

Corporate Compliance and Fraud Protection – Is Audit talking about the F-word with other departments?

IIA Calgary

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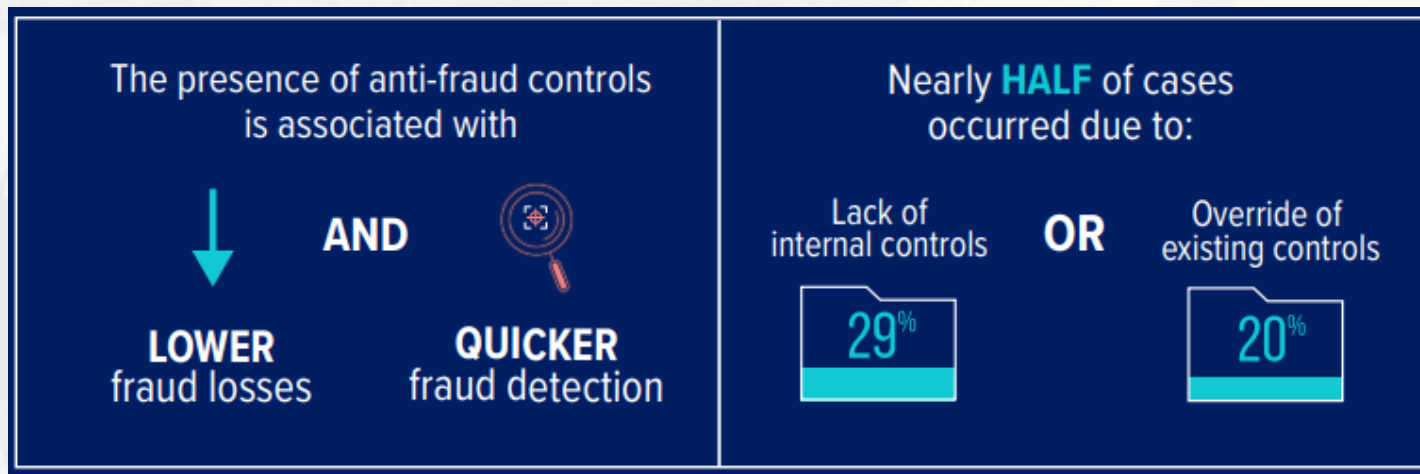
Agenda

1. Introduction
2. Construction Corruption Stats
3. Construction Corruption and the Foreign Corrupt Practices Act (FCPA), recent cases
4. Department of Justice (DOJ) Guidelines – Corporate Compliance Programs – what we can do
5. Third Parties and FCPA
6. COSO and ACFE guidelines
7. Forget the best practices and theory - Really - why perform a fraud risk assessment
8. Conclusion
9. Q&A

