

Compliance Training At BCCI 19th July 2019



Agenda

- Learning Objectives
- What is Corruption?
- Why Should We Act-Consequences Of Corruption
- Ideal Compliance Framework – Prevent-Detect-Respond
- Avenues for Bribery and Control Mechanism
- Whistleblowing Reporting Mechanism
- Investigations & Consequences and Remedial Action
- Training Methodology
- Implications Of Prevention Of Corruption Amendment Act (POCA), 2018



Corruption Definition

In philosophical, theological or moral discussions, **Corruption** is spiritual or moral impurity or deviation from an ideal.

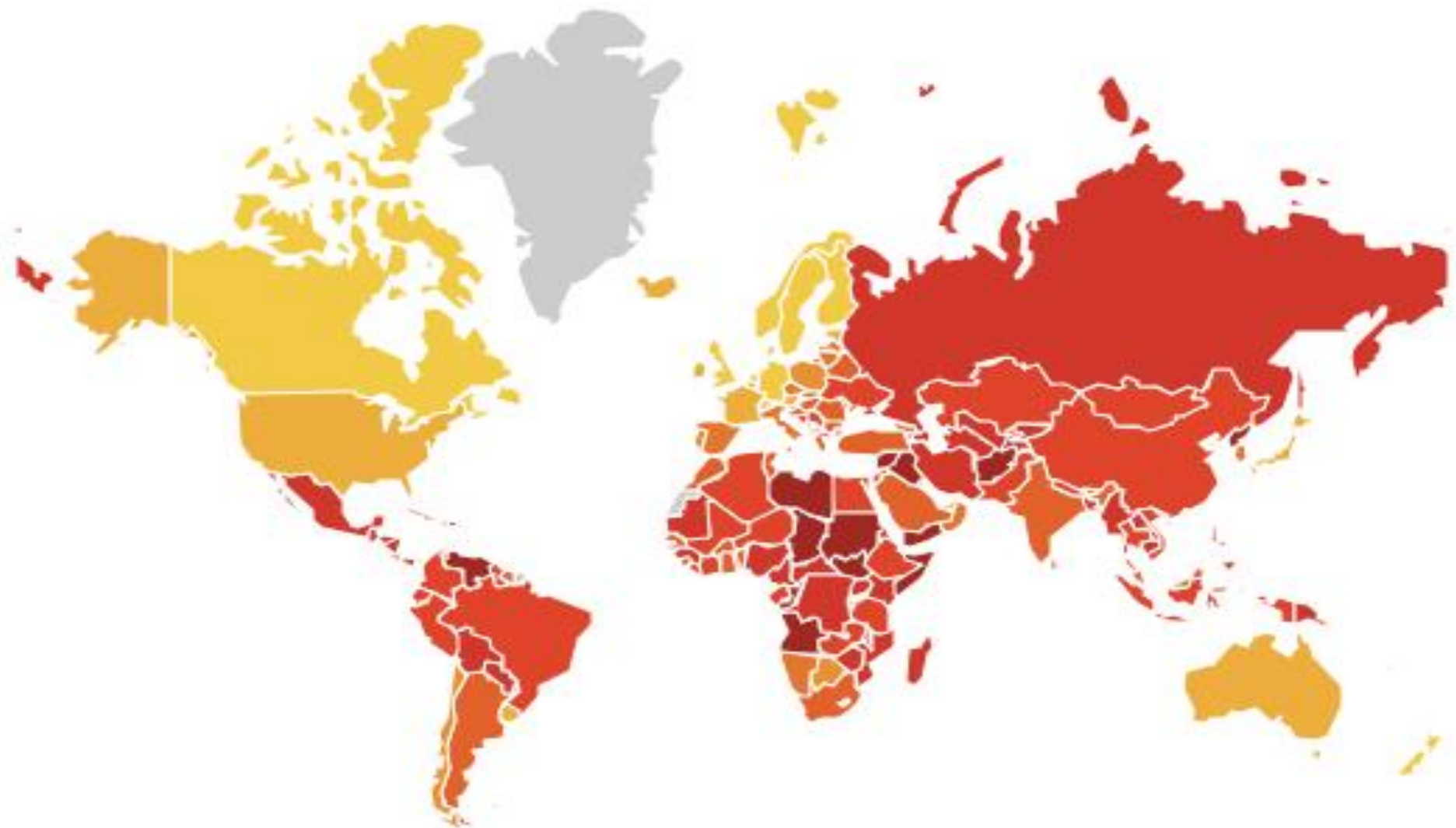
In economy, **Corruption** is payment for services or material which the recipient is not due, under law

