

Managing bribery and corruption risks

The real estate,
construction and
infrastructure industry

Second edition



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“Every dollar spent on bribes
is a dollar not spent on
innovation.”

Brackett Denniston

Senior Counsel, Goodwin Procter

Introduction

This is the second edition of *EY Managing bribery and corruption risks in the construction and infrastructure industry*. Originally published in 2012, it has been extended to include the real estate sector.

Since 2012, as the effects of the 2008 financial crisis have receded, the industry has grown. By 2025, global infrastructure spending is predicted to reach US\$9 trillion, up from US\$4 trillion in 2012.¹ For both the public and private sectors, this is a market of critical economic, political and social importance.

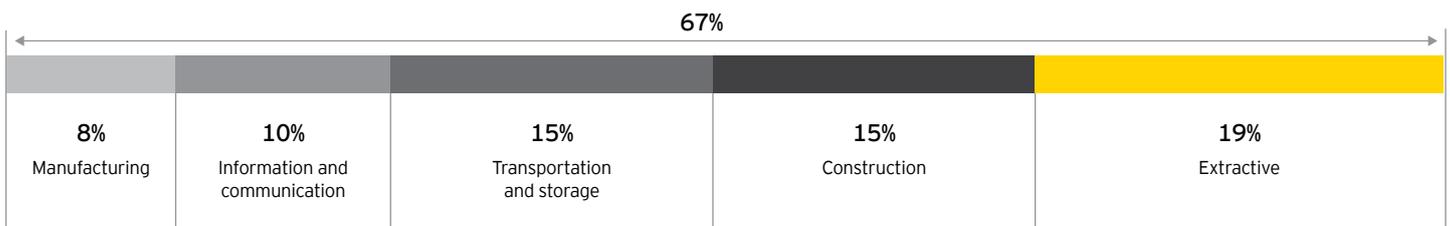
According to the Organisation for Economic Co-operation and Development (OECD),² the real estate, construction and associated industries are among the sectors with the highest level of corruption risk: 40% of foreign bribery cases occurred in construction, transportation, and information and communication. According to EY's *Global Fraud Survey 2016*,³ 13% of the companies surveyed thought that bribery was "common practice" in the industry – well above the average for all other industries.

Since the last edition, the regulatory environment has become more complex. Enforcement is on the rise, with new legislation in many countries. The foreign bribery laws of the US and the UK are extraterritorial in their application. For multinational companies working on projects with multiple partners in different jurisdictions, creating a cohesive culture of compliance is a major challenge.

By far the largest share of the growth will be in emerging markets, driven by China and Asia-Pacific, the rise of the new middle class, and the megacities necessary to accommodate it. Furthermore, companies in these markets are investors in infrastructure in their own right: their developers, contractors, purchasers and suppliers finance, build and operate some of world's largest projects in both developed and developing countries.

Figure 1: OECD Foreign Bribery Report 2014

Which sectors are most at risk?



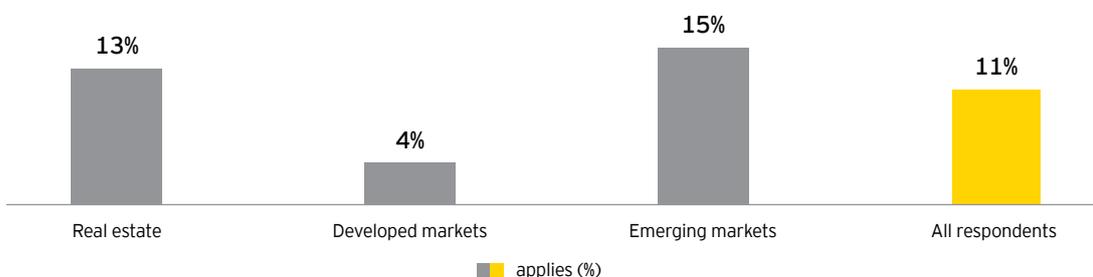
Two-thirds of foreign bribery cases occurred in five sectors.

While developed countries are not immune to corruption, comparatively, many of the emerging markets have a weak legislative structure and a business culture that tolerates, if not encourages, corruption. This increases the risks for companies that abide by the rules and skews the competition in favor of companies that don't.

