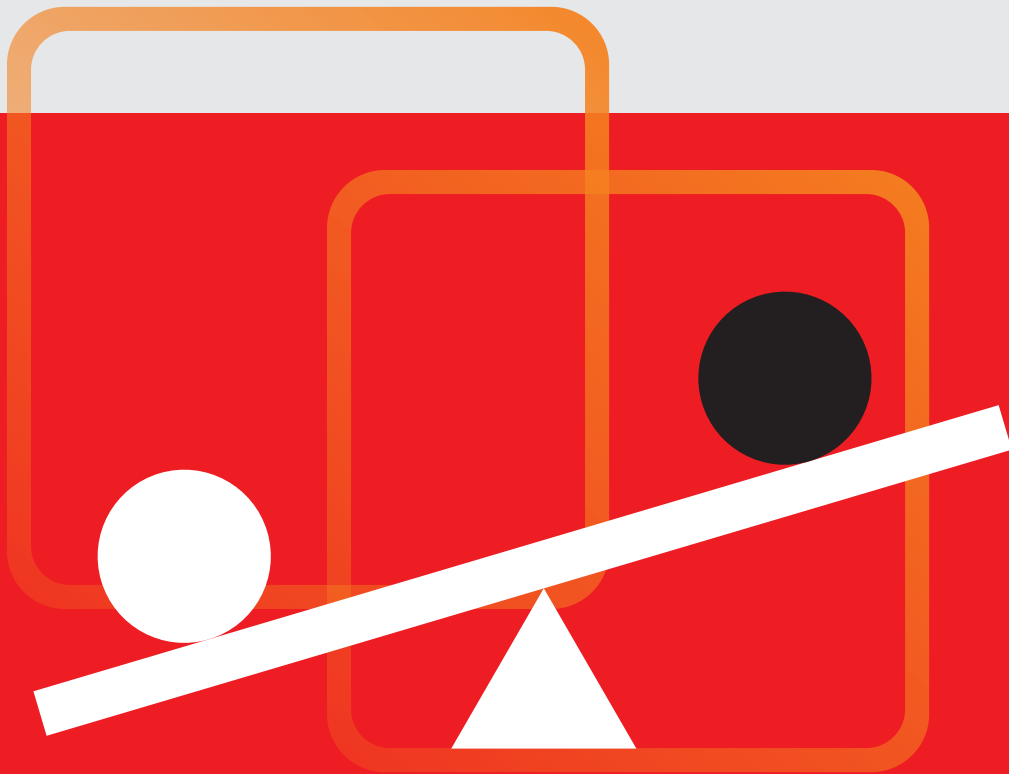




Global Compact Network
India

BUSINESS CASE FOR ANTICORRUPTION IN INDIA

**Principles, Economics and Application of
Transparency Tools**



A Collective Action Project India Publication
GLOBAL COMPACT NETWORK INDIA



Global Compact Network India

The UN Global Compact is the largest voluntary corporate citizenship initiative in the world and offers a unique platform to engage companies in responsible business behaviour in the world, through the Ten Principles in the areas of human rights, labour standards, environment and anticorruption. It provides access to the United Nations' broad knowledge base in development issues as well as in mobilizing governments, businesses, civil society, labour organizations and academic institutions to take collective action. Today there are more than 80 Global Compact Local Networks in key markets across the world. The Networks provide an opportunity for members to share experiences, innovative practices and to collaborate for furtherance of responsible business values within country specific contexts.

The Global Compact Network (GCN), India, was formed in November 2003 and registered as a non-profit society to function as the Indian Local Network of the UN Global Compact. GCN India is the first Local Network in the world to be established with a pan-Indian membership base. GCNI provides an extremely relevant vehicle for Indian businesses, academic institutions and civil society organisations to join hands towards strengthening Responsible Business Initiatives in India and internationally.

The Anticorruption Collective Action Project (CAP) was launched by UNGC in five countries, (Brazil, Egypt, India, Nigeria and South Africa), in December 2010, with support from Siemens Integrity Initiative. The Project aims at devising business integrity measures on the basis of the 10th UNGC Principle, to facilitate companies to operate with UNCAC recommended standards. The project also aims to foster a high-impact collective action platform on anti-corruption by facilitating on-going dialogue between private and public sectors.

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**Edited by
Shabnam Siddiqui**

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ACKNOWLEDGEMENTS

We would like to express our sincere appreciation to all the authors who have contributed their articles and case studies for this publication, and responded to multiple follow-ups with promptness and enthusiasm.

We also wish to acknowledge the support of Siemens through their Siemens Integrity Initiative, the UN Global Compact Anticorruption team led by Ms. Olajobi Makinwa and GCNI members and potential members - all of whom have partnered, supported, advised the Collective Action Project from time to time, across the country and region.

A special thanks also to the UNGC Anticorruption Working Group, which continues to share global challenges and practices candidly and sets the bar high for anticorruption initiatives across the world.

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SECTION-1

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1

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- Olajobi Makinwa

3. BUSINESS CASE FOR ANTICORRUPTION IN INDIA

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FOREWORD

Dinesh K Sarraf

President, Governing Council,
UN Global Compact Network India,
Chairman & Managing Director,
Oil and Natural Gas Corporation (ONGC) Ltd.

The idea of anti-corruption entered into international development discourse in the 1990s, defining corruption as a major global problem, being **“sand for the wheels of commerce”** and affecting development negatively. On one level it can refer to the risk of taxpayers' money in Government's projects being fraudulently spent or stolen. On another level it can refer to corruption within a country's financial structure and institutions including that in the private sector, with the negative impact that this has on economic growth of the country.

Corruption retards the pace of development and impedes developmental activities. It does not only suppresses economic growth by driving up costs, but also undermines the sustainable management of the environment and natural resources and results in criminal activity, malfunctioning state institutions and weak governance.

With the evolution of economies, mandate of the businesses have moved from being profit making entities to socially responsible organisations. Over the past few years, clean business has emerged as one of the primary objectives of the organisations. One of the most efficacious recommendations for business practice to tackle corruption has been found within the ambit of Collective Action. The idea is simple – get companies working together with their competitors and other stakeholders to create decisions that are driven by economic considerations and not by corrupt transactions.

Global Compact Network India (GCNI), in furthering the UNGC's 10th principle on Anti-Corruption, implemented the Collective Action Project (CAP) from 2011-2014. This project, in a phased manner, took up pressing corruption issues in Indian context, in the spheres of public procurement, bribery and fraud, supply chain transparency and sustainability, transparency in sports and sports related hospitality, and facilitated business-academia dialogue in the country.

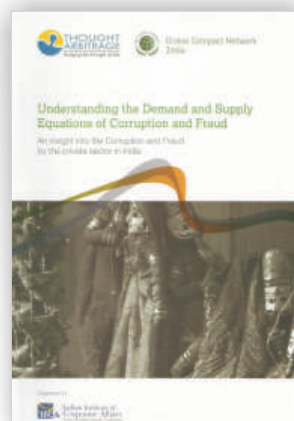
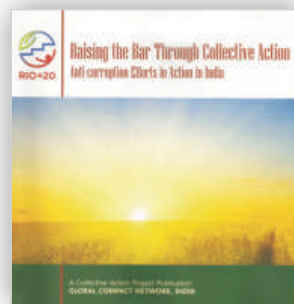
Over the past few years, clean business has emerged as one of the primary objectives of the organisations. One of the most efficacious recommendations for business practice to tackle corruption has been found within the ambit of Collective Action.

In its first series of Pan-India consultation conducted during 2011-2012 titled **Ethical Business for Profitability**, CAP partnered with academicians, civil society, chambers of commerce, and international business councils to share their best practices which were being followed in various sectors. This consultation resulted in CAP India's first publication **“Raising the Bar through Collective Action: Anti-corruption Efforts in Action in India”**.

CAP conducted its second series of pan-India consultation in the second half of 2012 titled **Turning Down the Demand: Cutting off the Supply – Collective Efforts to reduce Corruption in India**. The main aim of the consultations were to examine innovative ways in which corruption could be tackled and explore ground realities that are not factored in while constructing Anticorruption policies. The consultations provided recommendations that became part of the second CAP India publication - **“Understanding the Demand and Supply Equations of Corruption and Fraud,”** a study that showcased trends of private sector fraud and bribery in the last fifteen years in India.

This third and final publication of CAP Project presents the **Business Case for Anticorruption in India: Principles, Economics and Application of Transparency Tools**. UNGC companies and business entities have shared their practical experiences in this publication as to how they have been investing in getting their processes and procedures in order, so that businesses could be graft-free; and to ensure transparency in their supply chain and procurement mechanism, irrespective of the size of the business.

I am sure this publication will be a very useful reference for many new as well as existing business entities.



UN GLOBAL COMPACT 10TH PRINCIPLE: THE JOURNEY SO FAR AND THE WAY AHEAD

Olajobi Makinwa
Head Transparency and
Anticorruption Initiatives,
United Nation Global Compact

The world is now a global village. While the world is shrinking, traditional roles and responsibilities of business and governments are shifting and merging. The interconnectedness of roles and responsibilities are much more pronounced than ever before. Private investment, thriving entrepreneurship and vocational training are more needed today. In a globalized world, the private sector is expected to do much more in areas that used to be the exclusive domain of the public sector. **The world has moved beyond philanthropy and “doing good”. It is about sustainability which has moved up the corporate agenda –** away from the public relations realm to a strategic one handled at the highest levels of the company. Long-term financial success is now seen to go hand-in-hand with environmental stewardship, social engagement and effective governance for sustainable development. Bribery and corruption is no longer accepted as a way to conduct business. The current demand for transparency, integrity and accountability is consistent all over the world. Businesses and governments, more than ever before, are daily asked to conduct business with integrity, openness, accountability and transparency. It is a just call. The costs of doing business otherwise are known and such costs are no longer accepted; it is a task that has to be embraced and a task that has to be done. There is definitely a business case for anti-corruption and all businesses, big or small, global or local, have to come together to set a new path for all to take. The stage is set and is irreversible. It is a global movement of creating a sustainable and inclusive global economy. We therefore need to join hands to work towards reducing, if not eliminating bribery and corruption in conducting business. There is no other way.



Long-term financial success is now seen to go hand-in-hand with environmental stewardship, social engagement and effective governance for sustainable development. Bribery and corruption is no longer accepted as a way to conduct business. The current demand for transparency, integrity and accountability is consistent all over the world.

The United Nations Global Compact (Global Compact) was launched in the year 2000 amidst the emerging debate on globalization. Business was and continues to be recognized as a key stakeholder and driver in the international sustainable development framework. The Global Compact, a multi-stakeholder initiative is the world's largest voluntary corporate sustainability initiative with more than 8000 business participants from developed, emerging and developing countries. It has 80 local networks. With its ten universal principles related to human rights, labor, environment and anti-corruption and other platforms, the Global Compact calls on business to make environmental, social and governance issues as important as financial bottom lines. The adoption of the UN Convention against Corruption (UNCAC) in 2003 led to the addition of the 10th Principle against Corruption to stem the tide against corruption. **The year 2014 was a watershed as it marked ten years of business working collectively with the Global Compact to work against corruption in all its forms including extortion and bribery.**

Since its inception, the Global Compact's role has been that of a facilitator and a convener. It convenes international actors – government, business, investors, civil society and academia – at a common platform to devise and discuss ways to further the corporate sustainability agenda and take concrete action. It is a platform for continuous improvement. Activities of the 10th Principle against Corruption manifest this convening role as well as action platform of the Global Compact in a most comprehensive manner. **The 10th Principle globally advances its objectives through a working group comprising of anti-corruption champions from business, civil society, academia and international organizations, including the UN office on Drugs and Crime (UNODC), Transparency International, the World Economic Forum's Partnering against Corruption Initiative, and Global Compact local networks.** With the crucial interplay between global and local, the 10th Principle working group provides continuous guidance to the Global Compact's anti-corruption related activities. The working group meets regularly to identify priority work and discuss topics of relevance as well as issues that will help companies to embrace and embed anticorruption in their operations.



Over the years, various task forces comprising of members of the working group have developed a number of important generic tools and resources to guide companies in the fight corruption. Companies adopt the tools and resources taking into account their own specificities. The Global Compact tools and resources include Global Compact-Transparency International Reporting Guidance on the 10th principle against corruption, A Guide for Anti-Corruption Risk Assessment and Fighting Corruption in Sports Sponsorship and Hospitality. Others are UN Global Compact/UNODC e-learning tool on the UNCAC and the upcoming guidance on Whistle-Blower policies and Collective Action in Practice, to name a few.

Corruption is one of the biggest impediments to any economic or social development. The evil impacts of corruption are widely known. Private to private corruption is indeed a challenge. Small and medium enterprises bear the brunt of corruption with no leverage to fight back. The private sector can be a victim and can be a perpetrator of corruption. It is therefore of utmost importance for every effort to eliminate corruption to be done collectively. A company's lone action, while important, may not be sufficient to fully deal with the challenges of bribery and corruption especially where it persists. That is why an African adage that says "if you want to go fast, go alone. If you want to go far, go together" is apt. One can do a lot by oneself but one can do the impossible with a great team. It is with this realization and to multiply the effects of individual corporate action against corruption, companies are joining hands with like-minded companies and organizations to improve the way they conduct business and promote transparency. This type of partnership among multiple interested parties with common challenges and common objectives to turn the tide against a common foe, in this case bribery and corruption, is referred to as Collective Action.

**"if you want to go fast, go alone.
If you want to go far, go together"**

Collective action can create a more stable business climate by enhancing access to markets and allowing companies to save revenue and profits that would otherwise be lost to bribery. Collective action-led solutions arrived at by multiple stakeholders have more credibility, ownership, acceptance and their implementation is more sustainable. But collective action is indeed not easy. It requires many things, the most important is trust among companies, which is difficult to secure. Collective action has been the hallmark of the Global Compact's efforts to further anti-corruption and transparency. Global Compact Collective Action Projects in 5 countries are bold initiatives that have taken the bull by its horn by laying the foundation for solid collective efforts to address corruption challenges in the 5 countries.

The 5 countries collective action projects were launched in January 2011 to engage critical stakeholders in concerted efforts to eliminate corporate corruption. The 5 collective action projects were launched in Brazil, Egypt, India, Nigeria and South Africa with support from the Siemens Integrity Initiative. The 5 projects have been working with local businesses, governments, civil society and academia in these countries to create an enabling environment for dialogue, discussion and action against corruption. By facilitating ongoing dialogue between the private and public sector, the projects set the stage and offered an opportunity for a wide range of stakeholders to explore how collective action can create incentives for ethical business performance, and to discuss areas for further improvement. The Global Compact has proved to be the best incubator for these collective action initiatives.

Global Compact has leveraged these projects worldwide by disseminating information, raising awareness, calling for partnerships and collaborations through all possible mediums. These 5 collective action projects conclude in January 2015. However, the spark of action that has been ignited has the potential to shine brightly and incessantly with the commitment from business – whether local or global – and all key players in the international arena.

Collective action provides a framework for a coalition of like-minded stakeholders (industry peers, committed government officials & policy makers, civil society, academics, and business associations) to act together for a common cause.



BUSINESS CASE FOR ANTICORRUPTION IN INDIA

Shabnam Siddiqui
Project Director,
UN Global Compact Network India

According to World Bank estimates 0.5% of India's Gross Domestic Product (GDP) is lost due to corruption every year. **In 2014 India ranked 134 on Ease for Business Index and 179 in terms of Ease of Starting a Business amongst 189 nations in the world**, the ranking being based on parameters such as dealing with construction permits, getting electricity, registering property, getting credit, protecting investors, paying taxes, trading across borders, enforcing contracts and resolving insolvency.

Correspondingly efforts on anti-corruption has taken a front seat since the past couple of years. The beginning of 1990s saw several international organizations introducing anti-corruption instruments to make the functioning of businesses clean. With globalization and business opportunities spread across the globe, companies have to follow norms of several countries. Some of the strong global anti-corruption convention and legislation, mentioned below, have led businesses to introduce anti-graft initiatives in their working across the world. However India still lags behind.

OCED Anti-Bribery Convention (officially Convention on Combating Bribery of Foreign Public Officials in International Business Transactions) adopted in 1997, prohibits bribery of foreign officials, enhanced collaboration between law enforcement authorities of signatory countries and ban on tax deductibility of bribes to foreign public officials. These elements were borrowed by the other international legal instruments which were introduced after this convention namely United Nations Convention Against Corruption and UK Bribery Act. Though India is yet to ratify the OCED Anti-Bribery Convention, similar to the features of the convention, India has drafted Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill, 2011 which is pending in Parliament.¹



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¹http://articles.economicstimes.indiatimes.com/2013-05-24/news/39502234_1_oecd-bribery-indian-parliament

The UK Bribery Act on the other hand came into force in 2011 and is applicable to all companies registered in UK, its subsidiaries, as well as all non-UK companies trading in UK stock exchange. The Bribery Act criminalizes both the payment and receipt of a bribe and in the first of its kind of initiative the dealings with funds received as a result of bribery, could constitute a separate money laundering offense. The uniqueness of the act comes from the fact that it outlaws the facilitation payments that are permitted by several European countries.² In the Indian context, as yet, no case has been registered under the UK Bribery Act or any action taken to cater to its requirements. However, a large number of big Indian conglomerates come under the purview of this new Act which has all essential features of United Nations Convention against Corruption (UNCAC) which India ratified in May 2011.

Finally the tough global Act, which has reaped the maximum gains vis-à-vis penalties is the Foreign Corrupt Practices Act (FCPA), a US legislation which prohibits United States companies and their employees, officers, directors and agents from paying or promising to pay bribes to foreign officials, political parties, candidates or their conduits to obtain or retain business.³ The provisions of FCPA demand a comprehensive Compliance Program, along with a due diligence process for companies. In the last five years, the top ten cases of financial penalties under FCPA, have fetched penalties to the tune of USD 4.4 billion.⁴ FCPA, in the recent times, had incidence on the business operations in India wherein in March 2011, Wal-Mart, US Retail giant signed a joint venture with Bharti Enterprises, an Indian conglomerate to set up its stores in India. However, cases of bribery were reported. If charged guilty Wal-Mart could have been penalized under the FCPA. Finding issues with the joint venture, Wal-Mart in April 2014, decided to enter in the Indian market alone⁵ and suspended its joint venture, loosing around 150 million in the course of three years.

Thus with the increasing extra territorial reach of the Foreign Corrupt Practices Act of the US and the UK Bribery Act, UNCAC compliance and reporting, OECD Anti-Bribery Convention, Partnering Against Corruption Initiative of World Economic Forum, and Anticorruption Working groups

The Bribery Act criminalizes both the payment and receipt of a bribe and in the first of its kind of initiative the dealings with funds received as a result of bribery, could constitute a separate money laundering offense.

²<http://www.edwardswildman.com/the-foreign-corrupt-practices-act-12-17-2012/>

³<http://www.mondaq.com/india/x/220198/Compliance/FCPA+and+its+impact+on+India>

⁴<http://www.fcpablog.com/blog/2014/12/23/with-alstom-three-french-companies-are-now-in-the-fcpa-top-t.html>

⁵<http://ibnlive.in.com/news/walmart-to-open-50-wholesale-stores-in-india-in-45-years/463573-7.html>

of UN Global Compact and Business 20, there is a larger emphasis on corporate governance, transparency, responsibility and accountability. Even as companies are exposed to multi-jurisdictional laws and regulations, compliance and its monitoring have become an existential issue for most companies.

India is trying to address the issue of corruption by making legislative changes, ratifying international conventions and adopting technology in its administrative functioning. However, merely rules and regulations will not address the issue. It is important that the business stakeholders are committed and come together to participate in the fight against corruption.

BUSINESS CASE FOR ANTI-CORRUPTION

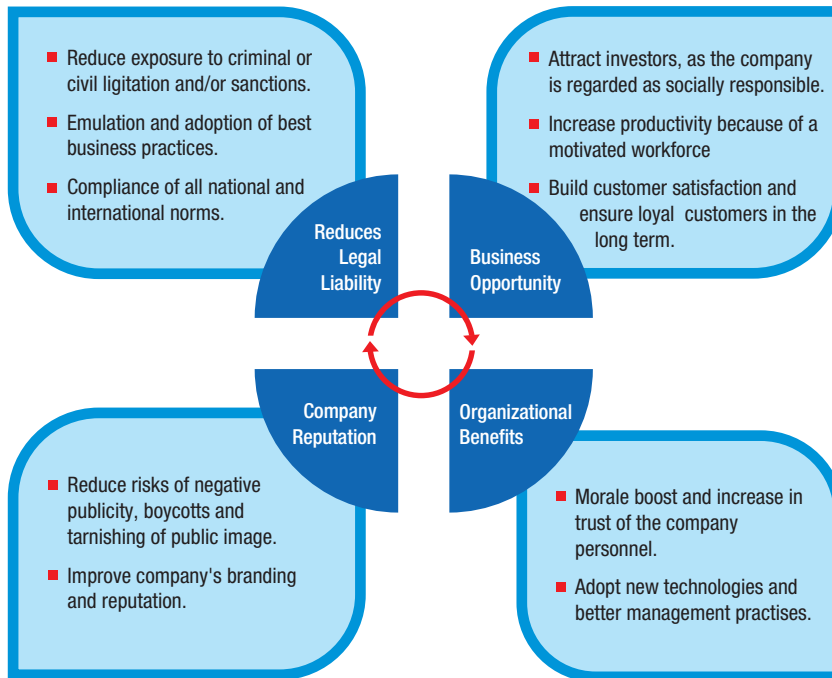
The Indian general election of 2014, fought on the plank of good governance and transparency, gave Mr. Narendra Modi, the current Prime Minister of India, a mandate for ensuring a clean and transparent governance agenda, a mandate that has triggered a new-found urgency in the efforts of corporate India to curb corruption in their operations.

Hong Kong-based Mini vandePol, who heads the global compliance practice at international law firm Baker & McKenzie observes that "Over the past five years, Indian companies politely listened when we spoke of tackling bribery and other compliance risks and told us that we don't understand how things get done with the Indian bureaucracy... Since the recent elections won on the premise of being corruption-free, a lot of companies are interested in starting afresh on building robust compliance systems to tap more markets and rope in new foreign investors."⁶ Mini vandePol, has received advisory mandates from over a dozen Indian firms in the last six months from sectors such as defence, manufacturing and IT.

Within the changing national and global scenario Global Compact Network India proposes the Business Case for Anticorruption in India. A business case for anticorruption assists in four ways: reduces legal liability, increases business opportunity, enhances company reputation and boosts the morale and trust of company personnel.

With the increasing extra territorial reach of the Foreign Corrupt Practices Act of the US and the UK Bribery Act, UNCAC compliance and reporting, OECD Anti-Bribery Convention, Partnering Against Corruption Initiative of World Economic Forum, and Anticorruption Working groups of UN Global Compact and Business 20, there is a larger emphasis on corporate governance, transparency, responsibility and accountability.

⁶http://articles.economicstimes.indiatimes.com/2014-11-20/news/56304200_1_adi-godrej-indian-companies-india-inc



OVERVIEW OF PUBLICATION

This publication is essentially divided into six sections, covering the entire gamut of initiatives and interventions that Collective Action Project India undertook in its four year of operation. Section 1 sets the tone of the publication by contextualising business case for anticorruption in India and outlining the journey of UN Global Compact 10th Principle so far and the way ahead.

Section two delves into the needs and challenges of ethical corporate governance. It begins with an **excerpt of UNODC case study** on Incentives to Corporate Integrity in accordance to UNCAC. After a review of India's legislation, policy and practice to assess conformity with selected articles of the UNCAC, the UNODC study makes specific recommendations for stronger legislations, greater awareness and sensitization and a need to create balance between incentives and penalties for encouraging corporate integrity. The next article by **Kaushik Dutta and Naveen Srivastav** explores how Ethics in Business is a Qualifying Factor, through the lens of the Companies Act 2013, concluding that the regulatory regime of new company law in India, along with revised Clause 49 of the listing agreement, endeavours to induce core values of integrity into the culture of Indian corporations. The third article of the section by **Mukesh Arya**, explores another recent Indian

legislation the Whistle Blowers Protection Act 2011 and outlines the needs and challenges of Whistleblowing in India viz 'what is next after one has received the complaint about frauds, corruption and other wrongdoings?' This question is fairly responded to by **Neville Gandhi** in the subsequent article, which outlines the Siemens Compliance System based on the prevent, detect, respond and continuous improvement approach.

Section three and four focus on the issues of Procurement and Vendor Management in India wherein case studies of three public owned enterprises and two private sector group explore the economics of transparency tools. In Section three on Public Procurement **Bubul Sen** explores the Ethical Challenges and Dilemmas of Public Procurement in India espousing for an effective public procurement act and corresponding policy around public procurement, as without such a vision document the legislation would lack sufficient ideological backing. The case study of **National Mineral Development Corporation (NMDC) Limited** reports a difference of 15 – 38 % in quoted and purchase price while following the e-tender route and **Amar Prasad** reports a saving of 1.99 crores on one procurement contract in Krishak Bharati Cooperative Limited (KRIBHCO), through the use of e-reverse auction, for procuring empty HDPE bags used as packing material in their Hazira Plant. In the last case study of section three **Arun Kumar Jain and Sandeep Kumar** showcase the work of Fluor a global leader in engineering, procurement, fabrication and construction, and how it has built its culture upon adherence to strong ethics and compliance based business practices over the last 100 years of its operation. Fluor is committed in its promotion and improvement of ethical standards and work practices for increased transparency across industries and geographies.

Section 4 begins with a business case for Integrity Pact proposed by **Ashutosh Mishra** wherein he outlines the issues, opportunities and challenges of the Integrity Pact tool and the dividends it is accumulating for the public sector undertakings who have formally adopted the tool. This assertion is confirmed by **A K Ambasht** in the case study of Oil and Natural Gas Corporation (ONGC) Limited which mentions specific tenders wherein Integrity Pact ensured faith and confidence among the vendors that they would be provided a level playing field in the whole bidding and contracting process. The last



article in this section by **Raman Ramchandran** outlines how the entire compliance programme of BASF India is based on the premise of corporate governance and compliance complementing business profitability in the long run.

