

**managing and reducing the risks of
fraud and bribery & corruption**

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general concepts regarding
fraud and corruption



the overlap between fraud and bribery & corruption

- The Association of Certified Fraud Examiners (“ACFE”) defines the act of fraud as *“any activity that relies on deception in order to achieve a gain”*. Regarding organizational fraud, the ACFE broadly categorizes this as
 - Internal or occupational fraud, which generally entails an employee, manager or executive of an organization deceiving the organization itself;
 - External organizational fraud, which relates to fraud committed against the organization by third parties, including vendors and customers.
- From a business perspective the ACFE definition of corruption is on point: *“A scheme in which an employee misuses their influence in a business transaction in a way that violates their duty to the employer in order to gain a direct or indirect benefit (e.g., schemes involving bribery or conflicts)*. The ACFE further includes the activity of corruption under occupational fraud.



the overlap between fraud and bribery & corruption

- The similarities between occupational fraud and bribery & corruption activities these criminal activities can best be illustrated by the following examples
- Both usually involve internal and external (third) parties:
 - Asset misappropriation through the issue of fictitious or inflated invoicing from a supplier / vendor. Bribery, where the fictitious or inflated invoicing by the third party generates the funds to pay the bribe to the employee for having awarded the third party the supplier contract.
 - Asset misappropriation, where an employee misrepresents to management the credentials of a supplier in order to facilitate the award of a supplier contract to the supplier. Corruption, where the employee fails to disclose that the supplier is owned by a close family member.



fraud and corruption

- One further point to bear in mind is that corruption may be further categorised into private and public bribery:
 - Private or commercial corruption, usually describing the dealing between agents or employees of commercial or prospective commercial partners in order to secure an advantage over business competitors;
 - Public bribery, which involves a public official (whether domestic or foreign) as one of the parties to the corrupt act.

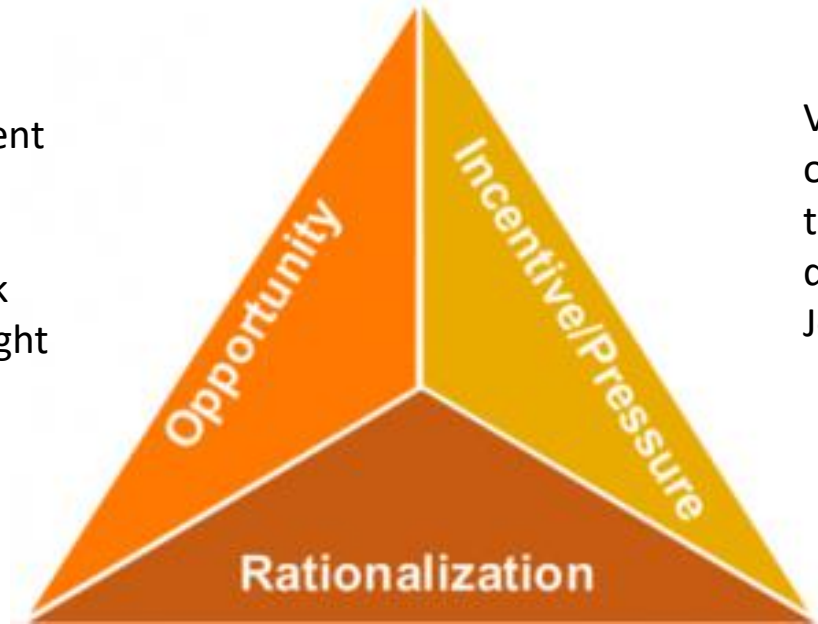


why do people commit
fraud or bribe?



why do people commit fraud: the Fraud Triangle

Opportunities may present themselves to tempt otherwise law-abiding employees, such as weak controls and poor oversight



Various factors can **pressure** otherwise law-abiding employees to commit fraud such as financial distress, “keeping up with the Jones’es

Rationalization takes the form of finding justification for the behaviour by re-labeling to remove moral stigma



why do people commit bribery: applying the Fraud Triangle

Opportunities

- Weak controls and poor oversight
- Poor culture of ethics
- No governance
- Highly regulated environment
- Perceived lack of enforcement
- No accountability



Pressure / Incentive

- Demands from the third party
- Anticipated benefit of paying the bribe
- Financial benefit of receiving bribe

Rationalization

- The perception that bribery is widespread – “everyone is doing it”
- The act is performed for the benefit of the organization, not the individual
- Entitlement – “poor” salary, seen as a supplement



overview of pertinent anti-fraud
and corruption legislation



overview of the Namibian law: fraud

- Fraud is a common-law crime and its definition is formed by case law, and legal precedents, drawing on academic opinion and judicial interpretation.
- Currently, fraud is defined in Namibia as the intentional and unlawful making of a misrepresentation which causes actual or potential prejudice to another.
- The misrepresentation may be made through an act – for example a misleading or false statement or representation - or may be made through omission – for example the failure to disclose a fact or information. As example of the above, a person may be guilty of fraud where he, in a situation where he has a duty to disclose a conflict of interest, actively states that he has no conflict of interest or where he fails to disclose the conflict of interest.



