



**GIACC**

*Global Infrastructure Anti-Corruption Centre*

## **Examples of Corruption in Infrastructure**

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## **Examples of Corruption in Infrastructure**

This document provides 47 examples of activities in the infrastructure sector which may constitute the criminal offence of bribery, extortion, fraud, deception, collusion, cartel, or similar offence.

These examples are hypothetical. However, they are all based on real occurrences. No company or project names are used.

### **Notes on examples**

These examples are indicative only and are not a complete list of all possible types of corrupt behaviour which could take place. The examples are deliberately simplistic and are designed to be informative of the type of acts which could constitute a criminal offence.

The examples in this section frequently use the project owner/architect/contractor contractual structure. However, they would apply on a similar basis to alternative structures, for example project owner/consultant, or contractor/sub-contractor.

Whether a criminal offence has been committed will depend on the precise circumstances, including the law in the countries which have jurisdiction over the offence, the degree of involvement of the individual in the particular situation and his intentions. Reliance should not be placed on these examples in determining the criminality of a particular action. Separate legal advice should always be obtained.

In many examples, there may be both corporate and individual liability. A company can incur criminal liability through the actions of individuals and companies acting on its behalf. Similarly, employees and independent consultants may incur personal criminal liability when acting on behalf of their employer or client. Therefore, in many cases, both the company and the individual will be guilty of the same offence. It is not practical, in the examples below, to list all categories of individual who may be criminally liable in each offence. Consequently, the global phrase 'individuals involved' has been used instead.

Even where the particular facts of the examples below would not inevitably lead to criminal liability, it is submitted that they would be sufficient to support a finding that the person concerned had not acted with integrity for the purposes of the person's professional or employment code of conduct.

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## **EXAMPLES**

### **Pre-qualification and tender**

#### *Example 1: **Loser's fee***

It is a condition (express or implied) of a tender that each unsuccessful tendering contractor will bear its own tender costs. Prior to tender submission, the competing contractors secretly agree that they will each include in their tender price an agreed additional sum of money representing the total estimated tender costs of all the competing contractors. Whichever contractor is awarded the contract will then divide this sum of money between all the unsuccessful contractors who will thereby recover their tender costs. This is known as a 'loser's fee'. This arrangement is not disclosed to the project owner. The project owner believes that the losing contractors are bearing their own tender costs. The project owner is therefore unknowingly paying more than it would have done had the unsuccessful contractors borne their own tender costs.

*Possible offenders:* Contractors and individuals involved.

#### *Example 2: **Price fixing***

A group of contractors who routinely compete in the same market secretly agree to share the market between them. They will each apparently compete on all major tenders, but will in advance secretly agree which of them should win each tender. The contractor who is chosen by the other contractors to win a tender will then notify the others prior to tender submission as to its tender price. The other contractors will then tender at a higher price so as to ensure that the pre-selected contractor wins the tender. The winning contractor would therefore be able to achieve a higher price than if there had been genuine competition for the project. If sufficient projects are awarded, each contractor would have an opportunity to be awarded a project at a higher price. This arrangement is kept confidential from the project owners on respective projects who believe that the tenders are taking place in genuine open competition, and that they are achieving the best available price. The project owners therefore pay more for their projects than they would have done had there been genuine competition.

*Possible offenders:* Contractors and individuals involved.

#### *Example 3: **Manipulation of pre-qualification***

A project owner appoints an engineer to manage a pre-qualification for a project so as to obtain a short-list of five suitable contractors who can then bid for the contract. A contractor who wishes to be short-listed pays a cash bribe to the engineer to ensure that key competitors of the contractor are eliminated from the short-list on artificial grounds. The engineer produces a short-list which does not contain several key competitors. The engineer falsely informs the project owner that it has selected the best five competitors. The project owner relies on the engineer's advice. The contractor who bribed the engineer wins the project.

*Possible offenders:* Contractor, engineer, and individuals involved.

