Ethics Institute of South Africa

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ASSOCIATION OF CERTIFIED FRAUD EXAMINERS · CFE ·

72% of SA c'pies had fallen prey to WCC, compared with 43% globally

(4th biennial PWC Global Economic Crime Survey, SA: 2007)

Don't be a victim of WCC
–
get even ...

Presented by Adv Werner Bouwer

Corruption prevalence ...

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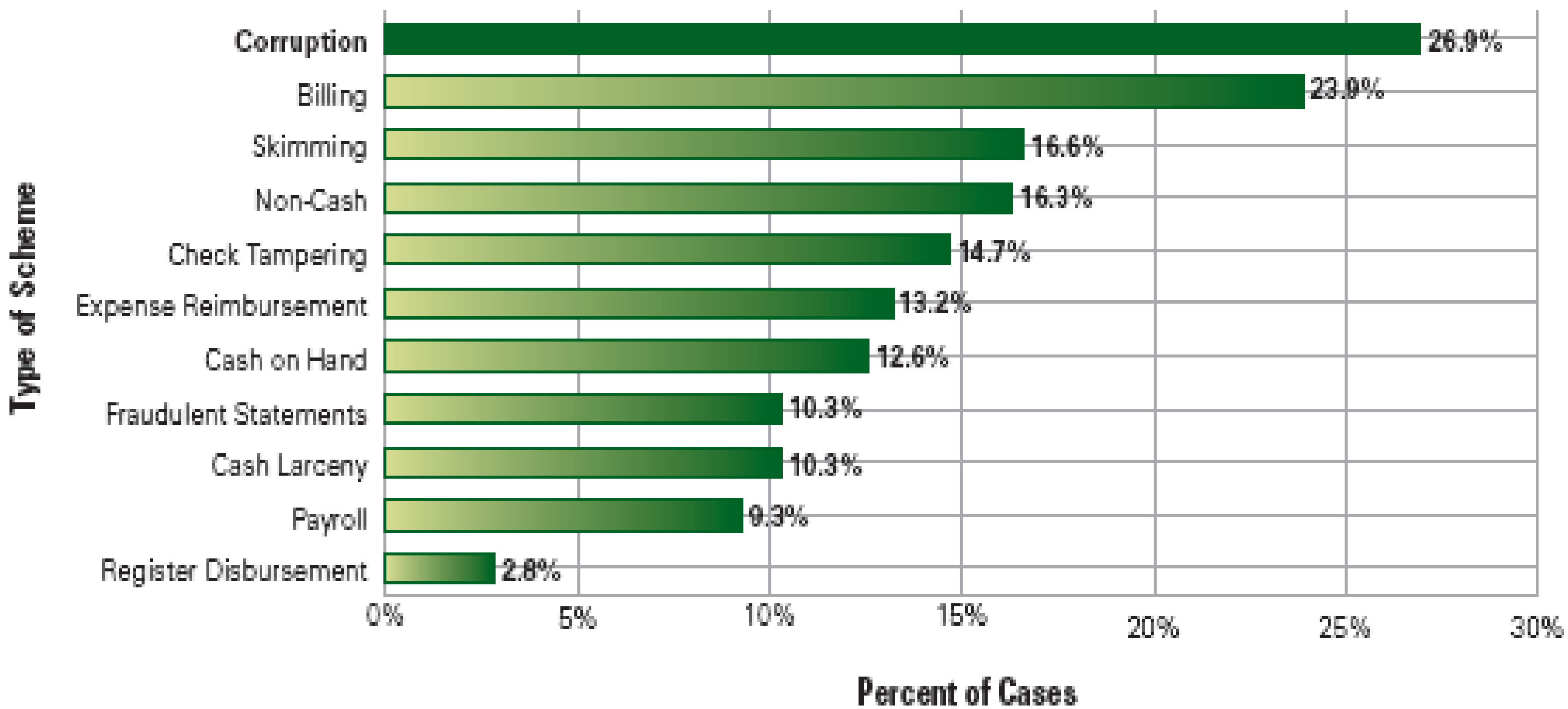
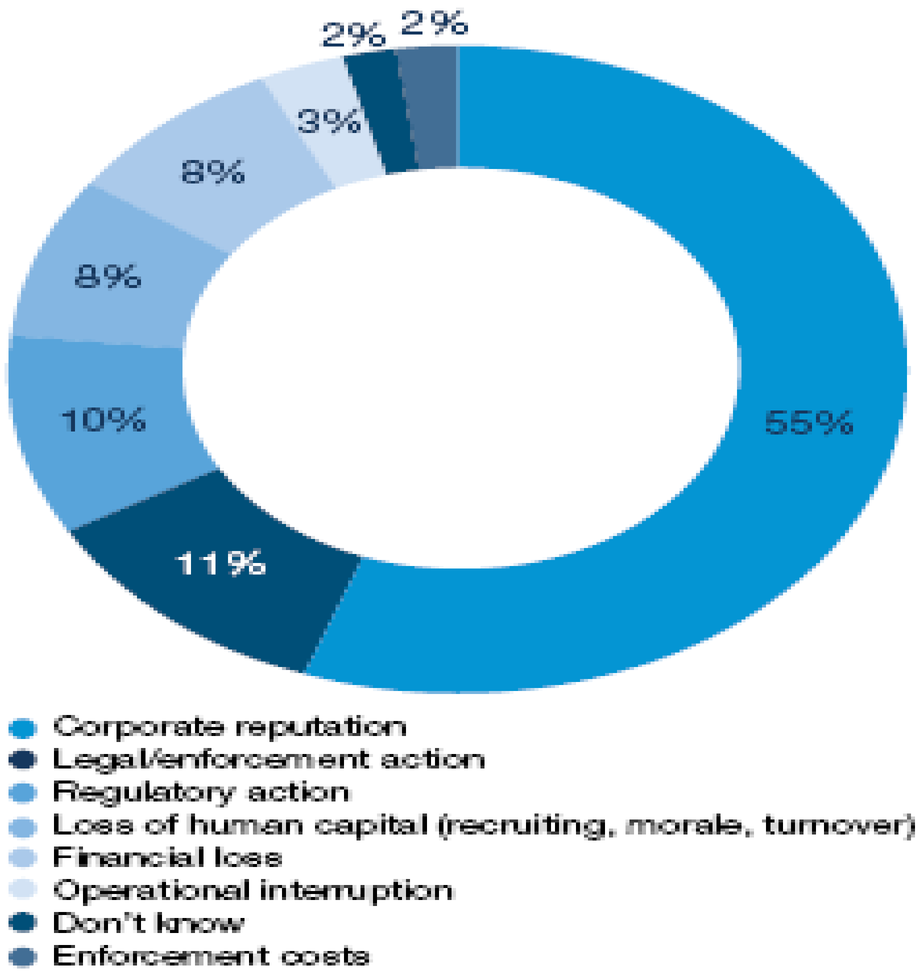
Breakdown of All Occupational Fraud Schemes — Frequency[3]



