



ANTI-BRIBERY/CORRUPTION

# Mitigate Your Risks.



Bribery is one of the world's most destructive and challenging issues. With over US\$ 1 trillion paid in bribes each year, the consequences are catastrophic, reducing quality of life, increasing poverty and eroding public trust. Yet despite efforts on national and international levels to tackle bribery, it remains a significant issue. Recognizing this, ISO has developed a new standard to help organizations fight bribery and promote an ethical business culture.

## ABSTRACT

Companies face the risk of prosecution from U.S. and non-U.S. authorities for violation of anti-bribery laws. While the U.S. leads the world in total number of investigations and enforcement actions, more and more countries are beginning to take action against companies and individuals who have bribed foreign officials. Non-U.S. enforcement actions have more than doubled in the past few years. In fact, in 2014 the number of non-U.S. enforcement actions (15) surpassed the number of U.S. enforcement actions (13). Companies also face the risk of prosecution for violating local anti-bribery laws. Almost twice as many countries are investigating bribery of their own officials compared to bribery of foreign officials. This may be an upward trend. Countries have brought a number of enforcement actions in the past for bribery of domestic officials.

## ORGANIZATIONAL CORRUPTION

According to the World Bank, “*The most popular and simplest definition of corruption is abuse of public power for private benefit*”. Corruption is not limited to an organization or to a country but it is a worldwide phenomenon. Data by World Bank group suggests that East Asia and Pacific experiences the maximum corruption across the globe. Corruption cannot be limited to the payment of bribe as it prevails at every level – economic, social, moral or administrative. For example in organizations employee claims to be involved in certain act of urgency but actually enjoying on a holiday. This is unethical form of corruption as the person is abusing the position for personal use. But the most common form of corruption is bribery. In simpler words, we can say *it is an unethical or immoral practice used by a person to gain advantage*. In organization of corrupt individuals, bottom-up phenomenon prevails wherein individuals gets benefits at cost of organizations. Only internal factors need to be blamed for this. There exists another form of corruption known as top-down wherein, the top management is involved in unfair practices for the organizational benefits with the help of external factors, typically known as third parties. The role of power plays a far greater role in top-down form of corruption in comparison to bottom-up.

### Corruption Outcomes

**Ethical:** Funds which could be used for schools or roads etc. gets diverted for personal use. Safety and environmental procedures gets avoided, resulting in dangerous infrastructure and living conditions.

**Safety and quality risk:** An organization’s safety and quality management can be tarnished in no time.

**Reputational risk:** The media frequently publishes articles on individuals and organizations involved in bribery resulting in deteriorated reputation.

### What makes Corruption so difficult to get rid of?

- The general view about corruption is that it makes things happen faster. In Asian countries, this mindset prevails to a larger extent.
- Corruption exists at all types of organizations: private, public or nonprofit.
- Corruption exists at all levels and sizes of organizations: small or large, national or international level.
- Corruption has become a way of life from childhood to family setting. Corrupted babies of yester years are now adults and leaders of industries.

## *Framework for Anti-Bribery*

Anti-Bribery Management Systems BS 10500, ISO 19600 and ISO 37001 meet the rapid rise for the organizations, companies or associations to be able to implement and execute an effective anti-corruption \ anti-bribery management system which applies to the organizations, the internal and external stakeholders to the company. The management systems aimed internationally to all types of organizations – public or private and to organizations of all levels – small, large or medium.



These standards if adhered to by the organizations will act as evidence to all the stakeholders of following non-corrupt ethical practices. It will indicate that the company is adopting and practicing measures which are for the people and care for them. In addition to risk mitigation, an organization following such practices will set an example for customers, suppliers and business associates as well to follow such practices. A client will always prefer an organization following anti-bribery practices over the one which is not, which will result in more business for the organizations. It clearly gives a competitive edge to the companies involved in anti-corruption practices.

## *New Standard for Anti-bribery Management Systems*

Despite numerous national and international laws and agreements which are designed to fight bribery remains an economy-eroding trouble. But a new ISO standard-ISO 37001 aims to help. Anti-Bribery standard, also, known as ISO 37001 is a major breakthrough towards anti-bribery. It is aimed internationally and to all types of organizations: private, public or nonprofit. It is flexible enough to be applied at organizations of all sizes, small or large, national or international level. ISO 37001 can be used as a management system by the organizations, companies, associations or administrations as a segment of corruption mitigation strategy. It can be used by the organizations which do not have such system in place and would like to implement one.



Like other management system standards, ISO 37001 ensures that organizations implement a program aimed at complying with anti-corruption or anti-bribery, suitable to their specific risk. With no surprise that assessment of corruption risk is the first step of an organization attempting the certification.