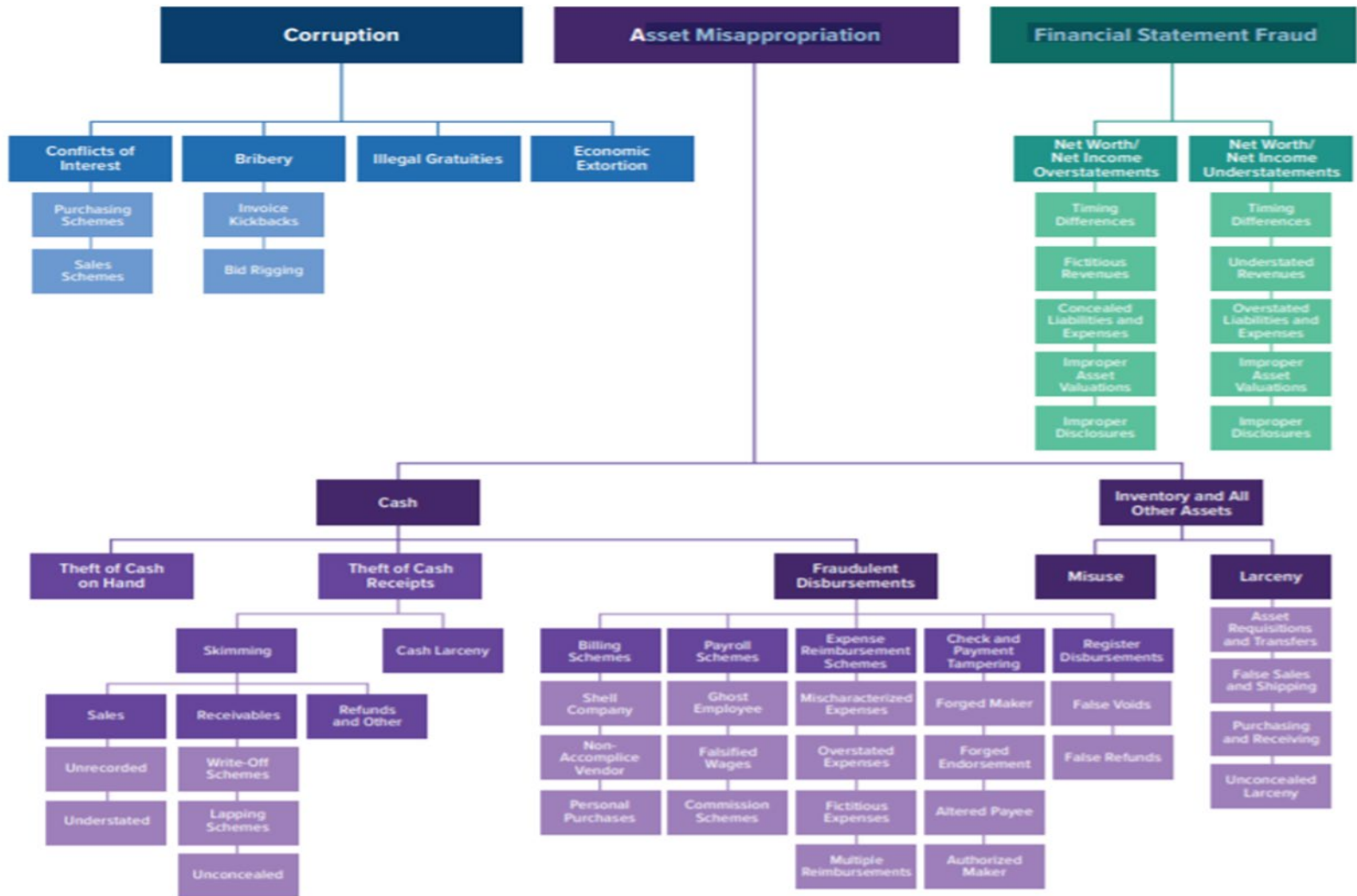
Construction Corruption – when things go wrong

FIG. 21 WHAT ARE THE MOST COMMON OCCUPATIONAL FRAUD SCHEMES IN VARIOUS INDUSTRIES?

INDUSTRY	Cases	Billing	Cash larceny	Cash on hand	Check and payment tampering	Corruption	Expense reimbursements	Financial statement fraud	Noncash	Payroll	Register disbursements	Skimming
Construction	78	24%	8%	10%	14%	56%	17%	18%	24%	24%	3%	9%



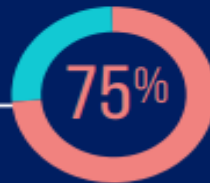
THE FRAUD TREE



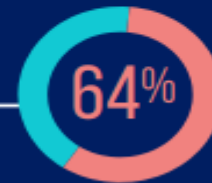
Construction Corruption – when things go wrong



81% of victim organizations **MODIFIED** their anti-fraud controls following the fraud.



Increased management review procedures



Increased use of proactive data monitoring/analysis

But what if you aren't the victim organization? What if a construction job under your control has been charged with committing an offence like bribing a government official, and the U.S. Department of Justice is investigating you? Would your compliance program be deemed effective?

Construction and the Foreign Corrupt Practices Act

The global construction market is expected to exceed \$16 trillion by 2025.

