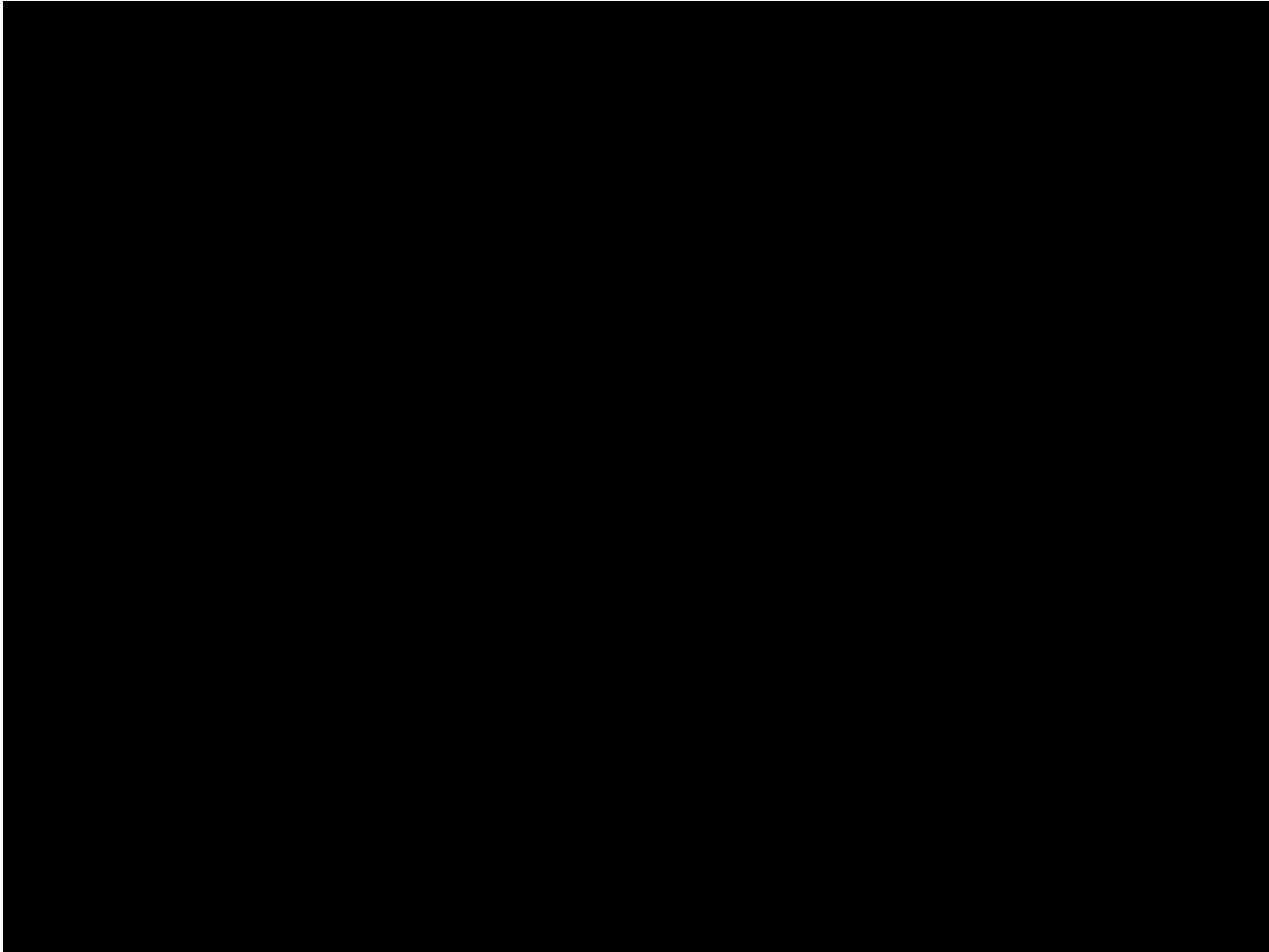


# Bribery and Corruption

## *Introduction*

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# CPE PIN Instructions



# Introduction

- Corruption schemes make up 38% of occupational fraud cases and cause a median loss of \$250,000.
- Bribery and corruption risks are on the rise.

# **Anti-Corruption Enforcement Is on the Rise**

- The United States, United Kingdom, and a number of transnational organizations have made corruption a priority.
- The Foreign Corrupt Practices Act (FCPA) and UK Bribery Act 2010 are at the center of anti-corruption efforts.
- However, there has been a notable increase in anti-corruption laws, regulations, and enforcement activities in many regions.