ISO 37001 does not specifically address fraud or other anti-trust offences, money-laundering or other activities related to corrupt practices. But it is at discretion of an organization to choose to extend the scope of the management system to include such activities.

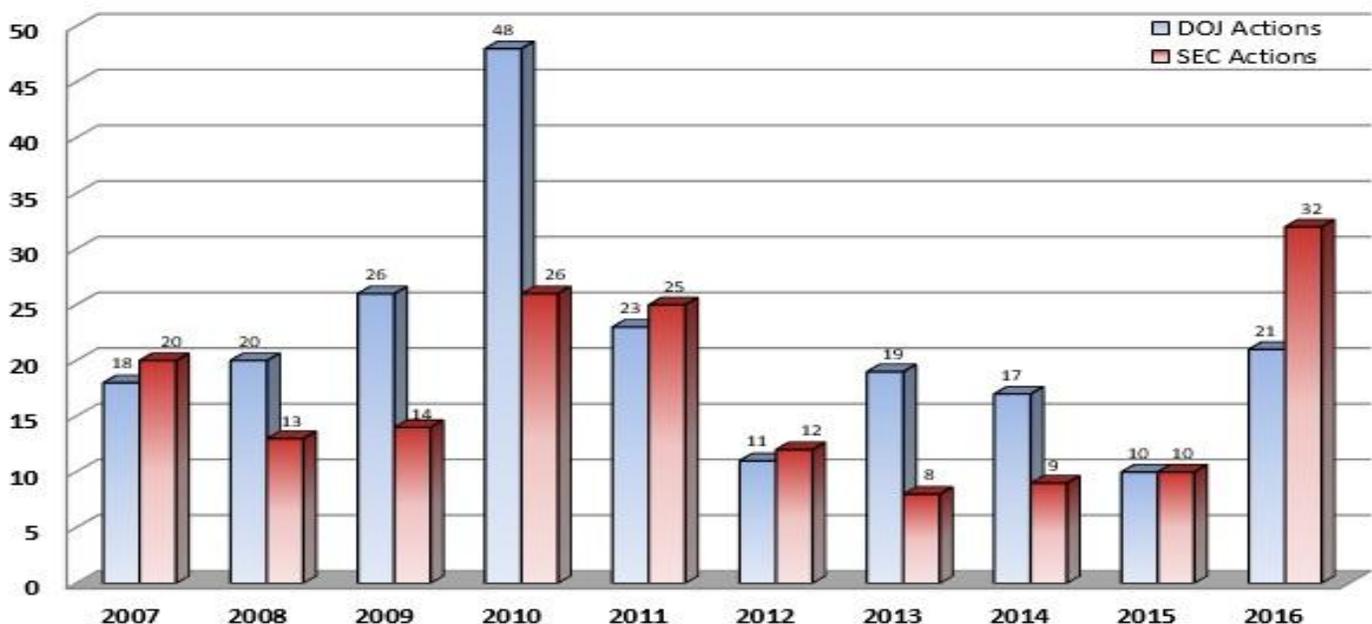
ISO 37001 requires the organization to implement a series of measures in a proportionate and reasonable manner. These include adopting an anti-bribery policy, requiring top management leadership, appointing a person to oversee anti-bribery compliance (full or part-time), providing training to personnel, undertaking bribery risk assessments and due diligence on projects and business associates, and implementing financial and commercial controls, and reporting and investigation procedures. In addition, organizations must have guidelines on gifts and invitations, protection for whistleblowers and they must ensure that their partners have equivalent commitments to integrity.

### *Foreign Corrupt Practices Act (FCPA)*

The Foreign Corrupt Practices Act (FCPA) is a United States federal law known primarily for two of its main provisions, one that addresses accounting transparency requirements under the Securities Exchange and another concerning bribery of foreign officials. The idea of Foreign Corrupt Practices Act (FCPA) is to make it illegal for companies and their supervisors to influence foreign officials with any personal payments or rewards. The FCPA applies to any person who has a certain degree of connection to the United States and engages in foreign corrupt practices. The Act also applies to any act by U.S. businesses, foreign corporations trading securities in the U.S., American nationals, citizens, and residents acting in furtherance of a foreign corrupt practice whether or not they are physically present in the U.S. This is considered the nationality principle of the act.

The Securities and Exchange Commission (SEC) and the Department of Justice are both responsible for enforcing the FCPA. This is because the FCPA both amends an SEC Act and the criminal code. The SEC enforces the Act for companies it regulates and the Department of Justice enforces the bill regarding all other domestic companies.