While expanding to global markets can have high rewards, risks such as those pertaining to the US Foreign Corrupt Practices Act (FCPA) are real. Within the last 10 years, sanctions have reached more than \$23 billion.

Leadership at both the US Department of Justice and the Securities and Exchange Commission indicate that the FCPA continues to be a high priority, and that they continue to have strong pipelines of enforcement actions.

President Joe Biden has enforced the message, establishing the fight against bribery and corruption as a core national security interest for the US.

References

<https://fcpa.stanford.edu/statistics-analytics.html?tab=2>

<https://www.sec.gov/enforce/sec-enforcement-actions-fcpa-cases>

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/03/memorandum-on-establishing-the-fight-against-corruption-as-a-core-united-states-national-security-interest/>

Recent Cases

Here are the ten biggest FCPA cases of all time based on penalties and disgorgement assessed in the U.S. enforcement documents:

1. Goldman Sachs Group Inc. (United States): \$3.3 billion in 2020
2. Airbus SE (Netherlands/France): \$2.09 billion in 2020.
3. Petróleo Brasileiro S.A. – Petrobras (Brazil): \$1.78 billion in 2018.
4. Telefonaktiebolaget LM Ericsson (Sweden): \$1.06 billion in 2019.
5. Telia Company AB (Sweden): \$1.01 billion in 2017.
6. MTS (Russia): \$850 million in 2019.
7. Siemens (Germany): \$800 million in 2008.
8. VimpelCom (Netherlands): \$795 million in 2016.
9. Alstom (France): \$772 million in 2014.
10. Glencore plc (Switzerland): \$700 million in 2022.

Recent Cases

Walmart - \$282 M in penalties and disgorgement of profit

*“According to the SEC’s order, Walmart failed to sufficiently investigate or mitigate certain anti-corruption risks and allowed subsidiaries in Brazil, China, India, and Mexico to employ third-party intermediaries who made payments to foreign government officials without reasonable assurances that they complied with the FCPA. The SEC’s order details several instances when Walmart **planned to implement proper compliance and training only to put those plans on hold or otherwise allow deficient internal accounting controls to persist even in the face of red flags and corruption allegations.**”*

Polling Question #1

Have you heard of any of these cases?

Yes

No

I don't know

U.S. Department of Justice – Criminal Division

Evaluation of Corporate Compliance Programs

A brief History

- 2008 – Morford Memo – guidance with respect to determining whether a corporate monitor should be appointed on a company after a criminal wrongdoing
- 2018 – Benczkowski Memo – supplements the prior memo, providing specific guideposts for making the determination
- 2020 – updated in June 2020 <https://www.justice.gov/criminal-fraud/page/file/937501/download>

Excerpt:

- *“This document is meant to assist prosecutors in making informed decisions as to whether, and to what extent, the corporation’s compliance program was effective at the time of the offense and is effective at the time of a charging decision or resolution, for purposes of determining the appropriate (1) form of any resolution or prosecution; (2) monetary penalty, if any; and (3) compliance obligations contained in any corporate criminal resolution (e.g., monitorship or reporting obligations).”*

Highlights of the Guidelines:

- I. Is the Corporation's Compliance Program Well Designed?
 - A. Risk Assessment
 - B. Policies and Procedures
 - C. Training and Communication
 - D. Confidential Reporting Structure and Investigation Process
 - E. Third Party Management
 - F. Mergers and Acquisitions (M&A)

What does this mean to us Auditors? What could you look at?

- Risk management processes, risk-based resource allocation, lessons learned
- Policies design and comprehensiveness, accessibility such as location and language of policies, updating to address policy violations
- Risk based training (do higher risk employees receive tailored training?), measuring the effectiveness of training, updating to address violations
- Effective reporting mechanisms, qualified investigators
- Contractor policies, training, controls, stewardship
- Due Diligence, integration of company into new corporate culture

Highlights of the Guidelines:

II. Is the Corporation's Compliance Program Adequately Resourced and Empowered to Function Effectively?

- A. Commitment by Senior and Middle Management
- B. Autonomy and Resources
- C. Incentives and Disciplinary Measures

What does this mean to us Auditors? What could you look at?