overview of the Namibian ABAC legislative framework

- The Anti-Corruption Act 8 of 2003
 - General definition of gratification, active & passive bribery, private and public bribery
 - Bribery of foreign public officials
 - Use of agents
 - Role of the Anti-Corruption Commission
 - Whistleblower and witness protection under the Anti-Corruption Act
- The Whistleblower Protection Act
- The Witness Protection Act
- Corporate legal liability
- Corporate governance provisions under the Corporate Governance Code for Namibia and enforceability thereof
- The Companies Act 28 of 2004 and books and records provisions
- UN Convention against Corruption, African Union Convention on Preventing and Combating Corruption



the spotlight is on fraud
and corruption



the spotlight on fraud in Namibia

- **Allegations that a MultiChoice Namibia employee defrauded the television company of about N\$2 million** - it is alleged that the employee, the marketing manager at MultiChoice Namibia, created falsified invoices, supposedly for advertisements placed in a newspaper and presented the invoices, with her bank account details thereon to MultiChoice for payment. **Allegations that employees of the Department of Education defrauded the department of N\$9 million** – it is alleged that in 2017 the employees colluded by claiming N\$9 million under the pretext of cash bonuses, additional payments and in subsidies, among others.
- **Allegations that doctors defrauded the Public Service Employee Medical Aid scheme of millions**
- **Allegations that 4 Namibia Breweries employees defrauded the company of N\$6.3 million** by falsely representing that crates and bottles had been returned, when in fact the trucks were empty.
- **SAA won a court case today against 9 persons for damages totaling N\$13 265 298.05** - the damages emanate from fraudulent and false baggage handling claims in the Namibian office of SAA.



the spotlight on corruption in Namibia

- Recent allegations centred around the fishing industry - the so - called Fishrot scandal – have brought international focus to bear on possible corruption in Namibia.
- The most recent Transparency International Corruption Perceptions Index (TI CPI) for 2021 rating scores Namibia as 49/100, ranking it at 58/180 countries. This is a notable deterioration from past scores – in 2018 Namibia scored 53/100 and was ranked 52/180.
- The recent TI CPI index score has met with dismay by the Anti-Corruption Commission, but other analysts have attributed the poorer scoring to inactivity on the part of the authorities to deal with corruption.
- Whatever the reason, it is apparent that the Fishrot and associated allegations have certainly drawn the attention of international media and watchdogs to the situation in Namibia.



what is the cost of fraud and corruption to an organization?



the cost of fraud and corruption to the organization

Overall Fraud

- The ACFE 2022 Report to the Nations estimates that organizations on average, lose 5% of their revenue annually as a result of fraud perpetrated against the organization.

Bribery & Corruption

- An analysis of reported cases in the period 1999 - 2014, undertaken by the OECD, indicates that the average cost of the bribe to public officials amounted to 10.9% of the transaction value. For certain industries the average was much higher:
 - Extractive – 21%
 - Wholesale and retail – 19%
 - Transport and storage, Manufacturing – 16%
 - Health – 14%
- On average, the bribe paid constituted 34.5% of the profits that the transaction generated to the organization.



increased cross border enforcement of corruption

- The Dept. of Justice of the USA has rigorously enforced corruption cases over the past 25 years involving foreign public officials under the Foreign Corrupt Practises Act (“FCPA”).
- The Serious Fraud Office of the UK has increased enforcement actions for the bribery of foreign public officials under the UK Bribery Act.
- Canada has of recent begun prosecuting organizations and individuals under its Corruption of Foreign Public Officials Act ("CFPOA").
- Germany’s Criminal Code and the Administrative Offences Act criminalizes corruption and holds companies civilly responsible for corruption offences committed on behalf of the company.
- French agencies are stepping up enforcement efforts under the 2016 SAPIN II law.
- China has imposed death sentences for violations of new corruption legislation.
- The OECD continues to encourage enhancements to anti-bribery legislation and enforcement efforts worldwide.



the cost of fraud and corruption to the organization

Enforcement actions under the US Foreign Corrupt Practises Act

Organization	Corporate Seat	Settlement	Year
Goldman Sachs Group	United States	\$3.3 billion	2020
Airbus SE	Ned/France	\$2.09 billion	2020
Petrobras	Brazil	\$1.78 billion	2018
Ericsson	Sweden	\$1.06 billion	2019
Telia Company AB	Sweden	\$1.01 billion	2017
MTS	Russia	\$850 million	2019
Siemens	Germany	\$800 million	2008
VimpelCom N	Netherlands	\$795 million	2016
Alstom	France	\$772 million	2014
Glencore	Switzerland	\$700 million	2022



what constitutes an effective
anti-fraud and corruption
compliance programme?



components of an effective compliance programme

Underpinned by proportionality – policies and procedures should be proportionate to the fraud / bribery risk faced by the organisation and the nature, scale and complexity of the organization’s activities and operations - in line with a key component of good corporate governance under the NAMCODE, namely the duty of management to govern risk in the organization by identifying and managing risks

