



Anti-Corruption

Year in Review 2014



American Chamber of Commerce in India

**FOREWORD**

As recognized by Prime Minister Modi, corruption is a serious threat to greater prosperity and economic development in India. It demands our collective and ongoing commitment, cooperation and creativity. This is a message that resonates with AMCHAM India, and this Year-in-Review publication bears testimony to that. It highlights key developments over the past year that are significant for our collective effort in dealing with the challenges and risks associated with doing business in a corrupt environment. It is intended to document lessons learned over the past year and identify practical tips for the coming year.

If the PM's Make in India initiative is to succeed and move beyond being a slogan, it is essential that it be taken as a mandate to implement bold and lasting action to effectively confront the debilitating nature of corruption, ensure clean and open government and bring enhanced integrity to the Indian market. As everyone is well aware, corruption and bribery impede economic growth, trade and investment; compromise markets and supply chain integrity; weaken the entrepreneurial spirit; and also erode citizens' trust in one another and in their government. For American businesses to thrive and succeed all they need is a truly competitive and uncompromised market, where decision-making is transparent and fair.

I would like to thank all the contributors to this Year-in-Review issue and the tireless and enthusiastic effort of the AMCHAM secretariat in bringing out this publication. The hope is that this publication will spur greater discussion, debate and study on how best to prevent corruption and enhance market integrity.

January 2015

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Dinesh Anand

Executive Director and Leader, Forensic Services,
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A PwC Forensic Services assessment

According to UNCTAD's World Investment Prospects Survey 2012–2014, India is the third most attractive destination for foreign direct investment (FDI) in the world (after China and the US).

With an increase in economic globalization, companies are now harboring growth prospects in emerging economies such as India. However, since they operate across multiple jurisdictions, these companies often face the risk of non-compliance with the various regulatory frameworks.

The risk of bribery and corruption is relatively high in India. As one of the leading forensic professionals, our experience tells us that the main factors contributing to the increasing risk in bribery and corruption include the following:

- **Obtaining routine administrative approvals**
- **Obtaining and retaining businesses**
- **Covering up inconsistencies in documentation, etc.**
- **Inappropriate choice of business partners**

An enquiry into factors that make companies vulnerable to bribery and corruption

Some of the most common functions vulnerable to bribery and corruption include: sales, marketing, distribution, payments, international expansion, expense reimbursement, tax compliance and facilities operations.

For instance, business processes within the retail and consumer sector may be prone to the threats of bribery and corruption due to the following key reasons:

- High level of interaction with government officials in connection with obtaining permits, licenses as well as other government approvals ranging from real estate and construction to setting up and operating a business and use of intermediaries in order to obtain the same.
- Customers, suppliers as well as third-party consultants may consist of government entities or state-owned commercial enterprises. There is a lack of adequate reliable information within the public domain related to actual ownership of vendors, third-party consultants, fair or true value of capital expenditure items (especially for land and buildings) or other ongoing corruption activities.
- Parallel economy' or 'black money' transactions involving 'cash components' in real estate deals in order to avoid or lower stamp duty fees to register, and avoid or evade taxes in the purchase of land and buildings or lease agreements.
- High and aggressive sales targets linked to employee incentives can lead to corrupt practices between the sales and distribution teams and dealers, distributors or customers.
- Bundling of potential illegal payments in contracts or leases may be executed in order to avoid or evade direct inappropriate contact with officials.
- Large spends on marketing or promotional events and merchandise in order to publicize and obtain business as well as 'permissions' or 'government approvals' pertaining to the same.
- Extensive compliance requirements due to multiple state as well as local regulations, policies and laws and their inconsistent interpretation.

Combatting bribery and corruption - some practical strategies

Companies can mitigate bribery and corruption risks through the following steps:

- Draw a comprehensive code of conduct duly aligned with regulations and business practices ensuring proper guidance to various stakeholders and strict enforcement of the code with zero tolerance.
- Establish an effective internal and external communication framework to report instances of any violations, including bribery and corruption.
- Stakeholders need to receive appropriate training on their company policy in order to combat bribery and corruption.
- Retailers working through a franchisee model whereby a third-party is trusted with the use of a brand or intellectual property must keep in mind to conduct a fieldwork exercise
- Companies, before investing into JVs or entering into third-party business relationships, may undertake a counter-party due diligence activity.
- Maintain an effective system of internal controls comprising financial and organizational checks and balances over the enterprise's accounting practices.
- Establish feedback mechanisms as well as other internal processes supporting the continuous improvement of the bribery and corruption programme.