### **Number of FCPA Enforcement Actions Per Year**



## Requirements of FCPA

- The anti-bribery provisions of the FCPA make it unlawful for a U.S. person, and certain foreign issuers of securities, to make a payment to a foreign official for the purpose of obtaining or retaining business for or with, or directing business to, any person. Since the 1998 Amendment of FCPA they also apply to foreign firms and persons who take any act in furtherance of such a corrupt payment while in the U.S. The meaning of foreign official is broad. For example, an owner of a bank who is also the minister of finance would count as a foreign official according to the U.S. government. Doctors at government-owned or managed hospitals are also considered to be foreign officials under the FCPA, as is anyone working for a government-owned or managed institution or enterprise. Employees of international organizations such as the United Nations are also considered to be foreign officials under the FCPA.
- The FCPA also requires companies whose securities are listed in the U.S. to meet its accounting provisions. These accounting provisions operate in tandem with the anti-bribery provisions of the FCPA, and require respective corporations to make and keep books and records that accurately and fairly reflect the transactions of the corporation and to devise and maintain an adequate system of internal accounting controls.
- Payments to foreign officials may be legal under the FCPA if the payments are permitted under the written laws of the host country. Certain payments or reimbursements relating to product promotion may also be permitted under the FCPA.
- A U.S. company acquiring a foreign firm could face successor liability for FCPA violations committed by the foreign firm prior to being acquired. Generally, acquiring companies may be liable as a successor for pre-existing FCPA violations committed by an acquired company where those violations were subject to the FCPA's jurisdiction when committed.

## Importance of FCPA

- Encourage internal communication and collaboration by requiring that employees are educated with respect to relevant risks.
- For prospective clients, business associates and potential investors, it guarantees that the business has established certain level of reasonable measures to prevent corruption.
- Effective compliance can actually serve as a shield against criminal and civil prosecution.

## Consequences of FCPA violation

- Companies or individuals found to have violated the FCPA may be barred from conducting business with the federal government.
- FCPA violators may be prohibited from conducting further international business which means loss of export privileges.
- Officers, directors, employees, agents, or stockholders acting on behalf of a domestic concern are subject to fines of up to \$100,000 and five years imprisonment.

## CASES

### Embraer jet deal

Embraer, Brazilian aircraft manufacturer has paid commissions to a UK-based defence agent in the \$208 million deal for three EMB-145 jets which was inked by the UPA government in 2008.

These middlemen and unauthorized agents are prohibited as per the Indian defence system. The commission to the agent is estimated to be at whopping \$5.76 million. Embraer was involved

in Foreign Corrupt Practices by keeping false books and hiding the payments. The details of bribery emerged in May 2016 when a vastly experienced employee at the company made a plea bargain or plea deal agreement with the Brazilian federal public prosecutor's office which probed the case.



### Engineering giant Rolls-Royce apologizes in court

Britain's leading multinational manufacturer Rolls Royce has admitted to be involved in unethical practices and "apologized unreservedly for the conduct which has been uncovered", the firm said.

It was found that the giant manufacturer has paid bribes including a luxury car and millions of pounds' worth of cash to middlemen to secure orders in six countries, including Indonesia, Russia

and China. Other countries included India, Nigeria and Thailand. In India, where the use of agents to secure defence contracts is prohibited, Rolls-Royce disguised its use of middlemen as "general consulting services".



### Donald Tsang sentenced to 20 months

Hong Kong's former leader Donald Tsang has been sentenced to 20 months in prison for misconduct. He was accused of conflicts of interest which included renting a luxury flat in China from the shareholders of a company whose license applications he approved, also, the flat was decorated free of charge and he nominated the interior designer for an honor. The jury found him guilty of misconduct over his failure to disclose the lease of the flat, but dismissed the charge related to the designer and did not reach a verdict on whether he accepted a bribe in return. Civil servant, Tsang rose through the ranks to become Hong Kong's second chief executive, following Tung Chee-hwa.



### New Zealand's largest bribery case

Two men were jailed and six other staff left their jobs after investigations began into the scandal which is termed as the country's largest bribery case by the Herald. The case involves Former Auckland Transport senior manager Murray Noone and Projenz managing director Stephen Borlase where Projenz would make payments to Noone in favor of contracts. Earlier Barrie George, Noone's deputy pleaded guilty to accepting bribes from Borlase.