Section five looks at the most crucial stakeholders in any discussion business case for anticorruption – the mSMEs (micro Small and Medium Enterprises). The first article in this section is an **excerpt from the Handbook on Competition Policies and mSMEs in India** published by Federation of Indian Micro and Small & Medium Enterprises (FISME). The Handbook and subsequently the article goes into details of anti-competitive violations with case studies, explores the consequences of such violations on the mSME specifically and business at large, and outlines the need for extensive capacity building of mSMEs as national and global compliance mechanisms are becoming a qualifying / differentiating factor for success of any enterprise. The case study of **Paharpur Business Centre (PBC)** in this section, a recipient of 'Ethics is Good Business' by Dr. A. P. J. Abdul Kalam, outlines their ethics policy, reposing belief that strong values and ethics is the foundation of sustainable and profitable business; and an organization's culture is the strong predictor of its market value.

The last section of this publication, Section six, looks at the way forward for Indian business and the anticorruption agenda, regionally and nationally. **Brook Horowitz** outlines the role of B20, a business advocacy group set up to advise the G20 on public policy, in Promoting Transparent Business in Emerging Markets. Transparency and Anticorruption have always been one of the key B20 agenda items, in

Transparency and Anticorruption have always been one of the key B20 agenda items, in keeping with the G20's strong commitment to the topic.



keeping with the G20's strong commitment to the topic. Since companies are potentially the governments' strongest allies in implementing the G20's decisions, B20 welcomes more companies into its exciting and developing space, including a much stronger representation from companies in India, one of the biggest and most powerful G20 economies. Finally the section and publication conclude with **A. K. Balyan** recapping the achievements of Collective Action Project India and setting the tone for the next phase of anticorruption initiative of Global Compact Network India – the establishment of the **Centre of Excellence for Transparency and Ethics in Business**. The Centre of Excellence (COE), as an advanced form of collective action, will address the issue of corruption collectively as it has the potential of reaching out to public sector, industry peers, suppliers & vendors, civil society, management institutes, media & other stakeholders and initiate joint activities to fight corruption apart from taking individual initiatives by them. This will enable towards creating a level playing field and a business conducive environment which will reduce risk of corruption. It will also encourage innovative methods of countering corruption by knowledge sharing and networking, thereby improving individual stakeholder practices on one hand and using ICT (Information, Communication and Technology) efficiently on the other.

This publication is evidence of the journey of Indian businesses with the Global Compact Network India's Collective Action Project since 2011. From a time when companies were hesitant to speak to each other around transparency issues, to having the confidence to share economics of transparency tools, CAP India's stakeholders have come a long way. The publication is the first essential step towards scaling up of the collective action agenda in India and the region.





Next year the world will agree a new post-2015 sustainable development agenda. Our aim is to empower individuals and catalyse governments, the private sector and civil society to help lift millions out of poverty, protect the planet and achieve shared prosperity and dignity for all. Eliminating corruption and its harmful impacts will be crucial to our future well-being.

The private sector has a crucial role. Good behaviour is good business. Business groups can convert anti-corruption action into firm support for sustainable development. I call on everyone to help end corruption, and come together for global fairness and equity. The world and its people can no longer afford, nor tolerate, corruption.

UN Secretary-General Ban Ki-moon
Message for the 2014 International Anti-Corruption Day



SECTION-2

**ETHICAL CORPORATE
GOVERNANCE**



2

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INCENTIVES TO CORPORATE INTEGRITY IN ACCORDANCE WITH UNITED NATIONS CONVENTION AGAINST CORRUPTION

United Nations Office of
Drugs and Crime

Excerpt from India study

Corruption is a challenge that no country or sector can claim to be immune to. Increasingly, there has been global recognition of the valuable role that the private sector can and must play in addressing corruption. The private sector's share of Indian GDP has grown significantly in recent years. The involvement of the private sector then, is especially pertinent in a country like India.

The opening up of the Indian economy in the 1990's, which led to the free inflow of Foreign Direct Investment (FDI), not only increased the role and importance of the private sector but has also heightened the need for focus on business ethics and corporate integrity in the Indian context. In 2002, the Department of Company Affairs (DCA) under the Ministry of Finance and Company Affairs then set up the Naresh Chandra Commission to examine various corporate governance issues. Corporate governance is an all-encompassing subject, which involves regulatory mechanisms to monitor actions of a company's management and its director. The objective of this is to mitigate risks which may stem from the misdeeds of corporate officers. One observation made by this commission was that unlike in many other countries, the need for strong and effective corporate governance in India does not emerge from financial crisis; it stems from increasing international competition resulting from the liberalization or opening up of the economy, and several large scams (such as the '1992 stock market scam' and others in recent times).

In May 2011, India became party to the United Nations Convention against Corruption (UNCAC) joining over 160 other countries who were party to this UN Convention. The UNCAC calls attention to the need to prevent and address private sector corruption. As the custodian of the UNCAC, enhancing the capacity of States Parties to implement the provisions of this Convention is one of the prime mandates of UNODC. In India, UNODC implemented two anticorruption projects supported by the Siemens Integrity Initiative – 'Incentives to Corporate Integrity and Cooperation in Accordance with UNCAC' which addressed a larger umbrella of private sector integrity issues, including private sector association with the State during public procurement. The purpose of the

*For complete article please visit www.unodc.org/documents/southasia/publications/research-studies/CI_Report.pdf

project was to create awareness on the need for a system of incentives, both within organizations and in the competitive landscape they work in, so as to strengthen an environment where companies are more willing to self-report an incident of corruption. The second project, 'Public-Private Partnership for Probity in Public Procurement' sought to reduce vulnerabilities to corruption in the intersection between the private sector and the State under public private partnership projects.

This paper is an excerpt from a larger report that is available on the UNODC website. The report presents the findings of two research initiatives carried out under the project 'Incentives to corporate integrity and cooperation in accordance with UNCAC'. The first is an assessment of Indian legislation to assess compliance with the UNCAC and to identify legislative gaps. The second is a survey of current practices, grassroots challenges and training needs to identify gaps in practice amongst businesses. Both research findings provide valuable information on the legal framework as well as its practical implementation.

The findings indicate that India has no specific legislation addressing corruption in the private sector. However, India is fairly compliant with the UNCAC in relation to addressing private sector corruption, taking into account provisions in existing legislations and if the draft legislations are enacted. The Ministry of Home Affairs is currently debating an amendment to the Indian Penal Code to include 'bribery' as an offence, within the private sector. Secondly, the India Companies Act 2013, criminalizes a number of offences, such as 'wrongful withholding of property' of the 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 fraud is done 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 Companies Act 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.

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While these legislations and amendments to legislations are still pending, what currently exist are broad offences across different legislations. Some of the laws that are applicable to the private sector are: general offences of cheating, breach of trust or attempt to commit a criminal offence or the giving or attempting to give a gratification with a view to induce the electoral right of a person, right to stand, not stand or withdraw from being a candidature in electoral proceedings under the Indian Penal Code. The Prevention of Corruption Act 1988 includes as an offence, the receipt of gratification by a private person to use personal influence over a public servant through illegal and corrupt means, abetment in the commission of an offence by a person who is not a public servant. The Prevention of Money Laundering Act 2002 covers as an offence a person's act of being part of any of the process of the proceeds of crime and calls this property untainted property. Additionally, from April 2001, listed companies in India need to follow very stringent guidelines on corporate governance. The enactment of the UK Bribery Act 2010 and the Foreign Corrupt Practices Act 1977 (US'FCPA) has also additional obligations for many MNCs operating in India.

SPECIFIC RECOMMENDATIONS:

After a review of India's legislation, policy and practice to assess conformity with selected articles of the UNCAC, following are some of the recommendations of the report.

1. Recommendations on legislation

- Liability of legal entities to be separate and additional to the liability of natural and legal persons working in the private sector.
- Reduced fines or penalties for organizations that report corrupt practices in their business and cooperate with investigations.
- Code of conduct to encourage good commercial relations. A close example could be taken from Clause 6 of the Public Procurement Bill 2012 which has laid down a detailed code of conduct for promotion of good business practices involving both public officials and private players. *A similar code of conduct is required to regulate business practices between private sector organizations.*



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- Create mechanisms by which shareholders can look at the financial reports of companies and also seek an explanation of profit and loss. Currently there is a similar requirement for listed companies to share their financial statements with the stock exchange.
- Companies beyond a certain size and scale must mandatorily have an anti-corruption department and a whistle blowing mechanism with the coverage of accountability extended to one of the members of the board of directors. This proposed recommendation may also consider enhancing the responsibility of the directors in light of stronger anti-corruption oversight and those involving the need to disclose to law enforcement authorities the occurrence of corrupt activities.
- With respect to conflict of interest as applicable to public officials, stipulations could be put in place that besides employment, no other forms of engagement (advisory with retainer, subcontract) can exist between former government officials and the private sector without explicit permission from the concerned department authorities or until two years from the last date of government service.

2. Need for greater awareness and sensitisation

- Currently there is a perception that only bribery is corruption. Corporate integrity is also often a notion or a statement of intent. There is need for a system of public communication relating to UNCAC and the different acts that it mentions which need to be criminalized as corruption.
- In particular there is a need to build awareness among small and medium sized companies' regards anticorruption benefits.
- Build greater awareness of economic crimes among law enforcement officials.
- Build greater awareness of the challenges and workings of private sector among government officials and of government sector among private sector officials.
- Introduce awareness on anti-corruption related issues into the curriculum for management students who will soon join the work force.

3. Need to create a balance between incentives and penalties to encourage corporate integrity¹

Incentives are rewards or motivations for meeting or exceeding your

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¹For further reference – Humboldt-Viadrina School of Governance. “Motivating Business to Counter Corruption: A Global Survey on Anti-Corruption Incentives and Sanctions”, 2012, for more information on sanctions and incentives, please see. http://www.humboldt-viadrina.org/w/files/anti-corruption/hvsg_acis_motivating-business-to-counter-corruption_report_final.pdf

anticorruption standards. These do not imply financial gains for meeting or exceeding anti-corruption standards, but rather refer to putting in place those mechanisms that encourage anti-corruption behavior in the environment in which the individual or the company operates.

Sanctions/disincentives can be punishments for violating anti-corruption standards. The disincentives or penalties for non-compliance to anti-corruption standards are: termination of contracts, debarments, fines, imprisonments, public naming and shaming. They can apply to a company as a whole or to representatives of the company.

CONCLUSION

High targets and tight deadlines, low orientation of the management's focus on ethical issues along with a highly dynamic and competitive market are some of the reasons cited for corruption in the Indian business sector. Most companies have a code of ethics, but there is very little adherence as they remain voluntary codes. The challenges to small and medium sized companies in an environment such as this are even greater. However, the loss of image and clientele in an international market is also cited as one of the reasons why companies are slowly seeking to ensure strong corporate governance and integrity. While a strong legislation may only address some of these aspects, it is important to create a change in business practice and mind set on the ground.

Finally it is well known that a strong legislation is effective only with effective implementation. It is also well known that there is a need to put in place a number of measures that address the deviations which may occur at the grassroots level and in the daily practices of the thousands of professionals working for the private sector in India. Governments, multilateral institutions, banks and companies recalled that the devil lay in the details i.e. the nitty-gritty of transactions among companies, banks, financial institutions and capital markets; corporate laws, bankruptcy procedures and practices; the structure of ownership and crony capitalism; stock market practices; poor Boards of Directors with scant fiduciary responsibility; poor disclosures and transparency; and inadequate accounting and auditing standards. In today's business environment, business ethics and an anti-corruption orientation is no longer a choice, but a necessity for sustainable business.

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ETHICS IN INDIAN BUSINESSES: THE QUALIFYING FACTOR

Kaushik Dutta
Naveen Srivastava

Thought Arbitrage Research Institute

Ethics in a business is the most significant qualitative factor that retains investors of equity capital over a longer period, sustains a business and creates value for all stakeholders. Companies and their management recognize ethics to be a creator of value and its absence to be a pervasive risk. How to uphold moral value across the breath of a company remains one of their key challenges? Regulators are overseeing companies through moral compasses and consequences of failing are punitive and severe. This creates a need for attention of the top management to deal with matters of ethical dimensions.

Do ethics make good business sense for Indian companies and adherence to ethical practises drive value? Few empirical studies support this case. The Corporate Executive Board (CEB) in 2013 based on their integrity index, point that the companies having highest integrity index score have 16% better returns than companies with the lowest score. Further, companies with a culture of high integrity have 12 % better employee productivity than others². The UK Institute of Business Ethics in their study also find companies which took steps to implement their declared ethical values financially outperformed those that did not go beyond a declaration of commitment to business ethics³. TARI's own framework - Wealth from Trust, has empirical evidences that a company gets a premium on valuation over its peers having similar performance parameters in a given industry for qualitative factors.

Lofty targets and stringent deadlines, management's inattentive focus on ethical issues along with a highly vibrant and competitive market are some of the key concerns for integrity issues in the Indian businesses. According to Global Fraud Report 2013/14⁴, companies exposed to fraud and unethical practices in India has increased from 67 % to 71 % and average percentage of loss of revenue has increased to 1.4% in current year in comparison to 1.2%. This trend is alarming!

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² Leslie Altizer (2013), Culture as Competitive Advantage, Compliance & Ethics Professional, March/ April 2013.

³ <https://www.icsa.org.uk/assets/files/pdfs/bookshop/Checklist%20of%20the%20week%2003.06.13.pdf>

⁴ Global Fraud Report by Kroll, 2013/14

A report by TARI and UN Global Compact India (2013) highlights that 43% of companies ceased to exist, and another 30% of companies continued their business but at a reduced level, which were hit by fraud and illegal activities. In some of the listed companies, market valuations significantly eroded with little or no trading of their stock. Scale of operations and market valuations have been marginally impacted in only 21% of the companies hit by fraud⁵.

Promoters are getting increasingly concerned that unfair or illegal business practices, which are often used for creating short term competitive business advantages, destroy reputation and value in days, and attract personal civil and criminal liabilities. **Today bribery, fraud and corruption is a key Board room risk.**

India has been plagued for years as having laws, which have been drafted with best intentions, but due to weak regulatory oversight and long judicial process gave little deterrence to perpetrators. Companies Act, 2013 and recent changes in securities laws are watershed changes in Indian business laws that reinforce the importance of business ethics in the organizations at top level and ensure public trust in conduct of business. The bars are set higher for listed companies, who need to adhere to the requirements of revised clause 49 of the listing agreement.

BOARD OF DIRECTORS AS THE CONSCIENCE KEEPERS

The Companies Act of 2013 and securities laws create an enhanced framework for directors to demonstrate their duty of care and loyalty as vanguards of interests of all shareholders and stakeholders. They need to show affirmative and measurable actions in discharge of their duties. The law requires directors (section 166): act in good faith to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company; and not to involve in a situation in which they may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

The spectrum of Indian companies, whether government owned multinational or domestic family held, have a dominant shareholder. High ownership concentration in companies results in agency conflict arising between dominant shareholder and minority shareholders⁶.

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⁵Thought Arbitrage Research Institute and UN Global Compact (2013), Fraud and Corruption in Private Sector in India.

⁶Kaushik Dutta and Naveen Kumar (2013), Policies and Practices of Ethical Corporate Governance: Need and Relevance. Background Paper for UN Global Compact India.

This creates challenges for independent directors, who are appointed by the principal shareholders to stand up to them and demonstrate their independence where the majority has a conflict with the minority or with the company. However, their actions reflecting their independence is under scrutiny and the consequences of failure to uphold are severe. It is expected that such personal liabilities of independent directors for failure to exercise diligence in their decision making will bring about a change in their functioning and improve their exercise of professional scepticism.

The dominant shareholders at times seek to have personal gains and advantages, at core of which are abusive related party transactions. TARI and UN Global Compact India⁷ study reports related party transactions as the second most common fraud technique (23%). The Act needs directors including the independent directors to set up framework for determining arms' length in such transactions and approve each transaction individually. In case they exceed certain threshold, these transactions need to be approved by minority shareholders. This oversight in the medium term would put a focus on related party transactions that are abusive towards the minority and would reduce self-dealing by the dominant shareholders.

The other areas that make directors personally liable include their responsibility to maintain internal controls, fair financial statements, dealing with public money raised through an Initial Public Offering (IPO) or statements in a prospectus etc. These collectively will result in higher vigil and engagement by the Board and ensure higher ethical compliance.

Law as a Deterrent: Framework to Punish Evil

Stringent laws and certainty of punishment are considered as pre requisite for deterring unethical business practices /fraud and fostering compliance of law in letter and spirit. In India, the chances of conviction for **cases of fraud and corruption is .006%**, which by any definition is extremely low and the expected gains far exceed the probability of any adverse consequences⁸.

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⁷Thought Arbitrage Research Institute and UN Global Compact (2013), Fraud and Corruption in Private Sector in India.

⁸Corruption in Delivery of Public Services by Bibek Debroy (2013): page 95- Fighting Corruption – Way Forward, Ed Samuel Paul

Average fine for breaches of corporate laws imposed by the Ministry of Corporate affairs from 2005 to 2011 was below Rs. 3000. For breaches of securities laws from 1998 to 2012, the fine imposed by SEBI for 75% of the cases was way below Rs. 50000⁹. Going by theories of chance it makes breaching laws almost profitable in India! This may change with the current sets of laws.

The company law in India, for the first time defines what is meant by fraud and entails stringent penalties for it (Section 447). Some acts for which a director/officer of the company is liable for punishment of fraud of the Section 447 include: inducing persons to invest money (section 36); conducting business of the company with fraudulent or unlawful intent (section 206(4) and 339(3)); fraud, misfeasance or other misconduct or withholding of information (section 213); making false statement in any of the return, report, certificate, statement or any other document (section 448). These fraud offences are cognizable and person accused under these sections cannot be released on bail or own bond. This section can be invoked for corruption and bribery too.

Now, fraud does not need any wrongful gain or wrongful loss to happen, mere intention to defraud is punishable under this section and any person who is found to be guilty of fraud, can be imprisoned for a term from 6 months to 10 years and additionally can be liable to fine to extent amount involved in the fraud to three times the amount involved in the fraud.

Responsibility, accountability and liability for company are on its directors, and officers including auditors are fixed and definitive. The enormity of punishment may keep unscrupulous members of Indian businesses under the straight and narrow path.

OVERSIGHT MECHANISM: ENHANCING THE CERTAINTY FOR CONSEQUENCES

One of the stumbling blocks to effective prosecution was multiplicity of regulators and investigative agencies working on a case. Satyam*, one of the biggest detected corporate fraud cases in India, has over 5 government agencies investigating the fraud and it has taken nearly five years for the initial judgement by a court. This is quite long considering the fact that this has been the largest fraud in India prosecuted in a special fast track court.

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* For details about the Satyam case <http://cbi.nic.in/fromarchives/satyam/satyam.php>

Enforcement agencies under the law are now empowered enough to take any punitive action¹⁰. The Serious Fraud Investigation Office (SFIO) has been provided statutory backing under new Company Law (Section 211) for the purpose of investigating the affairs/fraud relating to a company. The SFIO is empowered as a sole authority to investigate such cases, papers, documents for such malafide practices that involve fraud. This will not create multiple investigators and will build the expertise in SFIO required to investigate complex fraud cases and defend the conclusions based on conclusive evidences.

The SEBI, now in its legislative capacity can conduct investigations, substantially pass orders, seek information from any person or entity, and put strict sanctions for breaches of securities laws. SEBI has also been given powers to pass disgorgement orders for an amount equivalent to wrongful gains or to losses averted by contravention of regulations.

Auditors of the company (including, Cost Accountants for Cost Audit and Company Secretary in Practice for Secretarial Audit) are entrusted as gatekeepers to keep oversight on ethical sphere of company. They are now responsible (under Section 143) for reporting any offenses of fraud as covered under the Company law to the Board of directors of company immediately and to the Central Government after stipulated time period during the course of performance of their duties.

Whistle Blowers protection and processes would enhance the vigil mechanism of companies. Proxy advisors also serve as external vigilance for listed companies and keep watch on corporate intentions and counter those, which have the potential to affect the interests of the minority shareholders. Impact of proxy firms with rise in shareholder activism could be significant in the manner of influence on how companies have performed on various parameters of corporate governance.

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¹⁰ Kaushik Dutta and Naveen Srivastava (2014), Corporate Fraud: Risks and Challenges Ahead, Prime Directory

WHERE THE WINDS OF CHANGE MAY TAKE US

The regulatory regime of new company law, along with revised Clause 49 of the listing agreement, endeavours to induce core values of integrity into the culture of Indian corporations. **The company law framework focuses on the business integrity and its violations through sanctions by enforcing stringent penalties and punishment. However, it is to be understood that they only deter the unethical activities but do not provide incentives to companies to raise their standards of integrity.**

The capital markets provide the mechanisms for rewarding companies whose high levels of governance and integrity supplement their performance. This premium can be significant and creates a multiplier of wealth for shareholders.

Indian businesses for their desire grow in the global marketplace over the long term needs to be cognisant of the laws of other countries like USA or UK, where unethical practices can create critical risks. They have no option but to proactively implement benchmark ethical business practices, which go beyond the context of law.

Good necessarily does not become very wealthy but being good is an insurance against evil consequences. Indian businesses know the value of that!

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WHISTLEBLOWING IN INDIA: NEEDS AND CHALLENGES

Mukesh Arya

Founder,
Red Flag Oversight Consultancy
Services Private Limited

Was the office of the Prime Minister of India remiss when it casually revealed the identity of the whistle blower, Satyendra Dubey of National Highway Authority of India (NHA)? The word 'remiss' may sound harsh, but not when one learns that Mr. Dubey was promptly eliminated by those who were challenged by the allegations of fraud and corruption. Awareness about privacy and sensitivity about consequences are at the centre of whistle blowing anywhere. According to one media report, more than 30 whistle blowers in India reportedly suffered similar or worse fate in the recent past. Although, protection of whistle blowers has always been recognized by the legislators and the law enforcement agencies as a necessity, somehow it is the legislative opportunity that took some time to present itself. The Whistle blower Protection Bill was introduced in 2010, passed by Lok Sabha in Dec 2011 and was pending in Rajya Sabha since then. Eventually, the uncertainty surrounding the Whistle Blower Protection Act (the Act) ended on 21 February 2014 when the bill of 2011 was passed by the Indian Parliament. This indeed is an important milestone in the fight against fraud and corruption in India.

The real challenge however is the mind-set that believes in knowing the identities of whistle blowers rather than the real issues sought to be highlighted by them. This is evident from the provisions in Chapter II of the Act about public interest disclosure.

The law says that the whistle blower report must be in writing with personal declaration as to good faith disclosure with further proviso that he may be contacted for additional information. More importantly, the law says, if the identity of the complainant is not indicated, no action **shall be taken** by the competent authority. This blanket provision for the competent authority to disregard all anonymous public interest disclosures is indeed retrograde and does not harmonize well with the current best practice worldwide.

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Red Flag Oversight Consultancy Services Private Limited has launched the Indian version of the Whistle blower facility (ethicscall.net) in the private sector.

Mr. Arya is also former United Nations diplomat and Senior Executive, Comptroller & Auditor General of India.

One may wish to ask as to why Indian legislation should provide that no action should be taken on an anonymous complaint that provides relevant verifiable evidence, points to the actual wrongdoing, and clearly identifies the person/s involved in the fraudulent transaction.

The entire Act (including its name) revolves around the need to provide protection to the whistle blower. Is this objective achievable? It is conceivable that the whistle blower and/or witness could be compromised by threats to their immediate family members and in the Indian context, the extended family members too. Given the level of corruption in India and likely whistle blower cases that may run into several hundreds, each potentially requiring protection, is it possible for the Indian law enforcement agency to cope with the demand? If not, what is the usefulness of a law that cannot be effectively implemented? As it stands, the 'protection' objective is difficult to achieve fully, yet one may agree reluctantly that the law is contextually reasonable under the given circumstances. Indeed, the Indian society needs the whistle blower protection act that can be applied in stark cases of wrongdoing exposed by persons of integrity. What is important is therefore to find innovative ways to enhance credibility of whistle blower mechanism and to explore alternatives or additional mechanisms.

Speaking of credibility, **the best practice worldwide is to encourage anonymous whistle blowing backed up with relevant evidence. The obvious advantages of anonymous reporting are that (a) one concentrates on issues raised rather than on the 'person' raising the issues (b) it obviates the need to provide physical protection to the whistle blower (c) the provisions as to retaliation become irrelevant (d) the administrative machinery is less burdened as it need not inquire into whether the disclosure is made in 'good faith', or (e) invoke the system of proving offences for 'negligent' or 'mala fide' disclosure of identity of whistle blower by public authority.**

The only argument for not encouraging anonymous whistle blowing lies in the fact that large number of whistle blowing instances are mischievous, improperly motivated, vexatious or frivolous. Central Vigilance Commission of India, like similar anti-corruption bodies elsewhere, is chockfull with complaints from unsuccessful bidders on

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public tenders, from losers of business opportunities and those burdened with administrative 'injustice'. It is however seen that this observation generally holds good in the early phase of the establishment of whistle blower mechanism. Experience of similar bodies confirms that if the caseload of reports is professionally handled, this tendency tapers off quickly. In any case, the advantages of 'anonymous whistle blowing' dwarf the reasons advocated for 'identified whistle blowing'. What the Indian Whistle Blower Protection Act has done is to give disproportionately higher weightage to the problem associated with anonymous reporting. It is just like throwing out a baby with bath water. There is therefore the need to include provisions encouraging 'anonymous reporting' in the Act when it comes up for review.

