

# ***GIACC Anti-Corruption Training Module***

## ***“Understanding and avoiding corruption – Overview”***

# Content of Module

This training Module **“Understanding and avoiding corruption”** gives an overview of corruption in the infrastructure sector, and how to avoid and report it.

It takes approximately 30 minutes to complete, and covers the following topics.

- |  |   |
|--|---|
| <ul style="list-style-type: none"><li>• Risks of involvement in corruption</li><li>• What is meant by “corruption”</li><li>• Cost of corruption</li><li>• Corruption kills</li><li>• Likelihood of encountering corruption</li><li>• Bribery</li><li>• Gifts and hospitality</li><li>• Extortion – Threat of commercial harm</li><li>• Extortion – Threat of physical harm</li><li>• Fraud</li><li>• Cartels</li></ul> | <ul style="list-style-type: none"><li>• Abuse of power</li><li>• Embezzlement</li><li>• Conflicts of interest</li><li>• Money laundering</li><li>• Relationship between offences</li><li>• Liability for corruption</li><li>• Factors relevant to liability</li><li>• Recording and reporting corruption</li><li>• Avoiding liability for corruption</li><li>• What to do if in doubt</li><li>• Conclusion.</li></ul> |
|--|---|

# The risks of involvement in corruption

There is a significant risk that, if you work in the infrastructure sector, you could encounter corruption on one or more occasions.

The consequences of any involvement in corruption are high:

- you could lose your job, be prosecuted, be fined, and go to prison
- your organisation could be prosecuted, fined, and barred from being awarded public sector contracts
- there could also be a financial and reputational cost to both you and your organisation.

While the risks are clear and obvious, the practicalities of dealing with any corruption are not always so straightforward:

- you may work for an organisation which pressurises you to maximise commercial benefit for the organisation regardless of the ethical consequences
- clients or competitors may act corruptly, leaving your organisation at a competitive disadvantage if you do not do the same
- you may be unsure at what point a commercial act such as submitting a contract claim may cross the threshold from legitimate act to corrupt
- you may be unsure whether a gift or entertainment in a business context may be seen as corrupt
- a public official may try to extort an illegal payment from you in return for issuing your organisation a permit it is entitled to receive
- you may be unsure who to turn to for advice to if you witness corruption, and whether or not you should report it.

The purpose of this Module is to provide you with a greater level of understanding so that you are empowered to act appropriately.

# What is meant by "corruption"?

The word “corruption” derives from the Latin verb “corrumpere” meaning “to ruin” or “to rot”. It therefore had a broad meaning, which referred to moral depravity, or the breakdown of the values that enable society to function justly and efficiently.

Nowadays, the term “corruption” is used more narrowly, but there is no single internationally recognised definition. Some people use the term to refer simply to bribery. Others (including this Module) use it as an umbrella term to refer to various types of deceptive activity which result in an improper gain, including bribery, extortion, fraud, cartels, abuse of power, embezzlement, and money laundering.

This Module focuses on the seven types of corrupt activity listed above, which are the types of corruption that you are most likely to encounter in your business activities in the infrastructure sector. It also examines gifts and hospitality and conflicts of interest, and considers when these may be treated as corrupt.

These types of corruption are likely to be criminal offences in most countries. They are described in this Module in generally recognised international terms so as to give you a broad understanding of the types of conduct that they involve. However, the actual definition of these offences varies from country to country, so, the applicable law, and not this Module, should always be relied on in determining what you should do to avoid specific criminal offences in particular jurisdictions.

# The cost of corruption (1)

Corruption is one of the greatest obstacles to the alleviation of poverty and the development of adequate and safe infrastructure.

## **Human cost:**

- The corrupt by-passing of building regulations and contract requirements means that infrastructure can be unsafe and environmentally damaging.
- The theft of public funds means that fewer roads, schools and hospitals are built, and less money is available for education and health.
- The demand for bribes to access healthcare, water, power, and education means that those people who cannot or will not pay these bribes are denied access to these services.