[3]The sum of percentages in this chart exceeds 100 percent because several cases involved multiple schemes from more than one category.

Impact of corruption ...

If corruption was discovered at your company, in which of the following areas would the impact be most severe?



Confronting Corruption: the business case: PWC Jan '08

Who is looking, and where ...

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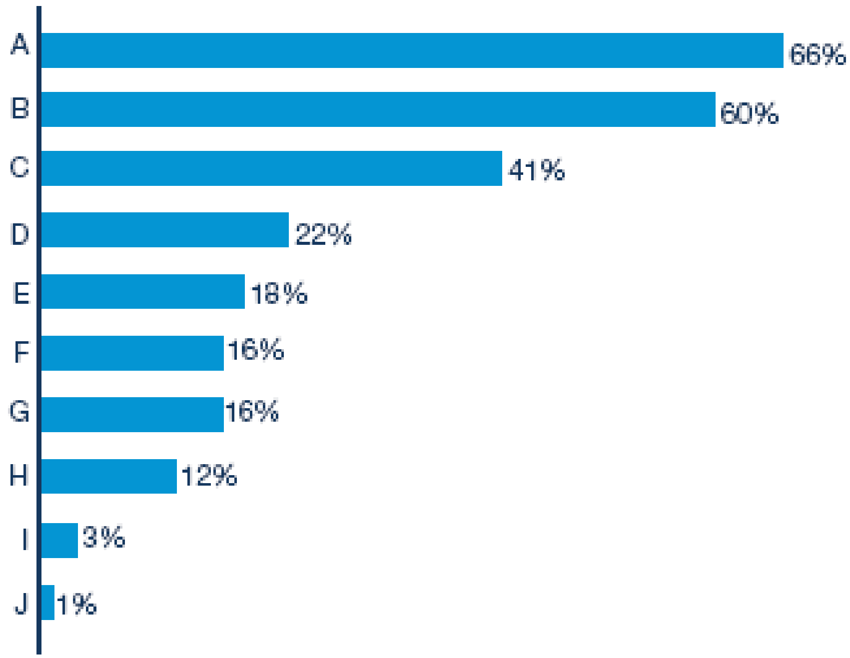
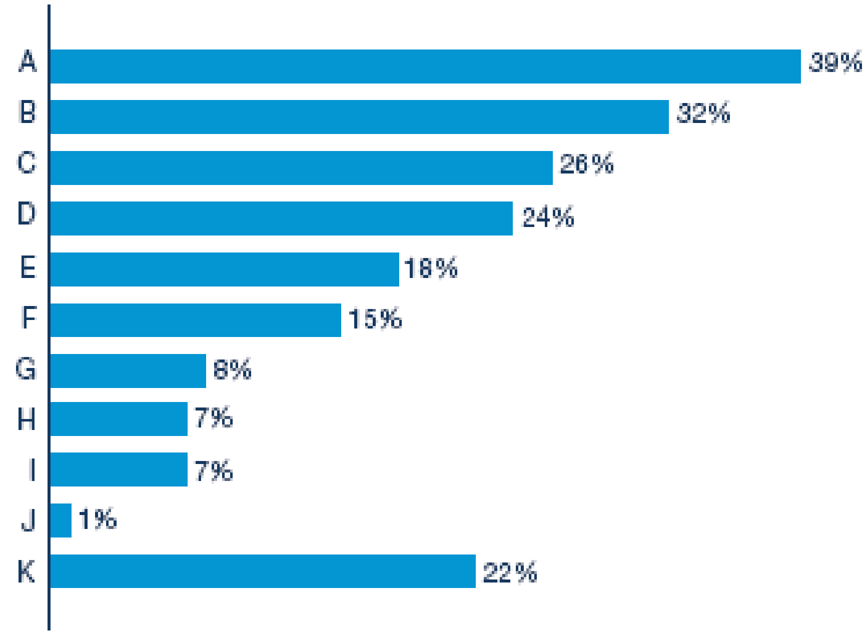
4. In your industry, in which functional areas of business do you think companies are at greatest risk of corruption? Select up to three.



A. Procurement
B. Bidding/sales
C. Establishing business presence in new markets
D. Licensing
E. Regulation
F. Import/export
G. Taxation
H. Intellectual property
I. Other
J. Don't know

5. If your company has experienced corruption (attempted or actual), how was it discovered?



A. Discovered through internal controls
B. Discovered through internal audit
C. Reported by employee through normal chain of command
D. Discovered through a whistleblower
E. Discovered by accident
F. We have not experienced any type of corruption
G. Discovered through external audit
H. Discovered by a government or government agency (e.g., police)
I. Discovered through other regulatory mechanism (e.g., rate-setting process by utility regulators)
J. Other
K. Don't know; I am not aware of my company experiencing any type of corruption