However, it may be noted there is no one-size-fits-all approach in addressing the issues of bribery and corruption. Companies need to consider the respective geography, sector and segment requirements, before establishing an anti-bribery and corruption framework.



Sushobhan Dasgupta

Managing Director
Johnson & Johnson Medical India



Anti-Corruption Compliance 2014 at Johnson & Johnson Medical India

As an organization aimed at ensuring total compliance with laws of country of incorporation and countries of operations; it is heartening to see that India as a Nation is striving towards becoming a transparent nation with “Minimum Government and Maximum Governance”.

Building a responsive and empowered compliance team has been a part of global strategy to ensure that Compliance is a go to piece of the organization and not get through part of the organization. This in turn has further empowered field team to take compliant decisions with agility. Philosophy of the organization is to evaluate the business results “What” with “How”.

All senior leaders of the Board have spoken the common language of Compliance and Ethics. Top management has repeatedly led through examples of walking the talk on Compliance and Ethics and J&J Medical Leadership team is fully committed to the mantra of 100% Compliance in everything we do in our organization.

Trainings and hope-interaction forums have resulted in the every associate of the organization, irrespective of whether operating out in the field or in the warehouse or at corporate office, being well connected to the theme of Compliance and Ethics.

These efforts are further supported through well-defined mechanism of self-certification on all key policies e.g. Policy on Business Conduct; Anti-Corruption Compliance Certification etc.; these certifications have been backed through independent & anonymous reporting of deviations (hotline), escalation policy, non-retaliation policy, etc.

2014 has seen highest number of collaboration forums amongst both internal and external stakeholders. These forums led by Legal and Compliance team of the organization has helped to reemphasize anti-corruption requirements, resulting in better appreciation of internal processes and requirements by these key stakeholders. This theme has been at the center of all processes at the organization; year 2014 has been a year of collaboration, transparency and minimum government with maximum governance.



Ritu Jain

Chief Compliance Officer
GE India Industrial Pvt. Ltd.



Business courtesies - Dealing with Government Officials in a Compliant Manner

Corruption, bribery and improper payments continue to be top compliance risk in the country. 2014 was another year that unfolded multiple such scams in the Indian politics as well actions by DOJ / SEC on several multi-national companies. At the same time, trends have emerged which show that bribery and improper payments have taken various forms other than a simple exchange of cash. The risk is especially heightened when interacting with government officials. This calls for companies to have a robust guidance to employees on providing business courtesies to government officials and monitoring mechanisms to identify any suspicious expenses that could be improper in nature. Following are the key aspects to be considered while establishing such a mechanism:

1. Identifying areas of interactions: To begin with, a company must understand potential areas where such interactions are possible. These could be practical scenarios and may vary based on the nature of company's operations:

- Visits by government customers to sites
- Meals during ongoing project discussions (e.g. engineering discussions)
- Meeting with senior government representatives
- Courtesies to factory inspectors
- Customary gifts during festive season

2. Landscaping local laws: Currently, there exist several laws which provide guidance on gifts and courtesies for public officials. These include:

- The Prevention of Corruption Act, 1988
- Central Civil Services (Conduct) Rules, 1964
- The All India Services (Conduct) Rules, 1968
- Foreign Contribution Regulation Act, 2010

These laws not only provide guidance on what is allowed for a public servant to accept but in some cases also provide thresholds for gifts.

3. Establish robust guidance and monitoring mechanisms: Once a company has mapped the potential scenarios of interactions and landscapes local laws, these should be incorporated in the company's policy and monitoring mechanisms. Following will be key considerations in this regard:

- Clearly define Do's and Don'ts for various industries/business segments so employees are aware of risks to 'watch out for'. Ensure ongoing education and awareness of such policies to employees at all level but ensuring key focus employees in functions where probability of such interactions is high, for example, sales and commercial
- Establish thresholds for employees by leveraging local regulations, performing external benchmarking and reviewing industry norms.
- Set up process to track business courtesies which can reflect the purpose of interactions, actual gift and courtesy provided and government officials to whom the courtesies were extended. This will enable an effective management oversight and auditability when needed.