In consequence, people suffer deprivation, illness, and death. The consequences fall disproportionately on the poor and vulnerable.

## **Economic cost:**

- Nationally, corruption reduces investor confidence and so reduces investment. Public funds are stolen resulting in slower growth.
- At project level, corruption increases project costs and results in defective infrastructure.
- At organisational level, organisations which wish to work ethically lose work to corrupt competitors, or are commercially or financially disadvantaged by corrupt public officials.

## The cost of corruption (2)

### Alarming corruption estimates:

Corruption is concealed. Much corruption is never discovered or prosecuted. So, it is impossible to quantify accurately the cost of corruption. The estimates below are more accurately described as guesses rather than estimates, but they do illustrate the potential enormity of the issue internationally.

- The United Nations and World Economic Forum estimated the global cost of corruption at 5% of the world's Gross Domestic Product (GDP). Based on 2024 GDP of US\$ 111 trillion, this equates to **US \$5.5 trillion per annum of stolen funds**. This is higher than the annual GDP of Germany, the world's third largest economy.
- Transparency International in 2019 estimated that **corruption cost developing countries \$1.26 trillion per year** (enough to lift the 1.4 billion people who get by on less than \$1.25 a day above the poverty threshold and keep them there for at least six years).
- Transparency International's Global Corruption Barometer 2017 recorded that **25% of persons surveyed worldwide had paid a bribe in the past 12 months** so as to access public services such as health care and education.
- In the international construction sector, the Royal Institution of Chartered Surveyors in 2021 estimated that, without significant interventions, **by 2030 up to US\$5 trillion could be lost annually to corruption**.

## Corruption kills (1): Grenfell Tower



- In most cases, corruption is concealed, and it is hard to determine its cost, cause and effect. However, on some occasions this becomes starkly obvious.
- Grenfell Tower is a 24-storey residential building in London containing 120 flats.
- In 2017, a faulty refrigerator in one of the flats caught fire.
- The burning fridge set fire to the external cladding (rainscreen panels & insulation).
- The fire spread throughout the whole building's external cladding.
- 72 people died in the resulting inferno.
- It is alleged that:
  - the cladding system was flammable in breach of building regulations
  - some managers fraudulently fabricated and concealed fire test results
  - fire doors and barriers were defective.
- A criminal investigation is in progress.

## Corruption kills (2): Building collapse



- In 2023, a massive 7.8 magnitude earthquake devastated parts of Turkey and Syria.
- Over 46,000 people died.
- Over 150,000 buildings collapsed.
- It is alleged that buildings were fraudulently built in breach of building regulations (which were intended to ensure that buildings withstand earthquakes).
- Inspectors are believed to have been bribed to overlook building regulation breaches.
- A criminal investigation in progress.

# The likelihood of you encountering corruption (1)

If you work in the infrastructure sector, you are likely to encounter some form of corruption during the course of your employment. This is for the following reasons:

The risks of corruption on an infrastructure project are widespread and complex.

- Different **types of corruption** can occur, including bribery, extortion, fraud, cartels, abuse of power, embezzlement, money-laundering.
- Different **individuals and organisations** connected with the project may act corruptly, including the project owner, funders, contractors, sub-contractors, suppliers, consultants, agents, joint venture partners, and government officials responsible for approvals and permits.
- The corruption can occur during different **project phases**; e.g. selection, planning, design, funding, procurement, construction, operation.

## The likelihood of you encountering corruption (2)

In addition to the widespread nature of the risks identified in the previous page, factors relevant to the infrastructure sector enable corruption to occur, and make it more difficult to identify and prevent. For example:

- There are often large sums of money involved.
- There are normally a large number of contracts on a project linking together the project participants. Every contractual link contains a corruption risk during the procurement, certification and payment process.
- The payment process normally involves measurement of work done and certification of quality, which are prone to corruption .
- Work is often concealed (e.g. steel in foundations, pipes in ducting) making it more difficult to check whether it has been properly carried out.
- Projects are often complex (in contractual, technical and financial terms) which makes it more difficult to ascertain whether a problem or cost overrun has been caused by management error, negligence or corruption.
- There are significant interfaces with government officials (e.g. in applying for planning permission, building approval, import permits etc.).
- There is often a lack of an effective anti-corruption control environment over procurement and construction management.