- Top-level commitment, tone from the middle
- Risk assessment – A periodic , informed and documented assessment of the nature and extent of the exposure of the
- Appropriate fraud / ABAC policy & procedures
- organisation to potential internal and external risks
- Risk based third party due diligence procedures and monitoring
- Effective, ongoing communication, training and guidance
- Financial and accounting procedures that ensure the maintenance of fair and accurate books and records
- Confidential reporting mechanisms – no retaliation
- Monitoring and review – continuous, updating and improving
- Appropriate remediation



top level commitment

There needs to be buy-in and demonstrable support of management to a zero tolerance policy against fraud and bribery / corruption. Best practice calls for:

- Management to communicate and display ethical leadership (NAMCODE)
- Clear messaging on the ethics and culture of the organization through issue and distribution of Code of Ethics / Code of Conduct
- Demonstrable top-level commitment by the governing body of the organization, with tone from the middle
- Effective, ongoing communication with employees, including training on Code of Ethics / Code of Conduct
- Promotion of a confidential reporting mechanism – no retaliation



risk assessment

Internal risks and external risks need to be identified, assessed for probability and impact, and evaluated against the internal controls of the organization, in order to determine whether the controls in place are effective or need to be enhanced.

- It is therefore imperative for an organization to understand the risks of bribery and corruption that an organization's business partners (including suppliers, agents, distributors, consultants, 3rd party intermediaries, customers, JV partners – collectively "third parties") pose to the organization
- Regulators therefore require that organizations perform risk based due diligence procedures over their third parties, which includes ongoing monitoring particularly of those third parties that are deemed to pose a high risk of corruption



how do I identify potential risks to the organization?

Best practice includes posing and answering the following questions in respect of potential risks:

- **Compliance framework** - does the organization's legal and regulatory compliance framework create risks for it?
- **Country risk** – do we operate in an environment in which fraud / corruption is committed with impunity? Do we operate across borders or in foreign jurisdictions that are regarded as high risk?
- **Sectoral risk** - do the activities and operations that we undertake, expose the organization to increased risk?
- **Operational / transactional risk** – are our operations dependent on processes that are generally recognised as being vulnerable to fraud or corruption?
- **Business partners** - do any of our business partnerships increase the risk of fraud or corruption?
- **Business opportunities** - does a particular business opportunity increase the risk of fraud or corruption?



risk rating process

- Once the key risks have been identified, the risks need to be documented in a risk register.
- These identified risks then need to be evaluated and prioritised in order to:
 - Focus attention on those business activities and relationships which are the most risky to the organisation,
 - Determine whether appropriate and adequate controls are in place to mitigate the key risks identified,
 - Establish whether additional controls need to be designed and implemented in order to mitigate the key risks.



**key components of an
anti – fraud / ABAC policy**



key components of an anti-fraud / ABAC policy

At an entity –level a fraud / ABAC policy should clearly articulate:

- A statement of active commitment by management to ethical conduct – tone at the top, tone from the middle
- A zero tolerance policy for fraud and corruption
- That management and employees are required to adhere to the policy, without exception. In certain cases you may consider subjecting your business partners to the policy or portions thereof
- The possible consequences to the organization should management, employees and business partners engage in illegal activity. The gravity of the impact should be stressed where the illegal act
 - relates to government, State-owned enterprises or government officials,
 - is subject to foreign legislation and the foreign regulators and/or enforcement agencies may intervene,
 - possible punitive measures such as international sanctions, debarment and black-listing by funding agencies



key components of an anti-fraud / ABAC policy

At an entity –level a fraud / ABAC policy should clearly articulate:

- The sanctions that will be imposed against management / employees if they commit fraud or engage in corrupt activities
- Measures that will be brought against business partners that fail to adhere to the policy.



key components of an anti-fraud / ABAC policy

- Your employees need to be clear as to what fraud and bribery & corruption is. A well-drafted policy should clearly define these activities, and provide examples of such conduct that are pertinent to your business.
 - The definitions should be in layman terms, easily understandable to all levels of employees in the organization
 - The examples should be pertinent to your business operations
- The policy should compliment and summarize other pertinent policies, including your:
 - procurement policy and procedures
 - sales procedures
 - entertainment, gifts and hospitality policy
 - donations, sponsorships and community investment programmes
 - conflicts of interest policy



key components of an anti-fraud / ABAC policy

- The policy should clearly articulate the internal and external mechanisms for reporting allegations of fraud or corruption, and
 - encourage the reporting of suspicions or corrupt activities
 - clearly state that whistle-blowers will not be retaliated against for making such reports in good faith, but that you will protect the confidentiality of the whistle-blower
- The policy should be communicated throughout the organization, through regular management, line management and departmental communications, including appropriate training. Training should be
 - localised through input from cross-functional working – legal, human resources and relevant business units
 - practical, providing guidance to the target audience
 - part of on-boarding process for new employees
 - considered in regular employee evaluation processes - sanction employees that fail to attend compulsory training sessions, reward employees that embrace the training requirements



thank you