- Tone at the top, oversight, shared commitment
- Where is the Compliance dept held – is it independent? Does it have seniority in terms of strategy, reporting line, resources, compensation, does it have proper funding and resources?
- Has the company considered the implications of its incentive program on compliance? Who makes disciplinary decisions? Are they consistent?

Highlights of the Guidelines:

III. Does the Corporation's Compliance Program Work in Practice?

- A. Continuous Improvement, Periodic Testing, and Review
- B. Investigation of Misconduct
- C. Analysis and Remediation of Any Underlying Misconduct

What does this mean to us Auditors? What could you look at?

- Internal Audit planning – is it risk based? If issues are identified, is there a follow up process? Are fraud risk assessments performed? What control testing exists? Has the compliance culture been assessed or measured?
- Are investigations independent, objective, qualified?
- Are root causes assessed and fed back to policy makers? Have controls been improved after misconduct/audit findings?

Compliance Assessment – who should participate?

Potential Team members

- Auditors
- Investigators
- Supply chain
- Compliance Officers
- Lawyers
- Policy owners and writers

*General Counsel and Stakeholder
Relationships Compliance Officer*

The audit/investigation department should be close friends with all of the above groups

Polling Question #2

Has your organization reviewed the DOJ memo?

Yes

No

I don't know

A closer look – third parties and FCPA

In 2015 KPMG International released the results of its global anti-bribery and corruption survey: *Anti-Bribery and Corruption: Rising to the challenge in the age of globalization*.

The report discussed the growing bribery and corruption risks that third parties present, and the challenges companies face in monitoring them. It also examines companies' lack of monitoring efforts in their own anti-bribery and corruption (ABC) compliance programs. It explores the compliance pressures organizations face as a growing number of governments have passed ABC regulations.

- Only 29 percent of respondents said their companies have right-to-audit clauses over third parties and 41 percent of those with such clauses exercised these rights.
- Auditing third parties for ABC compliance ranked as the most challenging ABC issue faced by respondents.
- 8 in 10 respondents said their companies have a formal, written ABC compliance program, but only 58 percent said these programs include continuous monitoring and internal audit protocols.

Polling Question #3

Does your construction audit program review ABC audit language and activities?

Yes


No

I don't know

DOJ Guidelines/COSO/ACFE – a similar story

- When we review the DOJ guidelines, there isn't anything earth shattering – we have seen similar guidelines before:
 - COSO – five components and 17 principles
 - COSO& ACFE - guidance on establishing an overall Fraud Risk Management Program

Fraud Risk Assessment – Best Practice

COSO Component	COSO Principle
Control Environment	<ol style="list-style-type: none"> 1. Demonstrates commitment to integrity and ethical values 2. Exercises oversight responsibility 3. Establishes structure, authority and responsibility 4. Demonstrates commitment to competence 5. Enforces accountability
Risk Assessment	<ol style="list-style-type: none"> 6. Specifies suitable objectives 7. Identifies and analyzes risk 8. Assesses fraud risk  9. Identifies and analyzes significant change
Control Activities	<ol style="list-style-type: none"> 10. Selects and develops control activities 11. Selects and develops general controls over technology 12. Deploys through policies and procedures
Information & Communication	<ol style="list-style-type: none"> 13. Uses relevant information 14. Communicates internally 15. Communicates externally
Monitoring Activities	<ol style="list-style-type: none"> 16. Conducts ongoing and/or separate evaluations 17. Evaluates and communicates deficiencies

Why Perform a Fraud Risk Assessment – Best Practice

Principle 1

- As part of an organization's governance structure, a fraud risk management program should be in place, including a written policy (or policies) to convey the expectations of the board of directors and senior management regarding managing fraud risk.

Principle 2

- Fraud risk exposure should be assessed periodically by the organization to identify specific potential schemes and events that the organization needs to mitigate.