In short, companies are caught between the need to comply with an increasingly stringent regulatory environment, and the reality of doing business in a high-risk industry and in high-risk jurisdictions. They need to consider building corruption risk management into their operations and effectively design corruption out of the system, to help mitigate the risks.

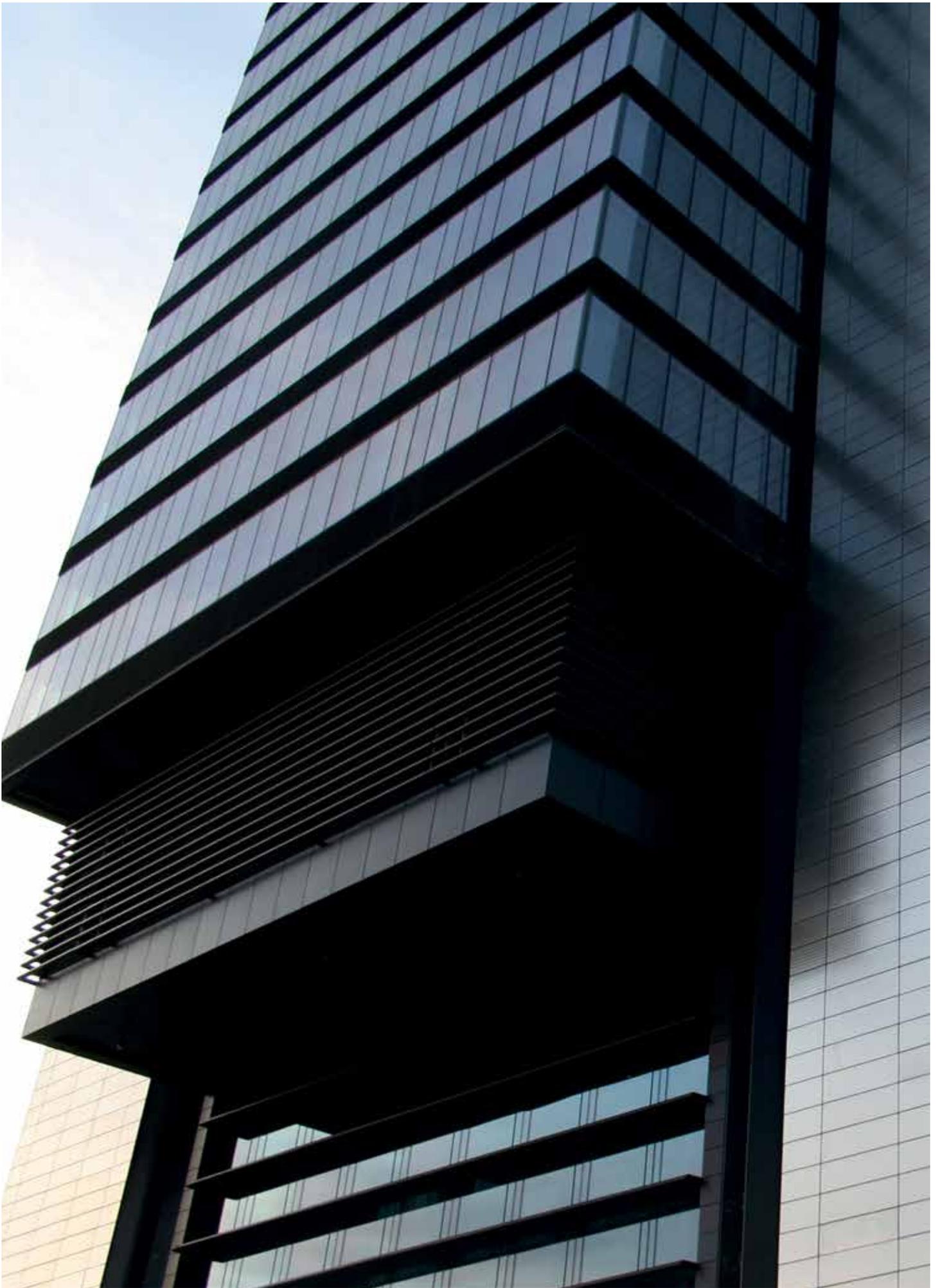
Figure 2: EY Global Fraud Survey 2016

In our sector, it is common practice to use bribery to win contracts.



