

Be prepared

The role of the General Counsel and Compliance Officer in managing bribery and corruption risk

Construction, real estate and infrastructure

The EY logo is positioned in the bottom left corner of the page. It consists of the letters 'EY' in a bold, white, sans-serif font. The background of the entire page is a photograph of a steel building frame under construction, with a clear blue sky. A bright yellow diagonal stripe cuts across the lower right portion of the image. In the bottom left corner, there is a decorative graphic of vertical white bars of varying heights, resembling a bar chart or a stylized architectural element.

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Building a better
working world

Construction, real estate and infrastructure projects are traditionally vulnerable to corrupt practices and these risks are increasing. At the same time, the international legal landscape is evolving, with implications for Australian companies. With bribery and corruption risk increasingly in the spotlight of regulators, it is time for General Counsel and Compliance Officers to not only manage crises but steer their organisations in the right direction.

Global trends

Historically, construction, real estate and infrastructure companies contribute significantly to bribery and corruption prosecutions - an estimated 15% of the global total¹ - because they are exposed to many risks. They work on high-stakes (financially and politically) projects; should not operate without licences and permits; have complex contractual arrangements; and rely on a network of suppliers, contractors and business partners.

As the business environment evolves in response to fundamental shifts, the sector's risk profile is growing exponentially.

Globalisation: Increasingly, growth relies on doing business in or with countries where bribery and corruption are accepted and local laws and regulations are unclear and poorly enforced.

Third parties: Business relationships are getting more complex. The more suppliers, partners, agents or local advisors are connected to a business, the more chance of being exposed to people with different ethical values.

Legislative changes: To tackle endemic bribery and corruption, other countries are tightening laws, improving detection rates and increasing prosecutions.

Cross-border cooperation: New technologies support closer relationships between national and international enforcement agencies, increasing detection rates.

Increased penalties: There are larger fines, longer imprisonment terms (for company directors and perpetrators) and more use of civil action to recover illegally gained profits; the global reach of social media means reputational damage can be long-lasting and extensive.

Many companies regard Australia as being isolated from these trends - but it is not.

Why Australian entities are not safe

It would be easy to be complacent about Australia's anti-corruption regime. While the work of ICAC and other Commissions have uncovered well-publicised cases of illegal behaviour, only two matters have been brought before the court under the Criminal Code Act, and they remain unresolved.

However, there is such an international groundswell of anti-corruption activity that in our opinion, Australia will soon be obliged to align with other jurisdictions or risk compromising its ability to do business overseas. There is a strong argument for readying for inevitable changes to the domestic landscape.

Australian organisations should also be managing the rising risk levels presented by interactions with overseas entities.

- ▶ The UK Bribery Act makes overseas companies who do business at any level in the UK liable if they fail to prevent bribery and corruption, including the actions of associated third parties.
- ▶ The US Federal Government is bringing significantly more Foreign Corrupt Practices Act charges against overseas companies, with increased penalties.
- ▶ European countries are responding positively to the OECD's call for bribery and corruption legislation and enforcement that is as tough as the USA's.
- ▶ The Chinese government has introduced an anti-corruption campaign and is enhancing transparency.
- ▶ Several high profile cases involving Australian organisations trading overseas have highlighted the dangers of adopting local attitudes to bribery and corruption.

Whether your organisation is a multi-national, has foreign business partners or relies on overseas suppliers, acting to minimise exposure in a dynamic risk environment makes better business sense than being purely reactive.

¹ OECD (2014) Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials



While it is impossible to eliminate bribery and corruption, a comprehensive, robust and contemporary risk management framework will go a long way towards protecting your organisation against future threats and minimising damage if an event does occur. It may also help with the defence case: in the UK and USA, being able to prove adequate anti-corruption procedures were in place when an offence occurred can now assist in mitigating penalties.

In a changing world, someone needs to take the lead on proactive, sustainable risk management – a role ideally suited to the General Counsel and/or Compliance Officer.

Stepping outside the box

While there is an inherent advisory role for General Counsel (GC) and Compliance Officers (COs), resource constraints and internal expectations mean this role is not often fulfilled to the extent it should be.

Yet GC and COs are well-equipped to go beyond traditional reactive roles and lead a more strategic approach to risk. They are up to date with the latest laws and regulations, can provide an objective perspective and are used to working collaboratively across the business.

However, the ability to move a business from a reactive to a proactive stance on risk needs more. It requires someone who can frame risk in business terms, has strong C-suite and Board relationships and is engaging rather than passive.

For some GC and COs, this is new territory. However, with extra effort, it is possible to reposition the role of the GC and CO to that of being a trusted advisor who can add value in the area of risk.

Checklist for an anti-bribery and corruption management framework

- Y N Does your organisation have a champion who understands both the legal and business context of risk?
- Y N Is there top down support that is communicated internally and externally?
- Y N Do you operate a risk vs. reward matrix that focuses resources and effort proportionately on areas that will produce the best outcomes?
- Y N Is there a risk register that lists the top bribery and corruption risks and is regularly updated?
- Y N Are risk management strategy and support systems in place that were devised in collaboration with relevant functions such as HR, Governance, Procurement, Audit, Communications, IT, Marketing and Sales?
- Y N Do you have anti-corruption policies and procedures that are consistent enterprise-wide and widely communicated?
- Y N Is there a Governance framework with clear accountabilities and responsibilities?
- Y N Does your monitoring and compliance program exceed minimum standards for frequency and robustness and include supplier audits and due diligence processes that are risk-based?
- Y N Do you have a crisis management plan? If so, does it set out accountabilities, reporting responsibilities and an escalation process and is it regularly reviewed and tested?
- Y N Is there mandatory anti-corruption training and education for everyone, including third party partners, Directors and senior executives?

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How we can work with you

EY delivers the following services globally:

- ▶ Corruption and risk assessments including suppliers, distributors, joint venture partners and other third parties.
- ▶ Assistance with designing, developing and implementing an effective anti-corruption framework.
- ▶ Advice and support in building and improving governance and reporting mechanisms for ethical risks and anti-corruption programs.
- ▶ Investigation of suspected unethical activity, bribery or corruption.
- ▶ E-data and discovery tools, methodologies and analytics in support of investigation, document management and continuous monitoring.
- ▶ Forensic due diligence during transactions including adequacy of target's anti-corruption program and investigation of specific suspicions.



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