Consequently, you need constantly to be alert to the risk of corruption in relation to your day-to-day activities.

# Bribery (1)

Bribery is where a benefit is offered, given, requested, or accepted with the intention of inducing a person to perform a function improperly, or being a reward for performing a function improperly.

The “benefit” can be anything of value, such as a cash payment, a gift, hospitality, a donation to a political party, payment for a holiday, or the promise of employment.

“Acting improperly” means acting improperly in the exercise of your duties.

The act of offering or requesting the bribe is normally sufficient to constitute the bribery offence. It is not necessary for the bribe transaction to be completed or to have a successful outcome for the offence to have been committed.

## Examples:

- A supplier offers a contractor’s procurement manager an all-expenses-paid holiday in return for the manager ensuring that the contractor awards a contract to the supplier rather than to the most suitable candidate.
- The contractor’s site manager requests that a sub-contractor working on a construction project makes a cash payment to the manager in return for the manager approving inflated payment claims and defective work by the sub-contractor.

# Bribery (2)

## How are bribes paid

The bribe may be given directly from the giver to the receiver. Or it may be paid through a third party so as to conceal the transaction. For example, an organisation may agree to pay a success fee to an agent if the organisation wins a contract. This may appear to be a legitimate fee. However, the hidden arrangement may be that the agent will use part of the success fee to pay a bribe to a government official who improperly ensures that the contract is awarded to the organisation.

Bribes may also be concealed in the contract prices of joint venture partners, sub-contractors or suppliers, and may be paid by those organisations.

## Avoiding bribery

Do not, directly or indirectly, offer, give, request or accept any benefit with the intention that the benefit will induce someone to perform a function improperly, or be a reward for performing a function improperly.

If you know or suspect that an activity involves a bribe, then avoid or withdraw from the activity and do not assist it in any way.

# Gifts and hospitality (1)

Gifts and hospitality in business dealings can be actual or perceived bribes.

If a gift or hospitality is genuinely given and received without any intention by the parties that it will influence the recipient to act improperly, or be a reward for acting improperly, then the gift or hospitality will not be a bribe. However, if the giver or receiver does have such an intention, then it is likely to be a bribe.

In business dealings, there is a risk that, even if there is no corrupt intention, a third party (competitor, media, prosecutor, judge) may perceive the gift or hospitality to be corrupt because they can see no other plausible reason for it.

The likelihood of a gift or hospitality being perceived to be corrupt depends on a combination of factors, such as its value and the circumstances in which it is given.

## Examples:

- A gift of cash or valuable jewellery, or entertainment at an all-expenses-paid sporting event involving travel and hotels, is highly likely to be perceived as a bribe.
- A business lunch at a reasonably priced restaurant is unlikely to be seen as corrupt. But, an expensive restaurant followed by a nightclub may be perceived to be an attempt to bribe the hospitality recipients if they have a relevant decision-making function.
- A low value memento branded with the organisation's logo, and with no resale value, is highly unlikely to be perceived as a bribe.

## Gifts and hospitality (2)

### Avoiding corrupt gifts and hospitality

Some countries laws prohibit their public officials from receiving gifts or hospitality. Many organisations place limits on the value of gifts and hospitality which may be given or received. Therefore, be aware of, and comply with, relevant laws and limits.

Doubts about corruption in relation to business hospitality and entertainment can be avoided by each organisation paying for its own personnel.

Always be very cautious in giving or accepting gifts or hospitality to or from someone with whom you are, or have been, or may be, in a business relationship. Before doing so, ensure that the gift or hospitality is not prohibited, and that it is not, and could not reasonably be perceived to be, intended either to influence the recipient to act improperly or to be a reward for acting improperly. If in doubt, do not offer or accept the gift or hospitality.