#### *Example 4: **Bribery to obtain main contract award***

A contractor who is tendering for a project is approached by an agent who claims that he will be able to assist the contractor to be awarded the project. They agree that, if the contractor is awarded the project, the contractor will pay the agent a commission of 5% of the contract price. The agent is appointed under a formal agency agreement which states that the agent will carry out specified services. However, the fee being paid to the agent is grossly in excess of the market value of the legitimate services which the agent is committed to provide. The agent intends to pay part of the commission to a representative of the project owner to ensure that the contractor

is awarded the contract. Although the contractor does not actually know that the agent will use the commission for that purpose, the contractor thinks it likely that this will be the case due to the significant disparity between the value of the legitimate services to be carried out by the agent and the amount of the fee. The contractor is awarded the contract. The contractor pays the agent the commission. The agent pays the representative of the project owner a bribe out of the agent's commission. The cost of the commission (and therefore of the bribe) is included in the contract price. The project owner therefore pays more than it would have done had there not been a bribe. The project owner is unaware that one of its representatives has been bribed.

*Possible offenders:* Contractor, agent, and individuals involved.

**Example 5: Bribery during sub-contract procurement**

A procurement manager of a contractor is managing a competitive tender between sub-contractors. One of the sub-contractors offers a free holiday to the procurement manager if the procurement manager awards the contract to the sub-contractor. The procurement manager does so.

*Possible offenders:* Procurement manager, sub-contractor, individuals involved.

**Example 6: Corruptly negotiated contract**

A senior government official who is in charge of the construction of new infrastructure projects wishes to enrich himself. He therefore decides to initiate a project which could conceal a major bribe for himself. In order to maximise the bribe potential, he ensures that the design will result in a project which is unnecessarily large and complex. He then informs a major contractor that he will ensure that the contractor is awarded the project on a non-competitive basis if the contractor includes in the contract price a payment for him personally of an amount equal to 30% of the contract price. The contractor agrees. The contract is awarded and the contractor pays the official.

*Possible offenders:* Government official, contractor, and individuals involved.

**Example 7: Manipulation of design**

A project owner appoints an architect to design a project. One of the competing contractors who is tendering for the project bribes the architect to provide a design with which only that contractor can fully comply. The bribe is the promise by the contractor of significant future work for the architect. The architect provides an appropriate design. The contractor submits a price that is higher than it would have been had there been a genuine competitive tender, and higher than several of the other tenders. The architect recommends to the project owner that the relevant design was in the project owner's best interests and that the compliant contractor should be appointed, even though its tender is not the cheapest, as only it fully complies with the tender design. In fact, to the knowledge of the architect, one of the cheaper tenderers bidding to an alternative design would have adequately suited the project owner's needs. The project owner follows the architect's advice and awards the contract to the compliant contractor.

*Possible offenders:* Contractor, architect, and individuals involved.

**Example 8: Specification of overly sophisticated design**

A project owner and a contractor are negotiating a design and build contract. There is no competitive tender and the project owner is, to the knowledge of the contractor, relying on the contractor to put forward a reasonable proposal. In its written proposal to the project owner, the contractor deliberately specifies an overly sophisticated design. The contractor is aware that an alternative cheaper design would be adequate for the project owner's purposes but does not inform the project owner of this possibility. The contractor's intention is that the project

owner will accept the sophisticated design as it will result in a higher overhead recovery and profit for the contractor. The project owner places the contract with the contractor.

*Possible offenders:* Contractor, and individuals involved.

**Example 9: Inflation of resources and time requirements**

A project owner and a contractor are negotiating a contract. There is no competitive tender and the project owner is, to the knowledge of the contractor, relying on the contractor to put forward a reasonable proposal. In its written proposal to the project owner, the contractor deliberately exaggerates the manpower, equipment and time required to complete the project. These exaggerated elements are not a contingency against possible risk. They are deliberate overstatements of the time and resources required in order to support a higher price. The project owner accepts the contractor's proposal. The works are carried out and the project owner pays the excessive contract price.

*Possible offenders:* Contractor and individuals involved.

**Example 10: Obtaining a quotation only for the purpose of price comparison**

A project owner intends to place a contract with a contractor which it frequently uses. It wishes to ensure that the price obtained from the contractor is a market price. It therefore requests quotations from two other contractors. It leads these contractors to believe that they have a chance of winning the project. However, the project owner always intends to award the contract to its favoured contractor. The price of one of the other bidding contractors is the lowest. The project owner discloses this lowest price to its favoured contractor and requires it to match the price. The favoured contractor does so and is awarded the contract. The other contractors therefore waste their tender costs.