Q. For each of the following, can you indicate whether you think it applies, or does not apply, to your country or industry? In our sector, it is common practice to use bribery to win contracts

¹ Capital project and infrastructure spending: Outlook to 2025, PwC/Oxford Economics, 2014.
² OECD Foreign Bribery Report: An analysis of the crime of bribery of foreign public officials, OECD, 2014.
³ EY 14th Global Fraud Survey 2016: Corporate misconduct – individual consequences, 2016.



“We will work on cross-border cooperation and information sharing between law enforcement and anti-corruption agencies and judicial authorities.”

G20 Leaders' Communique
Hangzhou Summit (September 2016)

Corruption pressure points

There are four main reasons why the risk of corruption is so high in the industry:

Demand side (“bribe takers”)

The size of projects, the source of funding and the authority for making decisions is often in public sector hands. Whether at the design stage, award of the contract or approval of permissions and licenses, government is involved. With decision-making control concentrated in the hands of a relatively small number of people, there are many opportunities for solicitation by public officials.

Supply side (“bribe givers”)

On the supply side, most projects involve a large number of local subcontractors, consultants and agents. Many involve a joint venture partner. These companies and individuals may be willing to pay bribes or offer gifts to win contracts or obtain permits. With legislation increasingly putting responsibility on the chief contractor for the behavior of “third parties” in their supply chains, even the most responsible multinational companies find themselves vulnerable.

Third-party fraud

There is a risk of fraudulent behavior by companies toward the client. For example, complex projects often involve changes to specifications and cost overruns. They also employ thousands of people and vendors. Such situations offer opportunities for companies at all stages of the project to attempt to falsify invoicing, substitute or steal materials, manipulate labor costs, misrepresent themselves, or organize themselves into cartels and engage in bid-rigging or collusion against bona fide competitors. Some of this behavior may even be generated by organized crime networks.

Employee fraud

With the significant difference between the large sums at stake in these projects and the relatively modest remuneration of employees involved in all stages of the process, there is potential for fraudulent behavior by individuals against their employers. Poor governance, lack of transparency, legal loopholes and family ties also present the potential for conflicts of interest.

Are companies doing enough to mitigate risk?

International companies are becoming increasingly aware of the risks – and the human, financial and societal costs – of corruption. Many companies are instituting systems that control and review at every stage of the process, from project design to project delivery.

Creating a low risk environment is achieved through a rigorous and disciplined approach to prevention, detection and investigation.

Managing risk

At a generic level, the process starts by setting the correct “tone at the top.” The concept of “corporate culture” has been much discussed but not always clearly defined. Companies’ culture is a mix of the stated values of the institution, the personal beliefs of the leadership, and the behavior and track record of top management. The chairman, board and senior executives that run the business should all be fully and visibly committed to creating a corruption-free zone throughout the company and up and down its value chains.

Prevention

Prevention is better than a cure. Many companies are expending considerable resource to ensure that they avoid even coming into contact with corrupt partners. Actions include:

- ▶ Undertaking a comprehensive bribery and corruption risk assessment – considering the type and location of projects so that specific risks are identified and understood
- ▶ Designing and implementing a code of conduct, with a full communication and training program
- ▶ Creating and implementing a compliance program with training for employees and third-party employees alike

Detection

Companies are instituting rigorous tracking systems that highlight unusual behavior and financial flows, and provide data and information about third-party suppliers and employees. Organizations should be implementing the following procedures:

- ▶ Conducting due diligence on contractors, subcontractors, agents and employees

- ▶ Implementing clear contracts with consultants and agents that refer to anti-corruption procedures and give the company audit rights over relevant contract records, and undertaking. Undertaking regular vendor audits
- ▶ Implementing a system of review and approval of payments to third parties including expenses claims
- ▶ Using forensic data analytics to detect transactions that indicate a heightened risk of bribery and corruption
- ▶ Monitoring expenses such as corporate entertainment carefully, paying particular attention to the recipient, context and timing of the entertainment or gift
- ▶ Instituting a whistle-blowing system that is acceptable and accessible to local employees, associates, third parties and the wider community