## Extortion (1): Threat of commercial harm

A public official may request an illegal or unofficial payment from a person in order to provide services which the person is legally entitled to receive without making such payment. This is often called a “facilitation payment”. It is a type of extortion.

It is normally a relatively minor payment in connection with e.g. issuing a visa or customs clearance or installing a utility connection.

The official may demand the payment, or make its necessity clear by simply not performing the required function.

The official receiving the facilitation payment receives it improperly in a personal capacity. If the payment demanded by the official is a published legitimate fee for such service, then it is not a facilitation payment.

In most countries, the demand for, payment of, and receipt of facilitation payments, however small, are treated as criminal offences.

A facilitation payment is sometimes distinguished from a bribe in that the facilitation payment is an illicit payment made to persuade the official to perform their duty properly, whereas a bribe is paid to persuade the official to perform their duty improperly.

**Example:** Your organisation is entitled to receive an import permit. The official indicates that they will only issue it if you pay them some money. This payment is not a legitimate official fee. You may be tempted to pay if the inability to import causes greater loss to your organisation than the value of the payment. But, if you do, you and your organisation are likely to be liable for a criminal offence.

**Avoiding facilitation payments:** Always be cautious when asked by an official to make a payment. Before paying, take reasonable steps to check that the payment is a legitimate official fee, not an improper personal payment. Ask to see proof of the legitimacy of the fee. If it appears to be legitimate, ask for an official receipt. If in doubt, do not pay, as you may be committing a criminal offence.

## Extortion (2): Threat of physical harm

The previous page examined extortion with the threat of commercial harm. This page examines extortion with the threat of physical harm: where someone demands money or other benefit in return for not inflicting death or personal injury on you or another person.

**Example:** A policeman who is manning a roadblock is carrying a gun and aggressively demands an illicit cash payment in order to let you through the roadblock. You pay the policeman, as you are afraid of personal harm.

### **Defence:**

Normally, paying an extorted payment to a policeman or government official is a criminal offence. However, many countries' laws provide a defence to such payment if you make it only because you fear imminent personal injury or death to you or another.

So, in the above example, it is reasonable to fear imminent personal injury, and to make the payment to avoid such risk. The policeman would be guilty of extortion, but, in countries with the safety exception, you are unlikely to be liable for an offence.

The situation would be different if the policeman stopped your car because you were driving dangerously and did not threaten you, but you offered the policeman a personal payment to avoid a fine. In this case, you are likely to be liable for bribery for making the offer, and the policeman is also likely to be liable for bribery if they accept the payment.

**Dealing with extortion:** If someone tries to extort money from you, but you in no way fear imminent physical harm to yourself or to another person, do not make the payment. If you fear imminent physical harm to yourself or to another person, it is generally safer to make the payment.

# Fraud (1)

Fraud is where a person deceives another person in order to gain some financial or other advantage. There are two main categories:

**Fraud by false representation** is where a person:

- makes a false representation to another person knowing that the representation is, or might be, untrue or misleading; and
- intends, by making that representation, to make a gain or to cause a loss.

**Fraud by failing to disclose information** is where a person:

- fails to disclose to another person information which they are under a duty to disclose, and
- intends, by failing to disclose the information, to make a gain or to cause a loss.

The following **general principles** apply to the above categories:

- A representation is any statement made to influence opinion or action.
- The representation may be express or implied, and may be oral or written (e.g. a statement in a contract claim, e-mail, meeting).
- A representation is false if it is untrue or misleading.
- A person will normally be under a duty to fully disclose all relevant information in relation to contractual issues with a financial or quality consequence; e.g. claims for payment, variations and extensions of time.
- The gain or loss may be financial or non-financial, and may be for the benefit of the person making the representation or another.

