fraud

2009 Third Party Marketers Annual Conference

Presented by Third Party Marketers Association

October 28-29, 2009 — Westin O'Hare, Chicago, IL

As part of an expert panel, Corporate Resolutions president Ken Springer will explore elements of traditional long only and alternative manager due diligence including operational due diligence, background checks, and competitive analysis.

Private Banking Latin America 2009

Presented by Terrapinn Inc, USA

November 11-14, 2009 — The Four Seasons, Miami, FL

Corporate Resolutions president Ken Springer will discuss due diligence concerns when investing in Latin America and how this area will change in a post-Madoff/post-Stanford world.



Trends, Tips and Lessons Learned

September 2009

The Portfolio Problem Parry

When faced with a challenge at a portfolio company, we have found it is critical to swiftly develop business intelligence for assessing the magnitude of the issue and to develop a course of action to resolve the problem discreetly and with minimal disruption. For instance, a firm that ignored an anonymous email alleging misbehavior by an executive and weeks later found the allegations made the front page of a local newspaper. Because the firm did not immediately address the issue, the firm was not only stuck dealing with a management problem but also had to navigate through a public relations mess.

Our firm conducts internal corporate investigations for portfolio companies that are confronted with various problems, such as receiving threatening anonymous correspondences; allegations of fraud, sexual harassment or misconduct; violation of a non-compete agreement; theft of intellectual property; and, finding grounds to terminate in effective executives. In each of these unfortunate instances, we are skilled at gathering appropriate intelligence that resolves the issue while not compromising the reputation of the company or the morale of the employees.

Trying to Locate Hidden Assets

When you suspect an individual's financial statements do not tell the whole story, our asset investigations are designed to locate cash, securities, real property, and other business interests, as well as provide some general background information. These asset focused inquiries have been great tools for clients who seek to locate assets when loans have gone into default or are being restructured; prior to counsel initiating litigation; releasing a guarantor; or any situation that requires you to confirm the existence of an individual's asset structure.

Often, subjects of our investigations, particularly real estate developers, are not collecting unemployment, but rather they have anticipated an inquiry into their finances and have hidden their assets accordingly. Frequently, we find that developers form new entities for each project to limit their liability. It is important to identify the different entities or real estate projects they have worked on. The last thing people let lapse is their insurance. Therefore, finding their insurance is one of the key components of our research.

Many times if we do not identify unencumbered liquid assets, the most valuable part of our investigation is identifying non-disclosed business interests and potentially fraudulent property conveyances. Often, this business intelligence can assist banks and others in implementing a strategy designed to give you leverage for settlement purposes.

In a recent asset investigation, a borrower called the bank in an effort to try to settle a debt for 10 cents on the dollar. The borrower disclosed that he had a number of assets, but they were all encumbered and, due to the weakened real estate market, they would not currently have any value. Our client asked us to confirm the indebtedness and see if we could identify any non-disclosed assets. We found the subject was indirectly connected to a development company that had just bid on a government contract. This contract required that all bidders had to provide disclosure that the entities bidding the work had a net asset value of at least \$10 million. Upon this discovery that the borrower had represented to the government that he was worth in excess of \$10 million, the borrower was then called into the bank. Just prior to his writing the check for 10 cents on the dollar, we stated, "We are happy to accept your check, but please be advised we will contact the governmental agency with which you are attempting to secure a large contract stating that you clearly do not have the assets you claimed." With that the borrower signed the check in the total amount of money due.



Trends, Tips and Lessons Learned

September 2009

Corporate Challenges in Asia

As more U.S. and other foreign-based companies set up in Asia, it is worth noting that certain government proclivities, local customs and crime trends can have severe repercussions on profit, loss, employee hiring and retention. As Corporate Resolutions gets more firmly established in the Asian business scene with the opening of our Hong Kong office, experiences of its management and other personnel are worth noting and preparing for.

Through Dan Grove, the director of our Hong Kong office, who has 30 years experience in Asia, we have conducted on ground investigations in Hong Kong, People's Republic of China, Taiwan, Japan, Korea, the Philippines, Singapore, Malaysia, Thailand, Vietnam, India and Indonesia. In new entries to the Asian business scene, whether a branch office, regional headquarters or joint venture, it must always be kept in mind that they are operating in environments with different laws, cultures and ethics. It is imperative to recognize the extent to which the rule of law is operative and to know your enemies, your friends and, most of all, your employees.