Investigation

Corruption cannot be eliminated completely. Even the most diligent companies may find themselves having to defend themselves in court for actions taken by a rogue employee or third-party vendor allegedly acting on the company’s behalf. The following procedures should be in place:

- ▶ A process for internal investigations that is proportional and effective
- ▶ The capability to react quickly to any whistle-blower allegations or government requests for information
- ▶ An external and internal communications strategy in case of an investigation initiated by the public authorities
- ▶ A clear process for triggering the involvement of external legal and accounting advice where serious breaches cannot be handled internally

What more should companies be doing?

Corruption challenges in major growth markets are not diminishing. The publication of the Panama Papers in early 2016 showed that, if anything, those with criminal intent are one step ahead of the authorities. At the same time, international cooperation among anti-corruption and money laundering authorities is increasing.

The EY Global and EMEIA Fraud surveys over successive years show marked progress in companies' increasingly disciplined approach to preventing, detecting and investigating criminal activity by their employees and business partners. This includes companies making continual rigorous and self-critical assessments of their own behavior. However, the surveys also show that many gaps remain as companies struggle to manage new risks and complexities in their markets.

Below are some of the areas that companies in the real estate, construction and infrastructure industries should be addressing:

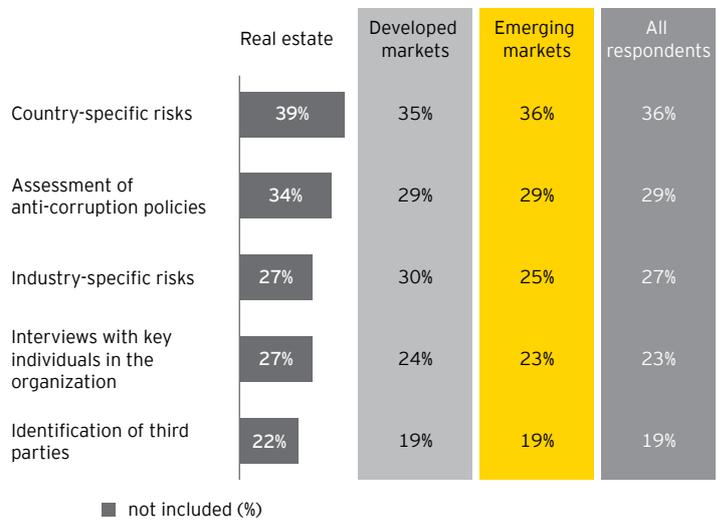
Policies and training for employees and third parties

The EY 2015 EMEIA Fraud Survey,⁴ showed only 55% of real estate respondents were aware of an anti-corruption policy and code of conduct within their organization – and that senior management had strongly communicated its commitment to anti-corruption policies.

Codes, communications and training cannot in themselves prevent corruption if a criminal is consciously set upon a course of action. However, companies are often inadvertently caught up in corruption cases. For example, an employee, unaware of a potential conflict of interest, took actions that put the business at risk. Training can help ensure the message is conveyed to everyone who needs to know. If there is a case to answer, the company's commitment to communicating its code of conduct or providing training can be offered as a defense that "adequate measures" were taken to prevent corruption.

Due diligence

Figure 3: Companies are doing less



Q. Which, if any, of the following are not included in your forensic or anti-corruption due diligence?

EY's 14th Global Fraud Survey 2016⁵ shows that the real estate industry's approach to due diligence lags behind other industries, both in developed and emerging markets.

This comes at a time when the risks of third-party fraud or corruption remain undiminished. Yet there's more information available thanks to technology and modern research techniques from experienced providers. Governments are also on the prowl for ill-gotten gains and illegal financial flows, passing new laws that force companies to declare their beneficial owners.

⁴ Fraud and corruption – the easy option for growth? Europe, Middle East, India and Africa Fraud Survey – findings for real estate, EY, 2015

⁵ 14th Global Fraud Survey: findings for Real estate, Corporate misconduct – individual consequences, EY 2016.