Consequences of Corruption

More than \$1 trillion dollars is paid in bribes each year, according to ongoing research at the World Bank Institute (WBI). The major consequences are:

- Inequality, Poverty, Failing Institutions, Lack of adequate Medical facilities.
- Inflates Costs which Deters Private Investments.
- Large scale corruptions could lead to political instability
- The latest available TI/CPI ratings place India at 78th position out of 180 countries that have been rated for perception of corruption prevalence in the countries.

Transparency International (TI) annually releases the Corruption Perceptions Index (CPI) Corruption Definition



Transparency International (TI)

Corruption Perceptions Index (CPI) 2018

SCORE	COUNTRY/TERRITORY	RANK	SCORE	COUNTRY/TERRITORY	RANK	SCORE	COUNTRY/TERRITORY	RANK	SCORE	COUNTRY/TERRITORY	RANK	SCORE	COUNTRY/TERRITORY	RANK						
67	Chile	27	52	Grenada	53	41	India	78	35	Armenia	105	29	Honduras	132	23	Uzbekistan	158			
88	Denmark	1	66	Seychelles	28	52	Italy	53	41	Kuwait	78	35	Brazil	105	29	Kyrgyzstan	132	22	Zimbabwe	160
87	New Zealand	2	65	Bahamas	29	52	Oman	53	41	Lesotho	78	35	Côte d'Ivoire	105	29	Laos	132	20	Cambodia	161
85	Finland	3	64	Portugal	30	51	Mauritius	56	41	Trinidad and Tobago	78	35	Egypt	105	29	Myanmar	132	20	Democratic Republic of the Congo	161
85	Singapore	3	63	Brunei Darussalam	31	50	Slovakia	57	41	Turkey	78	35	El Salvador	105	29	Paraguay	132	20	Haiti	161
85	Sweden	3	63	Taiwan	31	49	Jordan	58	40	Argentina	85	35	Peru	105	28	Guinea	138	20	Turkmenistan	161
85	Switzerland	3	62	Qatar	33	49	Saudi Arabia	58	40	Benin	85	35	Timor-Leste	105	28	Iran	138	20	Angola	165
84	Norway	7	61	Botswana	34	48	Croatia	60	39	China	87	35	Zambia	105	28	Lebanon	138	19	Chad	165
82	Netherlands	8	61	Israel	34	47	Cuba	61	39	Serbia	87	34	Ecuador	114	28	Mexico	138	19	Congo	165
81	Canada	9	61	Poland	36	47	Malaysia	61	38	Bosnia and Herzegovina	89	34	Ethiopia	114	28	Papua New Guinea	138	19	Iraq	168
81	Luxembourg	9	60	Slovenia	36	47	Romania	61	38	Indonesia	89	34	Niger	114	28	Russia	138	18	Venezuela	168
80	Germany	11	60	Cyprus	38	46	Hungary	64	38	Sri Lanka	89	33	Moldova	117	27	Comoros	144	17	Burundi	170
80	United Kingdom	11	59	Czech Republic	38	46	Sao Tome and Principe	64	38	Swaziland	89	33	Pakistan	117	27	Guatemala	144	17	Libya	170
77	Australia	13	59	Lithuania	38	46	Vanuatu	64	38	Gambia	93	33	Vietnam	117	27	Kenya	144	16	Afghanistan	172
76	Austria	14	58	Georgia	41	45	Greece	67	37	Guyana	93	32	Liberia	120	27	Mauritania	144	16	Equatorial Guinea	172
76	Hong Kong	14	58	Latvia	41	45	Montenegro	67	37	Kosovo	93	32	Malawi	120	27	Nigeria	144	16	Guinea Bissau	172
76	Iceland	14	58	Saint Vincent and the Grenadines	41	45	Senegal	67	37	Macedonia	93	32	Mali	120	26	Bangladesh	149	16	Sudan	172
75	Belgium	17	58	Spain	41	44	Belarus	70	37	Mongolia	93	32	Ukraine	120	26	Central African Republic	149	14	Korea, North	176
73	Estonia	18	58	Cabo Verde	45	44	Jamaica	70	37	Panama	93	31	Djibouti	124	26	Uganda	149	14	Yemen	176
73	Ireland	18	57	Dominica	45	44	Solomon Islands	70	37	Albania	99	31	Gabon	124	25	Azerbaijan	152	13	South Sudan	178
73	Japan	18	57	Korea, South	45	43	Morocco	73	36	Bahrain	99	31	Kazakhstan	124	25	Cameroon	152	13	Syria	178
72	France	21	56	Costa Rica	48	43	South Africa	73	36	Colombia	99	31	Maldives	124	25	Madagascar	152	10	Somalia	180
71	United States	22	56	Rwanda	48	43	Tunisia	73	36	Philippines	99	31	Nepal	124	25	Nicaragua	152			
70	United Arab Emirates	23	55	Saint Lucia	50	42	Bulgaria	77	36	Tanzania	99	30	Dominican Republic	129	25	Tajikistan	152			
70	Uruguay	23	54	Malta	51	41	Burkina Faso	78	36	Thailand	99	30	Sierra Leone	129	25	Eritrea	157			
68	Barbados	25	53	Namibia	52	41	Ghana	78	35	Algeria	105	30	Togo	129	24	Mozambique	158			
68	Bhutan	25										29	Bolivia	132						