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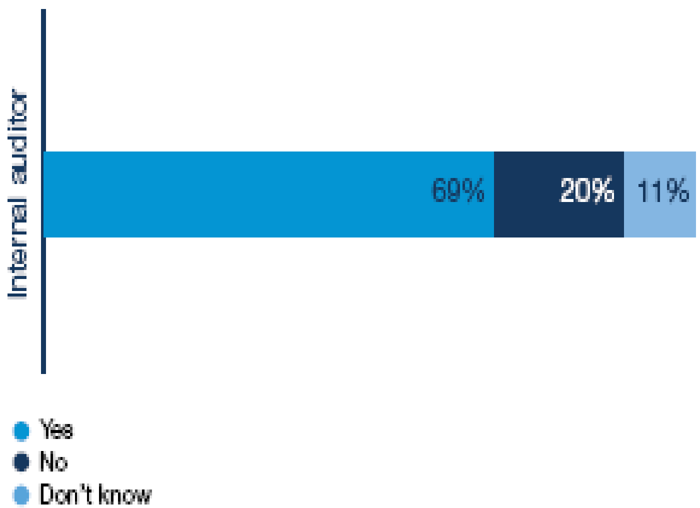
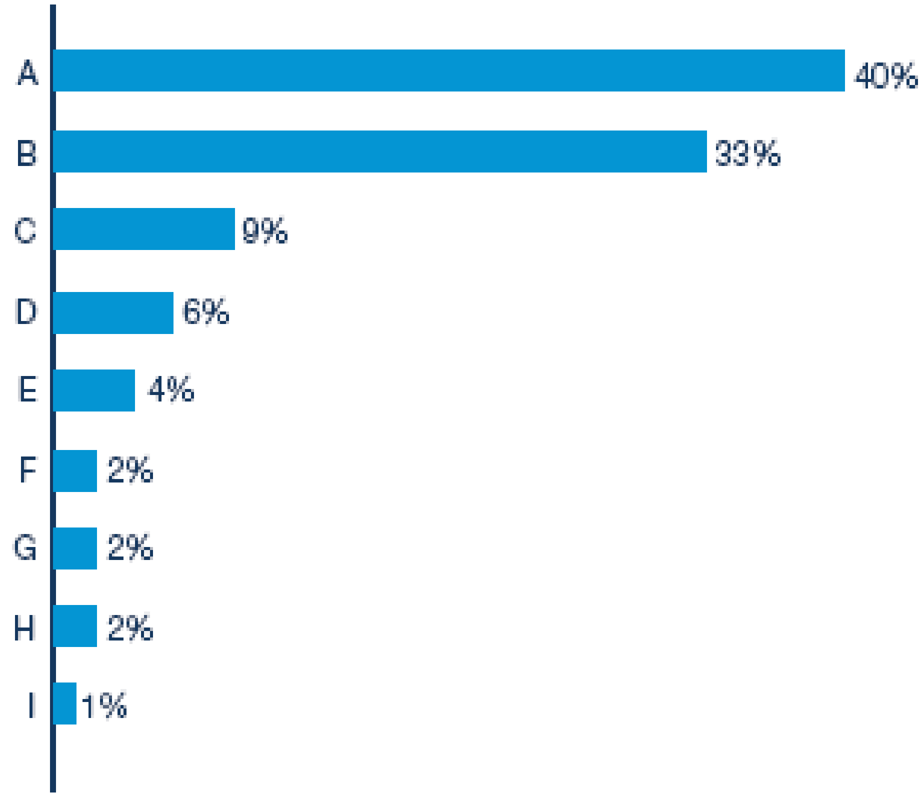
Perceived responsibility ...

13. Do you think internal auditors in your industry are performing procedures that are likely to detect instances of corruption?



7. In your view, who is primarily responsible for preventing corruption at companies?



A. Senior management
B. All staff members are responsible for their own ethical high standards
C. Internal audit
D. Local management / business units
E. Regulatory / compliance officer
F. Government / government agencies
G. Office of general counsel / lawyers
H. External auditors
I. Other

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How to deter corruption ...

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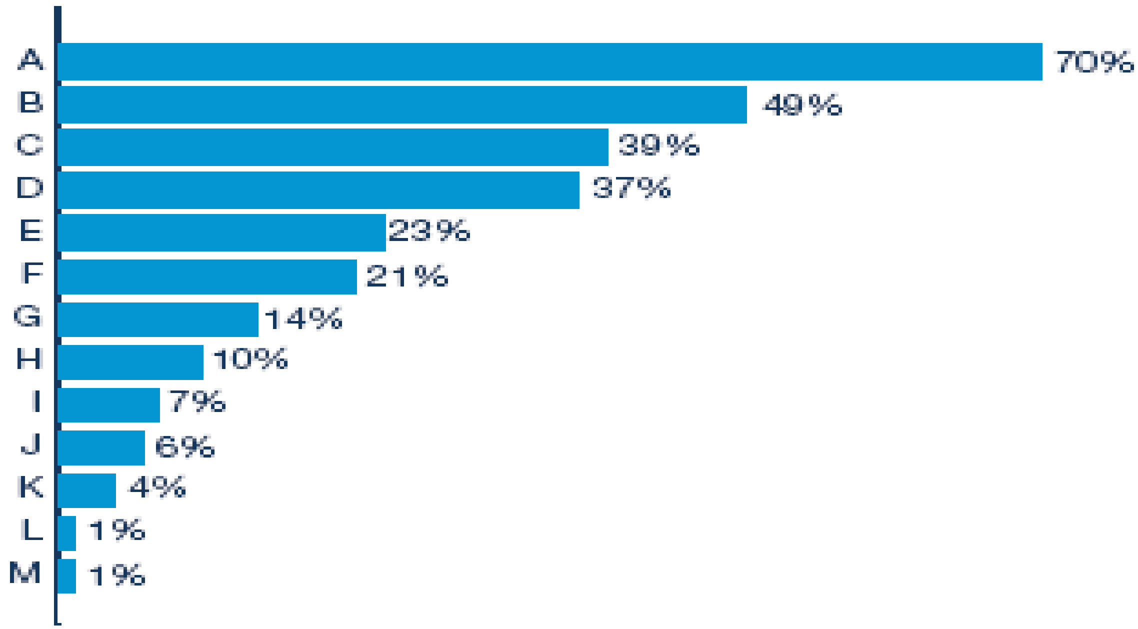
14. In your view, what are the most effective ways to minimise the likelihood of corruption at a company?