We have witnessed a microchip manufacturing facility in China that had been stealing chips at or near the end of the production line, rebranding them in Chinese at another site and selling them to local computer manufacturers. A similar operation in Malaysia kept many computer makers in Taiwan going for almost a year. Clamping down on production statistics (what goes in must come out or otherwise be accounted for) and help from some pretty good investigators broke up these operations. We have also seen companies suffer from having employees copy their entire business, running a business within a business. This happens all too frequently in Asia and is a very difficult setback from which to recover. Whether the counterfeit operation is in a "host company's" premises or off site, the compromise of a great many staff is crucial to its success. Accountability regarding time and production is an important control and "management by walking around" is a very desirable prevention technique.

If there is one salient piece of advice that will help Western companies getting established in Asia it is to absolutely ensure that you vet or conduct background investigations on all management level employees and any others in sensitive positions that could compromise your business. Of equal importance is the need to establish a Code of Ethics and proper anti-fraud programs that will hopefully uncover any major wrongdoing by employees. Corporate Resolutions can provide counseling on the formulation of ethics policies in Asian countries.

The Best Defense is a Good Anti-Fraud Fence

As the market begins to rebound, there is the palpable desire to dive back into business with the same gusto as the pre-recession days. However, it is important to take a lesson from those companies that signed deals too quickly and over-looked possible warning signs. It is time we return to the fundamentals of due diligence in order to protect our investments. More specifically, this can be the perfect time to design, or in some cases reinforce, an anti-fraud program.

Many business entities are governed by the Foreign Corrupt Practices Act and the Sarbanes-Oxley Act, in terms of their proactive fraud prevention. However, there are programs that businesses should implement regardless of their size or public status. For most companies the kinds of occupational fraud encountered are: corruption, asset misappropriation, fraudulent financial reporting and fraud against third parties. These broad categories encompass what we know today as white-collar crime.

In examining one's corporation the first question should be: where are the weaknesses. If you work in a very large, compartmentalized company the vulnerability may lay in the inability to know, at any given time how each unit is functioning. The following are some tools that will help any company, regardless of size or industry, to avoid some of the most common areas where fraud can occur:

Establish a Code of Conduct

All employees should be required not only to read the code, but each firm should periodically revisit the code of conduct with each individual. It is necessary that the company offer training in order to ensure that everyone

(continued on next page)



Trends, Tips and Lessons Learned

September 2009

understands what is expected of them. In addition, employees should know the designated communication channels and also be encouraged to use them.

Ethics Hotline

An ethics hotline must not only be independent from the management of the business, but it must be seen to be independent. In order for employees to feel comfortable expressing their concerns, studies have demonstrated that the belief of anonymity is important. Once the hotline is established, management should be communicating periodically with the hotline manager to resolve any issues expressed. Again, it is important to have a process designed to address any problems that may be expressed on the hotline.

Hiring and Promotion Standards

Creating standards for hiring and promotion must include background investigations for all persons who will be in 'a position of trust.' As many companies have found, one individual in a position of trust is capable of doing a lot of damage to a company, not just monetarily, but also to a company's reputation. It's important to know as much as possible about the people who have any authority and corporate responsibility at your firm.

Segregation of Duties

Corporate checks and balance are essential in any industry. This can be as simple as rotating responsibility between a few individuals on a regular basis or simply having one person from each department in charge of 'checking on' a different department – especially when dealing with customers/vendors.

This article was written by Laura Klein of our New York office, who has been with Corporate Resolutions since June 2006. Laura has both an undergraduate and a Masters degree in criminology from the University of Pennsylvania and recently received her Certified Fraud Examiner designation.

We at Corporate Resolutions Inc. are happy to give advice in any of these areas and their possible utility for your corporation. Hopefully, as the markets have indicated, the end of the recession is in sight. Corporate Resolutions is skilled at incorporating any and all of these anti-fraud provisions at your company. For more information please contact us or visit our website.



111 Broadway, Suite 1206, New York, NY 10006
(212) 691-3800 • (800) 893-1755
(212) 691-7635 • (877) 268-6751 Fax
www.corporateresolutions.com