The Act establishes the mechanism to address reports of corruption, wilful misuse of power or wilful misuse of discretionary powers by public servants. It also provides for safeguards against retaliation against the whistle blowers as well as broadly lays down inquiry mechanism. As it stands, the Act is in a sense, restricted to public interest disclosures only. Moreover, what is 'disclosure' is defined as offence under the **Prevention of Corruption Act (PCA)**, where 'loss' is caused to the government or 'gain' accrues to the public servant or where the public servant commits a **criminal offence**. Although, the definition of disclosure may sound restrictive, the words "PCA", "**public servant**" and "**criminal offences**" have the effect of broadened jurisdiction and the potential for interpretation. Conversely, these are the words that will see unnecessary growth of jurisprudence in days to come. Clarity of legislation can simplify delivery of justice; fair and quick. Viewed in this context, the subsidiary rules and regulations call for a public debate.

The Act obviously targets the public interest disclosures by whistle blowers, which essentially limits its applicability to government sector namely; ministries, departments, government undertakings, substantially funded autonomous bodies and nationalized banks and so on. Although, these constituents of government are what a layman is exposed to; one must recognize that similar problems of fraud, corruption and wrongdoing exist in private sector too.

Whistle blowers are equally important and vulnerable as well in the private sector. Let us focus on large number of multi-national entities and organizations with diversified shareholder-base in geographically

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omnipresent setting. For them, the need for whistle blower mechanism is immediate and that too for a variety of disclosures. One must understand and differentiate corporate sector oriented disclosures from the public interest disclosures. These are not restricted to only financial loss/gain or corruption. There are other issues that need strengthened whistle blowing and corporate compliance mechanism. The broad categories are presented in the box. Some of these are addressed by special laws in the public sector.

Sarbanes-Oxley Act (and the Stock Exchange Commission) mandates one of the most prominent whistle blower mechanisms in USA. According to this act, all listed companies have to establish whistle blower mechanism. Similar mechanism does not exist in many countries whereby fraud and corruption could be committed with impunity. India's Stock Exchange listing agreement merely provided for **recommendatory provision** for Fraud policy till recently whereby it was left to the companies to adopt the best practice. This has changed now with the revised Indian Companies Act 2013. Accordingly, it has become mandatory for the companies to establish '**vigil system**' to deal with the whistle blower reports. Aligning with the Indian Companies Act 2013, the Stock Exchange Board of India (SEBI) also provided on April 17, 2014 for mandatory compliance for whistle blower mechanism in the Listing Agreement (Clause 49).

These are encouraging developments, particularly for the corporate sector that has traditionally been more 'compliance oriented'. It can be safely stated that Indian corporates have largely ignored the advantages of adopting best practices to leverage its investment for corporate brand building. The devil is in the details. The ground reality about these provisions, as with many others, is reporting of 'compliance'. This is achieved by filling up the prescribed form by the statutory auditor of the company. The columns of the form require one to provide yes/no answer against most rows. Where does this take the company in terms of value addition to the corporate governance? The answer unfortunately is, 'not very far'.

One of the most significant breeding environs for fraud and corruption is lack of staff awareness about the reporting mechanism within the company. The reason for this disdain could be at once understood with

Broad categories of wrongdoing

- Actual Suspected fraud on the organization
- Unethical behavior
- Misappropriation
- Retaliation/reprisals
- Theft
- Quality control compromises
- Abuse of authority
- Substance abuse/ drugs related
- Sexual harassment/ workplace harassment
- Environment, health and safety
- Conflict of (personal and financial)
- Disclosure of confidential information/ Insider trading
- Corruption - gifts, bribes, kickbacks
- Misuse of organization assets
- Money laundering
- Accounting and auditing concerns

cursory glance at most websites of the companies. The main issues are with information disclosure such as (a) information on whistle blowing mechanism is hidden in one corner of the detailed pages on operations (b) it provides only the fraud policy and no mechanism for reporting fraud and corruption (c) it is silent on who is to be approached with the concern (lately some have delegated it to the Chair of the Audit Committee, others with the vigilance officers) and (d) there is nothing to assure the whistle blower that s/he will not be retaliated against. Obviously, such a system does not evoke trust of the employees. Mere compliance with laws and regulations do not truly enhance trust quotient for constructive whistle blowing.

Since many companies see the whistle blower mechanism as one of the compliance issues, they fail to realize its immediate and long term potential in terms of corporate governance by the Board of Directors, value addition in understanding corporate risks, and impact on its human resources. For example, employees usually rate the company high in surveys for “most desirable companies to work for”. The companies with good corporate governance usually attract and retain the best talent when transparency and accountability are ensured thereby saving, additionally, the costs of recruitment and training. Indian corporate sector is still challenged on making investment or leveraging the investment in whistle blower mechanism.

The Indian Companies Act and Clause 49 of the SEBI's Equity Listing Agreement talk about receiving whistle blower reports only from the directors and employees. This restriction effectively leaves out a large number of stakeholders such as vendors, consumers, service providers, creditors, NGOs and public at large. One may argue that Indian scenario presents alternative mechanisms for some of them such as on investor grievances, integrity issues in contracts, and consumer complaint mechanism. Again, the devil is in the details. Closer examination of these alternative channels of communication would show that these are not the same or similar platforms as whistle blower mechanism. And hence, the objectives are not met for most stakeholders.

Since many companies see the whistle blower mechanism as one of the compliance issues, they fail to realize its immediate and long term potential in terms of corporate governance by the Board of Directors, value addition in understanding corporate risks, and impact on its human resources.

The biggest challenge is not so much in the establishment of a whistle blower mechanism, but in **'what is next after one has received the complaint about frauds, corruption and other wrongdoings?'** Everyone knows that frauds and unethical behavior rupture the fabric of good governance and thereby place the organization in stressful situation; financially, operationally and strategically. Hence, obtaining, analyzing and reacting to instances of actual or potential frauds and wrongdoings are important functions. Who is to perform these functions? That is the main challenge.

Unlike the USA and some European countries, Indian corporates have not yet opened up to the idea of outsourcing this function. Many companies with geographical footprints in many jurisdictions have found it advantageous to establish their in-house mechanisms. Others are eagerly searching the alternatives. Indian managers do realize that the whistle blower mechanism must be at 'arm's length' from management to give confidence to the whistle-blowers and lend credibility to the entire exercise. This obviously presupposes existence of a number of private sector players who can offer confidential, professional and independent outsourced services, viz., intake of complaints and their investigation. Since the demand for such services is in the nascent stage, not many facilities are created in the market. The result is the dependence on some international firms and law firms who already operate centralized services (mostly at one location in one country) for the entire world. Many corporates find the international firms not appealing. They prefer national companies that understand communication nuances of their stakeholders and also provide cost effective investigation/inquiry services in the local context.

It is necessary for the systemic issues surrounding the whistle blowing both in public sector and private sector to be refined and adopted as well as infrastructure for several outsourced facilities in private sector established. Till then, we may see the Indian scenario remaining in a state of flux for the whistle blowers. And, perhaps one would have to occasionally experience the pain of likes of Satyendra Dubey till such time the whistle blowing comes of age in India.

The biggest challenge is not so much in the establishment of a whistle blower mechanism, but in 'what is next after one has received the complaint about frauds, corruption and other wrongdoings?'

THE SIEMENS COMPLIANCE SYSTEM: PREVENT–DETECT–RESPOND AND CONTINUOUS IMPROVEMENT

Neville Gandhi

Vice President, Compliance,
Siemens India

INTRODUCTION

The current Siemens Compliance System was developed in 2007 and 2008, initially in response to criminal investigations undertaken by the Office of the Public Prosecutor in Munich, the US Securities and Exchange Commission, the US Department of Justice and numerous other investigating authorities worldwide. Siemens developed a comprehensive new Compliance System in under two years which it has implemented worldwide. The new Compliance System is based on a clearly defined system into which Siemens' worldwide Compliance measures must fit:

We constantly strive to further develop and improve the Compliance		
Prevent	Detect	Respond
▼	▼	▼
Management responsibility		
<ul style="list-style-type: none"> • Compliance risk management • Policies and procedures • Training and communication • Advice and support • Integration in personnel processes • Collective Action 	<ul style="list-style-type: none"> • Whistle blowing channel "Tell us" and Ombudsman • Compliance controls • Monitoring and Compliance reviews • Compliance audits • Compliance investigations 	<ul style="list-style-type: none"> • Consequences for misconduct • Remediation • Global casetracking

The fundamentals of the new Compliance System and its status within this structure are out-lined as under:

I. MANAGEMENT RESPONSIBILITY: THE TONE FROM THE TOP

In a groundbreaking speech the President and CEO, Peter Löscher, made quite clear that: “Only clean business is Siemens business – everywhere – everybody – every time. Compliance as part of Corporate Responsibility is 1st priority”. **The current President and CEO of Siemens AG Joe Kaeser who took over the reigns from Mr. Loescher reiterates the Values of the company by stating that ‘The culture of a company and its values make the difference. People rightly associate Siemens with reliability, fairness and integrity.’** All Siemens executives were told to spread the message throughout the company.

Responsibility for Compliance is held by management while the requisite processes are provided by the Compliance Organization. Siemens has implemented a company-wide **Compliance Review Process** to ensure that this continues to be the case. Management and the Compliance Organization discuss the current status of the Compliance System, its implementation, fundamental development and relevant cases at quarterly meetings. In this framework the Compliance Review Process brings together the findings produced from various other reporting sources.

II. COMPLIANCE SYSTEM

1. PREVENT

1.1 Compliance Guidelines

The **Business Conduct Guidelines**, a revised version of which was approved by the Managing Board in January 2009, are at the heart of the Siemens Compliance System. These guidelines detail centrally-defined rules of conduct and go well beyond competition law issues and efforts to combat corruption. The additional Compliance Guidelines are comprehensive and deal with Compliance issues, relevant transactions, as well as sponsoring and donation activities.

In mid-2008 Siemens adopted the **Business Partner Policy**, a uniform company-wide risk assessment (performed with an electronic tool) of business partners, performing intermediary functions between Siemens

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“Only clean business is Siemens business – everywhere – everybody – every time. Compliance as part of Corporate Responsibility is 1st priority”

and the customer, was made a requirement. Based on defined risk indicators – such as the risk of corruption in the country in which the work is undertaken – a risk class (high, medium or lower risk) is specified for the business partner which determines the subsequent action taken (due diligence, approval requirements and mandatory contractual clauses). Potential orders are no longer evaluated simply in terms of financial and technical risk, but also according to specific Compliance risks.

All Compliance regulations are continually evaluated with regard to their practicability and adjusted or developed further if necessary.

1.2 Training and other communication measures

One of the key elements in implementation of the Siemens Compliance System is training. Employees as well as top management have taken part in Compliance instruction, with emphasis being placed on training legal, purchasing, sales and project management functions in particular. Employees and management are promptly and regularly informed about new Compliance measures and developments via the intranet and e-mail and in reports in the employee magazine. **The Compliance Organization has its own newsletter which appears every two to three months.**

1.3 Compliance Help-desk (Part I)

The Compliance Helpdesk performs basic functions within the context of the Compliance System. Siemens employees all around the world are able to send questions about the Compliance System, its interpretation and practical application by e-mail to the Helpdesk (**Ask Us** function). These questions were answered with the help of a company-wide network of experts within just a few days.

1.4 Integration of Compliance in human resources processes

In 2008, Siemens became one of the first companies in the world to include Compliance as one aspect of the compensation paid to its top management. In fiscal 2008, 2009 and 2010, about 20% of the annual unit performance bonus was contingent on achievement of defined Compliance targets.

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2. DETECT

2.1 Compliance Help-desk (Part II)

As well as the prevention functions which have already been discussed, the Compliance Help-desk's **Tell Us** has a **“whistleblower hotline” to which potential Compliance violations can be notified**. This is available 24 hours a day in almost all languages for employees and third parties all around the world, and is operated by a provider which is independent of Siemens. As a result it is possible to provide anonymous or protected information which can be passed on to the helpdesk in report form immediately, however the helpdesk cannot trace this information against the will of the informant. All information received by the helpdesk is recorded on the spot and then examined by experts in the Compliance Legal Department to determine whether there are reasonable grounds for suspicion which would justify taking further measures or which call for investigation.

2.2 Compliance investigations

Investigations are undertaken by the Compliance Investigations Department established or by Forensic Audit, with the full support of experts in the Compliance Legal Department. Completed investigations are followed up by another group of specialists from the Compliance Organization, to assess whether the identified deficits have been remedied and whether there are any structural shortfalls in the implementation of the Compliance System (**Remediation**).

2.3 Compliance reviews and controls

The new corporate Audit Organization has established a **Compliance Audit** function which regularly reviews implementation of the Compliance System. **Compliance reviews and controls in fiscal 2008 were especially important in testing of the Implementation Toolkit. By the end of March 2008 a total of 56 High-Risk Entities and a further 106 units with especially high sales volume were required to implement over 100 local Compliance System controls.**

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3. RESPOND

3.1 Consequences for misconduct

The **Corporate Disciplinary Committee (CDC)**, set up in August 2007, is tasked with assessing misconduct by members of the management (identified in the course of internal or official investigations) and with issuing binding recommendations for action. The CDC has a high-caliber membership and is chaired by the General Counsel.

3.2 Monitoring the effectiveness of Compliance measures

The systems operated by the Compliance Organization (such as the Business Partner Tool or the numerous functions of the Compliance Helpdesk) are evaluated on an ongoing basis, with the aim of detecting any developments as early as possible and of monitoring functionality and breadth of application in the company by way of plausibility assessments and random samples. These monitoring activities have to be distinguished from the formal controls performed by Audit undertaken in the framework of the Compliance audit.

III. CONTINUOUS IMPROVEMENT

The Siemens Compliance System continues to be developed, to enable it to respond to the insights gained from compliance and business processes. It is critically important, however, that the relevant sources are also utilized. These are primarily the company's employees. The latter are encouraged to submit ideas and suggested improvements for the Compliance System using the enterprise-wide innovation program. For this reason the Siemens Compliance System will never be completed "once and for all", but will continue to exist as part of an ongoing process of change and improvement.

IV. COLLECTIVE ACTION

Collective Action is just as essential in effectively combating corruption as the efforts undertaken by individual companies to establish their Compliance System. Siemens has consequently collaborated with the World Bank Institute and other partners to develop a **Collective Action Guide** on tackling corruption. Furthermore, Siemens had started an Integrity Initiative with a budget of more than USD 100 million as part of the settlements with the World Bank in July 2009 and the European Investment Bank in March 2013. The initiative will fund organizations, projects and training activities worldwide in the fight against corruption.

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Siemens Compliance System will never be completed "once and for all", but will continue to exist as part of an ongoing process of change and improvement.

Collective Action calls for high Compliance standards which benefit all market participants

SIEMENS

- Fight corruption in concert with competitors and other players
 - Create high compliance standard via a concept of prevention
-
- Integrate an independent institution for promotion and monitoring
 - Define sanctions in case of violations



1) Non-Governmental Organizations such as Transparency International

Collective Action is building alliances against corruption in order to support fair market conditions

SIEMENS

Content / Priorities

- Collective Action enables corruption to be fought collectively: businesses, NGOs*, and the public sector build an alliance against corruption
- The aim of these joint efforts is to create fair and equal market conditions for all market players and to eliminate the temptations of corruption
- Global implementation of legal a regulatory frameworks such as the UN Convention against Corruption (UNCAC) or the OECD Anti-Bribery convention and strengthening of legislation on anti-corruption
- Increase cooperation and encourage partnerships between public and private sector, and other stakeholders
- Increase transparency in government procurement



Position of Siemens

- Collective Action is a central element of our compliance system and an integral part of "Vision 2020"
- Collective Action contributes to the establishment of fair market conditions everywhere and enables Siemens to conduct business in high-risk emerging markets
- Promote, extend and implement sectoral, regional and long-term based initiatives
- Drive the Siemens Integrity Initiative with a total funding of more than US\$ 100 million. The initiative is based on the settlements with the World Bank and the European Investment Bank and supports organizations and projects that fight corruption and fraud through Collective Action, education and training.
- Actively engage in the global G20/B20 process on anti-corruption
- Incentivize enterprises to establish effective compliance programs to raise compliance standards (e.g. corporate codes of conduct); acknowledgement of clean business practices and companies by public contracting entities: recognize those who play by the rules; penalize those who do not
- Foster global knowledge sharing about anti-corruption and Collective Action





SECTION-3

**TRANSPARENT PUBLIC
PROCUREMENT**

A large decorative graphic on the left side of the page. It features two concentric circles: an inner teal circle and an outer light gray circle. To the right of the circles, a horizontal bar extends across the page, divided into three segments: gray, blue, and red. The number '3' is centered within the teal circle.

3

**1. ETHICAL CHALLENGES & DILEMMAS OF
PUBLIC PROCUREMENT IN INDIA**

- Bulbul Sen

2. TRANSPARENT PUBLIC PROCUREMENT: NMDC Case Study

3. TRANSPARENT PUBLIC PROCUREMENT: KRIBHCO Case Study

- Amar Prasad

**4. TRANSPARENCY IN PROCUREMENT IN THE ENGINEERING &
CONSTRUCTION INDUSTRY : FLUOR'S COMMITMENT**

- Arun Kumar Jain and Sandeep Kumar

ETHICAL CHALLENGES & DILEMMAS OF PUBLIC PROCUREMENT IN INDIA:

NEED FOR AN EFFECTIVE PUBLIC PROCUREMENT ACT AND CORRESPONDING POLICY CHALLENGES TO PROBITY IN PUBLIC PROCUREMENT

Bulbul Sen

Consultant,
CUTS International
Member,
UNODC Expert Group
on Public Procurement

The opening up of the Indian economy in the 1990's and India's gradual integration into the global economy is increasing the role and importance of the private sector in India, and giving rise to greater challenges to corporate governance and the practice of business ethics. "High targets and tight deadlines, low orientation of the management's focus on ethical issues along with a highly dynamic and competitive market" have emerged as some of the reasons cited by companies for unethical practices in Indian business¹. The most reputed companies have internal codes of ethics, which remain voluntary codes. The temptation for Small and Medium Enterprises (SMEs) to indulge in unethical practices for immediate gains is all the greater in such an environment.

The ethical challenge is particularly marked in the field of public procurement, given that it comprises a vast market, aggregating 25 - 30% of the country's GDP. Procurement is a sensitive function with complex mechanisms, neither single comprehensive procurement standard nor a single nodal agency, deals with the entire process of procurement. No penalties exist for the contravention of generic guidelines and provisions with regard to public procurement expenditure.

The challenge to ethics in public procurement is further heightened by the actual practices in the field. A number of recent reports² on public procurement in India have noted the numerous deviations from ethical practices that occur at the grass roots level. **Some aspects of the vulnerability to corruption include inconsistencies in vocabulary, lack of standardization of key definitions and terms, lack of standard bidding documents and other lacunae in the framework of the guidelines governing public procurement, leading to subjective interpretation of objective laws and guidelines; laxity in establishing specifications to suit specific bidders; subversion of GFR procedures under the excuse of non-availability of suitable bidders; bribery, collusion and cartel formation to suppress**



¹UNODC India report of 2012 titled 'India: Incentives for corporate integrity in accordance with the United Nations Convention against Corruption'.

²Reports of the Comptroller & Auditor General of India; CUTS International, 'Government Procurement in India: Domestic Regulations & Trade Prospects', 2012; The Energy & Resources Institute, 'Competition Issues in Public Procurement (India)', 2011, to name only a few studies on the subject.

competition. This is compounded by the limited skills of procurement personnel to detect corrupt practices. While the absence of binding laws are an important challenge to probity, an intangible challenge to ethical practices lies in the absence of an ethical mindset, without which laws and rules can always be manipulated.

The challenges in cultivation of an ethical mindset, as cited by the private sector in the UNODC study mentioned earlier include the belief that

- corrupt practices followed by rivals gives them a competitive edge/adoption of practices of integrity cannot come without loss of business;
- there is rampant promotion of corrupt practices in awarding business, which, in terms of public procurement, would imply the award of contracts;
- corrupt judiciary, regulatory and inspection authorities make it difficult for business to maintain high standards of integrity;
- collusion is necessary to secure favours that translate into business profits.

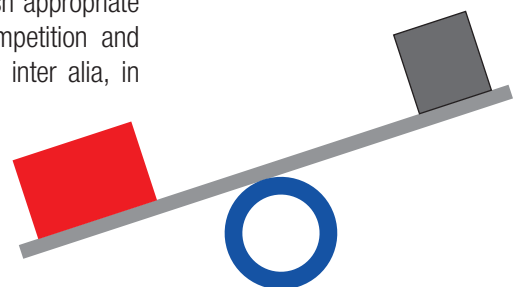
Thus a general sentiment that emerges from discussion with relevant stakeholders is that corruption is a necessary business tool for attaining success in India's corporate world today.

Developments since 2010 to meet the challenge in ethical business practices

In May 2011 India ratified the UN Convention against Corruption (UNCAC), which is the first global legally binding international anti-corruption instrument. It requires State Parties to criminalize certain corrupt conduct, strengthen international law enforcement, and provide for effective asset recovery mechanism. Recognizing the importance of public procurement in every country and its vulnerability to corruption, UNCAC contains a specific provision on this subject, i.e. Article 9.1 The crucial part of text of this provision is as follows:-

"1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision making, that are effective inter alia, in preventing corruption....."

While the absence of binding laws are an important challenge to probity, an intangible challenge to ethical practices lies in the absence of an ethical mindset, without which laws and rules can always be manipulated.



The Companies Act, passed in 2013, enhances independent supervision of a company's affairs, thereby increasing safeguards against anti-competitive malpractices by entities engaged in public procurement. Prescribed companies are required to conduct internal audit of functions and activities of the company in a manner prescribed by the Central Government (Clause 138). Every listed and other prescribed company has to establish an Audit Committee with the majority comprising of Independent Directors for reviewing and monitoring the independence and performance of Auditors, evaluating the internal financial controls and risk management systems, monitoring end use of funds raised through public offers and supervision of other matters relating to financial probity of the company (Section 177). Independent Directors are also entrusted with critical functions like safeguarding the interest of all stakeholders, particularly the minority holders, analyzing the performance of management, mediating in situations like conflict between management and the shareholder's interest (Schedule IV of the Act, 2013).

However the challenges to probity in public procurement were manifested in major incidents such as the irregularities in procurement for the Commonwealth Games in 2010. In response, the government of the day formed a Group of Ministers on Corruption in 2010 to look into anti-corruption issues, including public procurement. The Group recommended the establishment of a Committee on Public Procurement, which, through its report in 2011 recommended the enactment of an overarching public procurement law and after thorough public consultation, the Public Procurement Bill was introduced in the Lok Sabha (lower House of Parliament) in May 2012.

Additionally an important measure to reduce opacity in public procurement was introduced by the setting up of a Central Procurement Portal (CPP) by the Government of India with an e-publishing and e-procurement module. Since April 1, 2012 e-procurement has been made mandatory in a phased manner for all procurements greater than Rs. 10,00,000 (INR 10 lakhs) by ministries of the union government, their attached and subordinate offices and the Central Public Sector Enterprises.

The Companies Act, passed in 2013, enhances independent supervision of a company's affairs, thereby increasing safeguards against anti-competitive malpractices by entities engaged in public procurement.

Unfortunately the lapsing of the Public Procurement Bill (PPB) 2012 creates a vacuum in the fight to bring back ethics in public procurement.

Need for an effective Public Procurement Act and corresponding policy

India entered a new phase in its development with the ushering in of a new government in May 2014, whose priority, as spelt out through the President of India's inaugural address to Parliament, is "putting the Indian economy back on track" through creating "a policy environment which is predictable, transparent and fair.... Reforms will be undertaken to enhance the ease of doing business". If reviving ease of doing business is a paramount goal of the present government, then undoubtedly one of the key instruments through which this can be achieved is a public procurement policy promoting competition, transparency, probity expressed through a binding law to govern the huge public procurement market in India.

Moreover, India has undertaken an international obligation to introduce effective legislation to govern public procurement by ratifying the UNCAC and India is known never to fail in honouring its international commitments.

Therefore the new government requires to review and reconsider the Public Procurement Bill 2012 which lapsed in 2014. The features of the proposed bill that need to be retained on review are:

Probity promoting features

In line with the UNCAC and international best practices, the Public Procurement Bill (PPB) makes norms of probity binding for both the procuring agency and the bidder (i.e. public and private sectors)³. It introduces a code of integrity binding on both parties providing for sanctions for both sides for interfering with the procurement process for securing any wrongful gain or undue advantage for any prospective bidder, or engaging in any form of bid-rigging, collusive or anti-competitive behaviour in the competition process. This is a new note struck in Indian anticorruption law, which had till previously never engaged in tackling the supply side of corruption. In a complementary

³ Vide Article 9.1 of the Convention binding State Parties to ensure probity in the functioning of public procuring agencies & Article 12 requiring them to treat bribery and other forms of corruption in the private sector as a criminal offence.

move, Section 8 of the Prevention of Corruption Act is proposed to be amended by making bribe giving an offence, with the amendment pending in the Upper House of Parliament (Rajya Sabha).

Wrongful "interference" with the procurement process under the PPB 2012 includes a conflict of interest clause also, in that the bidder is prohibited from engaging a former official of a procuring entity within a period of one year after such former official was associated with a procurement in which the employer has an interest. The conflict of interest concept is also new in the field of public procurement in India. Introduction of this provision also brings India in tune with the thinking which has gone into the UNCAC, vide Articles 9.1(E) and 12 of the Convention, which touch on conflict of interest.

One other important probity promoting feature of the Bill is that it takes cognizance of offences by companies. It makes punishable whoever at the time the offence was committed was in charge of the conduct of business of the company as well as the company itself for breaches of the Act. Current Indian legislation only punishes the natural person who is in charge of the affairs of the legal entity but not the legal entity. Today complex corporate structures hide true ownership. Individual executives responsible may reside outside the jurisdiction where the offence is committed and the responsibility of specific individuals may become difficult to prove⁵. Therefore, liability of a legal entity, resulting in reputational damage and monetary sanctions may have a greater deterrent effect in today's scenario. This clause also puts India in compliance with its legal obligations under the UNCAC under Article 26, dealing with 'Liability of Legal Persons'.