### VimpelCom to Pay \$795 Million

In a global settlement telecommunications provider VimpelCom Ltd. has been ordered to pay to pay more than \$795 million to resolve its violations of the Foreign Corrupt Practices Act (FCPA) to win business in Uzbekistan announced by Securities and Exchange Commission. The company was facing the issue of offering and paying bribes to an Uzbek government official. As per Andrew J. Ceresney, Director of the SEC Enforcement Division “VimpelCom made massive revenues in Uzbekistan by paying over \$100 million to an official with significant influence over top leaders of the Uzbek government,”



### UK-based Group in a Global Settlement

The Department of Justice (DOJ) announced that Rolls-Royce, the UK-based designer, manufacturer, and distributor of power systems for the aerospace, defense, marine, and energy sectors, had agreed to an \$800 million global resolution with U.S., UK, and Brazilian authorities, to resolve charges related to a scheme to pay bribes to government officials in various countries in exchange for government contracts. The company had an allegation that between 2000 and 2013, the company conspired to pay more than \$35 million in bribes to officials in Thailand, Brazil, Kazakhstan, Azerbaijan, Angola, and Iraq in exchange for their assistance in obtaining confidential information and awarding contracts.

### Cognizant incurs \$27 million

US-based Cognizant incurred USD 27 million in costs related to its investigation into potential "improper payments" made in India and related lawsuits last year and expects the expenses to continue this year as well. The investigation has identified a total of about USD 6 million in payments made between 2010 and 2015 in "potentially improper payments" for company-owned facilities in India.



**Cognizant**

### \$264 Million JPMorgan Settlement

A U.S. government investigation into a JPMorgan hiring program in Asia concluded with a 264 million settlement. The Securities and Exchange Commission found significant evidence that J.P. Morgan offered prestigious jobs to the children of Chinese government officials in exchange for the officials' influence to secure lucrative investment-banking assignments which is a violation of the Foreign Corrupt Practices Act (FCPA). In 2006, JPMorgan APAC created a referral program known internally as the “Sons & Daughters Program.”



### Oil minister's money laundering trial

The trial of a former Petroleum Minister of Nigeria, Diezani Alison-Madueke, has been scheduled for June this year. Mrs. Alison-Madueke was arrested in October 2015, in London, as part of a UK investigation into suspicions of corruption and large-scale laundering. She is accused of having diverted funds from the state oil firm, the Nigerian National Petroleum Corporation and placed in 3 banks. The forfeited amount is \$153m.

## ***Few Cases (India)***

### ***Supreme Court convicts Sasikala***

After the demise of Jayalalithaa, chief minister of Tamil Nadu the potential CM Sasikala has been sentenced to four years in prison as she was found guilty of corruption by the Supreme Court in which late chief minister Jayalalithaa was also an accused. Jayalalithaa, Sasikala and her relatives Sudhakaran and Elavarasi were accused of amassing disproportionate assets to the tune of Rs. 66.65 crore during the late chief minister's first term from 1991 to 1996. She has already served 6 months at prison and will be serving the remaining term of three and a half years now.

### ***Money laundering case against former CM***

Under the Prevention of Money Laundering Act on the basis of a criminal complaint FIR registered by the CBI a case has been filed against Haryana's ex-CM Bhupinder Singh Hooda. The Enforcement Directorate has registered money laundering because of the alleged financial irregularities in land acquisitions in Gurgaon. The irregularities claimed to be Rs 1,500 crore. Hooda has denied any wrongdoing, and claimed he's being framed due to political tussle. "Our leaders, including Hooda, have not committed any crime", Congress's chief spokesman Randeep Singh Surjewala was quoted as saying.

## ***Few FCPA Cases***

### ***Penalty for Las Vegas Sands***

Las Vegas Sands Corp., gaming and resort Company to pay \$6.96 million after allegations of violating the Foreign Corrupt Practices Act (FCPA) in connection with business transactions in China and Macao. According to allegations, Sands executives did not have proper systems in place to ensure accounting compliance for its business consultants. Sands spent around \$5.8 million between 2006 and 2009 on the business consultant, without having any discernible business purpose listed for the funds.

### ***Food Giant Resolves Allegations***

According to SEC's order, in 2010, the Indian subsidiary of Cadbury paid an agent to obtain from Indian government officials licenses and approvals to build additional production facilities, without conducting appropriate diligence on the agent, monitoring the agent's activities, or accurately recording the nature of the services rendered by the agent. Without admitting or denying the charges, the companies agreed to pay \$13 million to settle the charges

## ***CONCLUSION***

Companies headquartered outside of the U.S. should not overlook their risk of prosecution under the FCPA. As of December 31, 2014, approximately 40% of investigations by U.S. authorities involved non-U.S. companies, and of those the majorities were European. Non-U.S. companies account for almost all of the top 10 largest FCPA enforcement actions, with only two U.S. companies making the list. Virtually every country in the world has been impacted by bribery. But operating or doing business in certain countries comes with an increased risk of prosecution for bribery.

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