A. Commitment from senior management
B. Communicate clear guidelines policies
C. Hire people with high ethical standards
D. Consistently take action against all perpetrators
E. Provide adequate training
F. Enhanced controls over risky transactions
G. Whistleblower hotlines
H. Create support networks and employee assistance programmes
I. Aggressive enforcement by regulatory agencies
J. Additional external government regulation/oversight
K. Collaborating in industry or non-governmental organisation initiatives
L. Other
M. Don't know

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The risk contained in the APA – RI

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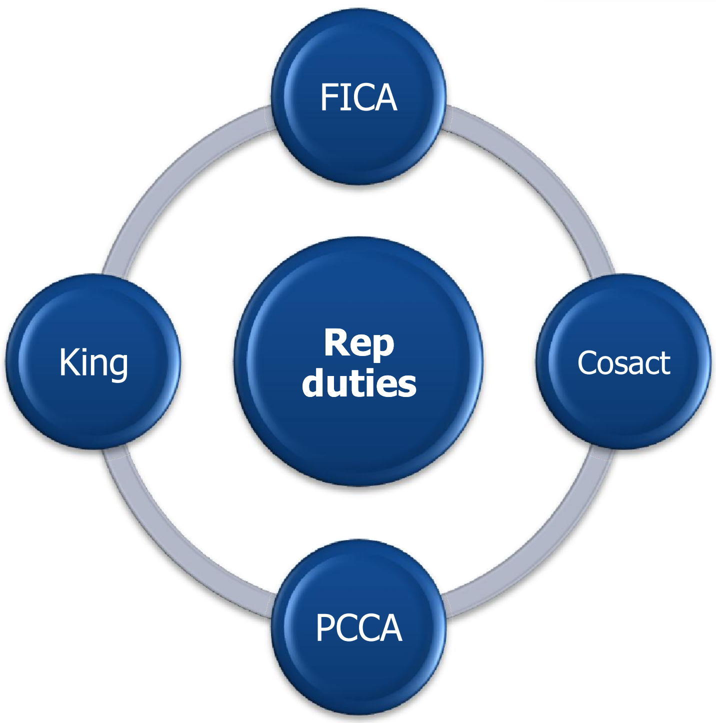
"reportable irregularity" means any **unlawful act or omission** committed by any **person responsible for the management** of an entity, which -

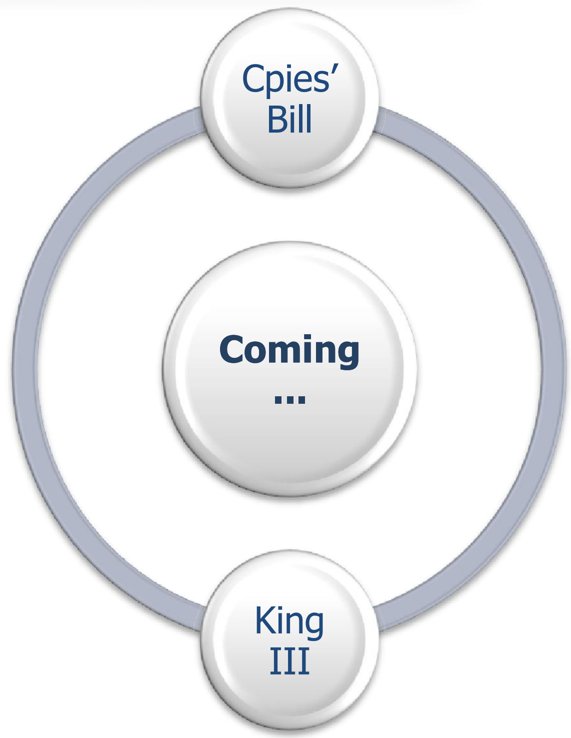
(a) has caused or is likely to cause material **financial loss** to the entity or to any **partner, member, shareholder, creditor or investor** of the entity in respect of his, her or its dealings with that entity; or

(b) is **fraudulent** or amounts to **theft**; or

(c) represents a **material breach of any fiduciary duty** owed by such person **to the entity or any partner, member, shareholder, creditor or investor** of the entity under any law applying to the entity or the conduct or management thereof;

See no evil, hear no evil ...?