Punitive action for breach of the provisions of the public procurement code, including exclusion of bidders from the procurement process, forfeitures, recoveries, debarment in participation from future procurement, fines and imprisonment for specified offences serves to give enforceability to the provisions of the Bill. Such clarity and firmness in dealing with unethical business practices in procurement is needed for restoring business confidence in India.

Current Indian legislation only punishes the natural person who is in charge of the affairs of the legal entity but not the legal entity. PPB 2012 takes cognizance of offences by companies. It makes punishable whoever at the time the offence was committed was in charge of the conduct of business of the company as well as the company itself for breaches of the Act.

⁵India: Incentives for corporate integrity in accordance with the United Nations Convention against Corruption', UNODC Delhi, 2012

Competition promoting features

The Bill of 2012 has provisions ensuring broad basing of bidders, objective pre-qualifying criteria for bidders, objective specifications for items of supply, pre-disclosed criteria for evaluating bids, upholding open competitive bidding as the norm, and compulsory publishing of tender results. It is felt that these competition promoting provisions should continue to feature in any public procurement legislation which India may seek to introduce.

Transparency promoting features

The Central Procurement Portal of the Union Government has been mandated to exhibit all matters relating to specific public procurement in an end -to- end manner, including, pre-qualification documents, bidder registration and bidding documents, list of bidders that presented bids for pre-qualification and registration, prequalified/ registered bidders, list of successful bidders, bidders excluded or debarred etc. This, together with the requirement for a procuring entity to maintain a record of procurement proceedings and electronic reverse auction as a mode of procurement are innovative measures which the Bill had introduced in the interest of transparency in public procurement. It is felt that these features need to be retained to ensure the healthy business environment which India seeks to foster.

Promoting an independent grievance redress mechanism

To maintain confidence in the fairness of the system and obviate the delay and expense of taking disputes to court or arbitration, PPB 2012 recommended the introduction of independent Tribunals to be set up by the central government for grievance redressal. These tribunals need to be empowered to give rulings on disputes and not merely be recommendation-making authorities, as envisaged in the Bill which lapsed.

WAY AHEAD

What is required then is to develop a policy around public procurement, as without such a vision document the legislation lacks sufficient ideological backing. Policy articulation will assist in providing justification to the legislation. Certainly new thinking in line with current political, economic and social priorities may be possible on certain features of the public procurement policy as reflected in the Bill of 2012. For example, the quantum of market access to be given to non-domestic players in



India's public procurement market or the kind of preference to be extended to disadvantaged socio-economic sectors in public procurement may need a re-look.

There are contentions that domestic preference should be the rule, rather than the exception, in government procurement policy, so as to encourage the growth of domestic manufacturing and job creation. Also whether and to what extent "green" or sustainable public procurement needs to be fostered through public procurement in India, as is being done in several advanced and developing countries as part of their general sustainability policy, could need fresh deliberation. These concerns need to be deliberated on and articulated through public procurement policy.

Secondly, a policy being a guideline document helps government to move towards accomplishing its objectives, it is needed as a roadmap for future measures by the government. A policy articulation of the intent to introduce further measures to strengthen the ethical framework of public procurement may be appropriate.

Finally the educative aspect of a policy statement is considerable. It could be used to make corporations realize that complicity can render them easily vulnerable to repeated illegal demands; can cause costs escalation; may compel them to commit economic offences; may, most importantly, cause loss of image in the market, among competitors and customers. Making corporations realize that prevention of corruption makes good business sense is one of the tasks that could be achieved through a well-articulated public procurement policy.

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ANNEXURE

Article 9.i of the UN Convention Against Corruption:

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision making, that are effective inter alia, in preventing corruption. Such systems which may take into account appropriate threshold values in their application, shall address, inter alia:

- A)** The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders.
- B)** The establishment, in advance, of conditions for participation including selection and award criteria and tendering rules, and their publication.
- C)** The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures.
- D)** An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed.
- E)** Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

Making corporations realize that prevention of corruption makes good business sense is one of the tasks that could be achieved through a well-articulated public procurement policy.

TRANSPARENT PUBLIC PROCUREMENT: NMDC CASE STUDY

National Mineral Development
Corporation (NMDC) Limited

PROFILE OF THE COMPANY

Incorporated in 1958 National Mineral Development Corporation (NMDC) Limited is a state-controlled mineral producer of Government of India and is under the administrative control of the Ministry of Steel, Government of India. Since its inception, NMDC has been involved in the exploration of wide range of minerals including iron ore, copper, rock phosphate, lime stone, dolomite, gypsum, bentonite, magnesite, diamond, tin, tungsten, graphite, beach sands etc.

BUSINESS BACKGROUND

NMDC is India's single largest iron ore producer, presently producing about 30 million tones of iron ore from three fully mechanized mines viz., Bailadila Deposit-14/11C, Bailadila Deposit-5 10/11A (Chhattisgarh State) and Donimalai Iron Ore Mines (Karnataka State).

Results	2011-12	2012-13	2013-14
Iron Ore Production(L+F)	27.26 mt	27.18 mt	30.02 mt
Iron Ore Sales (L+F)	27.30 mt	26.27 mt	30.50 mt
Income	Rs 13,301 crore	Rs 13,127 crore	Rs.14167 crore
Profit before tax	Rs. 10,759 crore	Rs. 9,465 crore	Rs. 9,759 crore

NMDC also has a strong back up of an ISO 9001 certified R&D Centre, which has been declared as the "Centre of Excellence" in the field of mineral processing by the Expert Group of UNIDO. NMDC Projects have following accreditations

- ISO 9001: 2008 - QMS Certification for all its iron ore mines and
- R&D Centre
 - ISO 14001:2004 - EMS Certification for all its production mines
 - OHSAS 18001:2007 - OHMS Certification for all its production mines

NMDC has made valuable and substantial contribution to the National efforts in the mineral sector during the last five decades and has been accorded the status of schedule-A Public Sector Company.

In recognition to the Company's growing status and consistent excellent performance, the Company has been categorized by the Department of Public Enterprises as "NAVRATNA" Public Sector Enterprise in 2008.

Finally NMDC is in the process of setting up a three MTPA Steel Plant at Nagarnar in Chhattisgarh, for which most of the major packages have been finalized and awarded; and two pellet plants at Donimalai (1.2 mtpa). Orders for major technological packages have already been placed, other auxiliary packages are in advanced stages of finalization and construction works of the major packages are being undertaken on war footing. For value addition NMDC is also investing in development of renewable energy resources as an environment friendly investment. A Wind Mill project (10.5MW capacity) has been completed & commissioned at Karnataka.

TRANSPARENCY IN PUBLIC PROCUREMENT IN NMDC

The payout budget for the procurement of Goods and Services is increasing year by year at NMDC in order to meet the demand of increased production. Additionally there has been an increase in the capital item procurement for its expansion plan in the field of steel, i.e. for setting of three MPTA Steel plant at Nagarnar in Jagdalpur, Chattishgarh and two MPTA Pellet plant at Donimalai in Karnataka. The procurement expenditure of past few years was to the tune of:-

Procurement of Good & services		Rs in Crores	
YEAR	Revenue	Capital Exp	Total
2013-14	466.84	2518.14	2984.98
2012-13	338.05	1607.24	1945.29
2011-12	326.00	1533.59	1859.59

With such a huge budget of procurement, which is increasing day by day, NMDC has implemented various tools of public procurement in order to implement the principle of public procurement i.e. Ensure efficiency, economy and transparency, provide fair and equitable treatment to bidders, promote competition, and prevent corrupt practices.

For Value addition NMDC is also investing in development of renewable energy resources as an environment friendly investment.

1. Internal code of conduct

NMDC Limited follows an internal code of conduct in all their transactions by following the laid out policies and procedures, guidelines, circulars, rules keeping in view the various Government directions and guidelines issued from time to time, including the circulars from Central Vigilance Commission. The methods involve transparent working, clearly spelling out the actions that are taken up leading to ethical climate, and following the other benchmarked ethical business practices wherever required.

2. Public disclosure

It is an accepted norm in NMDC Limited that public disclosures enhance transparency and ensures brand value for the company in the business world. NMDC follows the system of public disclosures by way of publication of all the relevant subjects in the newspapers, NMDC website and Government portals, apart from having them published in the websites of all statutory bodies specified by the Govt.

NMDC firmly believes that public disclosures would strengthen public and business trust and in a long way help pave the way for robust collective action, even if, certain issues / hurdles come up while adopting extensive public disclosures.

3. Integrity pact

With an objective of improving transparency in public procurement, NMDC has entered into MOU with Transparency International India for implementation of Integrity Pact Programme from September 2007 onwards. NMDC is the one of the first Navaratna Company in the mining sector to have entered into the Integrity Pact Programme and for wide coverage have fixed the threshold limits as follows:

Civil Works	-	Rs.20.00 Crores
Contracts	-	Rs.20.00 Crores
Procurement	-	Rs.10.00 Crores

Since inception in November 2007 Integrity Pact has been entered into 75 contracts worth value of Rs 20131.65 Crores which is about 90% of total value of Contracts awarded by NMDC Limited.

NMDC is the one of the first Navaratna Company in the mining sector to have entered into the Integrity Pact Programme and for wide coverage have fixed threshold limits

4. E-procurement

NMDC Limited adopts e-procurement covering e-tendering, e-auctioning (forward auction) and e-reverse auction and its automated procurement process include tender bid submission stage to payments process. Additionally NMDC has an online web based real time environment covering pre-tender process, bid hosting, bid uploading, provision for online payment of EMD's, tender opening, technical evaluation, commercial evaluation, order placement, post contract management and online vendor process.

During the year 2013-14 out of total procurement value of H.O of Rs 7644.00 lakhs, procurement worth Rs 1363.14 lakhs is through e-tender, which is about 17.83%.

5. Vendor empanelment

Keeping in view the various technological changes that are taking place in a rapid manner, the process of vendor empanelment is taken up on regular basis by advertising and inviting vendors for submission of their credentials for the area of work where vendor empanelment is sought. After assessment of the vendor credentials involving technical presentations, assessment of literature, vendor visits, the vendors are empanelled for the various categories of items for future reference and floating enquires whenever required. This is a continuous process and enables new vendors the entry for better competition.

A continuous vendor development programme is also conducted by issuing trial orders and developing components / spares with a view to de-proprietarize and break the monopoly of the proprietary manufacturers / firms.

Keeping in view the various government guidelines, the Micro, Small, Medium Industries (MSMEs) are encouraged for vendor empanelment and the materials are procured giving all the benefits that are provided in government guidelines.

During the year 2013-14 out of total procurement value of H.O of Rs 7644.00 lakhs procurement worth Rs 1363.14 lakhs is through e-tender which is about 17.83%.

6. Expression of interest

In order to follow the cardinal principles of public procurement like ensuring transparency, providing fair and equitable treatment of bidders, promote competition, enhance efficiency and economy, allow accountability and probity, prevent corruption and enhance public confidence, NMDC Limited has adopted the methodology of 'Expression of Interest Route' for all their major procurements.

NMDC by giving due publicity in all the major newspapers, its own website and the Government public procurement portal invites all vendors to show their interest and participate in the pre-bid meeting with their credentials for a particular procurement wherein the technical specifications, requirements, commercial terms & conditions and pre-qualifying conditions are discussed, deliberated across the table and given equal opportunity for expressing their views, credentials, etc. After the pre-bid meeting a thorough assessment of the various credentials received is made and a complete tender document is prepared keeping in view the various aspects of procurement.

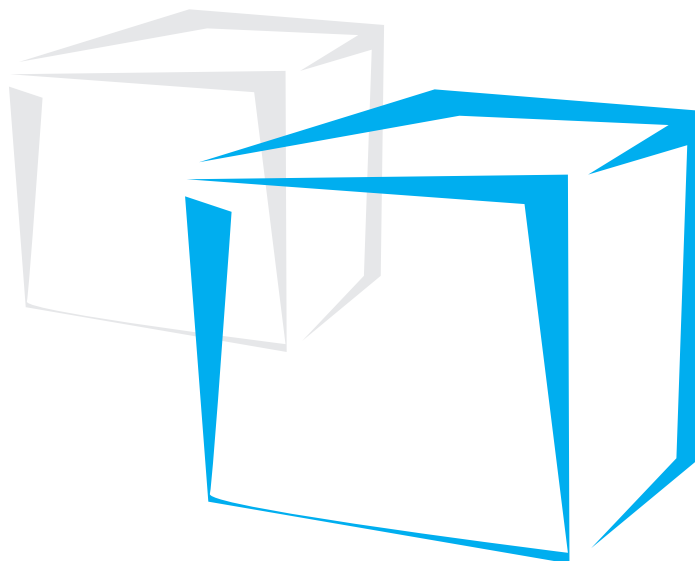
Accordingly, the process of procurement either by way of Limited Tender Enquiry to those who meet the conditions discussed during the pre-bid meeting or by going through an Open / Global Tender Notice is initiated giving a truly fair and equitable opportunity to all concerned in a transparent manner for promoting competition.

Expression of Interest (EOI) are used mainly when the requesting company does not have a solid idea on the type of product or service required. The company releasing the EOI may have a high level understanding of their business problem or requirements, or type of product they require, but they are unsure of the market's ability or desire to meet their need. EOI is the best option for the green field project like NMDC Nangarnar Steel Plant as it being planned on single Blast furnace of 4500 cum of its first kind in India.

The major Packages of Nagarnar Steel plant awarded through EOI Route.

Rs in Crores			
Sl. no	Name of Package	Detailed Estimate cost as submitted by Consultant	Awarded Cost
1	Raw Material Handling (Pkg-1)	1992.63	1395.00
2	Coke Oven Complex (Pkg-02)	1950.20	1978.36
3	By Product Plant (Pkg-03)	463.30	509.21
4	Sinter Plant (Pkg-04)	769.04	764.79
5	Blast Furnace (Pkg-05)	1914.81	1813.93
6	SMS (Pkg-07)	2251.55	2054.10
7	TSC (Pkg-07)	3185.10	2633.24

Apart from these major packages all other packages of NISP are awarded / will be awarded using EOI mode which will facilitate the choice of best technology available around the world for a particular process at the best price with an opportunity to discover the alternative option/route, which in turn results in promotion of competition, provides fair and equitable treatment to the bidders and brings in efficiency, economy and transparency.



7. E-tenders

NMDC projects are located in remote places that causes adverse effects on the competitive purchase as because of remote location vendor/supplier from various part of India hesitate to participate in tender which result in cartel formation by few local/regular suppliers who take undue benefit of the situation. But in case of E-tender as entire tender processing is online the geographical boundary almost comes to an end and thus interested vendor from each corner of India / World (in case of Global tender) can participate, thus providing better product/services at best price and at the same time avoid cartel formation and other corrupt practices by the supplier in order get the contract/supply order.

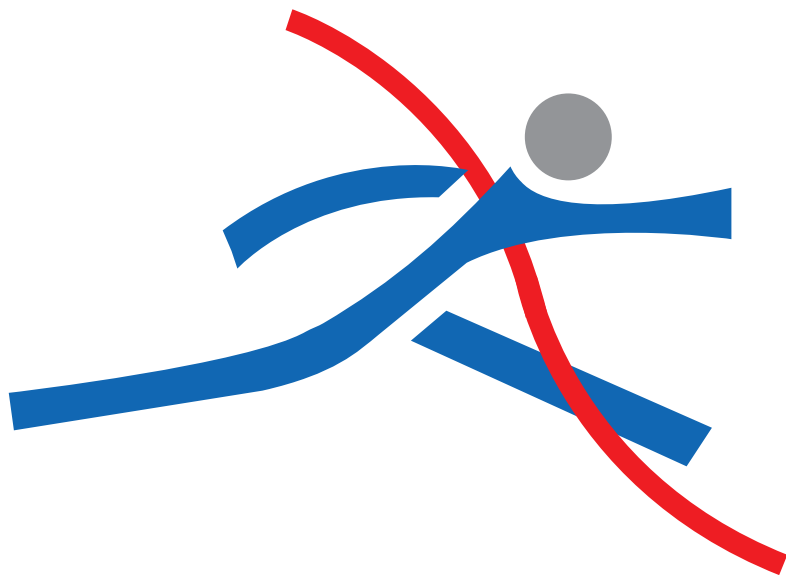
Few cases where the use of E- tender has resulted in greater economy:-

Sl. no	Name of Item	LPR (Last Purchase price)	E-tender Quote	% Diff
1	Supply Supervision installation testing & Commissioning of 3000 KVA 33Kv/ 3.3KV outdoor power Transformer	40 Lakh	24.70 Lakh	-38%
2	Primary screen For Donimalai	43.93 Lakhs	43.84 Lakhs	
3	Supply of TD Bogie Assemblies	27 Lakhs	26.31 Lakhs	-15%
4	Nylon Conveyor Belt			Apx-20%
	1) 900MM	6910	5377	
	2) 1050MM	7696	6307	
	3) 1200MM	9111	7318	
	4) 1350MM	8624	6906	
	5) 1500MM	10629	8510	

The above case study enumerates how e-tendering has contributed to greater economy in NMDC. The difference between quoted and purchase price is as substantial as 15 – 38 %.

CONCLUSION:

Public Procurement impacts the economy significantly by generating demand and consumption. Government, by virtue of its purchasing power can steer the market in a particular direction. Public Procurement also serves as an instrument to attain social outcomes. By way of preferential treatment in procurement, it may be used to promote indigenization of foreign technology, development of backward regions or protection of small scale industry. Of late, procurement is also being leveraged to promote the causes of environment, human rights, protection of children and gender equality. From the above methods it can be seen that multiple modes of transparent procurement enhances transparency and results in cost reduction as the number of participant increases, with better results and healthy competition, thus bringing efficiency, economy and transparency.



TRANSPARENT PUBLIC PROCUREMENT: KTRIBHCO CASE STUDY

Amar Prasad
Chief Vigilance Officer,
KTRIBHCO

PROFILE OF THE COMPANY

Krishak Bharati Cooperative Limited (KTRIBHCO) is a Multi-State Cooperative Society established in 1980 to produce and distribute quality agricultural inputs, mainly chemical fertilizers, through cooperative and institutional agencies across India. Registered as a fertilizer producing cooperative under the Multi-State Cooperative Societies Act, 2002, KTRIBHCO is a harbinger of the Cooperative Movement in India. It has evolved itself into a world class premier fertilizer producing, farmers cooperative society.

The Society is working earnestly in the service of the Nation, especially for upliftment of rural people of the country. It believes in staying in sync with its corporate philosophy and legacy, while adopting the latest technology and trends for serving the nation in a better way.

BUSINESS BACKGROUND

KTRIBHCO covers a range of chemical fertilizers like Urea, Ammonia, procured/imported fertilizers like SSP, DAP/MOP apart from Hybrid Seeds, Certified seeds, Bio-fertilizers (liquid and semi-solid), City compost etc. In order to provide quality seeds and bio-fertilizer, KTRIBHCO has set up 15 modern Seed Processing Plants and three Bio-Fertilizer Plants across the nation.

KTRIBHCO has its gas based urea, ammonia producing plant located at Hazira (Surat), Gujarat with a capacity of 21.95 lakh MT Plain/Neem Coated Urea annually. KTRIBHCO maintains the 2nd highest market share of fertilizer sales in the country with 45.34 lakh MT total sales, which includes 43.03 lakh MTs of urea sales during 2013-14.

Registered as a
fertilizer producing
cooperative under
the Multi-State
Cooperative
Societies Act, 2002,
KTRIBHCO is a
harbinger of the
Cooperative
Movement in India.

KRIBHCO has three Joint Ventures namely:

i) Oman India Fertilizer Company (OMIFCO) – Sur, Oman

KRIBHCO is one of the sponsors of OMIFCO which has fertilizer plant of capacity 16.52 Lakh MTPA of Urea and 11.90 Lakh MTPA of Ammonia at Sur, Sultanate of Oman.

**ii) KRIBHCO Shyam Fertilizers Limited (K.S.F.L.)
Shahjahanpur, (U.P.)**

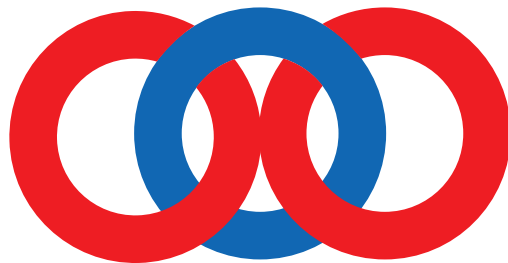
K.S.F.L. is a joint venture company of KRIBHCO and M/s STL Fertilizers (Pvt) Ltd. located at Shahjahanpur, Uttar Pradesh. K.S.F.L. owns a gas based fertilizer complex consisting of ammonia plant having annual capacity of 5.02 Lakh MT and Urea plant with annual capacity of 8.64 Lakh MT.

iii) KRIBHCO Infrastructure Limited (KRIL), Noida

KRIL is a 100% owned subsidiary of KRIBHCO, maintaining/operating Rail Linked, Inland Container Depot (ICD)/Private Freight Terminal (PFT) at Hazira (Surat), Rewari (NCR) and Modinagar (NCR).

KRIBHCO provides value addition in its endeavors by empowering farmers in the rural areas of the country by providing Farm Advisory Services through helpline, Farmers Training, KisanMela, Field Days, Soil Testing Laboratory, and other agrarian related activities. It strives for “Integrated Nutrient Management” by propagating efficient and balanced use of fertilizers and by testing soil samples for micro and macro nutrients collected from various parts of the country.

KRIBHCO has won many awards for overall outstanding performance and technological excellence in the fertilizer sector.



TRANSPARENCY IN PUBLIC PROCUREMENT

Procurement of goods and services in KTRIBHCO

KTRIBHCO being the second largest producer and marketers of agricultural inputs in cooperative sector of the country, the procurement expenditure is of considerable amount. In KTRIBHCO, procurement of goods and services have designated parameters, for achieving certain identified objectives, wherein the bidder with the best terms enters into an obligation to provide goods and services.

Public procurement is carried out through competitive bidding or tendering process with the intention of achieving maximum economic efficiency through competitive process. To ensure effective functioning of public procurement system, distinct but inter-related challenges are consciously addressed viz. (i) ensuring in-house integrity in the entire procurement process and (ii) promoting effective competition among suppliers, including preventing collusion among potential bidders.

1. Internal Code of Conduct

KTRIBHCO has well laid down purchase procedures and manuals to ensure in-house integrity and create healthy competition amongst the vendors. There are various tools towards improved and effective procurement of goods and services through internal controls to ensure streamlined purchase processes for efficient, economic and transparent systems. To promote effective competition amongst goods/service providers, including preventing collusion among potential bidders, well laid down internal code of conduct are in existence, which are enumerated below:

1. Procurement and contracting Manual
2. Civil Works manual
3. Manual on Dealers, Transport Contractors & Warehouses
4. Common Irregularities & Procurement Guidelines
5. Delegation of Powers



Generally no deviation is accepted by the management except in such instances where there is a need to take care of organizational interest. The procurement of goods and services are done through laid down procedures, methods, guidelines issued from time to time, and these methods involve transparent actions at each level to establish ethical business practices.

2. Public Disclosure:

Public disclosure is maintained by way of publication of all the tenders for procurement of goods and services in widely circulated leading newspapers of Hindi/English/Regional languages and KTRIBHCO website.

Through the above methods, KTRIBHCO firmly adheres to the concept of public disclosures which enhance transparency in working environment and brand value of the organization improves.

CASE STUDY – PURCHASE OF HDPE EMPTY BAGS THROUGH E-PROCUREMENT:

In KTRIBHCO Hazira Plant, packing material of approx. 4.40 crores HDPE bags are required to be procured annually. The procurement cost of empty HDPE bags used as packing material in Hazira Plant during the last three years is given below:

Year	Procurement cost (Rs/crores)
2014-15(Upto Nov.2014)	53.46
2013-14	74.07*
2012-13	54.46

* Production capacity of Hazira plant enhanced from 17.30 lakh MT to 21.95 lakh MT/year.

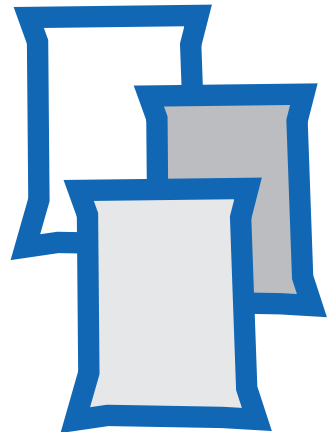
I. Vendors impanelment

Keeping in view the principle of public procurement/disclosure, ensuring integrity in the procurement process and promoting effective competition among suppliers, the process adopted is as follows:

- a) Public Notice inviting Pre-qualification of manufacturers for supply of Polythene Laminated HDPE Bags was published in leading national dailies (English/Hindi/Regional) having wide circulation. The Notice was also put on KTRIBHCO's website www.kribhco.net
- b) Structured format of details required for pre-qualification of vendors made available on KTRIBHCO's website
- c) On the basis of application submitted by the vendors for registration for supply of HDPE bags, technical committee visits the manufacturing sites of the vendors and physically verifies the infrastructure of the applicants and recommend the vendors for registration.
- d) The vendor list is approved by the Management for a period of three years. There is, however, a provision of midway induction of new suppliers, who may have created new facility of manufacturing of quality HDPE bags.
- e) Rates for supply of HDPE bags are invited only from the pre-qualified vendors.

II) Procurement of 150 lakh HDPE bags for packing KTRIBHCO urea

- a) During 2014 in the first lot, NIT for procurement of 150 lakh HDPE bags for packing KTRIBHCO Urea was issued to 23 pre-qualified approved vendors on 22.4.2014 with due date for submission of bids on 13.5.2014 and opening of the bids publicly on the same date.
- b) On due date and time, bids from only 18 vendors were received.
- c) The quoted/evaluated rates received were in the range of Rs.1945.00 per 100 bags to Rs. 2299.53 per 100 bags.



- d) After price bid opening on 13.5.2014, all the 18 vendors were informed through fax/e-mail that they are eligible for the e-reverse auction scheduled for 16.5.2014 at 11.00 AM onwards open for 60 minutes. An outsourced party was engaged to provide online training to all the vendors for the e-reverse auction process and also facilitate the e-reverse auction.