Principle 3

- Prevention techniques to avoid potential key fraud risk events should be established, where feasible, to mitigate possible impacts on the organization.

Principle 4

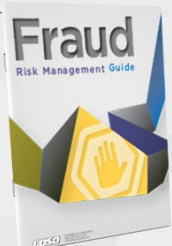
- Detection techniques should be established to uncover fraud events when preventive measures fail or unmitigated risks are realized.

Principle 5

- A reporting process should be in place to solicit input on potential fraud, and a coordinated approach to investigation and corrective action should be used to help ensure potential fraud is addressed appropriately and timely.

Fraud Risk Management Guide

A joint publication of COSO and the ACFE



Polling Question #4

Does your organization perform a fraud risk assessment?

Yes

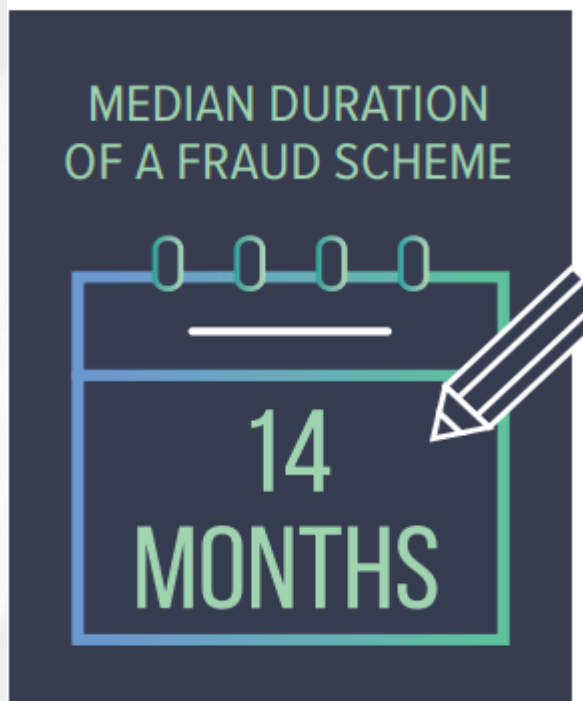
No

I don't know

Annual Fraud Risk Assessment Process



Median duration of fraud per the ACFE



Not all fraud can be prevented. Even in the most secure organizations, it is likely that some type of employee fraud will eventually occur.

Consequently, quick detection of fraud is vital to protecting an organization from potential damage.

Research shows that the median duration of a fraud—that is, the typical time between when a fraud begins and when it is detected—is 14 months.

The longer a fraud remains undetected, the greater the financial losses

So how do we identify fraud sooner?

Fraud Risk Workshop = Information Pipeline



Organizations with
FRAUD AWARENESS TRAINING
for employees were
more likely to gather tips through



**FORMAL
REPORTING
MECHANISMS**

56% of tips with training

37% of tips without training

The Real Benefit - Why Perform a Fraud Risk Workshop?

Performing a Fraud Risk Assessment on a regular basis has a number of benefits, including:

- Improved communication and awareness about fraud;
- Hear from the people on the ground - not only the tone from the top – hear the message from the middle – and the buy-in from the bottom;
- Connecting with the front-line people that are the first line of defense;
- Identifying where your company is most vulnerable to fraud and what activities put the organization at the greatest risk;
- Knowing which roles / functions put the organization at the greatest risk;
- Developing plans to mitigate fraud risk;
- Developing techniques to determine if fraud has occurred in high-risk areas;
- Assessing internal controls - provide a basis for Internal Auditing and continuous monitoring; and
- Demonstrating Audits' value in the organization and providing opportunities for consultancy and advisory services.

Polling Question #5

Does your organization perform fraud risk workshops?

Yes

No

I don't know

Conclusion

- DOJ, COSO, ACFE all offer guidelines on compliance and fraud.
- Help your organization by sharing the options that are out there for assessing your fraud and compliance programs.
- Develop feedback loops to allow for constant improvement of your fraud/compliance programs

Questions?