# Global Trends in Anti-Corruption Enforcement



- Increase in the number of enforcement actions
- Increase in the penalties paid by companies that settle in enforcement actions

# Global Trends in Anti-Corruption Enforcement

- Emphasized individual liability in some jurisdictions
- An increase in cooperation among enforcement authorities in different countries
- A majority of anti-corruption cases involve the use of third-party intermediaries



# What Are Bribery and Corruption?

- *Corruption* is the wrongful use of influence to procure a benefit for the actor or another person, contrary to the duty or the rights of others.
- Corruption schemes include:
  - Bribery and kickbacks
  - Illegal gratuities
  - Economic extortion
  - Undisclosed conflicts of interest

# What Are Bribery and Corruption?

- *Bribery* involves offering, giving, receiving, or soliciting anything of value to influence an official act or business decision.
  - Official bribery
  - Commercial bribery
- *Kickbacks* are improper, undisclosed payments made to obtain favorable treatment.



# What Are Bribery and Corruption?

- *Illegal gratuities* are something of value given to another party to reward a decision after it has been made, rather than to influence it before the decision is made.



# What Are Bribery and Corruption?

- *Economic extortion* is present when an employee or official, through the wrongful use of actual or threatened force or fear, demands money or some other consideration to make a particular business decision.

# What Are Bribery and Corruption?

- A *conflict of interest* occurs when an agent has an undisclosed interest in a transaction that adversely affects their professional role.
- To be classified as a conflict of interest scheme, the employee's interest in the transaction must be undisclosed.

# Methods of Making and Concealing Corrupt Payments

- Inappropriate or excessive gifts and favors
- “Loans”
- Use of credit cards or payments of credit card bills
- Sexual favors
- Overpaying for purchases
- Free use of an apartment or discounted rent, free use of a leased car, etc.

# Methods of Making and Concealing Corrupt Payments

- Cash payments
- Payments by checks and other financial instruments
- Giving hidden ownership interest
- Selling or leasing property to the recipient at a value that is less than the fair market value
- Making promises of favorable treatment
- Hospitality
- Enhanced commissions



# Red Flags of Bribery and Corruption

- Red flags of corrupt procurement employees:
  - Unusual amount of interest in contract or contractor
  - Accepts items not favorable to the organization
  - Acts outside their normal scope of duties
  - Declines a promotion to a position not involving procurement
  - Does not file their conflict of interest forms
  - Insists on using specific third parties



# Red Flags of Bribery and Corruption

- Red flags of corrupt procurement employees:
  - Rarely or never takes a vacation
  - Accepts inappropriate gifts
  - Exhibits an unexplained increase in wealth
  - Has an undisclosed outside business
  - Socializes with procurement officials
  - Has family ties with contractors
  - Approves an unusually high volume of purchases

# Red Flags of Bribery and Corruption

- Red flags of corrupt marketing employees:
  - Employee has a high success rate in markets where competitors are known to bribe.
  - Contracts have terms favorable to the organization's products or services.
  - Employee has frequent hospitality and travel expenses for foreign public officials.

# Red Flags of Bribery and Corruption

- Red flags of corrupt third parties:
  - Payments of unjustified high prices or price increases for common goods or services
  - Fees that are paid in cash
  - Fees that are made in a country different from where the underlying business takes place
  - Offers no apparent value to the organization
  - Charges high commission
  - Claims to have special influence

# Red Flags of Bribery and Corruption

- Red flags of corrupt third parties:
  - Appears unqualified
  - Poor relations with competitors
  - Address, telephone number, or zip code matches an employee's address
  - Incomplete address
  - Multiple addresses
  - Reputation for corruption
  - Contractor not on the approved contractor list

# Red Flags of Bribery and Corruption



- Internal control red flags of corruption:
  - Poor internal controls over key functional areas
  - Insufficient capacity to monitor high-risk employees or units
  - Inadequate anti-corruption control plan
  - Lack of separation of duties in purchasing