## Fraud (2)

### Examples:

- A concrete supplier knowingly supplies concrete which is of a cheaper and inferior specification than contractually required, but invoices for the contractually required concrete. The invoice falsely represents that the concrete was correctly supplied.
- A contractor claims additional cost from the project owner for delay, alleging that all of the delay is the project owner's fault, but knowingly withholds evidence that the contractor was partially responsible for these delays.

### Avoiding fraud:

To be liable for fraud, you will normally need to know that your representation is false (a deliberate act), or to know that it might be false (a reckless act if you know that information might be false but fail to take reasonable steps to determine its accuracy).

You are unlikely to be liable if you make a false representation which you honestly believed to be true (an innocent act). However, if the belief in a representation's accuracy is implausible, then an investigator or judge may not accept that the belief was genuine.

Therefore, never make any oral or written representation in connection with your work unless you honestly believe it is true. If you make a representation and are not sure whether it is true, then you should explain this as part of the representation.

If you make a representation and later discover that you have made a mistake, inform the other party as soon as possible of the mistake. Otherwise, you could be liable for fraudulently allowing the false representation to remain in place, while knowing it is false.

Always fully disclose all relevant information which you are under a duty to disclose, particularly if failure to do so may be misleading.

If you know or suspect that an activity involves fraud, then avoid or withdraw from the activity and do not assist it in any way.

# Cartels

A cartel is where two or more organisations secretly collude in relation to bidding for contracts or pricing of equipment, services or materials. Its purpose is to raise prices to a higher level than would be the case had there been genuine competition.

A lawful collaboration between organisations which is disclosed to the customer (e.g. a joint venture) would not normally be a cartel.

A cartel in the infrastructure sector normally constitutes of all of:

- a breach of cartel law (if the relevant country has such a law)
- fraud on the client (as the bidders are representing that they are in competition, whereas they have secretly pre-agreed the winner)
- a breach of procurement law (in cases of a public sector project).

## Examples:

- **Bidding cartels:** Bidders for a contract secretly agree in advance the bid prices they will submit and which one of them will win the contract. There is no genuine competition for the contract, and the intended winner as a result can submit a higher bid price.
- **Price fixing:** Suppliers (e.g. of concrete) secretly agree that, when they are competing against each other, they will not drop below an agreed price per unit. Their prices will be higher as a result.

## Avoiding cartels:

Do not participate in any discussion or arrangement with a competitor in relation to bidding or pricing (except as part of a formal joint venture disclosed to the client). If anyone employed by a competitor tries to discuss such issues with you, you should refuse to do so.

If you know or suspect that an activity involves a cartel, then avoid or withdraw from the activity and do not assist it in any way.

# Abuse of power

Abuse of power is where a person:

- occupies a position in which they are expected to safeguard someone else's interests, and
- abuses their power in relation to that position with intent to make a personal gain or cause loss.

A person occupies such a position if they are responsible for making decisions or controlling the finances on behalf of the public or an organisation (e.g. a finance manager, procurement manager, project manager, supervisor).

A person can abuse power by way of act or omission.

## Examples:

- A procurement official working for the public highways agency improperly ensures that the agency awards a contract to a construction company in which the official has a secret ownership interest.
- A public official in charge of running a project by-passes the normal employment procedures in order to appoint a family member or friend to a senior project management position (sometimes called "nepotism").

## Avoiding abuse of power:

If you are a public official, or are employed in a position of trust, always act honestly and objectively in the best interests of the public or your employer. Never exercise your official powers in your personal interest.

Do not participate in an abuse of power. For example, if you are a supplier, and a public official awards a contract to you without competitive tender in breach of regulations, you could be liable if you are aware of the abuse and accept the improper award.

# Embezzlement

Embezzlement is where a person misappropriates funds which they have a duty to safeguard.

It is a type of theft where you are stealing assets which you are meant to be looking after. It should be distinguished from other types of theft which involve stealing assets which you are not looking after (e.g. breaking into a person's house and stealing their valuables).