*Possible offenders:* Project owner and individuals involved.

**Example 11: Concealment of financial status**

A project owner places a contract with a contractor. At the time of placing the contract, the project owner is in serious financial difficulty. It believes that it is quite likely that it will go into receivership prior to completion of the contract and will therefore be unable to pay the contractor in full for work done. The project owner does not disclose its financial status to the contractor at the time of placing the contract. The project owner is aware that if it does disclose its financial difficulties, the contractor is unlikely to commence work.

*Possible offenders:* Project owner and individuals involved.

**Example 12: Intention to withhold payment**

A project owner places a contract with a contractor. At the time of placing the contract, the project owner intends, in order to increase the profitability of the project for the project owner, to refuse to pay the contractor the retention of 10% upon completion of the project and to concoct artificial counterclaims to set-off against the retention.

*Possible offenders:* Project owner and individuals involved.

**Example 13: Submission of false quotation**

A procurement manager of a contractor is required to organise the hire of cranes for one of the contractor's projects. Crane hire companies are at that time giving discounts of approximately 25% off their published hire prices for long-term hires. The procurement manager and two friends set up a company ('Craneco') which is registered in the names of the two friends. Half the shares in Craneco are secretly held as nominee for the procurement manager. Craneco obtains a quote including discount from a crane hire company. The procurement manager obtains the published rate sheets (excluding discounts) from two other crane companies. Craneco supplies a written quote to the contractor to supply the cranes at a rate slightly lower than the published rates of the two other crane companies, but at a higher rate than the rate quoted to Craneco. The procurement manager uses the two rate sheets and the quote from Craneco as three competitive quotes, and awards the contract for the supply of cranes to Craneco. These documents are placed on the procurement file, creating the false impression that there has been genuine competitive pricing, and that the hire contract has been awarded to the cheapest supplier. Craneco makes a profit. The procurement manager does not disclose to the contractor his interest in Craneco. The contractor pays more for the hire than it would have done if the contract had been awarded, including discount, to one of the other crane hire companies.

*Possible offenders:* Procurement manager and friends.

**Example 14: Falsely obtaining export credit insurance**

A contractor tenders for a project using a buyer credit. Under this arrangement, a commercial bank offers the project owner a loan for part of the project cost. The bank will directly pay the contractor for the work as it progresses. The project owner will then pay back the loan and interest to the bank over an agreed period of time. The bank is insured against default by the project owner in repaying the loan by means of an export credit guarantee. The contractor pays the export credit guarantee organisation a premium in return for it offering the guarantee. Under the application for the export credit guarantee, the contractor is required to warrant to the export credit guarantee organisation that it will not pay a bribe in relation to the project award. The contractor pays a bribe to a representative of the project owner in order to win the contract. (This example looks only at the offence committed in relation to obtaining the export credit guarantee deceptively.)

*Possible offenders:* Contractor and individuals involved.

**Project Execution****Example 15: False invoicing: supply of inferior materials**

A concrete supplier is obliged to supply concrete to a particular specification. The concrete supplier deliberately supplies concrete of a cheaper and inferior specification, but invoices the contractor for the required specification.

*Possible offenders:* Concrete supplier and individuals involved.

**Example 16: False invoicing: supply of less equipment**

A scaffolding sub-contractor contracts to provide a specified quantity of scaffolding to a project for a fixed price and for a fixed duration. Before the contract period for supply has expired, the scaffolding sub-contractor, without the knowledge of the contractor, removes part of the scaffolding. The scaffolding sub-contractor does not inform the contractor that some scaffolding has been removed nor does it make any deduction for the scaffolding removed. It invoices the contractor for the full fixed price. The contractor pays in full.

*Possible offenders:* Sub-contractor and individuals involved.