III. E-reverse auction

- a) e-Reverse auction was conducted on 16.5.2014 and all the 18 vendors logged in/registered their presence but only 17 vendors actively participated in the auction. The auction commenced with the base price of Rs.1945.00 per 100 bags being the lowest rate received. The e-reverse auction was started at 11.00 am and was closed at 12.23 pm. It lasted beyond 60 minutes due to automatic time extension when a bid is received at even a second before closing time.
- b) In the e-Reverse auction, the company received the lowest rate of Rs.1812.00 per 100 bags all inclusive FOR destination basis.

IV. Issuance of counter offer

Counter offer rate of Rs. 1812.00 per 100 bags received through e-Reverse auction were issued on 16.05.2014 to the next 6 lowest vendors who participated in e-reverse auction in order to have sufficient number of vendors for uninterrupted supply of bags as per the terms and conditions of the NIT. All the six vendors to whom counter offer was issued agreed to, and confirmed their acceptance, through fax/e-mail for supply of bags at the lowest rate i.e. Rs.1812.00 per 100 bags.



V. Benefits derived on e-reverse auction

Sl.No.	Details	Rate for 100 bags
1.	Original quoted Rate/100 bags by seven vendors	Rs.1945.00 to Rs.2299.53 variation of Rs.354.53
2.	Rate quoted in e-Reverse auction per 100 bags	Rs.1812.00 to Rs.1821.00 variation only Rs.9.00
3.	Counter offer rate of Rs.1812.00 for 100 bags	All vendors accepted to supply @ Rs.1812.00/100 bags
4.	% Variation of original lowest rate vs. e-Reverse final lowest rate	(-) 7.34%

a) The initial rates offered by vendors were ranging between Rs.1945.00 to Rs.2299.53, a variation of Rs.354.53 between L1 to H1 vendors that had been narrowed down to Rs.9.00 per 100 bags after e-Reverse auction.

b) After e-Reverse auction, the final rate came down by 7.34% against the original lowest rate quoted by the L1 vendor and a saving of Rs.1.99 crores was made.

CONCLUSION

The above detailed case study of purchase of HDPE empty bags enumerates that KTRIBHCO could achieve the goal of effective, efficient, economic and transparent purchase processes and could promote effective healthy competition amongst the vendors. Through this time bound transparent process, the objective of preventing collusion among potential bidders resulting in cartel formation could be avoided which resulted in an economic, cost effective and tension free environment during the negotiations through e-Reverse auction.



Transparency in Procurement in the Engineering & Construction Industry - Fluor's Commitment

Arun Kumar Jain,
Sandeep Kumar

As construction projects continue to grow bigger and more complex, they are also expected to be completed with accelerated schedules and an increased commitment to safety. Executing projects on time and on budget is a minimum requirement to do business with most organizations and is critical to building long-term relationships.

Fluor, a complete solutions provider, is a global leader in engineering, procurement, fabrication and construction, and is continually developing its core competencies and pioneering innovative solutions to meet increasing Client expectations. Fluor's history is built upon adherence to strong ethics and compliance based business practices – this is a critical element of Fluor's culture. Fluor has willingly accepted highly visible, global leadership roles in promoting and improving ethical standards and work practices to improve transparency and eliminate corrupt practices broadly across industries and geographies.

A core reason for Fluor's ongoing success is its strong social consciousness and commitment. Fluor strives to move beyond compliance with laws and regulations, approaching ethics issues proactively.

Clients depend on us to apply our ethical culture and innovative programmes and solutions to the delivery of their projects around the world. Fluor engages with clients, business partners, suppliers, sub-contractors, agents and other third parties on ethics and compliance as part of our regular business processes. Fluor seeks to do business with third parties who share our standards and values

Fluor has introduced a code of business ethics ('The Code') that includes inputs from employees and concentrates on Fluor's core values - integrity, safety, teamwork and excellence. 'The Code' serves as Fluor's centrepiece of commitment to business integrity. Though 'The Code' cannot cover every possible situation or area of operation, it provides the right questions to ask, the right experts to consult and the right way to make decisions.

The Engineering and Construction sector is generally considered as a fountain head of corruption. One research analysis estimates the global construction industry spend at \$7.2 trillion that is likely to go up to \$ 12.0 trillion. It estimates that upto 10% of the global spend on construction is lost to various forms of corruption. Thus the size of unethical conduct is estimated to be ~ \$ 700 billion a year, which inevitably would have a negative effect on the quality, safety, and value of the constructed projects.

Because of high spend in this industry, the Engineering and Construction industry arguably lends itself to fraud and financial crime. Therefore, the risk of corruption in the Engineering and Construction Industry is high. The industry is highly fragmented because of the chains of subcontractors which make consistency of standards difficult and make the tracing of payments more complex.

Projects are often large, involving cross-border parties, additional complexities of varying legal and tax regulations, language and cultural differences.

Keeping these factors in mind, we conduct risk-based due diligence when selecting a third party, and monitor red flags during our business relationship. Depending on the type of third party, we embed various requirements and processes to emphasize and mitigate applicable corruption risks.

Fluor limits the number of third party agents by relying primarily on our internal sales staff. We do not have a commission based sales structure, which contributes greatly to the management of corruption risks. We also limit the number of employees who are permitted to have contact with third party agents. Agents are required to certify periodically to their adherence of our anti-corruption requirements.

Fluor do not have a commission based sales structure, which contributes greatly to the management of corruption risks. We also limit the number of employees who are permitted to have contact with third party agents. Agents are required to certify periodically to their adherence of our anti-corruption requirements.

We evaluate our suppliers and contractors on various parameters of Business Integrity. Our suppliers and contractors are required to comply, and in turn, require their supply chain to comply with Fluor's Business Conduct Expectations for Suppliers and Contractors (the Supplier Expectations). The Supplier Expectations highlight key expectations in

1. Health, Safety, and environmental (HSE),
2. Human Rights and Employment Practices,
3. Financial and Operational Controls,
4. Conflicts of Interest, Gifts, Entertainment and Business Courtesies,
5. Improper Payments,
6. Trade Controls,
7. Money Laundering Prevention,
8. Company Resources,
9. Competing Fairly, and
10. Reporting Concerns.

FLUOR SUPPLIERS EXPECTATIONS

Fluor requires suppliers to align with below mentioned expectations :

Health, Safety, and Environmental

The health and safety of all personnel associated with our work is our highest priority. Our suppliers and contractors are expected to:

1. Provide a safe and healthy work environment that supports accident prevention, minimizes exposure to health risks, is in compliance with applicable workers health and safety laws, and minimizes harmful impacts to the surrounding community;
2. Apply safe work practices (including regulatory contract specific requirements) to all their activities and instill safety in every aspect of their work process and in the attitude and behavior of all their workers; and
3. Conduct their operations in an environmentally responsible manner and in accordance with applicable environmental laws.

Human Rights and Employment Practices

1. Support and respect human rights and avoid complicity in human rights abuses;
2. Treat all their workers with dignity, respect, and fairness; and
3. Conduct all their operations in a socially responsible,

non-discriminatory manner and in accordance with applicable laws including those associated with equal opportunity, child labour, forced or compulsory labour, working hours, wages and benefits, freedom of association, data privacy, and harassment free work environment.

FINANCIAL AND OPERATIONAL CONTROLS

1. Keep accurate, complete fair, timely, transparent, and understandable financial and operational books, records, and accounts, and a system of effective internal controls;
2. Create, retain, and dispose of business records in accordance with applicable legal and contractual requirements;
3. Keep accurate and complete records prepared for Fluor, including records of work time and expenses;
4. Never share non-public information relating to Fluor; and
5. Comply with insider trading laws including the prohibition against buying or selling securities or advising (e.g., tipping) others to buy or sell securities while aware of material, non-public information relating to Fluor.

Fluor maintains zero tolerance for bribery and expects suppliers and contractors to do the same.

Conflicts of Interest, Gifts, Entertainment and Business Courtesies

Our suppliers and contractors, their employees, and their family members must not receive improper benefits through their relationship with Fluor or allow other activities to conflict with acting in the best interests of Fluor. Our suppliers and contractors are expected to:

1. Limit promotional items or entertainment involving our employees to common business courtesies, within accepted business practices and never with the intent to improperly influence a business decision or create a potential conflict of interest or the appearance of impropriety; and
2. Disclose any potential conflict of interest to Fluor for review prior to entering into any business transaction.

Improper Payments

Fluor maintains zero tolerance for bribery and expects our suppliers and contractors to do the same. Bribery is directly or indirectly giving or promising to give anything of value to improperly influence actions of a third party. Bribes may include money, gifts, travel expenses, hospitality,

vacations, expenses, below-market loans or products, reciprocal favors, political or charitable contributions, or any direct or indirect benefit or consideration.

Money Laundering Prevention

Our suppliers and contractors are expected to follow applicable laws that prohibit money laundering and require the reporting of cash and other suspicious transactions.

Company Resources

1. Safeguard Fluor resources utilized in the course of performing work, to use such resources solely for legitimate business purposes to advance the interest of Fluor;
2. Honor the intellectual property rights of Fluor and the third parties at all times; and
3. Maintain, handle, and, if applicable, process any confidential information internally and on a need-to-know basis only, with utmost care and in accordance with applicable law.

Competing Fairly

Fluor strongly believes in the free market system where merit, quality, price, and other objective factors determine who succeeds and who fails. Our suppliers and contractors are expected to:

1. Compete honestly and fairly;
2. Comply with applicable antitrust and competition laws; and
3. Never participate in anti-competitive practices such as price fixing or bid rigging.

Prevailing Projects Evaluation Process in India

Typical Selection Criteria

The selection criteria for hiring engineering consultants and contractors for large infrastructure projects are often skewed and uni-lateral. Projects generally are awarded to contractors based upon the lowest quoted bid. However, this often may not be an accurate reflection of the actual capability of the selected contractor to deliver a quality infrastructure project on schedule and within budget. Another challenge is that certainty of Schedule, Cost, Safety and Quality are sometimes not given their due importance in the selection criteria. Selection of incompetent contractors inevitably is a source of corruption.

TYPICAL CONTRACT TERMS

A complex issue in EPC execution in India is the contract terms and conditions which restrain several international companies from participation. Irrational contract terms & conditions result in vexatious issues relating to:

- Indeterminate, uncapped liability
- Lack of compensation for unpredictable or runaway cost increases in prices of major components
- Incorrect coverage and allocation of major risks
- Payment terms and mechanism that deter positive cash flow for the project

Restricted competition and onerous terms, in turn, are fertile ground for increased corruption.

Typical Procurement Execution

Procurement is a key element of successful mega project execution in Engineering and Construction projects. The following are key issues:

Procurement strategies with aggressively negotiated lowest prices can result in:

- Poor, off-the-shelf design
- Cash-strapped vendors cutting corners and not adhering to project codes and standards
- Inexperienced vendor engineering teams incapable of understanding project design and safety requirements
- Poor supplier integration

These issues distort fair award of contracts, limit opportunities to develop a competitive sector, often results in poor quality work and create instability for companies through reputational and financial risk. Thus projects in the Engineering and Construction sector are a good candidate for strident promotion of anti-corruption practices.

PATH FORWARD

Adoption of the zero tolerance anti-corruption principles is a very important step. Over the coming year, companies are working to globalize this commitment within the Engineering and Construction industry and to also develop guidance and practices for implementation. A compliance mechanism for anti-corruption serves as a strategic differentiator for companies.

To promote transparency and ethical behavior in contract evaluation, Fluor has been using best international practices for sub-contractor evaluation and provides opportunities to deserving sub- contractors.

Procurement strategies with aggressively negotiated lowest prices can result in:

- **Poor, off-the-shelf design**
- **Cash-strapped vendors cutting corners and not adhering to project codes and standards**
- **Inexperienced vendor engineering teams incapable of understanding project design and safety requirements**
- **Poor supplier integration**

Recommended Contractor Selection Criteria

The key aspects to be considered are incorporation of the right weightage for the technical and project execution capabilities of consultants / contractors / sub-contractors during the selection process to improve the quality of project planning and bidding.

The current method of selecting consultants / contractors based predominantly on cost criteria has the potential of impacting the quality and delivery of projects. Instead, experience and proven skills should carry a greater weight in the evaluation process. A robust selection process will improve the predictability of final project outcomes and minimize cost over-runs. Therefore, a “Quality-cum-Cost Basis Selection” method may be the preferred methodology of procurement and Fluor often employs this for sub-contractor selection.

Recommended Contract Terms

Contract terms for projects should be equitable in character, as opposed to being heavily loaded in favour of Owners (examples are clauses pertaining to indemnities, liabilities, penalties, payment terms, termination, etc).

Inequitable contract terms lead to inequitable allocation of risks which tends to promote unethical behaviour. Fluor, therefore, recommends that risks for EPC contracts be allocated to the party that can best manage the risk.

We also recommend that inclusion of robust anti-corruption language such as a “Code of Business Conduct Expectations for Suppliers and Subcontractors” in the contract would promote ethical business conduct.

Contract Changes are potential avenue for corruption to sneak in (payoffs for approval for change orders, etc.). Owners, therefore, need a clear process for managing project changes and Fluor's Change Management

We also recommend that inclusion of robust anti-corruption language such as a “Code of Business Conduct Expectations for Suppliers and Subcontractors” in the contract would promote ethical business conduct.

process is designed to assist in managing both internally and externally influenced change. It's mandatory in Fluor to institute an effective Change Management Process in every phase of project execution. Effective Change Management helps both the Client and Contractor to manage changes during project execution with the utmost integrity and transparency.

Recommended Procurement Execution Strategy and Practices

Every project needs to have (as Fluor does) a Global Procurement Strategy and process to secure the best price, quality and timely supply by:

- Adoption of the Owner mandated Code of Business Conduct Expectations for Suppliers and Sub-contractors by the Project so that all stakeholders are aligned to common business practices
- Increased due diligence using comprehensive a Risk Assessment Tool and monitoring of vendors for quality and liquidity.
- Time tested online platform such as Fluor's Projects Online for seamless management of Owner and supplier document integration. Traceability and transparency.
- Aggressive, proactive management and expediting of suppliers.

LEADING FROM THE FRONT

To disseminate the learnings and promote ethical behavior in Engineering and Construction related projects in India; Fluor is actively engaged with advocacy groups. Here are some of the activities being undertaken:

1. Working with the US Department of Commerce and CII in development and adoption of the "New Delhi Principles" as a Business Ethics code.
2. Organizing roundtables in Delhi and Mumbai for Engineering and Construction companies to promote Business Integrity and Compliance.
3. Sharing our learnings and good practices with other American and Indian Companies via the American Chamber of Commerce and CII at their invitation.



Corruption remains a stumbling block to national progress as it increases transaction costs and reduces efficiency of public services.

Pranab Mukherjee, President of India
Speaking at a National Seminar on Combating Corruption

A decorative graphic consisting of two overlapping circles. The inner circle is a light teal color, and the outer circle is a light grey color. The circles are positioned such that they overlap in the center. The background is split horizontally: the top half is white, and the bottom half is a solid red color. The text 'SECTION-4' is centered within the teal circle, and 'TRANSPARENCY IN VENDOR MANAGEMENT' is centered in the red area below the circles. A thin white line connects the bottom of the teal circle to the top of the red text.

SECTION-4

**TRANSPARENCY IN
VENDOR MANAGEMENT**

A decorative graphic featuring two concentric circles. The inner circle is a light teal color, and the outer circle is a light gray color. A horizontal bar is positioned to the right of the circles, divided into three segments: gray, blue, and red. In the center of the inner teal circle is a large white number '4' with a subtle drop shadow.

4

1. INTEGRITY PACT AS A TOOL TO CURB CORRUPTION IN PUBLIC

PROCUREMENT: Issues, Opportunities and Challenges

- Ashutosh Mishra

2. COMMITMENT TO COMPLIANCE: Integrity Pact Reaping Dividends

for ONGC

- A K Ambasht

3. COMMITMENT AND COMPLIANCE: BASF Efforts towards

Transparency and Optimum Corporate Governance

- Raman Ramchandran

INTEGRITY PACT AS A TOOL TO CURB CORRUPTION IN PUBLIC PROCUREMENT: ISSUES, OPPORTUNITIES AND CHALLENGES

Ashutosh Mishra
Executive Director,
Transparency International India

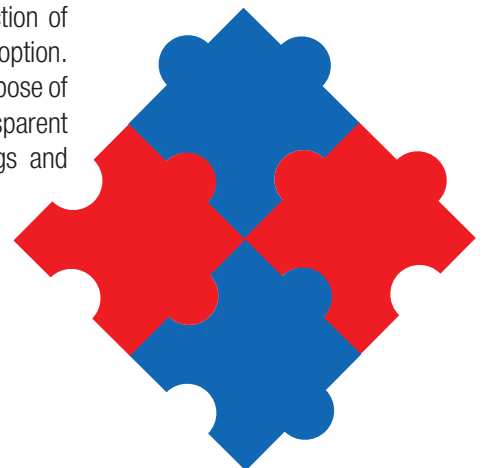
INTRODUCTION

Integrity Pact is a tool developed in 1990s by Transparency International (TI) to help government, business and civil society to fight corruption in public contracting and procurement. Transparency International India, as the accredited Indian National Chapter of Transparency International, came into existence in 1997 and has been advocating Integrity Pact since August 2001.

At the operational level, **Integrity Pact is a 'formal agreement' between the Principal, that is, the company implementing the IP, and bidders/ beneficiaries for public contracts/ funds disbursement. Establishing mutual contractual rights and obligations, it contains a commitment on the part of both that neither side will pay, offer, demand or accept bribes, or collude with competitors to obtain the contract or while carrying it out.** Besides, bidders also undertake to disclose all commissions and other payments made by them to anybody in connection with the contract. It provides for enforceable sanctions in case of violation. IP also introduces a monitoring system that provides for independent external oversight and accountability. Independent External Monitor (IEM), who is a person of impeccable integrity and has domain knowledge of tendering/contracting processes, is appointed to oversee IP's implementation and its effectiveness. The panel of IEMs is approved by Central Vigilance Commission (CVC).

As an anti-corruption tool, Integrity Pact is better understood as a 'process' covering all contract-related activities from pre-selection of bidders, bidding, contracting, implementation, completion and adoption. It is applicable to all sectors and types of contracts. The basic purpose of Integrity Pact is to make public contracting and procurement transparent by binding all to ethical conduct, detection of risks/ red flags and facilitating corrective measures.

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In terms of working, drafts of the MoU and the Integrity Pacts are prepared by the Principal and approved by the CVC and the TII. MoU is signed between the Principal and TII though it is not a mandatory clause. Some of the Indian PSUs have adopted Integrity Pact without signing MoU with TII.

So far, 48 Central PSUs, one state PSU and New Delhi Municipal Council (NDMC) have committed to adopt IP in letter and spirit. Adoption of Integrity Pact has been supported and recommended by several government circulars and memorandums. In its 2008 Procurement Policy, Ministry of Defense proposed to adopt IP in defense deals of Rs. 100 crores and above, and Rs. 20 crores in its enterprises. CVC in its circular issued on May 18, 2009 has issued a 'Standard Operating Procedure' laying guidelines for IP's adoption. Ministry of Finance and Ministry of Public Finances have issued office memorandum recommending adoption of IP in their department. The Second Administrative Reforms Commission too in its IV Report on 'Ethics in Governance' has recommended the adoption of IP.

IMPLEMENTATION OF INTEGRITY PACT IN INDIA: ISSUES AND CHALLENGES

As an anti-corruption tool to bring in transparency in public procurement, Integrity Pact has been an evolving concept. The implementation of Integrity Pact in India has been a journey fraught with several challenges but substantial achievements. Transparency International India did an impact assessment survey of Integrity Pact in 2011 to assess the positive impact that IP has been able to make, the loopholes that had come to the fore and the ways in which IP could be strengthened by addressing the concerns of various stakeholders.

The findings suggested that the tool of IP has been effective in making the procurement process transparent, providing a level playing field, enhancing the confidence of the vendors and improving the brand image of the company. The assessment also brought to the fore numerous issues that needed to be addressed.

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One of the issues that has come up has been about how can sub-contractors be effectively brought within the purview of IP, the issue of interpretation of *Transgression* and an effective mechanism to check transgression. The issue of whether or not IP should be mandatory has been settled after directions by Ministry of Finance. There is now increasing recognition that undue emphasis on making IP mandatory runs the risk of turning IP into a formality. In other words, IP needs to be understood more as a 'process' rather than 'certificate'. Simultaneous efforts are needed to be directed towards making IP compliance a part of ethical culture rather than enforcement. There is need for a balance between legal and ethical approach to the expansion and consolidation of IP in India.

Also there is need for a more pro-active role of civil society in monitoring and social audit pertaining to IP. Civil society needs to be mobilized to act as a pressure group to bring in transparency. Civil Society Organizations like TII become an important platform for awareness generation about IP. **Government of India has also been contemplating to bring about a Public Procurement bill and there is an ongoing debate in the public domain in India as whether or not and at what level IP should be incorporated in the Public Procurement bill.**

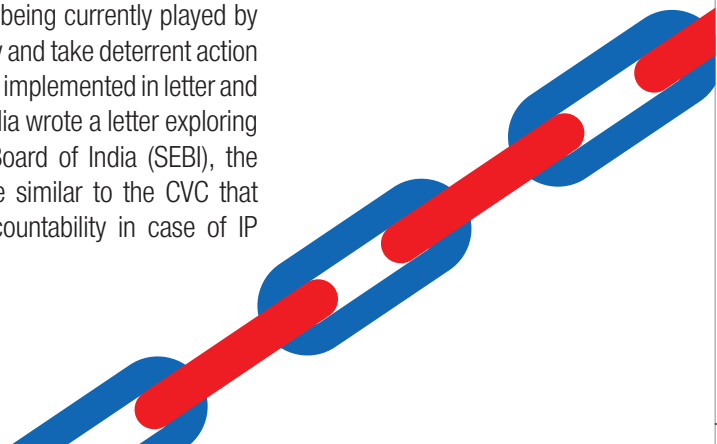
One of the major challenges in the implementation of Integrity Pact in India has been to convince the private sector to adopt IP. The next section would attempt to build up a business case for IP based on the success achieved in the public sector.

TOWARDS A BUSINESS CASE FOR INTEGRITY PACT

Addressing reluctance of the Private Sector

There have been numerous demands for introduction of Integrity Pact in the private sector and there has been a long-standing debate in the public domain in India about its pros and cons. In this regard TI India wanted to have an institution to play the role being currently played by CVC in appointing IEMs of impeccable integrity and take deterrent action against the concerned private sector if IP is not implemented in letter and spirit-once it is committed. Accordingly, TI India wrote a letter exploring the possibility of Securities and Exchange Board of India (SEBI), the capital market regulator, to perform the role similar to the CVC that provides for independent oversight and accountability in case of IP compliant PSUs.

There is now increasing recognition that undue emphasis on making IP mandatory runs the risk of turning IP into a formality. In other words, IP needs to be understood more as a 'process' rather than 'certificate'. Simultaneous efforts are needed to be directed towards making IP compliance a part of ethical culture rather than enforcement.



However rejecting the idea of assuming a CVC like role of anti-corruption watchdog for the private sector, SEBI in a memorandum submitted to its board at its meeting of Nov 24, 2011, said a CVC like role (“is not within the mandate of SEBI under the existing legal framework”). “Its jurisdiction extends to listed companies in the private sector on certain matters delegated under the Companies Act, and it has been established to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market as enshrined in the SEBI Act.”

Instead SEBI approved a new disclosure-based regime for listed companies with respect to non-ethical business practices. Accordingly, companies would need to submit a 'Business Responsibility Report', along with their annual reports, to help assess the fulfillment of their environmental, social and corporate social responsibilities. These disclosures would be based on nine key principles of responsible, transparent and ethical business practices. These include the companies' conduct and governance being based on ethics, transparency and accountability, promotion of the well-being of the employees, respect towards human rights and environmental issues, among others. **They also call for businesses to act responsibly when engaged in influencing public and regulatory policy.** These would initially apply to top 100 companies.

In addition to the issue of which institution could be assigned the task of monitoring in case the private sector is willing to adopt IP, the private sector itself has so far been shy of adopting Integrity Pact. The reluctance of the private sector to adopt IP needs to be addressed as in the age of globalization, privatization and liberalization, private sector is bound to be an important player in various developmental projects. The increasing reliance on Public-Private Partnership (PPP) mode of service delivery further reinforces the need for private sector to shoulder equal responsibility towards a transparent and accountable business ethics culture in the country.

SEBI approved a new disclosure-based regime for listed companies with respect to non-ethical business practices. Accordingly, companies would need to submit a 'Business Responsibility Report', along with their annual reports, to help assess the fulfillment of their environmental, social and corporate social responsibilities.



One of the major reasons for the reluctance of the private sector to adopt IP has been a general perception pervading the private sector that the public sector is marred by bureaucratic red tape resulting in frequent delays in decision making, unwillingness on the part of bureaucrats to innovate and change, having a fixed mind-set and an unprofessional attitude. **The private sector needs to deal with the government with an open mind without any pre-conceptions. Similarly, the governmental sector too has to be more flexible and forthcoming in its approach towards the private sector.**

Another specific reason cited by the private sector for not signing IP has been that they have their own internal control mechanism and code of conduct already in place similar to IP. For instance, Siemens is of the opinion that the clauses of IP are one-sided, being tilted in favour of the companies to the disadvantage of the vendors who are harassed and victimized. In fact according to private companies, both the companies and the vendors have no say but to sign on the dotted lines. This is in complete contrast to their own rules and regulations that are flexible enough to incorporate and address the apprehensions of both the parties. There is also grievance against the fact that private sector have no say in the appointment of the IEMs.

Having said that, the private sector too feels that there is a possibility of a business case for IP by floating a model IP approved by CVC and taking inputs from the private sector. The willingness to incorporate clauses that address the concerns of both the sides could be one way that can be explored.