Ideal Compliance Framework

Prevent – Detect – Respond

Prevent:

Controls aimed at Preventing Violations to include

- i. Risk Management
- ii. Policies & Procedures
- iii. Training & Awareness
- iv. Collective Action

Detect

Controls aimed at detecting Violations in a timely manner to include

- i. Anonymous Reporting Mechanism
- ii. Compliance controls
- iii. Reviews & Investigations

Respond:

Controls aimed at responding & preventing recurrence to include

- i. Consequences for misconduct
- ii. Remediation

Working with intermediaries



Working with intermediaries bears certain risks

« Third parties used as intermediaries are one of the most common channels through which bribes are made ... »

Transparency International

«Anti-corruption laws do not tend to differentiate between acts made by you and acts by someone acting on your behalf » OECD

«The management of each unit is responsible for its use of business partners. This means that management must

- Carefully select and
- Appropriately monitor and manage its business partners throughout the course of a business relationship »

Control Mechanisms for working with Intermediaries

- Perform a Due Diligence on Intermediaries.
- Communicate the Company`s Compliance Policies and Procedures to the Intermediary
- Obtain appropriate declarations from the Intermediary to the effect that the intermediary will confirm with the Compliance Policies while acting on behalf of the Company.
- Consider engaging external agencies who specialize in Due Diligences
- Monitor the Intermediary periodically on the basis of Level of Risk assessed during the Due Diligence.

Avenues for Bribery and Control Mechanisms

- Cash
- Gifts
- Sponsoring Activities
- Donations
- Charitable Contributions, Memberships
- Hospitality Packages



Principles to be observed while making Contributions

- No contribution may be promised, offered or made to secure inappropriate commercial advantages for the organisation or for other improper purposes
- All contributions must be clear and visible
- No activities directed to organizations whose goals are incompatible with Corporate Principles or would damage company`s reputation
- No activities directed to individuals and no payments to private bank accounts
- Memberships may not be used for private purposes
- Sponsoring Activities further
 - Require a written sponsoring agreement
 - Must be justified by a legitimate and plausible business purpose
 - May only be made if the contribution offered by organisation is proportionate to the consideration it receives in return

Reporting Mechanisms- Whistleblowing



Whistleblowing

Employees should be encouraged to report misconduct, questionable behavior or breaches of the law, such as willfully causing material damage or financial loss, intentionally violating accounting regulations, or committing unlawful acts punishable by a prison sentence or a fine.

Alternative Mechanisms should be made available to employees to Report potential violations such as reporting to:

- your **Compliance Officer**
- Reporting Manager
- the Chief Compliance Officer
- HR or
- report your concerns anonymously.

Policy for Protection of Whistleblowers should be formulated to ensure that genuine whistleblowers do not face retaliation for reporting potential violations.

Handling of Allegations Reported by Whistleblowers

- Potential Violations reported should be investigated in a structured manner.
- The principles of natural justice should be followed in the investigation process such as Presumption of innocence, Protection of personal rights, Right to a hearing etc to ensure the rights of whistleblowers and those accused.
- The focus should be on protecting the individual and ensuring the integrity of the investigation.
- Appropriate Disciplinary Actions & Remedial measures should be taken by the appropriate level of management on the basis of the findings of the investigation.