Effect on Business of Corruption and the aftermath of a Corruption Investigation

FCPA matters are an increasing compliance risk for U.S. companies operating in India. The risks of failing to comply with the FCPA, along with the cost of violations, can result in global reputation damage, directly impact on the bottom line and potentially derail ongoing operations in India.

The Indian bureaucracy, second-to-none, in terms of being slow and unresponsive, creates an environment for bribery. In order to obtain basic services, such as Customs clearance or formal registering of legal or official documents, some businesses have to resort to facilitation payments in order to obtain timely responses. U.S. companies operating in India, have had to implement risk management practices on a daily basis, with regard to the difficulties faced in accessing and obtaining government services. Whilst the FCPA recognises that at some basic level, these low level payments are necessary, the business environment in India is moving to a zero tolerance approach to bribery. It is likely in the current enforcement atmosphere that the tolerance of such payments will diminish.

In October 2009, the Indian media highlighted a letter written by an Indian Ambassador to the United States, highlighting instances totalling millions of dollars, paid as bribes to Government officials in Departments ranging from Customs, Excise and Sales Tax to the Indian Navy by a number of American companies. Following this media report, actions were initiated under the anti-bribery provisions of the Prevention of Corruption Act, 1988 (POC Act). As well investigations relating to the, violation of the accurate accounting requirements under the Companies Act, falsification of accounts under the Indian Penal Code and related proceedings under the Income Tax Act and other applicable statutes were commenced.

The U.S. Department of Justice (DOJ) and the SEC have an increasing focus on corrupt business practices by companies including those operating in India. Recently a retail venture ended after an investigation by Indian authorities, even though the Company had commenced a wide-ranging internal probe to determine if it had violated U.S. anti-bribery laws. The investigations led to the suspension of top-level officials, loss of a multi-million dollar investment and forced the company to put its expansion plans in India, on hold. The occurrence of FCPA matters in India is growing: with a number of high profile companies subject to enforcement action in relation to their operations in India.

Company	Description	Penalty (in USD)
Company 1	Payment made for favourable administrative judicial decision regarding customs issues.	\$55 million
Company 2	German subsidiary paid Third Parties to secure contracts and payments recorded as commissions.	\$25 million
Company 3	Subsidiary made payments to government official responsible for purchase/authorisation of products in India.	\$16 million
Company 4	Subsidiaries paid foreign officials to secure contracts; characterised as commission and consulting fees.	\$5 million
Company 5	Company's distributor allegedly created "slush" fund to pay Third Parties.	\$1.5 million
Company 6	Payments made to the Govt. Agency to expedite registration of products.	\$320,000

Table: <http://tfoxlaw.wordpress.com/2014/11/26/doing-business-in-india-corruption-risks-and-responses>

FCPA violations and investigations in India are likely to increase in occurrence. US companies need to be able to react and respond quickly to matters of bribery and corruption when they become aware of them. Managing the risk begins with robust standards and procedures. These standards and procedures must be tuned to the scope and applicability of the FCPA to individual companies and their operations as they work in India. They must be enterprise wide and ensure FCPA compliance as well as other laws applicable to companies operating in India, including the POC Act.

When an FCPA Compliance Risk arises, often without warning, normal business operations can be interrupted. Allegations can see Contracts put on hold and management attention diverted, to address the risk. Retaining control over the public knowledge of the allegation is essential as public awareness of the issue can see adverse market responses both in the U.S. and in India and can lead to predeterminations that are incorrect and unfair; distress and concern amongst staff and vendors, and in some cases, can lead to employee or community unrest. An adverse reaction may also lead to individuals taking measures into their own hands which may lead to the loss or destruction of evidence, which ultimately will not bode well for the Company if the DOJ or SEC becomes involved.

A Company setting out to investigate a bribery or corruption incident must carefully plan the investigation. Internal corruption investigations cause considerable levels of stress amongst staff and research has shown that the impact on morale and productivity can be quite significant. The ability of a workplace to recover after an investigation depends very much on how the investigation process is managed before, during and after the investigation.

The intrusive and unsettling nature of corruption investigations requires the investigator to consider the impact of investigations in his or her planning, conduct and reporting. The Investigator is a resource of the organisation and as such, has a duty to ensure that the organisation continues to operate efficiently. It is how the investigation is conducted that will impact on the process of restoring morale and productivity within the Company.

This does not detract from the requirement of an investigation to gather and collect all the information and evidence that will enable a fair determination of responsibility to be made. It does however expand the areas of consideration in the planning of an investigation and must include and require an active role by management in the planning process.