IP Implementation yielding results in Public Sector companies

There is ample evidence based on experience of PSUs that have adopted IP that effective implementation of IP yields numerous short-term and long-term benefits to both the Company and the vendors that makes for a solid ground for a business case for IP. The greatest advantage of adoption of IP is that it mitigates long drawn litigation, which not only saps the resources of both the parties but also dissipates energy, which can be utilized in other productive pursuits within the organization. The grievance redressal mechanism in the nature of Independent External Monitors (IEMs) under IP not only enables quicker and effective resolution of tender issues and complaints in a cost-effective manner, but also helps in inculcating faith and confidence among the vendors that they would be provided a level playing field in the whole bidding and contracting process.

The improvement in the brand image of the company is another major advantage of Integrity Pact. The PSUs who have effectively implemented IP have witnessed a positive overhaul in their brand value. ONGC, the first PSU which adopted Integrity Pact on 17 April 2006, based on its experience has shared how adoption of IP boosted market capitalization and image of the company, reduced VIP references and increased confidence of the bidders.

PSUs such as **GAIL India have accrued financial benefits with the adoption of IP. The success story of GAIL (India) in this regard is worth mentioning wherein inviting fresh bids in case of procurement of bare line pipes for VDPL projects, resulted in a reduction of Rs. 297.05 crores against the initial offer.** In yet another instance, re-tendering in case of procurement of carbon steel bare line pipes for Dahej-Vijaipur up-gradation project (DVPL-11) resulted in reduction of cost by Rs. 64.57 crores. Besides direct cost saving, minimization of delays in tender finalization as a result of IP has resulted in indirect cost saving. To cap it all, adopting IP has enabled PSUs to become more competitive and profitable.

CONCLUSION

In a nutshell, there is a possibility for a win-win situation for all if the private sector is willing to negotiate, the governmental sector shows more flexibility and civil society organizations like TII continue to play a pro-active role in facilitating the whole process.

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FROM COMMITMENT TO COMPLIANCE: INTEGRITY PACT REAPING DIVIDENDS

AK Ambasht

Chief Vigilance Officer,
Oil and Natural Gas Corporation (ONGC) Ltd.

PROFILE OF COMPANY

Oil and Natural Gas Corporation (ONGC) is a premier Public Sector Organization of India engaged in Exploration & Production of Hydrocarbons in India and abroad. ONGC has also forayed into downstream sector of Petroleum industry viz petroleum refinery and successfully invested in gas based power generation. Additionally ONGC has taken steps towards solar and wind energy fields. Considering the vast canvas of its activities, ONGC has to deal with suppliers/vendors/contractors, who provide services to ONGC in fields ranging from low end to very high technology (such as construction of platforms, revamping jobs, seismic data acquisition, processing and interpretations, hiring of services related to ships/vessels/rigs/ software procurement among others). ONGC also has to do business dealings with a number of domestic and international bidders, ranging from small to mid and multinational companies/firms, for supply of goods and services.

INTRODUCTION

In today's fast changing business environment, organizations are expected not only to be profitable but ethical in their business dealings/commercial transactions. Time and again, it has been emphasized that non-transparent dealings in any field are breeding grounds for favouritism and corruption and such acts not do any good for profitability and image of an organization. ONGC believes that one of the most important tools to fight corruption and irregularities in public procurement exercise is the Integrity Pact (IP). **The Integrity Pact contains rights and obligations to the effect that neither side will pay, offer, demand or accept bribes of any sort, or collude with competitors to obtain the contract, or while carrying it out. Also, that bidders will disclose all commissions and similar expenses paid by them to anybody in connection with the contract; and that sanctions will apply when violations occur. These sanctions range from loss or denial of contract, forfeiture of the bid or performance bond and liability for damages, to debarment for future contracts on the side of the bidders, and criminal or disciplinary action against employees of the government.**



ONGC aware of its responsibilities to bring about transparency and fair play in system of public procurements /services as a prominent PSU of India, led from the front and adopted the “Integrity Pact” tool in the year 2005 (in association with Transparency International India and Central Vigilance Commission of India). ONGC is the pioneer in this field in India among all PSUs and private companies.

Initially, w.e.f. 1st July 2005, ONGC decided to first implement IP in tenders of its major work centres i.e Mumbai High Asset, Offshore Drilling / Well / Logging Services, Engineering Services and Corporate Materials. Subsequently, it was implemented all across ONGC in all tenders for Works, Services & Purchase from 01st August 2005.

On 17th April 2006, Transparency International India (TII) proposed to ONGC to promote IP as a programme and to enter MOU with TII for process review and improvements. ONGC and TII agreed on the IP programme document. On 12th May 2006, orders issued that particular IEM as approved by Director (Onshore) I/C-MM shall be nominated by turn for tenders valuing Rs 150 Crores and above. Based on interaction with TII & IEMs and feedback from vendors following improvements have been made in IP:

- **Threshold limit** for Tenders for signing of IP valuing above Rs 1 crore only has been fixed which forms 95 % of tenders by value.
- **IP to be executed on plain paper**, irrespective of whether it is from foreign or Indian bidders.
- **IP proforma revised** and notified by circular dated 07th June 2007 and suitable amendment issued

KEY FEATURES OF ONGC'S IP PROGRAMME

(I) Commitments And Obligation Of ONGC :

- a) ONGC is committed to have most ethical and corruption–free business dealings with counterparties.
- b) ONGC values its relationship with all counterparties and will deal with them in a fair and transparent manner.
- c) ONGC and /or its Associates (employees, agents, consultants, advisors, etc.) will not seek or take bribes /undue benefits directly or indirectly for themselves or for third parties.
- d) In competitive tender as well as in general procurement ONGC will deal counterparties with equity, reason and fairness.
- e) ONGC will exclude all Associates who may be prejudiced or have a conflict of interest in dealing with counterparties.

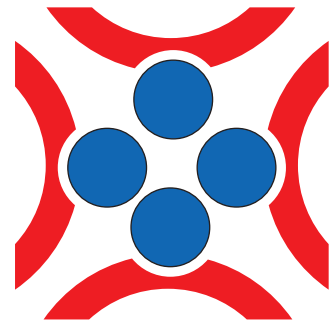
- f) ONGC will honour its commitments and make due payments to counterparties in timely manner.
- g) ONGC will initiate action and peruse it vigorously whenever corruption or unethical behaviour occurs.

(ii) Commitments And Obligations Of The “counterparty”

- a) The counterparty directly or indirectly (through Agent, Consultant, Advisor, etc.) will not pay any bribes or give illegal benefit to anyone to gain undue advantage in dealing with the ONGC.
- b) The counterparty will not engage in collusion, price fixing, etc. with other counterparts unless authorized by ONGC.
- c) The counterparty will not pass to any third party of the ONGC's confidential information unless authorized by ONGC.
- d) The counterparty will promote and observe best ethical practices within its organization.
- e) The counterparty will inform the Independent Monitor :
 - If they receive demand for a bribe or illegal payment/benefit.
 - If they come to know of any unethical or illegal payment/benefit
 - If they make any payment to any ONGC Associate.
- f) The Counter party will not make any false or misleading allegations against the ONGC or its associates.

(iii) Violations and Consequences:

- a) If a counter party commits a violation of its commitments and Obligations under the Integrity Pact Programme during bidding process, they shall be liable to compensate ONGC by way of liquidated damages equivalent to Earnest Money Deposit / Bid Security.
- b) In case of violation of the Integrity Pact whereby after award of the contract the ONGC terminates or is entitled to terminate the contract, ONGC shall be entitled to demand and recover from the contractor liquidated damages equivalent to Security Deposit / Performance Bank Guarantee.
- c) ONGC may ban and exclude the counterparty from future dealings until the Independent Monitors are satisfied that the counterparty will not commit any future violation.
- d) ONGC may initiate criminal proceedings against the violating counterparty.



IP MECHANISM AND PROCESS

ONGC has a robust mechanism in place to implement the IP in letter and spirit. Some of the major steps in the process are as follows:

- (a) All the bidders sign IP (pre-signed by ONGC authorized representative) while submitting bids.
- (b) As on today, one and all bidders sign the IP in all ONGC tenders. Some examples: GCA, Schlumberger, Halliburton, Transocean, Gesco, Jindal Drilling, CIPL, CDSS, ISMTL, OCTL, BHEL, BPCL, HSL, B&L, HPCL, HAL all Engineering EPC contractors etc. HAL, Bangalore under MoD is among the signatories.
- (c) So far about 5000 vendors have signed the IP while submitting their bids. These vendors included PSUs, NSIC registered vendors, foreign vendors.
- (d) ONGC engages three eminent personalities as Independent External Monitors (IEMs) with the concurrence of Central Vigilance Commission. The IEMs are normally senior retired functionaries with impeccable reputation and exposed to various facets of governance. Curriculum Vitea of IEMs are placed permanently on the home page of ONGC's web site*
- (e) Complaint from bidders is referred to IEM for review, if requested. CMD may also refer representations to the IEMs, if required.

In ONGC, there is process of periodic review and evaluation of IP programme also for the purpose of initiating corrective measures, if required.

Some OEMs/ Proprietary Article Manufacturers like M/s Altair Filter Technology, UK, M/s GE International Inc, Dubai, M/s. Haskel (Asia) Pte. Ltd, Singapore and M/s Indian Ordnance Factory, Pune have been given dispensation from signing IP. As articles/services provided by these companies are of proprietary nature, it becomes imperative for management to accede to their requests. However, this trend, though present in small proportion, indicates that there is an urgent need for the international business community to adopt IP as a mandatory tool so that such good initiatives are not adopted in isolation or as a matter of discretion.

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*https://tenders.ongc.co.in/wps/portal/!ut/p/b1/04_Sj9CPykyssy0xPLMnMz0vMAfGjz0INLc3MPB1NDLwsPJ1MDTzNPcxMDYJCjAOMzIAKIoEKDHAARwNC-sP1o8BK8Jjg55Gfm6pfkBthoOuoqAgArsF16g!!/pw/Z7_1966IA40J8IB50I7H650RT30D2/ren/m=view/s=normal/p=struts.portlet.action=QCPTenderHomeQCPIntegrityPactAction/p=struts.portlet.mode=view/=/

BENEFITS ACCRUED BY IMPLEMENTING IP IN ONGC

ONGC carried out an analysis of some of the major contracts awarded by them in the recent past after implementation of IP and tried to assess its impact in terms of satisfaction of stake holders and monetary benefits accrued to ONGC. Some of the important opinions given by IEMs, which brought about more transparency and fair play in the tendering process are as under:

(i) In the year 2012, ONGC invited tender for charter hiring of Vessel with estimated cost of US\$678 Million. Bidder represented that its bid was rejected as the company was not incorporated on the date of purchase of the tender document. After deliberations, IEMs opined that it may not be appropriate to reject the offer of the bidder merely on the ground of their having purchased the tender document before issue of certificate of incorporation by competent authority; however, if their bid is rejected by ONGC due to their not meeting any other parameter or condition of tender document, same would be within the purview of ONGC.

(ii) In the same tender, two bidder 'A' and 'B' represented against technical evaluation of their bids w.r.t. their Technical Collaboration agreement. Another bidder 'C' represented against entertaining of allegations from the disqualified bidders and for fairness in the tender. IEMs observed that process of the tender has been vitiated due to certain infirmities and advised ONGC management to take a view.

(iii) In a tender of Well platform project (in 2012), having estimated value of US\$ 141 Million, Bidder A represented whether consortium bidder B followed all requirements of BEC of bid documents and whether MOU submitted by bidder B comply with "Instructions to Bidders" and also whether disclosures made in Price bid and unpriced bid are identical. IEMs observed that there are infirmities and deviations which do not seem to be minor in nature and ONGC should revisit the issue.

(iv) In a tender of replacement of Equipments (in 2013) having estimated value of US\$24 Million, Bidder represented against rejection of their bid on ground of not meeting the experience criteria. IEMs felt that all the offers received should have been evaluated by applying same yardstick and similarly placed bidders should not be treated differently. ONGC should enquire and reasons for differential treatment to be informed to IEMs. ONGC had to review evaluation of the tender.

(v) In a case of software procurement (in 2013) related to hydrocarbon industry, a representation was made against ONGC's decision to award the contract on nomination basis to M/s. Schlumberger. IEMs upheld the representation and felt that in this case the procurement process has been vitiated. IEMs advised ONGC to review the procurement process of awarding on single tender nomination basis instead of resorting to open tender adopted in this case.

(vi) In a case of Offshore project (estimated cost of US\$ 600 Million in the year 2011), one of the bidders represented against wrong technical evaluation by technical committee. IEM dwelled upon the matter and opined that ONGC can seek clarification from the said bidder. Ultimately, this very bidder turned out to be L-1 with quoted rates of US\$100 million less than the L-2 bidder.

CONCLUSION

As is evident from above that due to implementation of Integrity Pact, bidders could raise an alarm in a transparent manner and were also provided with level playing field. **The process needless to mention avoided series of complaints and litigations costs, ultimately assisting all stakeholders in fair play. It also helped ONGC to speed up the tender process and decrease cost of procurement by way of increased competition.** One of the biggest advantage noticed due to IP implementation, is the reduced political, diplomatic and administrative interferences from various quarters. In the long run, this has enhanced the confidence of business community in procurement process being fair and transparent in ONGC. As such ONGC is committed to bring transparency in all its working spheres and IP is one of the vital instruments towards that goal.

One of the biggest advantage noticed due to IP implementation, is the reduced political, diplomatic and administrative interferences from various quarters. In the long run, this has enhanced the confidence of business community in procurement process being fair and transparent in ONGC.

COMMITMENT AND COMPLIANCE: BASF'S EFFORTS TOWARDS TRANSPARENCY AND OPTIMUM CORPORATE GOVERNANCE

Raman Ramchandran
Chairman,
BASF Companies in India and
Head South Asia

PROFILE OF THE COMPANY

At BASF, we create chemistry – and have been doing so for 150 years. Our portfolio ranges from chemicals, plastics, performance products and crop protection products to oil and gas. As the world's leading chemical company, we combine economic success with environmental protection and social responsibility. **Through science and innovation, we enable our customers, in nearly every industry, to meet the current and future needs of society. Our products and solutions contribute to conserving resources, ensuring nutrition and improving quality of life.** We have summed up this contribution in our corporate purpose: We create chemistry for a sustainable future. BASF had sales of about €74 billion in 2013 and over 112,000 employees as of the end of the year. BASF shares are traded on the stock exchanges in Frankfurt (BAS), London (BFA) and Zurich (AN). Further information on BASF is available on their website <www.basf.com>

BASF INDIA LIMITED

BASF India Limited (BSE code: 500042) is a public limited company. BASF has successfully partnered India's progress for over a century, with 13 of BASF's 14 global businesses maintaining a local presence in India today. BASF in India maintains excellent performance in environment, health and safety, in line with BASF global and internationally accepted standards. On the social front, our community development activities focus on relief and rehabilitation, women's empowerment, education, and improving governance standards. BASF in India has 2,254 employees at eight production sites & sales offices and two R&D centers. In 2013, BASF registered sales of €1.02 billion to customers in India.

INTRODUCTION

According to a study¹, the life of a Fortune 500 company or an equivalent is between 40-50 years. BASF, which will celebrate its 150th anniversary in 2015, is one of the exceptions. Effective corporate governance plays a key role in ensuring the transparency and accountability necessary to maintain a business over the long term.

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¹Corporate Births and Deaths by Royal Dutch Shell Group

Corporate governance includes the organization, values, corporate principles and guidelines as well as internal and external control and monitoring mechanisms. At BASF, effective and transparent corporate governance guarantees the company is managed and monitored in a responsible manner, with a focus on value creation. This fosters confidence of domestic and international investors, the financial markets, customers and other business partners, employees, and the public.

BASF combines economic success with environmental protection and social responsibility. Through science and innovation, BASF supports its customers in nearly every industry to meet the current and future needs of society. The company's products and solutions contribute to conserving resources, ensuring nutrition and improving quality of life. In 2011 this contribution was summed up in the BASF corporate purpose: We create chemistry for a sustainable future.

In line with this, **compliance is an important element of corporate governance. Based on international standards, BASF's Compliance Program combines important laws and company policies regulating the behavior of all BASF employees.** BASF has integrated compliance into the “We Create Chemistry” strategy as well in the company's internal guidelines.

Other than this, BASF has also implemented a Supplier Code of Conduct which includes environmental protection as well as compliance with human rights, labor and social standards, anti-discrimination and anticorruption policies. **Together with suppliers, BASF aims to create value and minimize risks.** With a sustainability-oriented supply chain management, the company pursues two primary goals: To strengthen suppliers' awareness of our standards and expectations, and shape their contribution to sustainable development in a transparent manner. BASF has also increased its focus on protecting data privacy by highlighting the issue in the global Code of Conduct.

In 2013 BASF rolled out One Company, One Code of Conduct – The BASF Compliance Program guide to all employees.

BASF has a Vendor Management Framework and stringent Reporting mechanisms in place to ensure there are no discrepancies in reporting formats. The company also supports a variety of external initiatives which help build a holistic ecosystem that promotes healthy and sustainable communities.

INITIATIVES UNDERTAKEN WITHIN BASF

BASF's Code of Conduct

BASF's Employee Code of Conduct firmly embeds mandatory standards into day-to-day business. The BASF Code of Conduct summarizes important laws and corporate policies that govern the behavior of all BASF employees in their dealings with business partners, office holders, other employees and society. It guides employees to make the right choices. The uniform Code of Conduct, updated in 2013, merges previous behavioral guidelines and covers human rights, labor and social standards, and conflicts of interest. **Efforts are principally aimed at preventing violations from the outset.** BASF's Code of Conduct is available in 26 languages and covers environmental protection as well as compliance with anti-discrimination and anti-corruption policies. Globally, all employees must take part in basic compliance training, refresher courses and special tutorials within a prescribed time frame. Board of Directors & Senior Management also affirms to the Code of Conduct. In 2013, more than 47,000 employees worldwide took part in a total of around 62,000 hours of compliance training.

BASF India Limited complies with the requirements of Corporate Governance in terms of Clause 49 of the Listing Agreement, as do other BASF companies in India. The company philosophy aims to help the management efficiently conduct its business and meet its obligations to its stakeholders, guided by a strong emphasis on transparency, accountability and integrity.

One Company, One Code of Conduct – The BASF Compliance Program

BASF is strictly committed to high standards of legal compliance as well as business ethics and expects all employees to adhere to these

In 2013, more than 47,000 employees worldwide took part in a total of around 62,000 hours of compliance training.

standards. Some defined policies that employees are exposed to frequently are highlighted in this program. Policies such as:

Gifts and Entertainment: Gifts, business meals or entertainment can be given or accepted only if intended or understood as simple business courtesies which are consistent with customary business practices and which from the outset rule out any influence on a business decision or an official decree. Offering, granting, demanding or accepting cash or cash equivalents is not allowed. Employees are instructed not to offer gifts to employees of other Companies, if they are aware that their gift policy does not allow its employees to receive gifts. **Giving and receiving of gifts beyond certain threshold require approval of the Managing Director of the Company. Names of the recipients of the gifts should be identified in advance at the time of taking the approval.** For employees working in the procurement department, there is a ZERO gift policy.

Corruption: BASF prohibits its employees, agents, and other third parties acting on BASF's behalf from engaging in any form of bribery. While dealing with business partners or government officials, they must never demand or accept anything of value (e.g. cash, gifts, entertainment or any other personal benefits) which could be construed as an attempt to influence or induce business decisions. Likewise, employees of other companies or government officials must never be promised or granted any personal benefits with the intent to obtain or retain business or to gain any improper advantage for BASF. **Furthermore, "facilitation payments" is not allowed.**

Money Laundering: No employee, either alone or in collaboration with third parties, may take measures that violate applicable regulations on money laundering. **Where questionable financial transactions involving transfers of cash or cash equivalents are requested, prior review by and approval from the treasurer is required.**

Hotlines: Compliance hotlines have been established in all regions of the world for reporting of any suspected or actual violation of law or Company policy. All cases reported are handled with confidentiality and thoroughly investigated.

For employees working in the procurement department, there is a ZERO gift policy.

Vendor Management Framework at BASF

An efficient framework of transparency can be followed only if a company's business partners also follow stringent corporate governance policies and compliance standards. Therefore, BASF has intensified its activities in evaluating suppliers.

Both new and existing suppliers are selected and evaluated on the basis of economic criteria and on environmental, social and corporate governance standards. **BASF's Supplier Code of Conduct is based on internationally recognized guidelines, such as the principles of the United Nations' Global Compact Initiative, the International Labor Organization conventions and Responsible Care.**

BASF has provided training on sustainability-oriented supplier management to 745 employees in procurement around the world in 2013. This enabled them to explore dialogues with our suppliers to raise awareness and minimize possible risks along the supply chain.

BASF in India has successfully and consistently shown a high level of commitment towards effective Corporate Governance and has been at the forefront of benchmarking its internal systems and policies with global standards. The company ensures that its operations and actions serve the underlying goal of enhancing the interests of its stakeholders over a sustained period of time, in a socially responsible way.

Reporting Mechanisms

BASF firmly believes in abiding compliance standards which is a part of responsible leadership. BASF sees compliance as the right way to secure the company's long-term success amongst our internal and external audiences. BASF aims to achieve higher levels of transparency, accountability and ethical conduct in all facets of its operations and interactions with its stakeholders, in India as around the world.

On a global scale, BASF ensures regular investigation of reported incidents by experts within a determined time frame. The Chief Compliance Officer (CCO) and more than 100 compliance officers worldwide regularly report to the Board of Executive Directors.

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Furthermore, the CCO reports to the Supervisory Board's Audit Committee in at least one of its meetings each year on the status of the Compliance Program as well as any major developments. In the event of significant incidents, the Audit Committee is immediately informed by the Board of Executive Directors.

Additionally, BASF's Corporate Audit department monitors adherence to compliance principles, to ensure employees adhere to regulations and make sure that the established processes, procedures and monitoring tools are appropriate and sufficient to minimize potential risk or preclude violations in the first place. In 2013, around the world 111 Group-wide audits of this kind were performed, predominantly in the areas of antitrust law, imports and exports, and gifts and entertainment.

BASF also supports the respect of human rights and the fight against corruption: BASF is a founding member of the United Nations Global Compact, and is committed to its responsibility in accordance with the U.N. Guiding Principles on Business and Human Rights.

As a member of Transparency International Deutschland and the Partnering Against Corruption Initiative (PACI) of the World Economic Forum, BASF assists in the implementation of these organizations' objectives. As a member of the U.N. Global Compact LEAD, BASF reports in accordance with the Blueprint for Corporate Sustainability Leadership. This action plan comprises concrete measures to support the U.N. Millennium Development Goals, addressing topics such as transparency and stakeholder engagement.

In India as well, BASF's Code of Conduct sets forth the company's policies on important issues, including the company's Gift Policy, Procurement Policy, Policy Against Sexual Harassment, and CSR Policy. These policies aim to develop a genuine and transparent culture where employees act as role models in promoting business ethics and legal compliance. Regular training is provided to all employees through specific training sessions, e-learning modules and internal audits to check on compliance.

In India as well, BASF's Code of Conduct sets forth the company's policies on important issues, including the company's Gift Policy, Procurement Policy, Policy Against Sexual Harassment, and CSR Policy. These policies aim to develop a genuine and transparent culture where employees act as role models in promoting business ethics and legal compliance.

EXTERNAL INITIATIVES SUPPORTED BY BASF

BASF's support to Anti-Corruption and Anti-Discrimination

In line with its corporate purpose and with India's national direction, BASF supports a number of anti-corruption and anti-discrimination initiatives.

Million Minds: BASF has conceptualized a unique program called 'Million Minds', **which aims to improve governance standards by focusing on the giver, who contributes towards the act of corruption.** The Million Minds project aims to sensitize at least one million Indian citizens to the issue of corruption and to facilitate joint efforts in fighting against corruption. BASF has published booklets including - 'Extracts: Citizen's Guide to Fighting Corruption' and 'A Simple Guide to Right to Information Act'. To highlight the achievements of youth role models who have raised the governance standards in all walks of life, BASF introduced the 'Good Governance ICON series in 2007.

Under the aegis of the Million Minds project, in 2013, BASF in India conducted the Seminar Series on Corporate Governance and Business Ethics at leading educational institutes across India such as the HR College, the SIES College of Management Studies, Shri Dharmasthala Manjunatheshwara (SDM) College of Business Management & Post Graduate Center for Management Studies & Research in Mangalore, and the Indo-German Training Centre in Mumbai. This seminar series was developed by BASF in collaboration with academia by training the students on all practical aspects of governance and ethical issues through a formal study course. **The primary objective of this initiative was to instill good governance practices among the student community, which is on the threshold of entering the corporate world.**

Code of Ethics: To make business in India more transparent, BASF also worked with an Expert Committee on Governance of the Bombay Chamber of Commerce and Industry to draft a Code of Ethics for companies. BASF is one of the founder signatories of the Code of Ethics, along with self-audit guidelines and a whistle-blower policy, all of which were presented to the Hon'ble Chief Minister of Maharashtra. **BASF also established the 'Ethics Cell' as a part of Bombay Chamber of Commerce, which aims to help Micro, Small and Medium Enterprises fight corruption issues at an aggregate level.**

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The Bombay Chamber of Commerce invited Mumbai's business community in 2012 to present its views on the trends emerging out of the study of companies indicted of corruption and fraud in India in the last 15 years. The study was conducted by Global Compact Network India (GCNI) along with its partners Thought Arbitrage Research Institute (TARI) and International Business Leaders Forum (IBLF). Under the 'Million Minds' project, BASF leaders used business networks like these to encourage other companies to focus on the giver in the act of corruption, and to raise governance standards, through which the risk of fraud and fraudulent practices can be minimized.

CONCLUSION

BASF is strictly committed to high standards of legal compliance as well as business ethics and expects all employees to adhere to these standards. Such a commitment must run deeply through the entire organization, as every employee is an ambassador for the company. The initiatives mentioned above have been streamlined and continuously improved through the years to ensure complete transparency in the organization.