**Example 17: False work certificates**

An earth-moving sub-contractor signs a contract with the contractor to remove unsuitable material from site and to replace it with suitable material. The earth-moving sub-contractor will be paid by the load. The contractor appoints a quantity surveyor to count on site the number of loads removed and replaced by the earth-moving sub-contractor. Each load will have a written load certificate which will be signed by the earth-moving sub-contractor and counter-signed by the quantity surveyor. The manager of the earth-moving sub-contractor agrees with the quantity surveyor that the quantity surveyor will falsely certify more loads than the earth-moving sub-contractor actually undertakes. In return, the earthmoving sub-contractor will pay the quantity surveyor 30% of the payment received by the earth-moving sub-contractor for each false load. The quantity surveyor certifies 20 false removals and 20 false replacements. The earth-moving sub-contractor submits both its genuine and its false certificates to the contractor for payment. The contractor pays in full, resulting in an illicit profit to the earth-moving sub-contractor. The earthmoving sub-contractor pays the quantity surveyor his share.

*Possible offenders:* Sub-contractor, quantity surveyor, and individuals involved.

**Example 18: Excessive repair work**

A plumbing sub-contractor is requested by the contractor to repair a toilet. After inspecting the toilet, the plumbing sub-contractor ascertains that the repair could be completed by the supply of a replacement washer. The plumbing sub-contractor, with the intention of securing a higher price, falsely informs the contractor that several new parts are necessary. The contractor agrees. The plumbing sub-contractor replaces the parts and invoices the contractor for the work carried out. The invoice is higher than it would have been had only the washer been replaced. The contractor pays the invoiced amount.

*Possible offenders:* Plumbing sub-contractor and individuals involved.

**Example 19: Overstating man-day requirements**

A sub-contractor is appointed by a contractor on a day-works basis to undertake work which the sub-contractor knows will take approximately 100 man-days to complete. The sub-contractor informs the contractor that the work will require 150 man-days. The sub-contractor deliberately over-states the man-day requirement in order to achieve a higher price from the contractor. The contractor accepts the sub-contractor's estimate of 150 days. The sub-contractor completes the work using 100 man-days. The sub-contractor invoices the contractor for 150 man-days of work and attaches time-sheets for the work. 100 man-days of time-sheets are correct. 50 man-days of time-sheets are falsified so as to support the amount invoiced. The contractor pays the invoiced amount.

*Possible offenders:* Sub-contractor and individuals involved.

**Example 20: Inflated claim for variation (1)**

A contractor is instructed by the architect appointed by the project owner to carry out a variation to the works. The contract entitles the contractor to an extension of time and additional payment in this circumstance. The contractor submits a written claim in respect of the variation to the architect which deliberately exaggerates the manpower, materials, equipment and time required to carry out the variation.

*Possible offenders:* Contractor and individuals involved.



**Example 21: Inflated claim for variation (2)**

The facts are as in Example 20 except that, when the architect indicates to the contractor that he is inclined to reduce the contractor's claim, the contractor offers the architect a bribe if he will approve the full claim. The architect does so.

*Possible offenders:* Contractor, architect, and individuals involved.

**Example 22: False variation claim**

A contractor carries out work which is not in compliance with the contract specification. Under the contract, the architect is responsible for issuing variations. The contractor offers the architect a bribe if he confirms in writing that the work was carried out pursuant to a variation issued by the architect, and is therefore acceptable. The architect does so.

*Possible offenders:* Contractor, architect, and individuals involved.

**Example 23: Issue of false delay certificate**

A contract entitles the contractor to an extension of time and payment of loss and expense in the event of specified delays caused by the project owner. The contract also provides that the contractor should pay liquidated damages to the project owner in the event of specified delays caused by the contractor. Under the contract, the engineer appointed by the project owner determines questions of delay and loss and expense. The works are delayed by the project owner. The contractor applies to the engineer for an extension of time and ascertainment of loss and expense. The project owner and engineer are aware that the contractor is entitled to both. The project owner agrees with the engineer that the engineer should refuse the contractor's claim and should instead issue a certificate requiring the *contractor* to pay the project owner liquidated damages for delay. The engineer does so.

*Possible offenders:* Project owner, engineer, and individuals involved.