Labour disputes can arise very quickly when management attempts to remove staff members that have been found to be responsible for corrupt behaviour. This also brings pressure to bear on the Investigator's need to recognise and acknowledge staff reactions and the negative impacts of a corruption investigation that identifies a popular member or leader of the employees. It is essential to understand the reactions and emotional responses expressed by employees in India.

An investigation should be aware of and prepare for reactions. The five common responses are:

1. Disbelief, incredulity and scepticism – staff will deal with the event in different ways and this may impact on the information they provide the investigation.
2. Anger, mistrust and a sense of betrayal – staff responses envelop fellow workers, and they may view the management and the investigators as intruders and resent their requests for information.
3. Guilt and blame – staff who have been involved closely with the person or people who have committed bribery may experience residual feelings of support for the perpetrator and believe that the investigation is mistaken; affecting the veracity of the support they offer the investigation. It is essential to identify these people early in an investigation so as to avoid consequential damage to the work environment through the creation of other situations requiring a disciplinary response.
4. A sense of loss and lack of direction - A prolonged investigation will have a stultifying effect on the normal running of a business. An investigation must be conducted quickly and effectively, so as not to stifle the ability of the business to return to normal.
5. Acceptance of the event, moving forward, making progress - Supporting post investigation training and acting to prevent future events is essential. The lessons learned about the organisation from the investigation should be used to develop stronger systems and procedures.

During the investigation, the Management should ensure they are receiving continuing feedback on the impact of the investigation on staff. This should be coming from both the investigation and the company's Human Resources and Line Managers. It is not information about the Case, but about how staff are responding to and generally perceiving the investigation. Do they see it as a sign that the organisation takes anti-corruption seriously or do they perceive a management attempt to apportion blame?

In the aftermath of an investigation the investigation report should address residual issues such as policy, processes and procedures that allowed the corrupt behaviour to occur in the first place. The Report should address procedural weaknesses that expose a Business, not only to corruption and bribery, but also to fraud. Finally, the investigation should assist in the formulation of strategies that can be implemented by the organisation in order to reduce future risk.

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India enacts weak Whistleblower law

The Whistleblower Protection Act, 2011 (“Act” or “Whistleblower Act”) was enacted and received the assent of the President of India on May 9, 2014. The Act will come into force once it has been notified by the Government, which usually happens after the rules to be framed under an act have been promulgated. We expect that this will take up to a year; there is no prescribed deadline specified in the Act.

Scope of Protected Disclosure:

Three categories of disclosure are protected - first, offenses or attempts under the Prevention of Corruption Act, 1988, which include inter alia acceptance by a public servant of a bribe or having assets disproportionate to legitimate sources of income; second, willful misuse of power or discretion resulting in loss to the government or wrongful gain to another; third, attempt or commission of a criminal offense by a public servant. Note that disclosures of misconduct on the part of the higher judiciary are excluded, as the definition of “public servant” excludes a Supreme Court or high court judge. Note also that the scope of protected disclosure does not include disclosure about malfeasance such as waste, neglect or dereliction of duty or misconduct that is not willful.

The Act protects a complainant against being “victimized”. Protection however is not sua sponte - in order to obtain redress the person being victimized must file an application with the relevant competent authority. The burden then shifts to the public authority (typically the employer) to prove that the person is not being victimized. Although victimizing the complainant is prohibited, it is not in and of itself an express offense under the Act.

Anonymous Complaints Will Not Be Accepted:

Under the Whistleblower Act however, a complaint cannot be filed anonymously. The Act expressly states that no action will be taken if a disclosure does not indicate the identity of the complainant. This is a serious shortcoming in the Act. While the whistleblower cannot remain anonymous, the receiving competent authority is required to conceal the identity of the complainant. Certain exception may apply. Thus the complainant must entirely rely on the competent authority as regards protecting his or her identity. By contrast, under US laws that provide for monetary rewards, the complainant can remain anonymous even while seeking a reward, so long as the complainant acts through legal counsel.

The first aim of any whistleblower law is to prevent the person making the disclosure from being victimized, dismissed or treated unfairly in any other way for having revealed the information. The most effective way of protecting whistleblowers is to maintain uncompromising confidentiality regarding their identity and the content of their disclosures. See UN Anticorruption Tool Kit 2003. People are often aware of misconduct but are frightened to report it. They will only come forward if they are assured the strictest protection against retaliation, and not revealing their identity is a critical safeguard.