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What is to come … New Companies Bill: new structures

**C'pies Ombud = **organ of State: dual mandate:

Å forum for voluntary alternative dispute resolution of matters under new Act; and

Å carries out reviews of administrative decision made by the CIPC

Ombud's decisions are binding on the CIPC; but not binding on other party who has right of access to court.

High Court remains primary forum for the resolution of disputes, interpretation and enforcement of the New Act.

CIPC (section 186)

organ of State / exercises functions ito Act, other law, Minister

CIPC Functions (section 188)

Åmust enforce this Act
Åmonitor proper compliance of Act by côpies/dir
Åreceiving/initiating/investigating/evaluating complaints
ÅMinister directing investigations
Åensuring contraventions promptly/properly resolved
Ånegotiating/concluding undertakings/consent orders
Åissuing/enforcing compliance notices
Åreferring matters to court/appearing before court
Åreferring offences to the NPA
Åinvestigate alleged non compliance with FRS etc.

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What is to come … New Companies Bill / Administrative fines: § 176

A court, on application by the CPC, may impose an administrative fine only for failure to comply with a compliance notice -

Å not exceeding the greater of 10% of the respondent's annual turnover during the preceding FY, and R 1 000 000.

Å When determining an appropriate fine, the Court must consider the following factors:

(a) the nature, duration, gravity and extent of the contravention

(b) any loss suffered as a result of the contravention

(c) the behavior of the respondent

(d) the market circumstances

(e) the level of profit derived from contravention

(f) respondent's co-operation; and

(g) Previous 'record'

How it's done in the USA: 18 USC Article 3572 …

In determining whether to impose a fine, and the amount, time & method of payment, considering factor is article 3553(a)(8):

If defendant is an organization, the size of the organization, and any measure taken by the organization to:

ÅDiscipline any officer, director, employee, or agent of organization responsible for the offence;

ÅPrevent a recurrence of such an offence.

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What is to come … New kind of risk /Compliance risk

What are compliance risks?

"The risk of impairment to organisation's business model, reputation and financial conditions (resulting) from failure to meet laws, regulations, internal standards and policies, and expectations of key stakeholders such as customers, employees and society as a whole".

(Basel Committee Paper on Compliance function in Banks 2003)

Biggest concern = fear relating to brand/reputation damage, and personal liability.

Management: less emphasis on short term costs of compliance, and more on fundamental ability of compliance to enhance return on investment.

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The Cost of non-compliance …

Compliance breach = Business failures?

- Enron
- Barings Bank
- Beige Pharmaceuticals
- Saambou Bank
- Regal Bank

Courts and Regulators not slow to impose dramatic sanctions

Citigroup (2005) fined £13,96m

(CEO of Adelphia Comm-John Rigas) (June 2005) ï 15 yrs

(CFO of Adelphia Comm) Timothy Rigas (June 2005) ï 20 years

(Enron) Andrew Fastow ï 10 years

(Dynergy) Jamie Olis ï 24 years

Civil settlements brought by shareholders of public companies or lenders have rocketed to record amounts. In the United States and Europe, regulators assessed fines and penalties in excess of US $1 billion for fraudulent and/or criminal behaviour during 2007.

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Difference between fraud & corruption & PCCA …

Fraud: misrepresentation to somebody / 1 liar & 1 victim = report.

