

Forensic Services

Volume 02 | December 2007



Forensics in the field

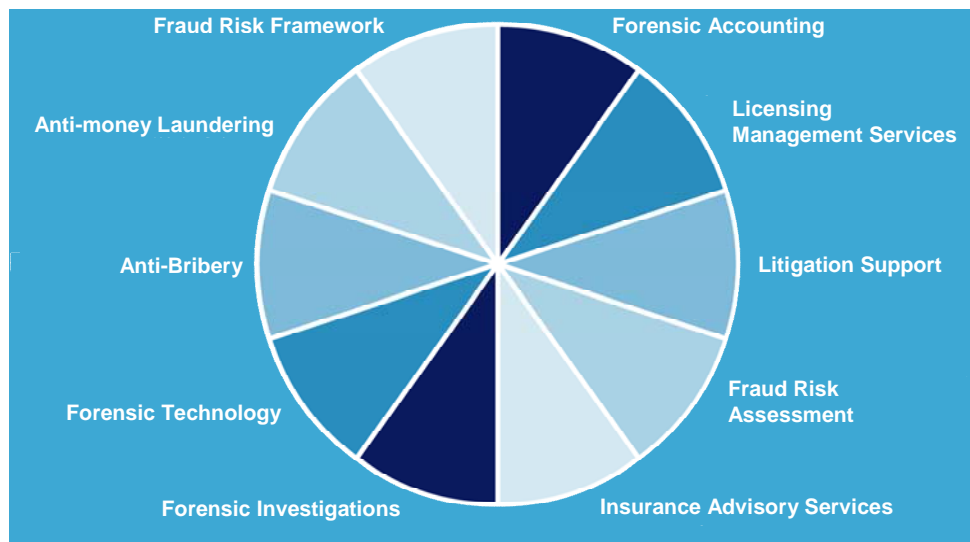
Forensics in the Field: PwC's Forensic Services newsletter.

In this edition

- Who we are
- Our services
- Telecommunications Fraud
- Forensic Technology Services
- Licensing Management & Revenue Recovery
- Foreign Corrupt Practices Act (FCPA)
- Forensic Services profile – Diego Ascani, Director, Sydney
- Case Study: Quantification of losses
- Forensic Services key contacts

Who we are

PwC's national Forensic Services practice offers a complete range of forensic services covering the full spectrum of fraud risk assessments, investigations, forensic technology, forensic accounting, insurance claims and insurance advisory services.



Global Economic Crime Survey 2007

PwC recently released its Global Economic Crime Survey 2007 (<http://www.pwc.com/extweb/home.nsf/docid/29CAE5B1F1D40EE38525736A007123FD>), which included an Australian supplement.

Over the past 2 years, about 50% of Australian companies experienced some form of economic crime. 25% of those incurred a direct loss of over AUD1.5mn.

There is an external audit expectation gap: 50% of companies think the external audit will identify fraud, when in fact most fraud falls below the materiality threshold and the primary audit purpose is not the identification of fraud.

Fraud risk management frameworks are the most effective mechanism to identify fraud including whistleblower hotlines and a strong culture of compliance with management controls and policies, and regular and proactive fraud specific reviews of higher risk areas.

Three emerging hot topics of economic crime are: Bribery; Money laundering; and IP infringement.

Telecommunications Fraud

As telecommunications technology advances ever more rapidly, the capacity to commit fraud has advanced with it. This has provided today's fraudsters with real opportunities to inflict major revenue losses on telcos in short periods of time.

Rapid advances in technology, coupled with an ongoing drive for greater efficiency, the flattening of organisational structures and rapid and continual changes to business models and operations in the telecommunications industry are causing telcos to shift their attention elsewhere – thereby, exposing them to fraud.



For telcos, more so than most other industries, the effective management of fraud risk is closely related to revenue protection, reputation and commercial integrity. Rather than waiting for a flood before building a dam, a proactive response to the ever-more present threat of fraud must be taken.

Solutions to this threat, as for any other type of commercial organisation, are grounded in general good governance principles. These best practices include:

- Understanding the extent and types of problems faced.
- Continual measurement of risks, losses and savings.
- Avoiding the pitfall of 'fire-fighting' and starting to think about fraud strategically.
- Achieving the right balance between monitoring and control, review and implementation.
- Ensuring organisational support (board, audit committee, etc).

Indeed, the Communications Fraud Control Association (CFCA) quantifies telecommunications fraud at US\$35-40 billion annually in the global telecommunications industry.

Stephen Hipkin, Associate Director: Forensic Services.