**Example 24: False extension of time application**

A contractor has been delayed in completing the project. Two reasons could account for the delay. The first is the delayed delivery of materials by one of the contractor's suppliers for which delay the contractor is responsible under the contract and for which he would be liable to pay liquidated damages to the project owner. The second is a change to the specification for which delay the project owner is responsible under the contract and for which the contractor would be entitled to receive an extension of time and additional cost. The contractor is aware that the whole or part of the actual cause of the delay is the supplier delay. However, the contractor submits a written claim to the architect appointed by the project owner which alleges that the whole delay was attributable to the change in specification. The architect accepts the contractor's claim, and awards the contractor an extension of time and additional payment. The project owner pays the additional payment.

*Possible offenders:* Contractor and individuals involved.

**Example 25: False assurance that payment will be made**

During a project, a project owner runs into financial difficulties and realises that it will be unable to complete payment to the contractor. The project owner nevertheless induces the contractor to finish the works by falsely assuring the contractor that it will be paid.

*Possible offenders:* Project owner and individuals involved.

**Example 26: Delayed issue of payment certificates**

The project owner offers the architect a future appointment on another project if the architect delays the issue of payment certificates which are due to the contractor. The architect agrees.

*Possible offenders:* Project owner, architect, and individuals involved.

**Example 27: Concealing defects (1)**

A contractor accidentally omits some structural steel from the foundation works. The contractor discovers the omission after the foundations have been completed. Neither the architect nor the project owner realises the omission. The contractor decides not to disclose the omission to the architect or project owner. The contractor invoices the project owner in full for the foundation works (including the omitted structural steel). The project owner pays the contractor in full.

*Possible offenders:* Contractor and individuals involved.

**Example 28: Concealing defects (2)**

A roofing sub-contractor installs a waterproof roof membrane. The membrane is accidentally perforated during installation which means that it could leak. The membrane needs to be approved by the contractor's supervisor before it is covered over. The membrane should be rejected and replaced owing to the perforations. The sub-contractor offers to make a payment to the supervisor if he certifies that the sub-contractor's defective membrane is water-tight. The supervisor accepts. The payment is made by the sub-contractor to the supervisor and the supervisor issues the certificate. The sub-contractor submits the certificate to the contractor, and obtains full payment for the defective membrane. Neither the sub-contractor nor supervisor discloses to the contractor that the membrane is defective.

*Possible offenders:* Sub-contractor, supervisor, and individuals involved.

**Example 29: Set-off of false rectification costs**

A contractor has completed the works and applies for final payment. Under the contract, the architect appointed by the project owner is required to specify outstanding defects. The project owner persuades the architect to include, in the schedule of defects, additional purported defects which in fact are not outstanding. The project owner then sets off the alleged cost of rectification of these defects against the balance due to the contractor. The contractor disputes the deduction. The project owner informs the contractor that, if the contractor does not accept the reduced sum, then he will have to litigate or arbitrate to get the remainder from the project owner. The contractor cannot afford litigation, so he accepts the reduced amount.

*Possible offenders:* Project owner, architect, and individuals involved.

**Example 30: Refusal to issue final certificate**

A contractor has properly completed the works and is entitled to receive a final certificate. The engineer appointed by the project owner refuses to issue the final certificate to the contractor unless the contractor pays him 5% of the final certificate value. The contractor refuses to pay.

*Possible offenders:* Engineer and individuals involved.

**Example 31: Requirement to accept lower payment than is due**

A project owner owes a contractor payment of the contract price. The contractor has completed the contract works to the correct specification and within the allotted time. There is no dispute between the project owner and the contractor. The project owner informs the contractor that it will pay the contractor 80% of the contract sum immediately in full and final settlement. The project owner further states that, if the contractor does not accept this proposal and wants to recover the full amount, the contractor will have to sue the project owner for payment and the project owner will make the litigation as long and as costly as possible. The project owner is a large company which could bear the cost of protracted litigation. The project owner knows that the contractor would be unable to do so. The contractor agrees to accept the reduced payment.

*Possible offenders:* Project owner and individuals involved.

**Example 32: Extortion by project owner's representative**

A contractor is due the final payment on a project. The project owner's representative informs the contractor that he will not authorise the release of the final payment unless the contractor makes an extra payment to the project owner's representative personally. The contractor makes the payment. The project owner's representative authorises the release of the final payment.