Training Methodology

- Compliance overview session is included as part of the Induction Program for all the new joinees.
- Annual in person refresher trainings for identified target groups of existing employees
- Topic specific trainings such as Anti Trust, Anti Money Laundering, etc.
- Web based Trainings are also rolled out for identified target groups on specific topics.

Implications Of Prevention Of Corruption Amendment Act (POCA), 2018

Amended Provision	Impact on Commercial organizations & Safeguards & Remedial Measures
<p>Any person (includes commercial organization) who:</p> <ul style="list-style-type: none"> a) Gives OR Promises to give an “undue advantage” to another person or persons b) with intention to Induce Public servant to perform public duty improperly OR c) To reward a public servant for improper performance of public duty <p>Shall be punishable with imprisonment up to 7 years Or fine Or both (Section 8)</p> <ul style="list-style-type: none"> ➤ Person to whom undue advantage is given may not necessarily be the person performing / has performed public duty ➤ It is immaterial whether such undue advantage is given directly or through a third person 	<p>Impact: Commercial organization can be an accused of such offence and shall be punishable with fine if the offence is proved.</p> <p>Safeguards & Remedial Measures:</p> <ul style="list-style-type: none"> • In the event of such allegations immediate defense is to prove/establish that such person/commercial organization has been compelled to give “undue advantage” • To exercise such defense there is reporting obligation. Within 7 days from giving such undue advantage the person shall report the same to law enforcement authorities or investigating agencies
<p>Offence by Commercial Organization:</p> <p>Offence is said to be committed by the “Commercial Organization” if any Person associated with Commercial Organization gives / promises to give undue advantage to a public servant with an intention</p> <ul style="list-style-type: none"> a) To obtain / retain Business for Commercial Organization OR b) To obtain or retain an advantage in Conduct of business of Commercial Organization (Section 9) 	<p>Impact:</p> <ul style="list-style-type: none"> • Definition of Any Person associated is wide and it includes the person who performs services for or on behalf of commercial organization and it includes an Employee Or Agent Or Subsidiary • If accused is an employee of the Commercial Organization it will be presumed that he has performed services for or on behalf of the Commercial Organization • Broadly all relevant circumstances will be considered to determine whether person has performed for/on behalf of the commercial organization and not merely the relationship of that person with organization <p>Safeguards & Remedial Measures:</p> <ul style="list-style-type: none"> ➤ Defense To “PROVE” (in trial) that Commercial Organization had in place adequate procedures in compliance of preventive guidelines ➤ The Government will prescribe necessary guidelines for compliance by the commercial organizations ➤ Compliance should be made compulsory not only on the employees but also on the agents and subsidiaries.

Implications Of Prevention Of Corruption Amendment Act (POCA), 2018

Amended Provision	Impact on Commercial Organizations & Safeguards & Remedial Measures
<p>Liability of Person in charge of the organization:</p> <p>If it is PROVED in Court that commercial organization has committed the offense with Consent or Connivance of any DIRECTOR, MANAGER, SECRETARY or other officer- such person shall be guilty of the offences proceeded against and shall be punishable with imprisonment not less than three years and extendable up to seven years and fine (Section 10)</p>	<p>Impact: Consent and connivance of person in charge to commit offence under the Act if is proved the person shall be guilty</p> <p>Safeguards & Remedial Measures: Firstly the offence should be proved by the prosecution and to held person in charge liable for the offence consent and connivance of that person for commission of offence should also be proved</p>
<p>The Term “Undue Advantage” is also widely defined which includes any gratification other than legal remuneration and it is NOT limited to pecuniary gratification or estimable in money Section 2(d)</p>	<p>Impact: Any sort of gratification made to the public servant may be construed as an “undue advantage” under the Act</p> <p>Safeguards & Remedial Measures: Stringent preventive and safeguarding Policy should be in place</p>
<p>Prior approval / sanction for enquiry / inquiry by the investigating agency is provided for the prosecution of Public Servant. Commercial Organizations will not have such privilege (Section 17A)</p>	

Thank you.

Neville Gandhi
Vice President Compliance- Siemens
Limited.

Balasubramanian Viswanathan
Chief Manager - Compliance
Siemens Limited.