Ask yourself whether your client's business is vulnerable to revenue fraud. The following questions will help identify opportunities for business improvement:

1. How much is provided for bad and doubtful debts? Is this acceptable?
2. How much consumer debt is written off?
3. Does the company have an agreed-upon fraud control plan?
4. Does a process exist for identifying and reporting fraud?
5. How much fraud was reported last financial year (monetary value, number, classification)?
6. Is the level of fraud reporting in proportion to debt provisioning?
7. Do controls exist to monitor and identify channel fraud?
8. What controls exist around international and premium rate service usage?
9. Are prepay products "unbundled"?
10. How are credit card 'chargeback' levels monitored and managed?

Urgent action via the implementation of comprehensive anti-fraud platforms is often necessary to ensure the success, integrity and safety of revenue streams for telcos of the future.

Forensic Technology

The PwC Forensic Technology Solutions ("FTS") practice in Australia has 14 forensic IT analysts based in Sydney and Melbourne. Our team is part of a wider global team of 350 forensic IT professionals who share tools, training and methodology.

We are able to provide a comprehensive range of data analysis services including:

Electronic Data Recovery & Preservation: With computers and other electronic devices being an important source of evidence, FTS uses forensic methodologies to recover data and appropriately preserve electronic data in a manner completely admissible in a court of law.

Computer Forensic Analysis: Illegal activities / cyber crime conducted through the use of

computers will leave traces of digital evidence. Through expert technical knowledge and forensic investigatory experience, FTS can analyse and provide evidence whilst maintaining the highest evidentiary standards.

Electronic Discovery: Litigation involving organisations often requires the collection of vast amounts of data either by consent or through enforceable discovery orders. Modern organisations generally have a wide variety of potential relevant data sources including computers, servers, backup tapes, PDAs and more. Using internationally accepted tools and forensic methodologies, FTS can identify, acquire and process relevant data sources into a single review environment for review and discovery.

Through expert technical knowledge and forensic investigatory experience, FTS can analyse and provide evidence whilst maintaining the highest evidentiary standards. FTS is also called upon to provide expert witness testimony and court support.

Peter Chapman, Director: Forensic Technology Solutions.



Licensing Management & Revenue Recovery

Developing a successful trademark, brand or trade secret is costly and the resulting intangible asset is highly valuable, yet rights associated with intangible assets are often neglected.

It is not uncommon to find that licensors sign 10-15 year licensing agreements, however they do not then monitor the royalties and return on their investment.

A proactive approach is required to maximise IP value, whereby:

- the commerciality of licence terms is considered when drafting the licence agreement; and
- licence agreements are systematically reviewed and audited on a regular basis.

Commercial licence terms

When undertaking royalty audits we sometimes encounter difficulties in applying or interpreting licence terms. The most common areas of difficulty include:

- The definition of royalty bearing sales and the inclusion, or exclusion, of certain deductions to calculate net sales.
- Attributing value for product that is bundled with non-licensed product.
- Calculation of foreign currency transactions and what exchange rate to apply.



Other issues that improve value in licence agreements include:

- Indexing minimum payments, especially when the licence agreement is or an extended period of time.
- Sub-licence royalty rates and the ability to sub-licence to related parties.

Licensee Compliance Reviews

In our experience, such reviews pay for themselves over time, given that:

- (1) most licensee agreements mandate that the licensee is liable to pay the cost of the examination should a minimum of, say 5% of under-reporting of royalties be identified; and
- (2) under-reporting has been identified in 95% of our reviews.

Other benefits of conducting licensee reviews include:

- (1) a proactive licensing management strategy can promote a culture of compliance amongst all licensees;

(2) an audit may identify differences in interpretation of licence clauses or out of date terminology or requirements which can be clarified and updated by the parties to improve future agreements; and

(3) identification of errors in reporting may lead to both recoveries of past royalties due as well as increased royalties going forward. For example, when conducting a review we identified an undisclosed sublicensing arrangement which resulted in the licensor recouping \$250,000 in unpaid past royalties as well as future royalties.

We have found instances where, upon sending a notification letter to all licensees informing them of a licensing review program, licensors have received cheques in the mail.

A well-structured licensee review program should be used to enhance and promote the integrity of licensee reporting. Compliance by licensees must not be taken for granted as licensees will pick up on this and royalty reporting will suffer. This is something that businesses today definitely can not afford.

Cassandra Michie, Partner: Forensic Services.

What PwC Can Do For Our Clients

Consideration of the commerciality of licence terms

Assess and make recommendations for consideration of the commerciality of licence agreement terms, including, for example:

- (1) the appropriate royalty structure, considering returns relative to the overall value of technology and benchmark licence agreements;
- (2) reporting obligations such as budgets and financial statements; and
- (3) existing and possible additional licence agreement terms to strengthen rights for the licensor.

Verification of compliance with licence payments and contractual obligations

Assess whether, and to what extent, terms of the licensing agreement are being satisfied, such as:

- (1) royalties are paid in accordance with the licence agreement;
- (2) compliance with restrictions on the use of technology;
- (3) maintenance of adequate insurance; and
- (4) maintenance of a minimum spend on research and development, advertising or software support renewals.