*Possible offenders:* Project owner's representative, contractor, and individuals involved.

**Example 33: Facilitation payment**

A customs official demands a payment from a contractor in return for the customs official speeding up the issue of an import permit to which the contractor is entitled. The contractor makes the payment.

*Possible offenders:* Customs official, contractor, and individuals involved.

**Example 34: Overstating of profits**

In the project accounts, a project manager deliberately overstates the profitability of the project he is overseeing in order to enhance his performance bonus.

*Possible offenders:* Project manager.

**Example 35: False job application**

In order to obtain employment, an applicant for the post of contract manager states in his job application that he has worked as a contract manager. He has not held such a position. He is appointed to the post.

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| <i>Possible offenders:</i> Applicant. |
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**Dispute resolution****Example 36: Submission of incorrect or misleading contract claims, pleadings or particulars**

In a contract claim, or during dispute resolution proceedings (such as mediation, adjudication, arbitration or litigation), the claimant submits claims, pleadings or particulars which he knows to be false, or does not believe to be true, or of which he is reckless as to their accuracy. These include:

- A claim for an extension of time (in circumstances where the contract permits an extension of time based on actual delay) where the extension claimed is greater than the actual delay caused, or where the stated cause of delay is not the true cause of delay;
- A loss and expense claim where the extension of time claim on which the loss and expense claim is based is incorrect or the amount of loss and expense claimed is overstated;
- A claim for payment for the supply of work, equipment or materials where the work, equipment or materials are defective, or are not in accordance with the specification, or are not supplied.
- A claim containing false or misleading statements as to the parties' understanding at the time the contract was made;
- A claim containing false or misleading statements regarding representations made concerning scope of work, quality, timing, or limitations of liability.

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| <i>Possible offenders:</i> Claimant and individuals involved. |
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**Example 37: Concealment of documents**

In a contract claim, or dispute resolution proceedings, a claimant deliberately does not disclose to his opponent, or to the dispute resolution tribunal, documents which are, or may be, damaging to the claimant's case. Such documents include:

- Timesheets which would undermine the claimant's case that labour and equipment were working on a particular item of work;
- Work records which would show that the claimant's claim document overstates or incorrectly describes equipment or material;
- Work records which would show, contrary to the claimant's case, that the works were not completed by a particular date, or were defective, or were not in accordance with the specification;
- Programmes which would establish that the delay claimed by the claimant was in fact due to a different reason from that claimed, or was not as long as that claimed;
- Cost records which would show that claimed costs have been incorrectly stated;
- Photographs which would show an activity occurring at a different time or in different circumstances to that alleged by the claimant;
- Correspondence and other records which would undermine the claimant's case.

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| <i>Possible offenders:</i> Claimant and individuals involved. |
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**Example 38: Submission of false supporting documents**

In a contract claim, or dispute resolution proceedings, a claimant submits the following supporting documents as genuine and accurate when he knows that they are false, or does not believe them to be true, or is reckless as to their accuracy:

- Timesheets which are not genuine and which have been created to show falsely that labour and equipment was used for a particular item of work when in fact it was not;
- Work records which are not genuine and which have been created to overstate or incorrectly describe equipment and materials supplied;
- Programmes which purport correctly to state dates and events, but which do not and which have been deliberately amended to attribute delay falsely to a stated cause;
- Cost records which incorrectly state the cost of items, or include items or work which were not provided;
- Photographs which have been created to show falsely that an activity occurred at a certain time or location, when in fact it did not.

*Possible offenders:* Claimant and individuals involved.

**Example 39: Supply of false witness evidence**

In dispute resolution proceedings, a witness as to fact gives evidence on behalf of the claimant (whether by way of affidavit, witness statement or orally) that he knows to be false, or does not believe to be true. Such evidence by the witness includes the following:

- Confirming that supporting documents (such as those referred to in Example 38) are genuine and accurate, when he knows that they are false, or is not sure whether or not they are accurate;
- Stating that an event occurred, when he knows that it did not occur, or is not sure that it occurred;
- Stating that the opponent's action was the sole cause of delay to the works, when he knows that there were other causes of delay, or is not sure that it was the sole cause of delay;
- Stating that the claimant's loss was a certain figure, when he knows that the figure has been inflated above the true figure, or is not sure that the claimed figure is correct;
- Stating that a fact had been orally agreed between representatives of the claimant and the opponent, when he knows that this fact had not been agreed, or is not sure whether or not it had been agreed;
- Giving an incomplete account of events, knowing that, or being reckless as to whether, the incomplete account may be misleading.