Additionally as the business landscape starts getting more complex, corporate governance will support BASF to increase its value with stakeholders and streamline measures that could help customers improve their businesses. In short, corporate governance and compliance will complement business profitability over the long run.





SECTION - 5

mSMEs IN INDIA

A large graphic featuring two concentric circles. The inner circle is teal, and the outer circle is light grey. A horizontal bar is positioned to the right of the circles, divided into three segments: grey, blue, and red. In the center of the teal circle is a large white number '5' with a subtle drop shadow.

5

1. COMPETITION POLICIES AND mSMEs IN INDIA

- Excerpt from FISME Handbook

2. PBC'S COMMITMENT TO UNGC'S '10TH PRINCIPLE': Challenges and Opportunities of Ethical Business Conduct for SME's In India

- Paharpur Business Centre

COMPETITION POLICIES AND MSMEs IN INDIA

Federation of Indian Micro Small & Medium Enterprises (FISME)

Excerpt from FISME Handbook

BACKGROUND

A competitive environment is essential if resources are to be used efficiently. The competitive markets provide positive incentives for good performance encouraging firms to improve productivity, reduce prices and innovate. They also reward consumers with lower prices, higher quality and wider choice. A competitive environment, therefore, precedes competitiveness and drives it further.

The legal and administrative frameworks – termed as Competition or Antitrust Policies, aiming fair competition, have been in evolution for years in many countries. While moral argument of fairness has always been strong, it is the heightened global competition that has added a new dimension to the debate. Today all nations are chasing competitiveness for which an efficient and effective Competition policy framework has become indispensable.

A competition policy framework aims to encourage and promote the competitive spirit and culture to enhance the competitive process. It influences the economic policies adopted by Government making them more amenable to competition and provide for the legal instruments needed to curb and penalize anti-competitive business practices.

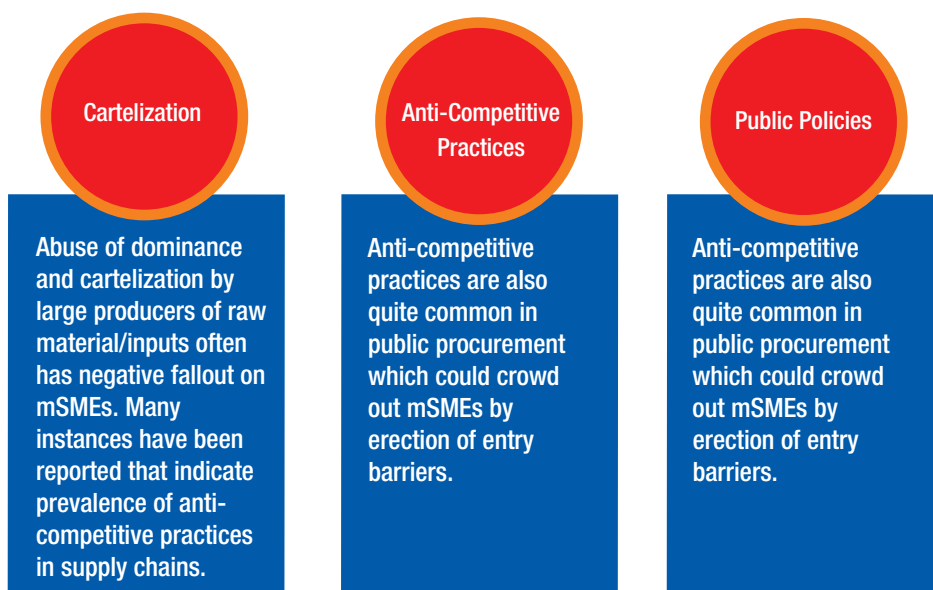
While a not-so-effective mechanism of Monopolies and Restrictive Trade Practices Act 1969 did exist covering limited aspects, developments with regard to a comprehensive Competition policies in India are of recent origin. Though the Competition Commission of India was established through the Competition Act, 2002 on 14th October, 2003, it could become fully functional only in 2009.

The micro Small and Medium Enterprises (mSMEs) sector is a big stake holder in the debate. There are around 26 Million mSMEs employing over 60 Million people and accounting for 45% of Industrial output and over 40% of India's direct exports. The mSMEs are largely unorganized and vulnerable to adverse external economic environment.

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¹The Article is an excerpt from the Handbook on Competition Policies and MSMEs in India published by Federation of Indian Micro and Macro Small and Medium Enterprises (FISME).



The Competition policy dispensation provides for recourse measures against many of such practices. However, the mSMEs are largely ignorant of their rights and responsibilities in the new Competition policy regime. To address the issue, Federation of Micro and Small & Medium Enterprises (FISME) under the project 'Strategies and Preparedness for Trade and Globalization India' which has been coordinated by UNCTAD and sponsored by Department of Commerce (Ministry of Commerce and Industry) and DFID, commissioned a study probing as to how mSMEs could leverage the new Competition policy framework to their advantage.

A survey was conducted as part of the study to gather insights from experience of mSMEs on various unfair/anti-competitive practices they encountered while doing business. The Handbook help mSMEs themselves identify such practices both in public and private domain and explains the remedial measures available under the law to mitigate their hardships.

INTRODUCTION

A perfect competition exists in a “completely efficient market situation characterized by numerous buyers and sellers, a homogenous product, perfect information for all parties, and complete freedom to move in and out of the market”. Even though perfect competition is a utopian concept, it is used as a standard for measuring market performance.

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Indian Parliament passed the Competition Act in 2002 and it received the President's assent in January, 2003. To fulfil the objectives of the Act, government established a Commission with effect from October 14, 2003. Certain provisions of the Act were challenged in the Supreme Court and Chennai High Court. In response, Government promised to carry out amendments to the Act. This amendment bill was introduced in Parliament in 2006 and was adopted in 2007. Subsequent to the said amendments, provisions in the Act dealing with ant-competitive agreement and abuse of dominance respectively, were notified in May, 2009.

Provisions related to Combinations (Mergers, Acquisitions and Joint Ventures) have not been notified by 2014. **The government is considering increasing the threshold limits of the asset value and the turnover for notification of Combinations in order to exclude smaller transactions with limited effect on the market from the purview of the Commission.**

ANTI-COMPETITIVE VIOLATIONS

The Handbook discusses in detail particular anti-competitive activities, illustrates it with examples, outlines indicative behaviour for each anti-competitive activity and presents a crisp case study where legal action was taken against the activity.

Some of the Anti-competitive activities are discussed as follows

1. Bid-Rigging

An agreement, between enterprises or persons engaged in identical or similar production or trading of goods or provisions of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding. It can also be defined as a particular form of collusive price-fixing behavior by which firms coordinate their bids on procurement or project contracts.

Case Study:

In Elevators and Escalators case the entities informed each other of calls for tenders and coordinated their bids according to pre-agreed quotas. Cover bids were sometimes made but deliberately at a higher price. Fines amounting to 992 million Euros were imposed on these entities.



2. Bundling/Leveraging:

It is a marketing strategy in which a dominant enterprise sells one product in proportion to another as a requirement for the sale. It is quite common in the software industry. For instance, bundling operating system with media player or bundling of channels by cable operators. For example consider two markets, one of ink and other of pen. Enterprise A has monopoly in the market for ink but there are many competitors in the market for pen. Bundling/Leveraging occurs when enterprise A starts creating conditions when the buyers of Ink also start buying A's pen. For example enterprise A can do it by offering a rebate if the consumer buys both Ink and Pen. Such a strategy would kill competition in the market for pens.

Case Study:

In Eurofix-Bauco v Hilti, the accused undertaking was held guilty of giving less discounts to customers for orders on nail cartridges without nails.

3. Tie-in Agreement

It is an agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods. Consider two markets, one of pencil and other of eraser. 'A' who is operating in both markets sells pencil only on the condition that the consumer also buys eraser. (The survey elicited the response that "all large manufacturers follow the policy that slow moving items had to be purchased, if mSME had to purchase a fast moving item.)

Case Study

In a case related to Microsoft in the European Union, the company was accused of tying in its operating system with Internet Explorer. Subsequently Microsoft gave a commitment to give consumers in the European Union the opportunity to choose from a variety of browsers to access and surf the Internet.

4. Market sharing cartel

In a market-sharing cartel the member firms agree only on how to share the market. Each firm then operates only in one area or region agreed without encroaching on the others' territories. A, B and C are the three players in the Indian market for cement. In order to maintain their profits they decided to divide the market into three parts exclusively reserved for each of the enterprises and agree not to compete with each other and restrict their operations to their respective market.



A responded said "In India there are only two major players. Both these companies have bifurcated their customers (markets) and they do not disturb each others' existing customers. For last two years they have been regularly increasing their prices to actual users".

5. Predatory Pricing/Destroying Price

Predatory Pricing is a strategy for driving out competitors by selling goods at prices which are less than their cost of production as may be determined by regulations. In Tetra Pack II case, Tetra Pack was selling non-aseptic cartons at a loss. It was found to be guilty of predatory pricing.

6. Discrimination/Price discrimination

It is the practice of imposing discriminatory condition or price in purchase or sale of goods or service to customers by a dominant undertaking. Dominant Firm Enterprise A is a manufacturer of tyre and tubes and dominant in the market. It supplies tyres in Delhi. Enterprises B and C are buyers of tyre tubes in Delhi. A supplier's tyre tubes to B at INR 100 per tube and to C at INR 150 per tyre tube even though there is no difference in the cost of supplying the tyre tubes. Further this discrimination is without any justification.

Tender conditions, like high annual turnover of the entity, which are not relevant to the sale of product concerned, may be considered a case of abuse of dominance by imposing discriminatory conditions.

7. Price-fixing cartel

Price fixing cartel occurs when two or more firms agree to raise or fix the prices in order to increase their profits by reducing competition. It is an attempt at forming a collective monopoly.

If the manufacturers of products e.g. polysters, polymers, titanium dioxide have been increasing the prices simultaneously, there is a possibility of a price-fixing cartel if it can be proved that there was meeting of minds between the competitors. If the manufacturers of product have agreed to hike the prices upward when the international prices are rising, but not to reduce them with the fall in international prices, it may be considered a price-fixing cartel.

If the polyester film manufacturers are increasing prices simultaneously and randomly, if it can be proved that the competitors are doing it in terms of an agreement, this could qualify as a price-fixing cartel.

Tender conditions, like high annual turnover of the entity, which are not relevant to the sale of product concerned, may be considered a case of abuse of dominance by imposing discriminatory conditions.



8. Margin Squeezing

It is an attempt by vertically integrated undertaking, holding a dominant position in the upstream market, to prevent its downstream competitors, who are not vertically integrated from achieving an economically viable price – cost margin.

Case Study:

In Napier Brown-British Sugar case, British Sugar was dominant both in the market for sugar beet and in the market for the derived product viz. sugar sold in retail market. It was found to be guilty of reducing the price of retail sugar by more than cost of transforming the raw material in order to drive sugar merchants including Napier Brown from the retail level of the market. It also specifically undercut Napier Brown's prices in respect of certain customers. It was fined 3 million Euros.

CONSEQUENCES OF VIOLATIONS

Commission has been given broad powers for restraining anti-competitive activities and penalizing the precursor of such activities. Enterprises and their officers should understand in no unclear terms that the consequences of anti-competitive activities can be devastating for the future of enterprise, as a whole, and individual officers responsible for such activities.

In case Commission concludes that there has been contravention of statutory prohibitions, it can pass any or all of the following order:

- It can direct the violating entity to discontinue and not to re – enter such agreement or discontinue the abuse of dominant position.
- It can impose such penalty as it deems fit upon each of the persons or enterprises which are parties to such agreement or abuse. However, such penalty can be up to ten percent of the average of the turnover of the guilty party for the last three preceding financial years.

Cartelisation is considered the most serious anti-competitive activity. They are difficult to detect and prosecute. Hence, the law limits the degree of evidence required to prosecute a cartel.

- In case of cartels, Commission can impose, upon all the participants of the cartel, a penalty of up to three times of the profits for each year of continuance of such agreement
- It can give directions for modifying the agreement
- Pass order or give directions as it may deem fit

Cartelisation is considered the most serious anti-competitive activity. They are difficult to detect and prosecute. Hence, the law limits the degree of evidence required to prosecute a cartel.

Further, if Commission finds that the contravening entity is a member of a group of companies, and that other members of the group were also responsible for, or in any way contributed to the anti-competitive activity, then the above mentioned orders can also be passed against such group members.

Failure to comply with orders/directions of the commission – **In case of a failure to comply with its order or direction, commission can impose fine on the guilty party, which may extend to INR 1 Lakh for each day for which such non-compliance occurs, subject to a maximum of INR ten Crore.** If the person concerned does not comply with the orders or directions issued or fail to pay the fine imposed, Commission can lodge a complaint with Chief Metropolitan Magistrate, Delhi who can punish the offender with imprisonment term which may extend to three years or with fine which may extend to Rs. 25 crores. Further, any persons can make an application to the Competition Appellate Tribunal for an order towards recovery of compensation from the offending person/enterprise, for any loss or damage suffered by such person as a result of violation of directions issued by the Commission or contravening, without any reasonable ground, any decision or order of the Commission.

No Corporate Veil – Competition Act, enables the Commission to look at individuals behind the corporate veil. Commission will deem both individual and the company guilty, if at the time at which contravention was committed, the said individual was in charge of and was responsible to the company for the conduct of such business. He/she would be liable to be proceeded against and punished in accordance with law.

mSMES AND COMPETITION POLICY: A WAY FORWARD

Though the Indian Competition Act does contain many provisions which are of direct interest to mSMEs, there are a few areas where a mSME specific dispensation in Competition Policy framework would be more helpful in improving their capability to compete with much bigger competitors and in ensuring a level playing field.

Special Provision in Merger Provisions

mSMEs may often get into a combination in order to fulfil their funding requirements. These may be in the nature of mergers or joint ventures. A provision which makes an exception from merger notification, if one of the parties to a combination is an mSME, then it would ensure that mSME related transactions do not face procedural constraints vis-à-vis Competition law.

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De Minimis in abuse of dominance

Even an mSME may be considered dominant in a small market. mSMEs can advocate for a de Minimis rule laying down threshold in order to ensure that mSME cannot be considered adominant enterprise in particular market.

Settlement Procedure

Settlement Procedures ensure that parties avoid lengthy investigation and expensive litigation. Provisions for settlement have been made in competition law statutes in other countries. However, Indian Competition Act, does not provide for any kind of settlement procedure. In light of this, mSMEs can advocate for a provision for settlement at least with respect to the mSMEs.

Special Provision for claiming damages

Under the present dispensation, the process for claiming damages is much more prolonged. A person who has suffered damages due to anti-competitive activities has to approach the Competition Appellate Tribunal with an order of the Commission to seek damages. mSMEs can advocate a special provision, which can allow Commission to give damages to mSME within acertain pecuniary limit. In the alternative, the said provision can give a time frame within which Competition Appellate Tribunal should decide a damages cases filed by an mSME.

Powers to the Commission to comment on the Policy Issues

It is possible that statutory authorities in India may come up with policies which may be Anti-competitive. In such a situation, Commission should have the power to advise the relevant statutory authority against implementation of such policies. Hence, mSMEs can request for Provisions which allow a person to approach the Commission, in order to bring such anti-competitive policies, proposed or existing, to its attention. The provisions should also allow the Commission to take suo moto notice of the matter and advise against.

Settlement Procedures ensure that parties avoid lengthy investigation and expensive litigation. Provisions for settlement have been made in competition law statutes in other countries. However, Indian Competition Act, does not provide for any kind of settlement procedure. In light of this, mSMEs can advocate for a provision for settlement at least with respect to the mSMEs.

CONCLUSION

A business case for anticorruption, in any economy, essentially has three core stakeholders, whose roles are complementary to each other, viz. the Government, public and private sector companies and mSMEs. Wherein, **Government is responsible for framing conditions in an economic environment, large companies and mSMEs are mutually dependent on each other for the realisation of effective profits.**

Unlike their larger counterparts, most mSMEs in India continue to suffer from ambiguity of compliance management, low resource base and are caught in the vicious circle of 'low resources - lower focus on compliance', as existence is closely related to survival. The limitation is exacerbated in view of changing needs of mSMEs with national and global compliance mechanisms becoming a qualifying / differentiating factor for success of an enterprise. The need for capacity building of mSME, through active associations like FISME, is being felt equally by the mSME development agencies as well as by other key development focused stakeholders.

Most mSMEs in India continue to suffer from ambiguity of compliance management, low resource base and are caught in the vicious circle of 'low resources - lower focus on compliance', as existence is closely related to survival.

PBC'S COMMITMENT TO UNGC'S '10TH PRINCIPLE': CHALLENGES AND OPPORTUNITIES OF ETHICAL BUSINESS CONDUCT FOR SME'S IN INDIA

Paharpur Business Centre
(PBC)

BUSINESS BACKGROUND

Located in one of the largest and busiest business districts of South Delhi – Nehru Place, New Delhi – Paharpur Business Centre (PBC) is a green Micro, Small and Medium Enterprises (mSME) in the service and real estate sector that offers instant, managed & serviced Office Solutions on a “plug & play” basis in mountain fresh air ambience at flexible terms. PBC also offers 24x7 Luxury Furnished Space for Large and Small Offices, Conferences, Trainings, Interviews, Seminars, Product Launches, Cocktail Parties, Hi-Tea, Corporate Lunches and Dinners along with a suite of 27 support services.

Built to compulsory Government Design, it is the first retrofit building in India that is USGBC LEED Platinum EB Certified (under O & M category) in 2010 and a BEE 5-star rated building with an annual energy hourly energy rating (AAhEPI) of 28 Wh/ hr/ sqm². PBC & its suite of 27 support services are certified to ISO 9001, 14001, 22000, 50001, SA 8000 & OHSAS 180001.

PBC has been recognized for its transparent business practices since its inception and was presented '**Ethics is Good Business**' award in December 2005 by **Dr. A. P. J. Abdul Kalam**, the then President of India.

COMMITMENT TO PRINCIPLES OF UN GLOBAL COMPACT

PBC is deeply committed to the ten principles of UN Global Compact. It conducts itself in a responsible & ethical manner, ensuring transparency in all its dealings, especially in its supply chain management, to assure all stakeholders of its accountability and responsibility. Strict adherence to the laws of the land; both statutory and regulatory compliances are an essential aspect of all PBC Business verticals / operations.

Regular internal audits are carried out by our Quality Assurance (QA), Finance, Human Resources (HR) and Legal Departments to ensure standards, codes and other statutory and regulatory requirements are regularly updated whilst also controlling & monitoring its adherence in PBC's day to day operations.

**USGBC: US Green Building Council*

**LEED: Leadership in Energy and Environmental Design*

**EB: Existing Buildings*

**O & M category: Operations and Maintenance*

**BEE: Bureau of Energy Efficiency*

**Wh/hr/sqm refers to Watt-hour per hour for every square meter*

PBC conducts itself in a responsible & ethical manner, ensuring transparency in all its dealings, especially in its supply chain management to assure all stakeholders of its accountability and responsibility.

Apart from this there is an on-going / concurrent financial audit that happens by an independent entity, who report directly to the top management on the findings. Third party audits of the various management systems reinforce this by providing an unbiased audit of the systems and operational standards.

In case any business unit/department is found to be non-compliant during the audit process, immediate corrective action is taken in terms of re-defining of SOPs, getting the compliances in place and reviewing it for further compliance & adequacy.

PBC has various business verticals. During the audit process, one of the departments was found to be non-compliant to departmental process. There were several gaps in the billing report of the respective department. For each variation that was found by the audit team, the concerned HOD was asked to submit a detailed report with proper justification and adequate evidences within a week's time. This was followed by an exhaustive verification of each and every observation and the corrective measures were immediately implemented and process reviewed for further adequacy.

As a part of the corrective measure, PBC made necessary changes in the departmental processes and the responsibilities of each team member to avoid re-occurrence of such an instance in the future. PBC also created a system of evaluation by placing check-points at various levels to ensure that as and when any gap comes up, it is highlighted and further, resolved. It took PBC about 3 weeks to resolve it at the root level.

At PBC, policies are developed in a transparent manner to prevent corruption and intentional wrong-doings. The company manual 'Management Standing Instructions' (MSI) lists down all the policies as well as the 'Dos' and 'Don'ts' and this forms an integral part of the formal induction process that every new employee has to undergo and also sign off in order to confirm and agree that while they are at PBC they will conform to its code of conduct.

Regular training programs and workshops conducted by HR department ensure that the team members are aware of the core value system of the organization.

During the audit process, one of the departments was found to be non-compliant to departmental process. There were several gaps in the billing report of the respective department. For each variation that was found by the audit team, the concerned HOD was asked to submit a detailed report with proper justification and adequate evidences within a week's time. This was followed by an exhaustive verification of each and every observation and the corrective measures were immediately implemented and process reviewed for further adequacy.

Any employee violating the company's code of conduct and/or found exhibiting unethical behavior is subject to an investigation by the committee and appropriate action is taken against the violator in an impartial / unbiased manner.

Something similar happened when one of the PBC employees took money for booking a party and did not deposit it with the accounts, nor did he book the party. The employee did not account for it and pocketed it. It came to light when the customer came to PBC's office to meet the concerned manager to talk about the event facilities and decide the date. Though the difference between the actual amount and the forged one was not huge for PBC, however, considering the stringent practices followed in the organization, the particular employee was asked to leave, even though he had been with the organisation for over fifteen years.

This was done because of PBC has a "Zero Tolerance" policy on ethics, personal integrity and dishonest conduct.

INTEGRITY IN BUSINESS

At PBC, personal integrity and integrity in business are regarded as two most important pre-requisites for recruiting / employing talent, getting business, signing Business MOU, finalizing vendors / sub-contractors or forging new partnerships. The company does not condone any violation of the law, unethical business, dishonesty or other participation in any illegal act such as bribery, fraud and theft.

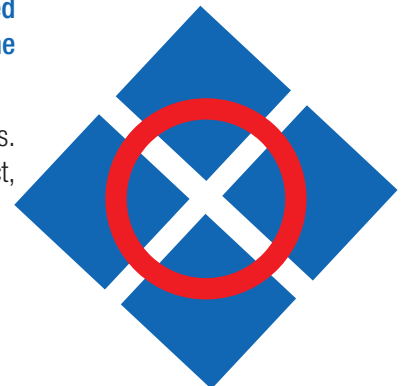
PBC statement can be well demonstrated by the instance mentioned below:

Few years back, PBC had hired a very Senior Marketing person as Head of Sales and Marketing. However during the background verification by HR from his previous company, it was ascertained that he had forged documents related to his salary and work experience.

A senior team from PBC met his former employers, authenticated the information and necessary action was taken post the investigation.

The recruitment team at PBC is very stringent about hiring procedures. Though skills of a candidate matter a lot; however, the code of conduct, ethical behavior and personal integrity of a person is not overlooked.

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PBC has put systems in place to ensure that only candidates who are talented and morally sound are employed. PBC does not compromise with their recruitment ethics / policy in any form or manner.

PBC'S ANTI-CORRUPTION AND ETHICAL POLICY:

PBC has a stated anti-corruption and ethical policy monitored by Human Resource Department and all the HODs in their respective business area. The anti- corruption policy was initiated on April 28, 2011 by Quality Assurance / Sustainability Department. It was then discussed with the CEO who was determined to have a proper system in place to address corruption and ethical dilemmas faced by the employees during operations.

It also provided the HODs an opportunity to present their views and provide inputs on the components of the policy. This process also gave them a strong feeling of belonging and owning the system and therefore commitment to adhere to its tenets at all times.

Drawing from the inputs from the business heads, a team comprising key players from QA and HR department and the GM's Committee developed a policy framework. This was discussed with the CEO for his inputs, which were included in the policy document. The CEO then presented this before the board for final validation / approval, which was given on May 26, 2011.

It took PBC less than a month in formulating a very clear cut ethical / anti-corruption policy and process, developed in consensus, due to strong leadership.

ANTI-CORRUPTION & ETHICAL POLICY AT PBC states

As employees in PBC, we:

- Will ensure to behave in an honest & ethical manner.
- Will set a good example by being trustworthy.
- We will make sure that our behavior complies with the policies and rules of the organization / PBC.
- We will use the resources of our company in the best interest of the company, and not for personal & gainful reasons. We will not misuse these resources.
- We will not pay or accept bribes / anything of value / cash/ gift / gratuities, offer of employment etc., for the purpose of influencing placement of contracts, obtaining a business advantage or any other reason.

- We will make a clear distinction between the interests of our company and our personal interests, and avoid possible conflicts of interest; we do not accept gifts, invitations or other advantages, which could contradict this principle or influence our business decisions that are against the norms of our company.
- Ensure that we comply with law of the land, including National legislations & statutory compliances.
- All commissions and fee contracts shall have prior approval of our CEO.
- Report incidents, risks and issues which deviates from our policy, to your immediate reporting authority, or Head- HRD or CEO
- Complete and Implicit support / protection to the employee / whistleblower who reports unethical behavior
- Encourage Employees to be continuously conscious about our ethics and values and ensure each employee maintains their integrity, thereby maintaining the integrity of the organization.
- All employees must adhere to this policy and any violation to the above may result in termination / legal action, as deemed fit by the management.
- The CEO must approve any exceptions to this policy.

As owners of PBC, we:

- Commit ourselves to this policy and to an ongoing effort to maintain our integrity
- Make sure that PBC complies with the applicable National and International norms and commit PBC to an open and transparent Management Approach
- Expect our stakeholders i.e. partners and other business associates to respect this policy and wherever possible, we will influence and encourage them to also adopt this policy.

Thereafter the policy mentioned above was shared / circulated to all the team members / employees of PBC, who are required to ensure strict adherence to it and behave in a manner suited/appropriate to the stated policy and rules of the organization at all times. The organization expects them to not only behave in an honest and ethical manner but they are also expected to set a good example by acting in a responsible and transparent manner.