Advice and/or assistance on collection of outstanding licence/royalty fees

Including preparation of reports detailing:

- (1) any non-compliance with licensing agreements;
- (2) quantification of lost revenue from unpaid royalties and damages; and
- (3) reports useful in consequential litigation or arbitration and on which independent expert testimony can be based.

The PwC Licensing Management Services ("LMS") practice in Australia is part of a wider global team of over 100 forensic licensing professionals who share tools, training and methodology.

Foreign Corrupt Practices Act (FCPA)

“Corruption is the linchpin of so many different global problems. It undercuts democracy and the rule of law. It stifles economic growth and sustainable development. It destabilizes markets. And it creates an uneven playing field” (Alice S. Fisher Assistant Attorney General United States Department Of Justice, October 16, 2006).

The Australian environment, in terms of localised corruption and bribery, is said to be one that is robust and with a lower actual risk than many of our closest neighbours. When comparing the opinion of Transparency International on their Global Corruption Perception index, Australia ranks 11 in the world with a score of 8.6, a score of 1 being the worst and 10 being the best.

Although we do find some comforts in Australia and enjoy a relatively low risk of exposure to corruption we must be aware of our exposure to such risks in other jurisdictions. Not only do we have to be conscious of local laws, we must also be conscious of international laws including Australian laws with cross border implication.

The relevant law in respect to foreign bribery affecting Australians is summarised below, it reflects similar legislations developed in OECD nations and is similar to the USA Foreign Corrupt Practices Act.

Criminal Code Act 1995 with Amendment (Bribery of Foreign Public Officials Division 70, 1999)

- Based on the OECD 1997 convention on combating bribery of foreign public officials in international business transactions. It focuses on large scale bribery, rather than facilitation payments, to induce public officials to perform functions which are part of their routine duties.
- Australian criminal code applies to a perpetrator that is an Australian citizen or a corporation incorporated in Australia, for conduct both within and outside Australia, as well as any conduct occurring wholly or partly within Australia or on board an Australian ship or aircraft regardless of the nationality of the perpetrators.
- The intent of the code is to prevent

bribery of foreign officials by imposing criminal penalties on companies & individuals (max 10 years imprisonment).

Most recently the Australian Wheat Board (“AWB”) was called to answer regarding their involvement in the Oil-for-Food scandal in Iraq. Since then the Australian Government has renewed its focus on foreign corruption.

The exposure to corruption abroad is real, and it is no longer acceptable locally or globally to plead ignorance or naivety in these matters, nor is it acceptable to excuse such behavior as “the way business is done”. It is paramount that individuals and corporations know their risks and diligently guard against foreign corruption as well as report knowledge or suspicion of such corruption.

Matthew Fleming, Director: Forensic Services. Matthew will be attending the 18th national conference on the FCPA in Arlington USA during November to become proficient and certified in the investigation of US-style corruption.



Personal Profile – Diego Ascani, Director: Insurance Advisory Services, Sydney



Diego is an experienced insurance practitioner having worked in the insurance industry for the past 17 years in his capacity as a solicitor, loss adjuster and insurance consultant.

He has been assisting insurance companies in the identification of process improvements and implementation of effective change management initiatives in claims and underwriting.

He has been involved in a number of high profile mergers & acquisitions conducting insurance due diligence reviews.

On behalf of a number of ASX top 100 clients, Diego has conducted insurable risk reviews and provided advice on insurance coverage, strategies and structure.

He has also been involved in the investigation, quantification, assessment and settlement of individual, property and liability claims running into millions of dollars.

A case study:

Recently, Diego and his team of forensic accountants and insurance experts assisted a client quantify and recover substantial costs incurred following losses occasioned due to unit pricing errors.

The client, a large international investment bank, entered into an Enforceable Undertaking with ASIC, by which it agreed to compensate investors who had been adversely impacted by errors in unit prices.

Some 55,000 investors were affected across 750 investment funds.

Forensic Services Key Contacts

Forensic Services and Investigations

Malcolm Shackell
Partner, Sydney
+61 2 8266 2993
malcolm.shackell@au.pwc.com



Cassandra Michie
Partner, Sydney
+61 2 8266 2774
cassandra.michie@au.pwc.com



Diego Ascani
Director, Sydney
+61 2 8266 0575
diego.ascani@au.pwc.com



Steve Ingram
Partner, Melbourne
+61 3 8603 3676
steve.ingram@au.pwc.com



Robert Kus
Partner, Melbourne
+61 3 8603 6218
robert.kus@au.pwc.com



Stephen Hope
Director, Melbourne
+61 3 8603 3560
stephen.hope@au.pwc.com