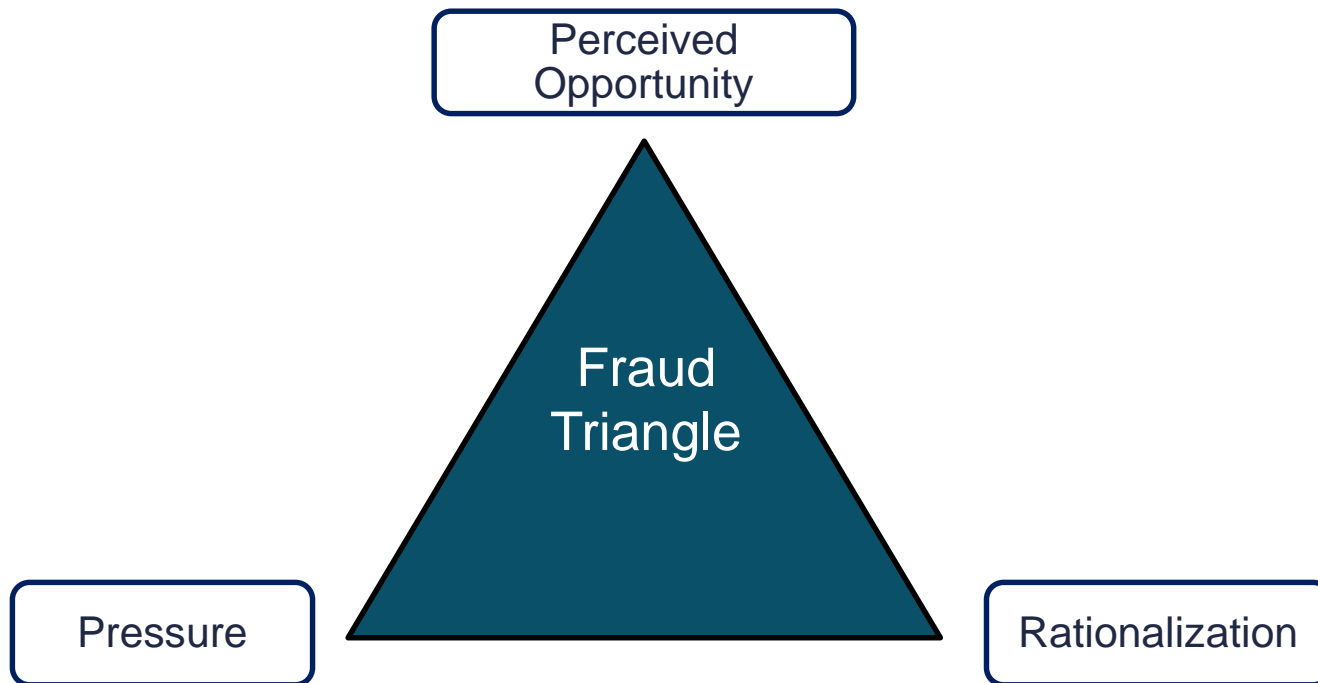
# Red Flags of Bribery and Corruption

- Internal control red flags of corruption:
  - Poor enforcement of existing policies
  - Poor documentation supporting award of contracts or subcontracts
  - Inadequate monitoring procedures