Whistleblower Laws Becoming Ubiquitous:

Laws requiring the use of a whistleblower mechanism are becoming common. The UN Convention Against Corruption, which India signed long ago but ratified only in 2011, requires each state (signatory country) to incorporate into its domestic legal system appropriate measures to protect persons who report corruption in good faith and on reasonable grounds. Besides Indian domestic law, companies in India accessing US capital markets are subject to the US Securities and Exchange Commission's whistleblower provisions under the Dodd-Frank Act, which provide for a bounty (cash reward) to be paid to the whistleblower.

In addition to “external” whistleblower laws, companies in India are required to have similar internal reporting mechanisms. The Companies Act, 2013 which came into effect in 2014 requires companies to establish a “vigilance mechanism” to report genuine concerns and provide for “adequate safeguards against victimization” of people who report misconduct. Certain exceptions may apply.

No Second Level Escalation of Complaint:

Under the Whistleblower Act, the “competent authority” is charged with accepting and acting on complaints and safeguarding the complainant against retaliation. No specific entity is the competent authority; rather various entities (including the Prime Minister, Central or State Vigilance Commission and the jurisdictional High Court) are the competent authority depending on the status of the person against whose misconduct the complaint is made. Accordingly, the competent authority is an amorphous category of a wide range of governmental authorities.

The Whistleblower Act provides only for a single level of competent authority to which complaints can be made, with no mechanism to escalate to a second higher level if the complainant wants to. The global consensus is that whistleblower laws should provide for at least two levels of institutions. The first level should be comprised of entities such as an independent ombudsman within the organization for which the whistleblower works, or if the whistleblower is a public servant, he or she should be enabled to report to an anti-corruption agency or an auditor general. In addition, whistleblowers should be allowed to turn to a second level of authority if needed, such as designated members of the legislature, the government or the media. See UN Anticorruption Tool Kit, 2003.

Active Enforcement is Essential:

The main purpose of whistleblower laws is to provide protection for insiders who report cases of malfeasance, corruption or other abuse of authority. Potential whistleblowers will be affected not by the mere existence of a law, but by plausible assurance that they will actually be protected from consequences that may range from minor harassment to murder. For the Whistleblower Act to be effective, it is therefore essential that it be actively enforced and administered, and that this is readily apparent.





Risk Assessments, Compliance Programs and Internal Controls for India Operations

Recently, TRACE International came out with its first business bribery risk index, TRACE Matrix, in which India was ranked at 185th position out of 197 countries with a bribery risk score of 80, on a scale of 100. The bribery risk index, the first of its kind, is specifically tailored to the needs of the compliance community.

The Matrix assessed countries across four domains – business interactions with government, anti-bribery laws and enforcement, government and civil service transparency, and the capacity for civil society oversight, including the role of the media.

On Domain one of the Matrix, Business Interactions with the Government, India's score was 92 on a scale of 100, compared to 17 in Malaysia and 57 in Indonesia. This means Businesses are exposed to very high level of Government interaction which increases the risk of bribery, while doing business in India. At the same time, under many foreign bribery laws, companies can be liable for improper payments made by third parties. Willful ignorance of law is not an excuse, and evidence of money having changed hands is not needed. All that is required to make companies liable is a firm belief that particular circumstances existed

MNCs therefore have to be extra careful while dealing with companies and SMEs operating in India and other developing countries. Bribes paid by SMEs to Indian officials can make MNCs liable for punishment under their anti-corruption law. In India too, there is now a greater push for corporate integrity. Common people and civil society are increasingly getting impatient with corruption both in the government and the private sector. In May 2011, India became party to the United Nations Convention against Corruption (UNCAC), joining more than 160 countries who were already a party to this convention. The UNCAC is very concerned about the need to prevent and address private sector corruption. The Ministry of Home Affairs is currently debating an amendment to the Indian Penal Code to include 'bribery' within the private sector as an offence. Also, the Ministry of Corporate Affairs, Government of India, has drafted the Company Bill 2012, which criminalizes a number of offences, such as 'wrongful withholding of property' of a company or applying it in a manner that has not been authorized and 'fraud', which includes intent to deceive, to gain undue advantage from, or to injure the interests of the company or its shareholders or its creditors or any other person.