In the financial services industry, banks have invested in a know your customer (KYC) manager. While this may not be necessary in other industries, companies should at least be using an approved supplier database and implementing a rigorous process for checking the ownership or backgrounds of third-party suppliers. By failing to do so, companies may leave themselves open to the possibility of inadvertently making payments to fraudsters, criminal gangs, politically exposed persons or government officials, with potentially devastating financial, legal and reputational consequences.

Forensic data analytics (FDA)

FDA refers to the ability to collect and use data, both structured (e.g., general ledger or transaction data) and unstructured (e.g., email, voice or free-text fields in a database), to prevent, detect, monitor or investigate potentially improper transactions, events or patterns of behavior related to misconduct, fraud and non-compliance issues.

In our Global Forensic Data Analytics Survey 2016,⁶ all industries rated the threat of cybercrime as their biggest risk. Sixty-two percent reported an increasing level of concern over “cyber breaches or insider threat.”

EY 2016 Global Fraud Survey suggests that senior management in real estate do not appreciate the extent of the threat posed by cybercrime. Only 39% of respondents from the industry considered it a cause for concern.

But the construction and infrastructure industry, with its reliance on thousands of external partners, customers and suppliers from all over the world, is not immune. Businesses, even more traditional “bricks and mortar” family-run companies, must adapt to new cybercrime risks. As businesses begin to address the risks associated with the theft of information such as intellectual property or customer data, their senior management, in particular their finance teams, must increasingly understand the risks associated.

EY Global Forensics Data Analytics Survey 2016 found that organizations receiving positive results from FDA have several elements in common. They are more likely to use advanced technology, analyze more data, and invest more of their total compliance and anti-fraud spend in FDA.

Whistle-blowing

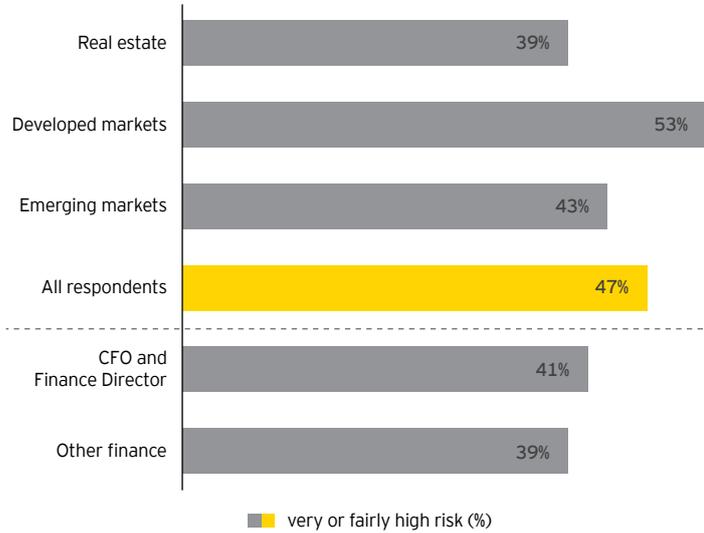
Whistle-blowing has become increasingly recognized as one of the main tools for detection of fraud and corruption. In the US, for example, since 2011, the Dodd-Frank Act has provided financial incentives for whistle-blowers to supply information. As a result, between 2011 and 2015, the US Securities and Exchange Commission (SEC) awarded more than US\$54m to 22 whistle-blowers of which US\$37m was paid in 2015 alone. This is having a significant impact on how companies manage the reporting of crime.

For companies in the construction and infrastructure industry, there are a number of specific challenges. In EY 14th Global Fraud Survey 2016, responses from the real estate industry suggested that loyalty to colleagues and the company was more likely to prevent employees from blowing the whistle than in other industries. Unsurprisingly for a sector so heavily invested in emerging markets, these results were on a par with those from emerging markets, where the idea of reporting crime to the authorities, especially in countries with weak legislative structures, is still seen as counterintuitive and, in some cases, dangerous.

For whistle-blowing to penetrate the supply chain, companies must create a culture of trust, where employees and third parties feel confident their anonymity will be preserved. Building trust in societies where it is in short supply requires conscious investment in a complex combination of human and technological resources.