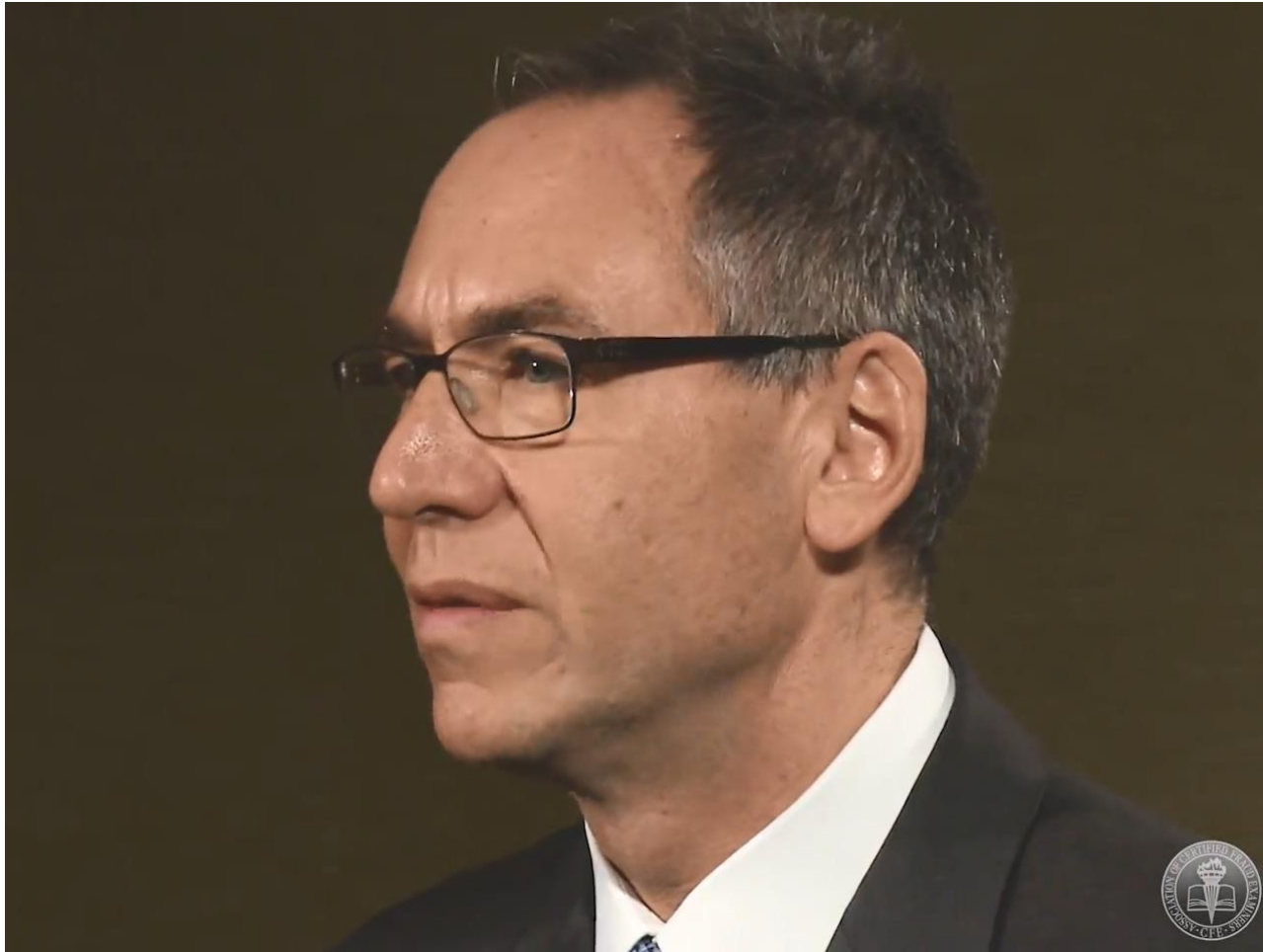


# The Fraud Triangle

- According to the Fraud Triangle, there are three interrelated factors that enable someone to commit fraud.



# The Fraud Triangle



# The Cost of Corruption

- Effect on market capitalization:
  - Public companies undergoing FCPA investigations lost an average of 2.9% of market cap.
  - Companies facing only bribery charges lost 1.5% of market cap.
  - Companies being investigated for both bribery and financial statement fraud lost 16.3% of market cap.

# **The Cost of Corruption— ACFE 2018 *Report to the Nations***

- Corruption schemes pose substantial risks to organizations throughout the world.
  - Most common form of fraud in all geographic regions
- Corruption was the most prevalent fraud committed in larger organizations.
- More than 50% of all cases in the energy, manufacturing, and government/public administration sectors involved corruption.
- 50% of corruption cases were detected through tips.

# Benefits of Fighting Corruption

	Benefits of Engaging	Risks of Not Engaging
<b>Individual Company Action</b>	<ul style="list-style-type: none"> <li>• Reduce the cost of doing business</li> <li>• Attract investments from ethically oriented investors</li> <li>• Attract and retain highly principled employees, improving employee morale</li> <li>• Obtain a competitive advantage of becoming the preferred choice of ethically concerned customers/consumers</li> <li>• Qualify for reduced legal sanctions in jurisdictions like the US and Italy</li> </ul>	<p>Criminal prosecution, in some jurisdictions both at company and senior management levels which can lead to imprisonment</p> <ul style="list-style-type: none"> <li>• Exclusion from bidding processes, e.g. for international finance institutions and export credit agencies</li> <li>• "Casino risk" – no legal remedies if a counterpart does not deliver as agreed and/or keeps increasing the price for doing so</li> <li>• Damage to reputation, brand and share price</li> <li>• Tougher fight for talent when hiring new employees</li> <li>• Regulatory censure</li> <li>• Cost of corrective action and possible fines</li> </ul>
<b>Collective Action by Business</b>	<ul style="list-style-type: none"> <li>• Create a level playing field overcoming the "prisoner's dilemma"</li> <li>• Improve public trust in business</li> <li>• Influence future laws and regulations</li> </ul>	<p>Missed business opportunities in distorted markets</p> <ul style="list-style-type: none"> <li>• Increased magnitude of corruption</li> <li>• Policy-makers responding by adopting tougher and more rigid laws and regulations – internationally, regionally and nationally</li> </ul>

(Source: [www.unglobalcompact.org/docs/issues\\_doc/Anti-Corruption/clean\\_business\\_is\\_good\\_business.pdf](http://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/clean_business_is_good_business.pdf))



# Course Objectives

- In this course, attendees will learn how to:
  - Navigate the legal elements of bribery and corruption.
  - Comply with the FCPA and UK Bribery Act.
  - Identify and prevent corruption in purchasing.
  - Conduct corruption risk assessments.
  - Implement and evaluate anti-corruption programs.
  - Manage third-party risks.
  - Conduct M&A corruption due diligence.
  - Respond to evidence of corruption.
  - Manage international investigations.