Some of the means by which a fraud is committed could include corrupt practices, such as: providing false documentation like financial statements, returns, reports, certificates etc. and intentional giving of false evidence. It also provides for a limited liability of companies wherein penalties are applicable to the company or any officer of a company for violations of any provisions of the Act. The Company Bill contains certain requirements for audit, responsibilities of directors and company secretaries and also the investigative roles of selected organizations to look at private sector management. The Government of India has also drafted the Prevention of Bribery of Foreign Public Officials and Officials of Public International Organizations Bill 2011.

With such strict International anti-bribery laws in place, it is important for Indian companies doing business outside India, esp. in U.S and U.K to fall in line with a bribery prevention policy which is communicated to staff on induction and is also part of a company's training session. These companies should designate a responsible person to oversee matters related to bribery prevention measures. They must ensure that their monitoring systems are alert and vigilant at all levels, that the organization itself has a clear policy on gifts, expenses and corporate hospitality, and that it keeps records of all gifts and payments.

Most important of all, Companies should have due diligence policies and procedures in place to cover all parties to a business relationship. For example, a company must implement a zero tolerance policy towards all kinds of corruption, carry out background checks on individuals and/or organizations with which it does business (or plans to do business). Such steps will obviously help manage the risks of bribery to a very large extent. The level of due diligence required depends on the level of risk attending on a situation.

Ashish Maloo

Manager – Compliance
Bard India Healthcare Private Limited



Anti-Corruption Year in Review: 2014

As a global corporation, Bard has a moral responsibility to be a steward of its community. We are committed to sustainable responsibility with an emphasis on maximizing the positive impact on the health and wellness of society. We are committed to the highest standards of ethical business practices and compliance with applicable laws and standards. Our core values of Quality, Integrity, Service and Innovation all are related to, and dependent upon, attaining the highest levels of compliance and ethical behavior. We are committed to conducting our business consistent with these core values.

During the year our organization has taken various initiatives to ensure all relevant aspects of Anti-Corruption and FCPA compliances in India. Following are the new initiatives were taken during the year:

Appointment of Compliance Manager:

Till previous year Anti-corruption compliances were reviewed by Finance function. During the start of the current year our organization has appointed a compliance manager, who reports directly to Director of Compliance (Asia, Latin America and Australia). Compliance Manager is an independent function in India to ensure all relevant aspects of Anti-corruption and FCPA compliances in India.

Trainings:

Training of Anti-corruption and FCPA compliance is an on-going requirement. As a new initiative this year organization has extended online training beyond our employees to its distributors and third party representatives.

Strengthen Organization's Internal Controls:

- i) **New SOX cycles implemented** - During the start of the year organization has implemented new Sox cycle revenue for testing and also during last quarter purchase to payment cycle is implemented.
- ii) **Segregation of duties and Access** - During the year entity has analyzed segregation of duties and access within the accounting system and changed user roles to ensure no major conflicts remains.
- iii) **Balance Sheet Reviews** - Organization has implemented standard balance sheet review templates to ensure monthly all major balance sheet items have relevant supports and reconciliation in the standard format.



Sanjay Koul

Chairman and Managing Director
Timken India Limited



Introduction:

At Timken Ethics & Integrity is one of our core values. Timken has been regarded as one of the world's most ethical company by Ethisphere since 2012. Our Standard of Business Ethics (code of conduct) talks about conduct of the associates in and outside of the company.

The Standard of Business Ethics includes separate section on anti-bribery clause which strictly prohibits extending anything any benefit either directly or indirectly for obtaining an improper business advantage for Timken and stipulates maintenance of accurate financial records reflecting the use of our funds.

Vigil Mechanism:

The Company has a vigil mechanism in place wherein any stakeholder can contact the helpline with any kind of concerns including violation of the Standard of Business Ethics. The helpline can be accessed through e-mail or by a toll free number provided in the communication. The complainant can remain completely anonymous in case he/she desires. All complaints received are properly investigated and disciplinary action taken if required. Timken follows a non-retaliation policy towards reporting stakeholders for genuine complaints lodged by them.

Training & Education:

The Company has an elaborate training and education system to create awareness among its associates on anti-bribery. Various training modules including on anti-bribery are offered to associates through Timken University online tool which the associates are required to complete within the prescribed timeline. In India Legal and Compliance runs road shows on an annual basis to create awareness among associates about various compliance norms including Standards of Business Ethics, anti-bribery/FCPA regulations..