## Examples:

- A finance manager diverts an organisation's funds to the manager's private bank account and makes false entries in the organisation's accounts to conceal the diversion.
- An accounts clerk sets up phantom employees on the organisation's payroll and pays these employees' salaries into the clerk's own bank account.
- Two managers of a supplier conspire to arrange for payment for supplies to be made in cash and then keep some of the payments for themselves.

## Avoiding embezzlement:

You should always ensure that you deal with money honestly and in accordance with the duty with which you are entrusted.

If you know or suspect that an activity involves embezzlement, then avoid or withdraw from the activity and do not assist it in any way.

# Conflict of interest

A conflict of interest is where a person has a personal interest which conflicts with their employment or other duties.

There may be a conflict of interest where you, or a family member or friend, has an interest in an organisation which is doing or may do business with your employer, and where you have a relevant decision-making function for your employer.

Having a conflict of interest is not a criminal offence in itself. It can be quite common to have conflicts of interest where you work for an employer in the same sector in which you, or your family or friends, have business interests.

However, unless the conflict is dealt with appropriately, it may lead to an action which is a criminal offence (e.g. abuse of power).

**Example:** You are responsible for procuring supplies for a contractor. Your sister is sales manager for a supplier which provides supplies to the contractor. You therefore have a conflict of interest, as you may want to help your sister by e.g. ignoring deficiencies in quality in the supplies made. But you also have a duty to act in your employer's interests, and so should ensure that the supplies are of proper quality. The conflict itself is not a criminal offence. However, if the conflict leads you to act in favour of your sister and against the interests of your employer, then you will be in breach of employment duties and may be committing a criminal offence.

## **Avoiding conflicts of interest:**

Promptly declare any actual or potential conflict to your employer. Do not take part in any decision affecting that other organisation.

Do not wait until the conflict actually occurs. As soon as you become aware that there may be a conflict, declare the interest so as to give your employer time to consider the situation, and, if necessary, to make alternative arrangements (e.g. assign another employee to manage the contract).

# Money laundering

Money laundering is where a person deals with cash or assets knowing or suspecting that they, or the original source of funds, were obtained by criminal activity.

The purpose of money laundering is to conceal the criminal source of funds, or to move funds out of reach of the relevant prosecutors or courts.

## Examples:

- A government official receives cash as a bribe and pays it into an offshore bank account in the name of a relative.
- A finance manager of an organisation embezzles money from the organisation and purchases a house in another country with the money.
- A sub-contractor submits a fraudulent claim to a contractor for work which it did not carry out. The contractor pays the amount of the fraudulent claim into the sub-contractor's bank account with Bank A. The sub-contractor then moves the payment to Bank B.

## Avoiding money laundering:

Do not deal with any money or other asset which you know or suspect may wholly or partly be the proceeds of a crime.

If you know or suspect that an activity involves money laundering, then avoid or withdraw from the activity and do not assist it in any way.

# The relationship between different offences

One corrupt action may often result in more than one criminal offence being committed. For example:

- Bribery often has related fraud. For example, a bribe paid to win a contract will normally be concealed by fraudulent documentation which makes the contract appear to have been won on a genuine arms-length basis.
- Fraud does not necessarily involve bribery. However, many acts of fraud may need an act of bribery in order to complete the fraud. For example, a project owner may wish fraudulently to withhold payment from a contractor and may bribe the project certifier to certify falsely that costs for rectification of defects are payable by the contractor, so as to justify the withholding.
- Cartels, embezzlement and abuse of power will normally involve fraud, as false documentation will be drawn up, or false statements made, so as to conceal the true nature of the corrupt act.

In addition, corruption offences may also constitute breaches of tax and accounting laws and stock market regulations. For example:

- A bribe wrongly shown in an organisation's accounts as an agency commission for legitimate services is likely to constitute a false accounting entry which would be in breach of accounting laws and stock market regulations.
- An organisation treating the cost of a bribe as a deductible expense in calculating tax due is likely to be in breach of tax law.