*Possible offenders:* Claimant, witness, and individuals involved.

**Example 40: Supply of false expert evidence**

In dispute resolution proceedings, a claimant appoints an expert to provide an opinion on an aspect of the claimant's case. The expert's initial report, prepared confidentially for the claimant, is unresponsive of the claimant's case. The claimant makes it clear to the expert that his appointment will continue only if the expert amends his report to make it favourable to the claimant's case. The expert does so. He believes the amended view to be arguable, but presents it in the report as his most favoured view, and as the correct view, when this is not his belief. The report is then submitted as expert evidence in the proceedings and the expert witness gives oral evidence in accordance with it. Both the expert and the claimant are aware that the expert does not believe his evidence to be true. The success of the claim and counterclaim in the proceedings depends on the outcome of the expert evidence.

*Possible offenders:* Claimant, expert, and individuals involved.

**Example 41: Bribery of witness**

A claimant offers a witness a percentage of any future award by the arbitrator in the claimant's favour if the witness gives false evidence in support of the claimant in the arbitration. The witness accepts, and provides a false witness statement and false oral evidence both of which support the claim and undermine the counterclaim.

*Possible offenders:* Claimant, witness, and individuals involved.

**Example 42: Blackmail of witness**

The respondent in an arbitration owes money to the claimant. The respondent tells a witness that he will be dismissed as an employee of the respondent unless he gives false evidence in support of the respondent in the arbitration. The employee gives the false evidence and as a result the respondent wins the arbitration, and does not need to pay the claimant.

*Possible offenders:* Witness, respondent, and individuals involved.

**Example 43: False information as to financial status**

Under a settlement agreement, a project owner agrees to pay a contractor a certain amount. The project owner is late in paying and meets with the contractor to discuss payment. At the meeting, the project owner falsely informs the contractor that the project owner is in financial difficulty. The project owner offers the contractor a lower amount than the contractor is due and states that, if the contractor does not accept the lower amount, the project owner would have to be put into liquidation and the contractor may in that event get even less than the amount offered, or nothing at all. The contractor accepts the reduced payment.

*Possible offenders:* Project owner and individuals involved.

**Example 44: False statement as to settlement sum**

A contractor has reached a confidential settlement with the project owner. The settlement amount includes an amount for payment in full to all sub-contractors on the project. The contractor then meets with the sub-contractors, and falsely states that he received a smaller amount from the project owner under the settlement agreement than he actually received. The sub-contractors believe the contractor and, as a result of what they believe to be an underpayment under the settlement between the contractor and the project owner, they agree to accept a reduced payment of sums due under their sub-contracts.

*Possible offenders:* Contractor and individuals involved.

**Example 45: Over-manning by law firm**

A contractor appoints a law firm to act in an arbitration on its behalf. The partner in the law firm who is head of construction sees the arbitration as a major opportunity to make money and allocates four lawyers to the arbitration when he knows that two lawyers would be sufficient. The partner advises the contractor that this number of lawyers is necessary owing to the complexity of the case and the volume of the work. The contractor accepts this advice. The partner quotes the contractor an hourly rate for each of the lawyers. Monthly bills are submitted by the law firm to the contractor and these are paid by the contractor.

*Possible offenders:* Partner.

**Example 46: Excessive billing by lawyer**

A lawyer working on an arbitration for a project owner bills more hours to the project owner than the lawyer actually spent working on the case.

*Possible offenders:* Lawyer.

**Example 47: Complicity by lawyer**

In relation to Example 39, the lawyer involved in drafting the witness statement is aware that the witness does not believe his evidence. However, despite this knowledge, the lawyer continues to draft the witness statement on the basis that it is true, and allows the witness statement to be put forward in support of the claimant's case.

*Possible offenders:* Lawyer.

**1st May 2008**

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