The Company does have a robust Management Approval System where pay managers are expected to monitor and approve business expenditures as may be required for the business. We have an Audit Committee of the Board and strong internal audit programme run by PwC and also exposed to SOX audit by the Corporate Audit function in US.

Compliance Committee:

As part of Global Initiative, we have an India Compliance Committee consisting of 10 functional heads with the CEO as its Chairman to oversee status of compliances regarding certain identified risks. The responsibility of the Committee is as follows:

- (a) Risk Inventory – Identify Compliance risk
- (b) Risk Assessment – Assessing risk and to establish priorities
- (c) Audit & Monitoring – Identify business processes, test effectiveness of controls & implement controls
- (d) Training & Education – Identify audiences, method etc.
- (e) Reporting to Global CEO on the work of the Committees



Anti-bribery Compliance Program – India

Anti-bribery compliance has remained an ongoing focus for India in the year 2014. Anti-bribery compliance in India is coordinated by a local team of professionals with risk owners with identified areas of responsibility at the Asia-Pacific regional level and at the enterprise level.

Business leaders consistently focus on communication within the organization, which creates a ripple effect towards sensitizing the relevance of anti-bribery compliance within the organization.

2014 saw an increased focus on in-person, formal compliance training sessions, in addition to this ongoing leadership messaging. In India, 21 training sessions on anti-bribery were conducted in person, addressing key elements of FCPA, Prevention of Corruption Act, and the UK Bribery Act in addition to importance of accounting and internal processes and procedures. The training also covered important processes around engagement with government officials and engagement of third parties that interact with government agencies or customers on behalf of the enterprise. The trainings reached more than 1200 personnel in India. In addition to the training conducted by legal and compliance personnel, we have also conducted workshop based trainings alongside business leaders, with strong reliance on business specific scenarios and examples.

Legal and compliance personnel provided ongoing guidance to the business unit personnel and continued implementation of enterprise procedures requiring pre-approvals for certain engagements with government officials, be it for hosting government officials at company's sites, meeting them during events, offering company branded gifts, arrange for travel etc.

Further, compliance audits were conducted at selected locations and business units to evaluate adherence to enterprise policies and procedures, with audit results documented and reported back within the organization. To address any gaps observed, remediation plans are created and implemented. This has proven to create and improve compliance awareness and implementation of required procedures within the business units.

In addition to the compliance audit remediation process, internal controls to address fraud and antibribery risks have been enhanced and are in the process of being rolled out to locations around the world, including in India. This roll out will continue in 2015.

We anticipate that the enterprise focus on anti-bribery compliance will continue in 2015. The emphasis on training and communication will continue, as the company believes that an effective compliance program creates a competitive advantage. Our customers are increasingly focused on working with business partners who have a high standard of integrity. Developing and implementing a world class compliance program allows us to demonstrate that we meet this requirement.



“What is it with the FCPA stipulations and US companies? Is it very strict in terms of bribes and lobbying money payments? Do we really follow them? Aren't we looked like ALIENS by the government officials since we say that we do not TAKE CARE of them?” Raghu, the new MD of the US based plant shot series of questions exhibiting his inquisitiveness on FCPA subject as a person new to companies with FCPA applicability. “Hold on, hold on Raghu. I understand your eagerness on this topic, I would consult all the HODs and we would do a quick presentation for you ASAP”.

Rahim, the HR manager walked off Raghu's cabin with mixed feelings as he now has the task of explaining the audit recommendations from internal audits that happened in the plant early that year, the additional controls put in place and above all, the challenges the company officers face while dealing with bribery scenarios, especially with government officials.

“Welcome all leaders to the **LOOK-BACK; LOOK FORWARD** session today. We would like to extend our special welcome to the new MD of our plant, Raghu”.

“As part of remedial actions for recommendations that emanated from the internal audit on bribery risk factors early this year, would like to present the learnings and actions taken to overcome potential risks in this arena” started Ronald, the Finance Director.

Consultant hiring:

- Having a consultant does not immunize us from FCPA penalties as we are responsible for the acts of the consultants or other contractors / sub-contractors who work for us.
- In this context, we did an in depth overhaul of the consultants we have appointed and culled out those ones who possessed potential risks in terms of bribery.
- Retained consultants were specifically asked to sign the anti-bribery and FCPA clauses as part of the engagement. It was also decided internally that only employee officers and not consultants would have direct meetings and interactions with officials to reduce vulnerability.
- Consultant and other third part service provider agreements made clearer with specific request for break- up of fees / contractual payments.
- Also, hiring consultants with proper background check with specialized experience in government related matters has also helped us to a larger extent.