Therefore, a wide range of people may be caught in both the initial offence (such as bribery or submission of fraudulent claims), which may involve project and commercial staff, and in subsequent offences, which may involve accounting and legal staff.

# Liability for corruption (1)

## Criminal Liability for individuals:

- **Those directly involved:** You may incur criminal liability if you are directly involved in a corruption offence. For example, if you submit a claim for payment which you know or suspect contains false statements which wrongly inflate the claim, you may be liable for fraud. Or if you personally pay a bribe in order to induce a person to act improperly, you may be liable for bribery.
- **Those indirectly involved:** You may be liable if you are indirectly involved in the offence. For example, if you are sales director and appoint an agent on a success fee arrangement, and the agent pays a bribe to the client to help your organisation win a contract, you may be liable if you knew or suspected that a bribe would be paid, even if you did not personally authorise it.
- **Those in authority:** If you are a chief executive, director, or manager, you may be liable for a corruption offence even where you were not directly involved in the offence, but where you either expressly authorised the offence or that type of offence, or knew or suspected that the offence would be committed by someone under your management control and took no action to prevent it.
- **Aiding and abetting:** You may be liable if you help in the commission of a corruption offence if you knew or suspected that an offence was being committed. For example, a lawyer drafts an agreement knowing that the document is part of a fraud. Or an accountant approves or implements a payment suspecting that it is going to be used to pay a bribe.

## Criminal Liability for organisations:

- If a senior employee commits a corruption offence on behalf of or for the benefit of their organisation, then both the employee and the organisation may be liable for the offence. For example, a sales director pays a bribe to ensure his organisation wins a contract.
- In some jurisdictions, an organisation is liable for bribery or fraud committed by a person (e.g. an employee or supplier) on behalf of or for the benefit of the organisation if the organisation did not take reasonable steps to prevent it.

# Liability for corruption (2)

## Civil liability for individuals and organisations

In addition to criminal liability, both individuals and organisations involved in corruption are at risk of being sued under civil law, and being found liable to compensate those other individuals or organisations who may have suffered loss as a result of such corruption. This may occur where, for example, an unsuccessful bidder sues a bidder who has been corruptly awarded a contract in order to recover the unsuccessful bidder's lost bid costs and lost profit.

## Consequences of criminal and civil liability

### For individuals:

- Criminal liability can result in imprisonment, fines, and loss of employment and professional status.
- Civil liability can result in termination of contracts, and the requirement to pay compensation to a wronged party.

### For organisations:

- Criminal liability can result in fines, and debarment from contracts.
- Civil liability can result in termination of contracts, and the requirement to pay compensation to a wronged party.

# Factors relevant to liability

## Proof of intention or knowledge:

If you participate in a corruption offence, then whether or not you are criminally liable normally depends on whether you had the requisite intention or knowledge (i.e. you intended the relevant circumstance to occur, or knew or suspected that it would occur).

It may be difficult for prosecuting authorities to prove corrupt intention or knowledge, as the parties involved may deny such intention or knowledge, and there may be no clear evidence. In this case, courts may accept an inference of corrupt intention or knowledge (i.e. that the only reasonable explanation is that the parties must have intended or known about the corrupt outcome).

**Example:** A contractor gives an expensive gift to a public official, who then awards a contract to the contractor. The court infers that the only reasonable explanation for the gift was that it was intended to improperly influence the public official, and so was a bribe.

**Circumstances which are not valid defences:** It is important to be aware that if you participate in a corruption offence, you may still be personally liable even if:

- you thought that acting in this manner was “normal in that country” or was “standard business practice”
- your competitors were acting corruptly, so you only acted corruptly so as to “level the playing field” with your competitors
- you paid the bribe so as to help your employer avoid a loss (e.g. if equipment was being wrongfully detained by customs)
- you added an additional unjustified amount to a contract claim as a “negotiation margin”, as you knew that the other party would reduce your claim
- you had been instructed to act in this manner by someone more senior to you in the organisation
- you did not personally benefit from the corrupt act.

