

# CORRUPTION RISKS IN THE CONSTRUCTION INDUSTRY



Transparency International's Bribe Payers Index Report 2011 cites 'Public works contracts and construction' as the sector in which companies are most likely to accept bribes internationally. Corruption in construction is nothing new but as the sector struggles through global austerity measures it is more important than ever to protect your company against fraud.

## What's the issue?

The nature of the construction industry arguably lends itself to fraud and financial crime more readily than other sectors. It is a highly fragmented industry often involving chains of subcontractors making consistency of standards difficult and the tracing of payments more complex. Projects are often large and when involving cross-border parties include additional complexities of varying legal and tax regulations, language and cultural differences.

Fraud is commonly perceived as a victimless crime, yet has a significant and far-reaching impact beyond those who commit the crime. It distorts the fair awarding of contracts, limits opportunities to develop a competitive sector, often results in poor quality work and creates instability for companies through reputational and financial risk.

That is not to say that the industry is not addressing these issues. The Construction Sector Transparency Initiative (CoST), Global Infrastructure Anti-Corruption Centre (GIACC) and UN Global Compact initiative are all working towards greater transparency and accountability. But despite these efforts, the sector continues to be perceived as the most corrupt. And, with the introduction of the UK Bribery Act 2010, it is likely to come under ever closer scrutiny.

## What constitutes corruption risks?

Corruption can occur at any point - in planning, design, tendering, construction, operation and maintenance. Examples of potential risk points include:

- Obtaining planning permission or licences to operate
- Bribes to acquire land at favourable prices
- Bribes to award maintenance contracts or property lets
- Bribes by a bidder to ensure the project design improperly favours that bidder
- Bribes to rig the outcome of a tender
- Bribes to supervising engineers or public officials to approve defective or non-existent work or to over-certify value of works conducted
- Bribes by clients to project engineer to delay issuing payment certificates or granting of extensions of time or bribes by contractors to secure such certification or extensions of time
- Bribes to officials to secure import licences or customs clearance for machinery and materials or visas for key staff
- Bribes to influence expert determinations or arbitrators
- Bribes may invalidate your contract.

## Contact Us

To find out more about the Bribery Act or how we can help protect your business against fraud, please contact us or your usual BDO adviser.

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## UK Bribery Act 2010

The UK Government introduced the Bribery Act to clamp down on bribery, particularly while doing business with overseas companies. The four key offences under the Bribery Act 2010 are:

1. Offering, promising or giving a gift or financial advantage to induce a person to act improperly
2. Requesting, receiving or accepting a gift or financial advantage in return for acting improperly
3. Bribing a foreign public official, with the intention of obtaining or retaining business and an intention of influencing him/her
4. Corporate offence - if a person associated with the company pays a bribe, and the company does not have adequate procedures to prevent bribery.

Bribes do not have to be monetary. They can be anything of value which are likely to influence improper performance.

## Your best defence

The UK Government has issued guidelines on the internal controls needed to protect against bribery:

- Proportionate procedures
- Top level commitment
- Risk assessment
- Due diligence
- Communication (including training)
- Monitoring and review.

There is a full defence to the corporate offence if you can show your organisation had adequate procedures in place to prevent bribery.

## You can't turn a blind eye

The potential impact of ignoring fraud is significant and can result in prison and/or ultimately the loss of the business.

## Potential consequences of corruption

<b>Contractual liability</b>	Termination of contract and damages claims from direct losers.
<b>Shareholder and competitor liability</b>	Claims for loss of value to reputational damage and fines or other penalties imposed. Claims by competitors for loss of opportunity.
<b>Criminal liability</b>	Unlimited fines under UK Bribery Act 2010 and imprisonment.
<b>Criminal confiscation</b>	Under POCA 2002, following conviction the value of the benefit obtained by the corrupt activity can be confiscated. For example the entire value, not just the profit, of a contract obtained by bribes.
<b>Civil Recovery Order</b>	Under POCA 2002 "property obtained by or through unlawful conduct" can be recovered eg profits on an unlawfully obtained contract. No need for a prosecution.
<b>Debarment</b>	EU and US regulation providing for permanent or long running debarment from tendering for public sector contracts
<b>Reputational risk</b>	Damage to brand and loss of future opportunity if clients, joint venture partners or funders refuse to do business with you.
<b>Cost of remediation</b>	Very large legal and compliance costs, such as an external compliance programme and monitor being imposed on the business.

## How BDO can help

BDO carries out anti-bribery and diagnostic reviews based on Transparency International's Business Principles and Self Evaluation Tool. We review the company's policies and control framework, asking whether:

- A robust risk assessment has been carried out and methodology documented
- A clear anti-bribery policy framework and assurance programme is in place
- Gifts and hospitality and facilitation payment registers are in place
- Robust due diligence has been carried out on agents, joint venture partners and funders
- Recognisable training programme are in place
- Whistle blowing programme are in place
- There are any potential red flags, eg interactions with public officials, operations in high risk countries, supervision of payments, etc.

## Our full range of fraud and forensic accounting services



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