⁶ Global Forensic Data Analytics Survey 2016, EY, 2016.

Figure 4: Respondents recognizing cybercrime as a risk

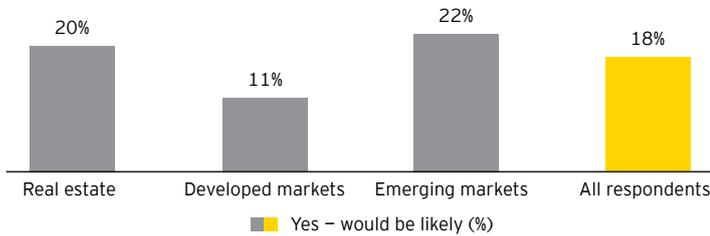


Q. How much of a risk would you say cybercrime poses to organizations such as yours?

Source: EY 14th Global Fraud Survey 2016: Corporate misconduct – individual consequences

Figure 5: Factors preventing employees from blowing the whistle

Loyalty to your colleagues

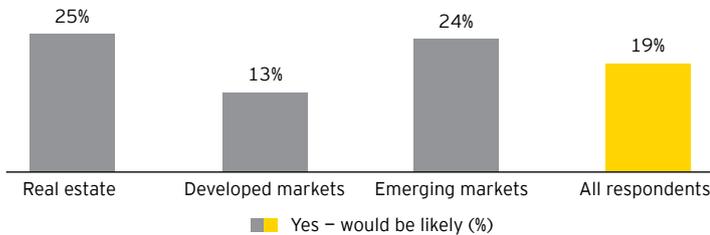


Q. Which, if any, of the following would be likely to prevent you from reporting an incident of fraud, bribery or corruption within your business?

Source: EY 14th Global Fraud Survey 2016: Corporate misconduct – individual consequences

Figure 6: Factors preventing employees from blowing the whistle

Loyalty to your company



Q. Which, if any, of the following would be likely to prevent you from reporting an incident of fraud, bribery or corruption within your business?

Source: EY 14th Global Fraud Survey 2016: Corporate misconduct – individual consequences





“Corruption is a symptom of failed governance, but can also act to further weaken the governance environment. Corrupt acts not only raise the price of infrastructure but can also reduce the quality of, and economic returns to, infrastructure investment.”

Charles Kenny,
Senior Fellow – Center for
Global Development



How EY can help?

With its experience in the industry, and its international, cross-border and cross-functional approach and structure, EY is ideally placed to provide support for its clients in prevention, detection and investigation. Here are some examples:

Data analysis in China

We assisted the client in developing a data analytics tool for fraud detection and prevention in the procurement and cost control processes. EY developed a construction risk register specifically for the client's procurement and cost control practices through our industry experiences, interviews and a review of the client's operating procedures. A number of high risks were selected based on the industry risk profile, the client's operational characteristic and previous investigation results. EY reviewed the client's procurement and cost control systems and data structure, and developed data analytic models for the selected risks. The data analytic tool helps the client identify potentially fraudulent transactions proactively and also provides trending analysis for compliance monitoring, fraud prevention and operation enhancement.

Whistle-blower investigation in Asia

We were engaged by an S&P 100 company to lead an investigation in multiple Asian countries following whistle-blower allegations stemming from its acquisition of a group of companies. We worked closely with two external law firms, and the client's general counsel and head of internal audit in each country.

We reported regularly to the management committee, the external auditor and, ultimately, to the SEC.

Our work helped our client to act swiftly, leading to voluntary disclosure of certain Foreign Corrupt Practices Act (FCPA) issues identified through the investigation. We also assisted external counsel in identifying and formulating remedial measures.

Investigation in Africa

We were retained by external counsel to the audit committee of our client to investigate concerns raised by a new finance director.

We conducted interviews and reviewed customs clearance documents for multiple years to identify potential FCPA violations. Our findings were reported to the board and the audit committee.

As a result of our work, the company made improvements to its local policies and internal controls, as well as its FCPA compliance program.