Dealing with government officials:

- Employees trained to deliver a very clear and polite message that there won't be a penny of illegal amount paid to the officials nor they could expect bribery-in-kind viz gifts during festivals, favors for their known sources, transportation from company for factory visits and personal purposes.
- To avoid fraud risks in this area, there has been a VISIT LOG maintained which talks about meeting details as to which staff met which government officer for which purpose.

Legal Recourse:

- To make our stand clear against corruptive practices, we have also appointed legal advisors who help us to take legal course of action to protect our interest and also to get the work done. This has also brought up changes in the attitude of the government officials who are perplexed to see that we are ready to spend INR 2 lakhs on legal fees,

instead of a bribe of INR 2,000.

- Early planning in terms of new projects and raising early warning to our headquarters whenever we come to know that there might be a delay.
- Above all, staff has been told to persevere until the work is done in a legal manner. We have also taken decisions which would mean “**STANDING BY** anti-bribery rules even if that means putting our machines in **STAND-BY**”.
- Increased training on anti-bribery laws and also preparation of compliance calendar stressed the increased importance of our commitment to equip ourselves.

While this sunk-in, Raghu started asking “It is great that you have such controls. However, aren't you facing issues because of ZERO BRIBERY stand? End of the day, our performance is on how PROFITABLE we are and aren't these things additional costs?”

Rahim quickly pitched in, “If you take the legal system across many countries in the world, the compliance to law is high and deviations are less. However, in our country, its topsy-turvy. A person or organization who is trying to be honest and straight-forward is seen as a BLACK SHEEP which is the worst societal disincentive. We do face issues,

- Government authorities related to civil structures and factories operation still harass us for bribe payments taking advantage of loop holes in the archaic laws, some of which are as old as 1950s. Authorities inspecting factories convert observations into summons to threaten us.
- Wherever there is absence of E-MODE of doing things, bribery requests come at large. Some vulnerable departments being Electricity board, Pollution Control Board, Factories, health and labor acts related organizations. These are particularly acts which give authorities the DISCRETION power which is normally abused to demand bribe amounts.
- Willful delays and ill treatment of company officers in government organizations. Daring statements like “You are in India, nothing happens without Bribe”. All these also have negative impact on employee morale, causing turnover and also causes the ETHICAL DILEMMA as to “Why should I even try to be honest and be looked upon like a fool?”
- Increased operational / project cost: This is mostly in form of legal fees for resisting corrupt practices or harassing demands (which talks about eviction or bank attachment)and for correcting the 'issues' pointed out by authorities expecting some benefit in return. This again affects our competitiveness in the market as there are many delays.
- Delay in obtaining licenses / approvals would mean operations are suspended at times, which affects delivery schedule and in turn business.

“Thanks for the information and after listening to all these, in a nut shell, I feel that initially ignorance on bribery laws created issues. But now, I see that full understanding is causing even bigger issues! This is paradoxical and we will have to seek intervention from higher echelons of the government to stop this. Until then, let us all persevere” concluded Raghu.

Our Prime Minister said “ **Acche dhin aage hai (good days are ahead!)**” Let us hope we would be at a position where we remember F.D, Roosevelt's famous presidential campaign song “Happy Days are here again!”

And Miles to go before WE sleep and And miles to go before WE sleep.



AMERICAN CHAMBER OF COMMERCE IN INDIA

Established in 1992, the American Chamber of Commerce in India (Amcham India) is an association of American business organizations operating in the country.

Amcham India has around 500 members, spread across the nation. The Chamber enjoys a close relationship with the U.S. Embassy, which supports its objectives and helps in fulfilling them. The incumbent U.S. Ambassador to India is the Honorary President of Amcham.

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Amcham's principle objectives are to:

- Promote activities that encourage and stimulate investment by U.S. companies

in the country.

- Support the business operations of its members.
- Encourage bilateral trade between India and the U.S.

These primary objectives are fulfilled by:

- Providing a forum for U.S. – based business organizations to discuss and identify common issues, economic and commercial interests in India and/or the U.S.
- Instituting Sectoral Committees which implement the primary objectives in their respective sectors.
- Reviewing policies and procedures in various sectors that affect the members as

well as growth of foreign direct investment.

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