Corruption: 2 crim's / ≠ lie / abstract victim

S 34: all corruption

S34: only fraud > R100k

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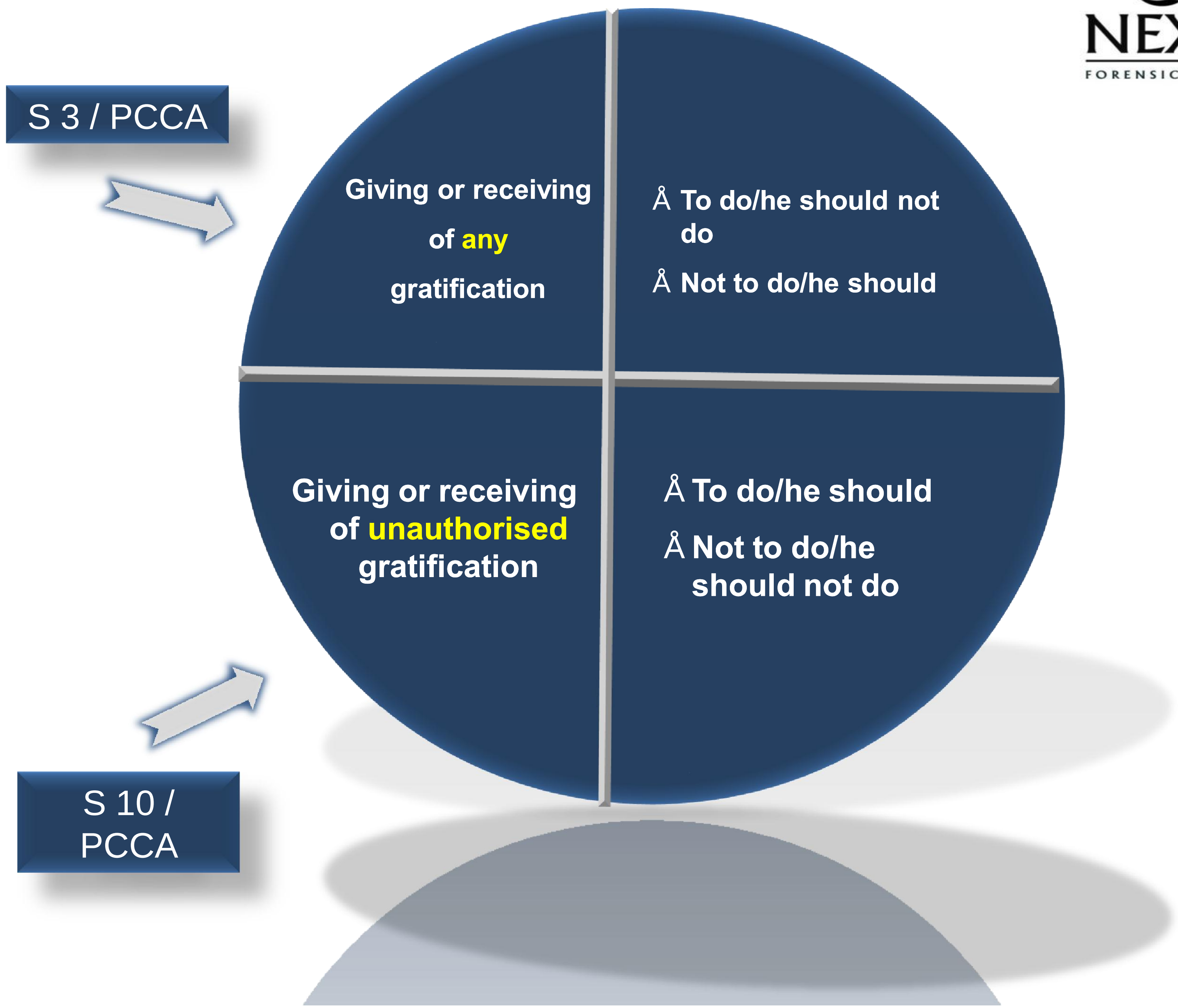

The payroll funded liquor shop …

Å Employee in salary department for 13 years – listed cpy

Å Salary control account did not balance at 2008 year end. Difference of **R14 536 264.90**

Å Quantified misappropriated amount of **R23 460 257.57** over a 10 year period:

ï *Unauthorised payments to her bank accounts and accounts of daughter, son, husband, son's wife and husband and son's businesses*

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The payroll funded liquor shop … modus operandi (1)

Å Initially had input and processing rights into payroll

Å When taken away, obtained passwords of people who had input rights

Å Could effect changes on payroll system and process payments

Å Corrected unauthorised changes on payroll before manual approval

Å Manipulated supporting documentation

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The payroll funded liquor shop … modus operandi (2)

- Imported payment run into bank's electronic salary payment program ('espp')
- Printed pre-load report for authorisation
- Added payments onto espp
- Used names of known beneficiaries but changed bank account numbers
- Changed load report (with notepad) before printed for authorisation
- Changed total amount reflected on bank statement
- Processed several journals in an attempt to hide excess payments

Red flags …

- Lack of segregation of duties
- Did not take leave
- Tight deadlines / pressure on sub ordinates
- Control over everything - also worked from home
- Personality of individual (‘my domain’ – ‘I know what is going on here’)
- Excessive journals
- Control accounts not cleared on a monthly basis

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What could they have done differently?