Conflict of interest risk analysis in Scandinavia

Our client found it had been overcharged by vendors for emergency repair work after a flood following extraordinary rain storms. It transpired all vendors involved had one common contact at the host company. EY helped review potential conflicts of interest relating to employees and their relations with vendors. We matched the vendor master file with information from the HR system, the tax authorities and the company register. We also reviewed existing policies, procedures and internal controls for situations where employees could be subject to influence from third parties: for example, procurement of construction work, letting, sponsoring and renovation of apartments. As a result of our work, some vendors were suspended, the authority to approve certain vendors was moved to a different employee, and internal controls were tightened up throughout the company.

Investigation into alleged bribes to government officials in Europe

Our client was subject to an FCPA investigation as a result of alleged bribes paid to government officials. We were engaged to collect and analyze documentation relevant to the allegations. Our international team of e-disclosure professionals processed 15 million electronic documents over a three-week period.

We assisted our client and its legal counsel in designing and implementing robust and efficient disclosure strategies, and helped them deal with various jurisdictional data privacy concerns.

By using a combination of interviewing techniques and analysis of the electronic data, we helped our client with its submissions to the SEC. Our technology tools and overall investigation approach allowed the client to provide timely responses to the SEC.



EY service to its clients

Global reach and local experience

Corruption is a global phenomenon, but with local manifestations and national and regional characteristics. Very often, corruption crosses national boundaries. At the same time, national enforcement bodies are demonstrating better coordination and increased capacity to pursue cases across borders. International bodies and networks such as the OECD, World Bank, G20 and the UN are enabling better coordination among national anti-corruption and anti-fraud authorities.

Our structure is ideally placed to support our clients in this challenging environment. We combine a global, highly connected team with local knowledge in the countries where our clients operate. This helps us to leverage our strengths more efficiently and move swiftly to bring together our teams to serve our clients, drawing on our industry experience across all of our services in 73 countries.

Corruption risk experience

We have more than 4,500 Fraud Investigation & Dispute Services professionals with experience in business integrity, investigations, disputes and forensic technology. Dealing with complex issues of fraud, regulatory compliance and business disputes can detract from efforts to achieve your company's potential. Better management of fraud risk and compliance exposure is a critical business priority – no matter the industry sector. We assemble the right multidisciplinary and culturally aligned team to work with you and your legal advisors. And we work to give you the benefit of our broad sector experience, our deep subject matter knowledge and the latest insights from our work worldwide.

Industry knowledge

Our Construction and Infrastructure Team is part of a 7,000-strong Real Estate practice, serving more than 4,000 real estate clients worldwide. Our people have diverse backgrounds and a wealth of experience. Many of them have served in industry and government, while others have professional services experience and hold relevant certifications.

Our team comprises experienced professionals using sophisticated tools and proven methodologies to meet the most complex and demanding challenges and provide commercial and technical services on a global basis. The team includes forensic accountants, certified fraud examiners, forensic technology professionals, economists, regulators, quantity surveyors, architects, project managers and delay analysts. Our in-depth sector knowledge and experience allows us to advise clients and their legal advisors in an efficient manner.

Multidisciplinary professionals

- ▶ More than 4,500 professionals worldwide
- ▶ Forensic accountants, technologists, and former law enforcement and intelligence agency professionals
- ▶ Working in 73 countries
- ▶ Across 27 industries

Understanding how regulations, laws and compliance issues vary by country and region

Cross-sector professionals

- ▶ Financial services
- ▶ Life sciences
- ▶ Extractive industries
- ▶ Government and public sector
- ▶ Construction and infrastructure

Market-leading breadth and depth of insight into complex, international business processes

Contacts

EY Fraud Investigation & Dispute Services contacts

For further help and information, please contact one of our industry sector or local area representatives, or log on to ey.com/fids.

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About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

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EY's Fraud Investigation & Dispute Services

Dealing with complex issues of fraud, regulatory compliance and business disputes can detract from efforts to succeed. Better management of fraud risk and compliance exposure is a critical business priority – no matter the size or industry sector. With more than 4,500 fraud investigation and dispute professionals around the world, we will assemble the right multidisciplinary and culturally aligned team to work with you and your legal advisors. We work to give you the benefit of our broad sector experience, our deep subject matter knowledge and the latest insights from our work worldwide.

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BMC Agency
GA 0000_07920

ED None.

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