# Recording and reporting corruption

If you know or suspect that an activity involves a corruption offence, then you should consider the following actions:

**Recording corruption offences:** You should, as soon as possible, make a record of the incident, noting all relevant facts. Such record will provide valuable evidence of the incident which may be used in a prosecution. It may also help to protect you should allegations be made against you.

**Duty to report:** You may be under a duty to report a corruption offence. This duty can be imposed by any one or more of:

- Your employer, who may impose a duty to report under your employment contract or a corporate code of conduct
- Your professional institution, who may impose a duty to report under its membership conditions or code of conduct
- Your country of residence or the country where the offence took place, which may impose a duty to report under law.

**Voluntary reporting:** If you are not under a duty to report, you should still report the incident to your manager or your organisation's compliance function, and to your professional institution (where the matter involves a fellow professional). Do not report if you fear for your or another person's safety if you make such report, or if you suspect that the person to whom you may report could be involved in the corruption.

**Failing to report:** Be aware of and comply with any duty to report (unless you fear that complying could lead to physical harm to you or another). If there is a duty to report, and you fail to do so, you risk disciplinary proceedings or prosecution.

# Guiding principles for avoiding liability for corruption

**The primary principle:** To minimise the risk of incurring criminal liability for corruption offences, **always act honestly.**

**Guiding principles:** The following are some guiding principles to help ensure compliance with the primary principle:

- Ensure that you are aware of the different types of corruption and possible corrupt situations.
- Do not become involved in any activity which you believe will, or is likely to, involve corruption.
- Do not comply with any instruction to act corruptly.
- Do not instruct any other person to act corruptly.
- Do not make any oral or written statement which you believe is, or might be, untrue or misleading. Only make the statement if you believe it is true. If you are not sure of the facts, explain to the relevant other party that you are not sure.
- If you discover that a previous statement you have made is untrue, correct the inaccuracy as soon as possible.
- Do not withhold information, if the withholding could mislead another person.
- Do not provide, conceal, or approve work, materials, equipment or services which you know or suspect are not of the quality and quantity required under contract.
- Do not give or receive payments, gifts, hospitality or other benefits unless you are reasonably certain that there is no risk of these benefits having, or being perceived to have, a corrupt purpose.
- If you are a manager, take reasonable steps to prevent any corrupt conduct within the function or department you are managing.

# What to do if in doubt

## Advice:

If you suspect that you are in a potentially corrupt situation and are in doubt as to what to do, ask for advice from an appropriate person who you believe is not involved in the corruption. For example:

- If you are an employee of an organisation, ask for advice from the organisation's compliance function (if there is one) or an appropriate senior manager.
- If you are given advice or instructions by a senior manager in your organisation to act in a way which you believe may be corrupt, then ask a more senior manager or your organisation's compliance function for advice.
- If you are a member of a professional institution or an employee union, then that institution or union may have a help line which you can call for advice.
- Your government may provide a telephone advice line which you can contact.

If you are unable to obtain advice as to what to do, or if you do not believe that the advice is satisfactory, then avoid participating in the transaction about which you are seeking advice.

**Safety:** Always put your safety and the safety of others first. So, if, for example, someone is attempting to extort a payment from you, and failure to make immediate payment could put you or another person in imminent risk of personal harm, then make the payment. If you are compelled to make a payment in such circumstances, do not conceal it. Report the circumstances as soon as possible to an appropriate person in your organisation, professional institution, or employee union, or to the authorities.

## In conclusion

To minimise the risk of incurring criminal liability for corruption offences, the primary principle is:

**– Always act honestly –**

**You have now completed this Module.**

If you would like to obtain a more detailed understanding of corruption in the infrastructure sector, GIACC has published a suite of eleven free online anti-corruption training modules. The Module that you have just completed contains materially the same content as Module 1 of these eleven Modules. To access GIACC's other Modules, go to: <https://giaccentre.org/training-online-modules/>

To obtain further information on corruption in the infrastructure sector, and how to prevent it, go to: <https://giaccentre.org/>