- Know what system allows / think out of the box
- Look for trends. For example why are one of the bank statement pages a copy and all the others originals?
- Perform checks (surprise audits) on lengthy electronic schedules. If for example a lengthy list of payees:
  - *download list and ensure total is correct*
  - *check for hidden lines or columns*
  - *check for duplicate data*
- Ensure reconciliations are properly performed
- Perform tests on data from source, and not as prepared by responsible employee
- Segregation of duties re key functions
- Note employee's personality and behaviour

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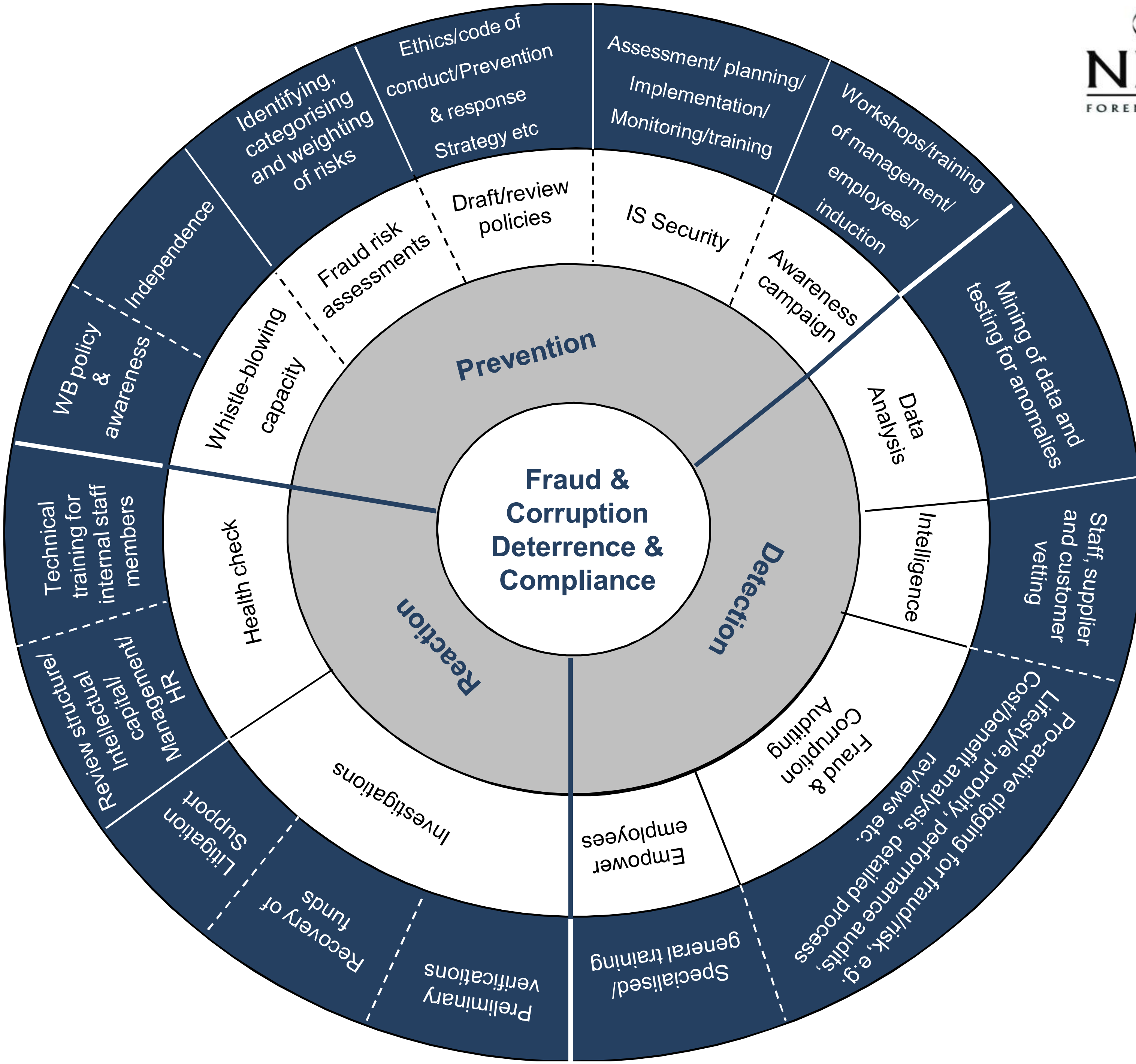

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THANK YOU