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PBC GIFT AND HOSPITALITY POLICY

In keeping with PBC's policy on Gift and Hospitality, no PBC employee or any member of their immediate family is allowed to accept any form of gifts or favors from contractors, suppliers, clients/customers, or any other party having business dealings with the company. However, in such circumstances where it is customary to do so, employees are permitted to accept such gifts of nominal value or favors provided that such gifts or favors are not extended and/or accepted for the purpose or with intention of:

- Influencing any present or future decision by that employee.
- Inducing such employee to perform or omit any act in violation of their proper duties and responsibilities.
- Inducing such employee to use or direct any other person to use their influence with a government, or any of its representatives, divisions or agencies to affect or influence any act or decision of any such government, representative, division or agency and in any or all of the above cases, for the purposes of expediting, benefiting, prejudicing or affecting in any way whatsoever whether directly or indirectly the business dealings or relationship of the gift giver with the company.
- For the purpose of this section, "Nominal Value" of a gift is defined as the sum of the gift(s) having the aggregate monetary value of not more than Rupees Three Hundred only (Rs 300). Employees are required to report to their respective Head of Department / HRD on all gifts or favors received which exceed the above nominal value.
- Any employees in doubt as to the nature or purpose of the gift or favor must consult the HR Manager who will decide, either in consultation with or through his own accord, the course of action in respect of such gift or favor.
- Gifts that exceed the nominal value stated above, cannot be accepted by PBC employees and will be returned to the donor; or if such return is not possible, the company will retain the same for distribution to recognized charitable organizations.

PBC's determination to go beyond compliance is evidenced from the fact that it is a signatory to policies and frameworks developed by International Organisations such as UNGC and GRI. The company strongly believes that voluntary compliance to International Standards and benchmarks is the way forward.

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CHALLENGES TO IMPLEMENTATION OF PBC ETHICS POLICY

- PBC is an mSME in the services and real estate sector. Being an mSME is a huge challenge in itself in terms of gathering resources and funds.
- Yet another challenge of being an mSME is making your position strong in the market and **face competition / compete with non-SMEs and Business Giants**. PBC does this with the help of ethical business practices; maintaining transparency in the internal processes and by bringing about green and good corporate governance into effect/action.
- PBC has a suite of 27 business verticals. **Ensuring that all business verticals are adhering to the legal and statutory compliance is a constant challenge** as it involves Government Liasoning and working with various Government Departments
- **Working on the principles of “No compromise on Integrity” public procurement and facilitation charges are challenges**. There is an instance wherein a PBC employee from the engineering department violated procurement norms and provided forged quotes for comparison. The employee was found to be in possession of a few letterheads of different vendors to quote a price. PBC purchase system requires a minimum of three quotes for better comparison and effective vendor evaluation. Upon investigation it was found that in the past, these letterheads were used to submit higher quotes by the employee for evaluation and comparison. This issue was taken up seriously and the employee involved was asked to leave. As a corrective measure, PBC tweaked their procurement policy and involved an ongoing internal audit process for this activity.
- As per procurement policy, a supplier or any vendor does not directly interact with Finance/ Accounts Department.
- There have been instances when PBC has brought certain important issues to the notice of the Government authorities. These are certain issues that PBC as an organisation has always stood for and thought it to be correct, whether it's to do with environmental or social goals and responsibilities. PBC to struggle a lot to save the only Green Lungs of Nehru Place, “Nehru Place Greens Park” (Public Park). Eventually, they successfully resolved the problem by convincing the authorities that they were doing the correct thing, it was meant for the community around them with no vested interest and was also good for the environment.



As per procurement policy, a supplier or any vendor does not directly interact with Finance/ Accounts Department

CONCLUSION

The biggest risk for any organization is handling corruption. PBC sees corruption as a serious issue be it within employees; within authorities or within vendors. It strongly discourages such practices. PBC believes that strong values and ethics is the foundation of sustainable and profitable business and an organization's culture is the strong predictor of its market value.

Organisations with sound value system and strong ethics, along with its commitment to good governance, are more likely to succeed than the ones that have scant regard for values, principles and ethics in business. Therefore, doing business responsibly and in an ethical manner is the only way forward for all to remain in business for times to come.

PBC intends to build an effective compliance program and risk mitigation programme and continue to raise awareness on ethical policies and practices within its stakeholders through training sessions for its employees, customers, vendors and other important stakeholders. PBC incorporates ethical practices in advertisement and promotional activities as it believes that business reputation and branding impact business enhancement & improvement.



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“I long so much to make beautiful things. But beautiful things require effort - and disappointment and perseverance”

—Vincent van Gogh

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SECTION - 6

A white L-shaped line originates from the text 'WAY FORWARD' below. It extends vertically upwards, then turns 90 degrees to the right, extending horizontally to the left edge of the teal circle. This line points from the text to the teal circle.

WAY FORWARD

A large graphic on the left side of the page features two concentric circles. The inner circle is a vibrant teal color, while the outer circle is a lighter, semi-transparent grey. To the right of these circles, a horizontal bar extends across the page, divided into three segments: grey, blue, and red. The number '6' is centered within the teal circle.

6

- 1. THE BUSINESS CASE FOR ANTICORRUPTION:** Role of B20 in Promoting Transparent Business in Emerging Markets
- Brook Horowitz
- 2. CENTRE OF EXCELLENCE FOR TRANSPARENCY AND ETHICS IN BUSINESS:** Scaling Up The Collective Action Agenda In India
- A. K. Balyan

ROLE OF B20 IN PROMOTING TRANSPARENT BUSINESS IN EMERGING MARKETS

Brook Horowitz
CEO,
IBLF Global

The B20 is a business advocacy group set up to advise the G20 on public policy. Transparency and Anticorruption have always been one of the B20 agenda items, in keeping with the G20's strong commitment to the topic.

B20 was first initiated on the eve of the Toronto summit in June 2010 and for the past four years it has been a regular feature of the G20 calendar, alongside other outreach groups such as the Civil Society's C20. At the annual B20 Summit about 400 CEOs from companies of all the G20 markets gather to discuss and publish their recommendations to the G20 leaders. The recommendations are compiled by the companies over the earlier part of the year working in a number of "Task Forces" focusing on key G20 topics such as "Financing Growth", "Investment and Infrastructure" and "Trade". The recommendations are transmitted to the G20 governments, which help in informing the leaders' declaration, which is published at the end of the G20 Summit.

Although the names of the Task Forces and their number vary from year to year, in some years there have been as many as 11 and as few as 4. Transparency and Anticorruption has always been one of the task forces in keeping with the G20's strong commitment to the topic.

The B20 Anticorruption Task Force is unique in that, for various historical reasons, it includes not just major companies, such as GE, Fluor, Siemens, SABIC, Mahindra, ENI, Rio Tinto, Thales which have been regular participants since the start, but business associations such as World Economic Forum, International Chamber of Commerce, Korean Federation of Industry, multilateral agencies such as the OECD and UN, and entities such as TI, Basel Institute of Governance, IBLF Global and the UN Global Compact. This has given it the distinctive richness of a multi-stakeholder dialogue, and the ability to leverage the considerable expertise from some of the leading lights of the international anticorruption community.

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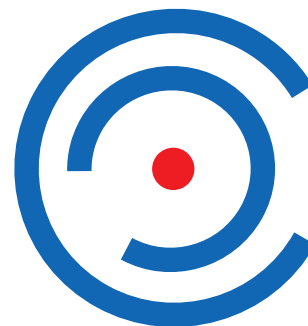
With its natural mandate to include companies from the emerging markets which make up half the membership of the G20, the B20 is one of the few business forums which has the capability of bringing together multinationals from the developed and the emerging markets.

The recommendations that successive Anticorruption Task Forces have come up with have focused on a number of key issues that will be recognisable to most international investors concerned with the risks and costs created by corruption viz. **incentivisation of self-reporting, harmonisation of public procurement procedures in international tenders, promotion of high level reporting mechanisms, encouragement of effective compliance education and awareness, expansion of compliance training to the governments' public officials and to the companies' own supply chains, among others.**

In terms of effectiveness, successive B20 Task Forces have been rewarded with a high level of recognition by the governments. According to an assessment made by the B20 secretariat at the end of the Russian Presidency¹, the Task Force successfully had a number of recommendations taken up or mentioned in the leaders' declaration. According to the authors of the assessment: "The G20 acted upon a number of the most important B20 messages and included all working areas proposed by B20 into its agenda. Thus the B20, proved its ability to constructively engage with the G20 on critical issues in the anticorruption sphere."

In 2014, under the Australian Presidency, the B20 managed to get a number of its key ideas to be accepted by the G20. This was reflected in two key documents: the G20 leaders' communique², and the G20 Anti-Corruption Working Group's 2015-2016 Action Plan³. What impact will these decisions have on business in the months and years to come?

Firstly fears that China would block the proposals on Beneficial Ownership did not materialise. The leaders committed to implementing the G20 High-Level Principles on Beneficial Ownership Transparency⁴ which is closely linked to previously approved G8 standards. There remain many questions about how this will work in practice, and how



¹"B20 under the Russian Presidency: Achievements and Challenges" http://b20russia.com/en/the-b20-3/presidency_outline/item/827-key-documents.html

²https://www.g20.org/sites/default/files/g20_resources/library/brisbane_g20_leaders_summit_communique.pdf

³https://www.g20.org/sites/default/files/g20_resources/library/2015-16%20g20_anti-corruption_action_plan_0.pdf

⁴https://www.g20.org/sites/default/files/g20_resources/library/brisbane_g20_leaders_summit_communique.pdf

countries and companies will manage the data in a consistent and transparent way. Here companies from the different G20 countries could usefully exchange best practices on how to achieve this.

The G20 leaders committed to more harmonisation, more cooperation and more coordination on enforcement. Certainly, the impact of such an approach has been tangible in recent months. For companies, there will be more pressure to tighten up their compliance systems, but also there will be a better of chance of seeing a level playing-field, and more clarity when it comes to self-reporting. The fact that the pressure will equally be on corrupt officials who solicit bribes will also be welcomed by companies who might have been forgiven for thinking that the emphasis on the bribe-giver rather than the bribe-taker was rather one-sided.

The G20's focus on high-risk areas will have an impact on business. The governments singled out extractives, fisheries and primary forestry, construction sectors for particular attention. For companies in any of these industries, it is the areas of interaction between private and public sectors which are most likely to generate opportunities for corruption, for example public procurement and customs.

Most encouraging was the G20 governments' commitment “to taking practical action in these sectors by promoting collective action initiatives”. There, at last seems to be consensus that what is needed is a new approach to combating corruption – one where government and business move from an adversarial relationship to working together.

WHERE WE ARE TODAY

The focus on action by the G20 governments is matched by a similar commitment from the B20 companies. Starting from 2013, working under the motto “from declaration to action”, the companies delivered a number of actions to complement and support their recommendations. Concrete results include the creation of a B20 Collective Action Hub⁵ under the management of Basel Institute of Governance and the UN Global Compact, an institution which will have an important impact in the G20 markets and beyond in the years to come; the organisation by the Basel Institute of the first conference on Collective Action; the publication of reports and updates on high level reporting mechanisms, self-

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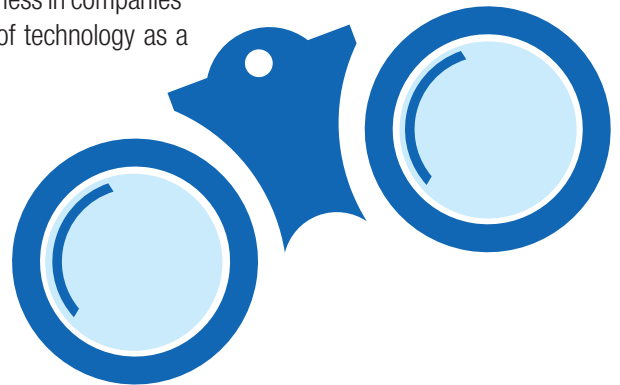
⁵<http://www.collective-action.com/>

reporting and Collective Action which have helped advance the discussion of these issues within the G20 ACWG (Anti-Corruption Working Group) and their acceptance by the governments; as well as the publication of various educational and training handbooks.

In 2013, one of the recommendations was to develop the concept of Anticorruption Centres of Excellence in G20 countries – the term was originally coined by GCN India – and this idea has had some traction. In one year, within the G20 countries alone, there have been initiatives to set up such Centres of Excellence, or “convert” existing organisations in India, Russia and Turkey, and we are aware of interest in several countries outside the G20 too. We expect this work to continue in the years to come.

LOOKING AHEAD

In 2015 under the Turkish Presidency, we have already felt the host nation's intention to develop the anticorruption agenda, with a focus on the role of the private sector and a commitment to implementation. The B20's proposals to the G20 to strength the anticorruption work between the B20 and G20 will hopefully come to fruition: the dialogue should shift from the tri-annual “outreach” consultation to a closer collaborative relationship, with the B20 providing more detailed inputs on specific priorities on a regular basis over a two year period. Topics likely to be at the top of the joint B20/G20 agenda are harmonising government's approaches to self-reporting, incentivising companies to strengthen their compliance programmes, standardising approaches to public procurement on international investment projects, promoting education and awareness in companies' supply-chains, especially amongst SMEs, and use of technology as a tool to promote anti-corruption.



CONCLUSION

The action-orientated nature of the Task Force's approach is what has excited the companies and the government. If we are trying to find the link between all this activity in the rarefied atmosphere of multilateral negotiations and the reduction of corruption on the ground, in the economies and societies of each country, then that link is business.

Companies with their powerful management structures, with their technology, data and human resources, with their extensive network of business partners, are agents for enforcement, not just compliance. Companies are potentially the governments' strongest allies in implementing the G20's decisions in each country and stimulating the culture change that needs to happen.

Companies around the world know these risks from inside and should be contributing their experience and insights to the governments who are formulating anticorruption policies. The governments should be more actively involve business in the process of regulatory development and enforcement.

It goes without saying that the existing companies in the B20 will welcome more companies into this exciting and developing space, including a much stronger representation from companies in India, one of the biggest and most powerful G20 economies⁶.

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⁶For further information about the Turkish B20, visit the B20 Turkey web-site on <http://b20turkey.org/> or contact: b20turkey@b20turkey.org

CENTRE OF EXCELLENCE FOR TRANSPARENCY AND ETHICS IN BUSINESS: SCALING UP THE COLLECTIVE ACTION AGENDA IN INDIA

A. K. Balyan

Member, Governing Council,
UN Global Compact Network India,
Managing Director & CEO,
Petronet LNG Limited

India ranked 74 out of 180 countries in the Corruption Perception Index 2014, while in the ranking of the World Bank index 'Ease of Doing Business' India fell three positions from 131 in 2012 to 134 in 2013, amongst the selected 189 countries. 'Ease of Doing Business' is seen as an indicator towards pace of economic development of any economy; readiness of foreign companies to invest and (or) set-up their business units. Various multinational and foreign institutional investors have entered the country but there are far more companies which have not entered the booming Indian economy due to corruption.

In response to the existing economic and socio-political situation prevailing vis-à-vis transparency and anticorruption in business, Global Compact Network India participated in implementing the UNGC-Siemens Integrity Initiative led Collective Action Project (CAP) in India. The aim of CAP India was **“to provide a platform on anti-corruption dialogue between private and public sector and incentivize ethical behavior of businesses”**.

CAP India started its journey in January 2011, taking a holistic approach towards anti-corruption by creating awareness about the issue of graft through seminars, regional and national consultations and conferences. Post the creation of such a unique platform, stakeholders were keen to deliberate on transparency specific issues in several business establishments across industries. Some of the issues taken up by CAP India were Transparency in Public Procurement, Sustainable Supply Chain Management, Changing Trends of Fraud and Bribery in India, Transparency in Sports and Sports related Hospitality and Regulatory Mechanisms and its effectiveness.

During the course of project, CAP released three publications to add value to the anti-corruption literature available in India. The first publication was a policy paper which presented the merits of public-private dialogue on anti-corruption; followed by a special compilation of good practices to showcase effective anticorruption tools being utilized by public and private sector businesses; and finally a well researched publication to ascertain the trends of fraud and bribery in the private sector in India.

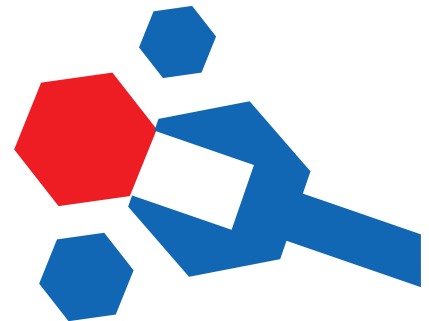
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The interactions with the diverse group of stakeholders, over the four years of its operation, led CAP India to develop the '**Business Case of Anticorruption**', which this publication has looked into in detail. Expert analysts have presented their arguments, which have been substantiated by case studies from businesses. CAP stakeholders unanimously agree that a level playing field, both from the perception of small and medium scale enterprises and national/ international business, is the need of the day, and are willing to commit in taking the momentum built by CAP India forward.

The new face of this momentum is the launch of '**GCNI Centre of Excellence for Strengthening Transparency and Ethics in Business**' which started operation from December 2014. This three-year GCNI – Siemens Integrity Initiative intends to scale up the collective action agenda in India by encouraging shared focus and greater coordination amongst stakeholders, thereby increasing the reach and impact of UNGC 10th Principle in India. Since a major learning from CAP India was that '**one size does not fit all**' for ensuring transparency and process enhancement, facilitating dialogue and empowerment of key verticals in business will be a high priority agenda of the Centre of Excellence (COE).

The COE for strengthening transparency and ethics in business aims to bring diverse stakeholders to a common and neutral platform for exchanging best practices, deliberate upon challenges and policy recommendations, undertake sector specific study and promote responsible standards in particular, and transparency & ethics in general. The COE while addressing the issues of corruption in India, will act as a knowledge hub, take up research & training initiatives, facilitate and foster dialogue and communication, provide support services, and encourage policy discussions & recommendations on various practices.

As a first of its kind unique model in India, the COE is expected to fill the void of a neutral platform, hitherto in India, for deliberating on the issue of transparency and ethical business practices by a diverse range of stakeholders negatively affected by corruption in some form or other.



Essentially the COE aims to:

- Develop pragmatic approaches around UNGC Principle 10 to challenging business decisions
- Provide enabling platform to businesses, policy makers, civil society, industry associations, UN agencies and academia
- Improve organizational decision making through a stakeholder management framework that integrates transparency and integrity

The Centre of Excellence, as an advanced form of collective action, will address the issue of corruption collectively as it has the potential of reaching out to public sector, industry peers, suppliers & vendors, civil society, management institutes, media & other stakeholders and initiate joint activities to fight corruption apart from taking individual initiatives by them. This will enable towards creating a level playing field and a business conducive environment which will reduce risk of corruption. It will also encourage innovative methods of countering corruption by knowledge sharing and networking, thereby improving individual stakeholder practices on one hand and using ICT (Information, Communication and Technology) efficiently on the other.

COE aims to work with and for, a wide range of sectors, target groups and geographical areas. COE will institutionalize the affiliation with existing stakeholder groups through providing qualitative knowledge and information, fostering effective dialogue & communication and offer myriad support services whilst identifying new sectoral partners for furtherance of collective action agenda in India. It will also initiate pilot, field-level demonstration projects towards enhancing transparency in the country, which would be scaled-up and replicable. Additionally COE has inherited substantial impact created by the Collective Action Project India which brought into the forefront the importance of implementing UNGC 10th Principal in business transactions. COE will further scale up the collective action agenda and responsible development.

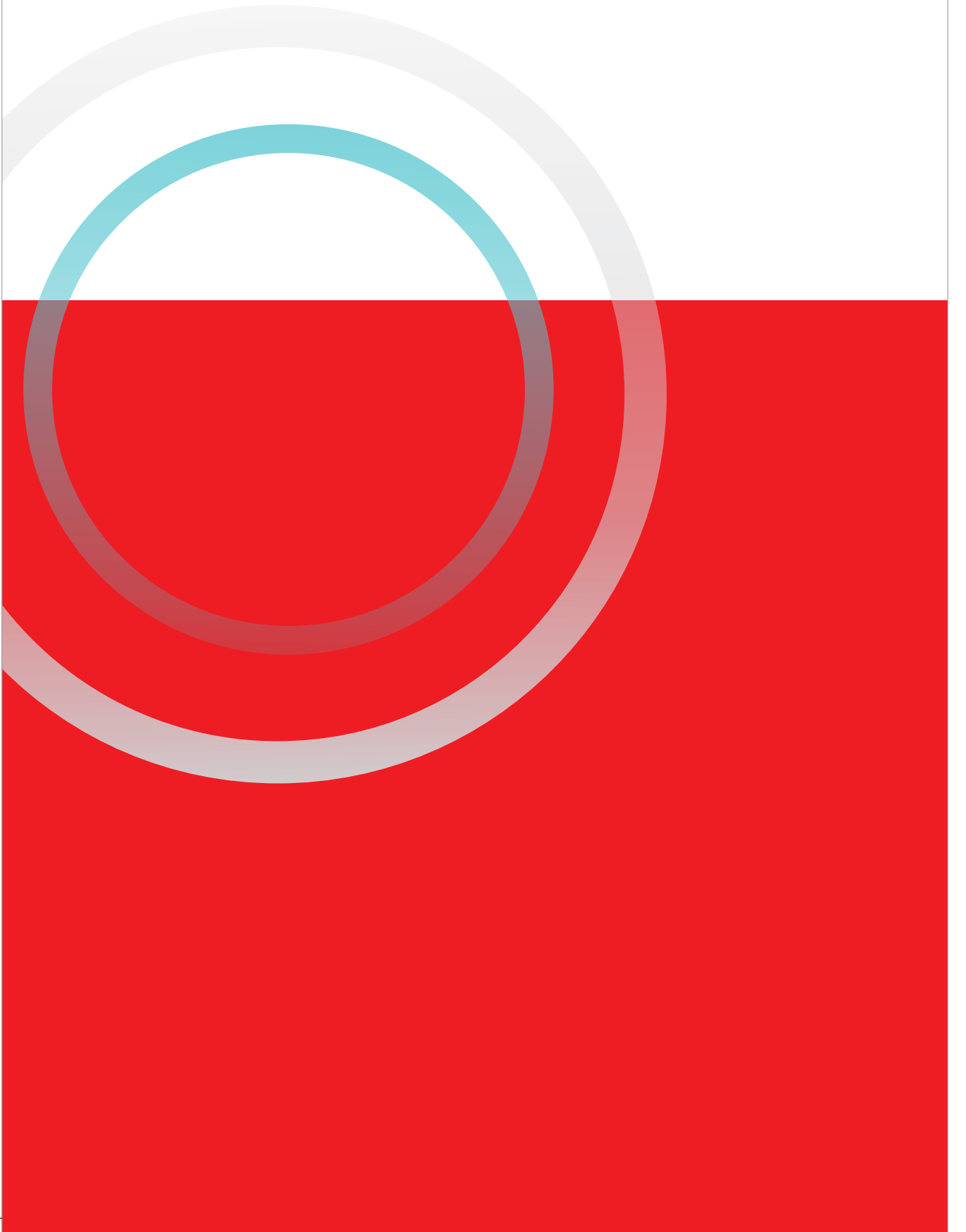
I invite you all to continue to work with us in this journey of ensuring a better future for coming generations by actively working with us, utilising the services of the COE to its maximum potential, and guiding and advising us as we develop a common agenda for transparency and change in India.

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APPENDIX



APPENDIX: RECOMMENDATIONS EMANATING FROM THE COLLECTIVE ACTION PROJECT INDIA

CAP India
(2011-2015)

With the purpose of building a national collective action platform for responsible and sustainable development through informed partnerships with the business community, bureaucrats and civil society, Global Compact Network India, through the Collective Action Project India (2011 – 2015), facilitated research and national and international consultation around issues of ethical corporate governance in India. These deliberations and constructive dialogue assisted in bridging the gap in knowledge of how public and private businesses can engage with government, and set a collective agenda for businesses operating out of India. Some key recommendations emerging from GCNI research and deliberations are presented in this section.

This section is an attempt to acknowledge the feedback received from stakeholders who were committed, candid and forthright in their interactions with the Project. Some of these recommendations have already been implemented by GCNI member companies and / or incorporated in national policies that came up subsequently. However a large section is still pending like the most important ones on Public Procurement and periodic monitoring and review of policies.

The events, and subsequent recommendations, would not have been accomplished without the diligent and concerted efforts of the ever evolving Collective Action Project India team comprising of Gagan Mehta, Vijay Kiran Rawala, Jot Prakash Kaur, Nazia Irshad and Chitra Nair.

PROCUREMENT

Domestic Manufacturing	<p>1. In 2012, the amendment made in the procurement rule of electronic goods laid out by the Indian Department of Information and Technology aimed at providing preference to domestic manufactures. However, the decision of procurement from the domestic manufacturers will depend upon the government guidelines prevalent during the time of procurement. The rule should provide a clear picture as to what kind of preference will be provided to the domestic manufacturers.</p>
Technical Specifications in Procurement	<p>2. In case of technical procurement or a new kind of product procurement, special care should be given to proven track record for the same specification.</p> <p>3. Specialized cadre of technical experts on procurement to be consulted in large procurements work.</p>
Disclosures	<p>4. The legal existence and the registered office of the selected bidder should be disclosed in the tender documents so that defunct and special vehicle companies could be avoided while selecting the bidder.</p> <p>5. Public procurement process should be more transparent, by divulging the information of selected and non-selected bidders along with their reasons.</p> <p>6. Section 19-20 of the Public Procurement Bill should be expanded and provisions should be enlisted as to disclosure of relevant information to all the suppliers and serve as an equal opportunity platform.</p>
Transparency	<p>7. For deterrence in indulging in acts of corruption, provisions should be made on taking stringent actions (depending upon the offence committed) against the companies registered in such associations found to indulge in manipulating procurement procedures.</p> <p>8. The companies can adopt Strategic Sourcing Process wherein same company is not selected year after year for the tender or similar kind of project.</p> <p>9. Due to the overlap in General Financial Rules and Central Vigilance Commission(CVC) rules, the Government should take concrete steps to make the procurement process in India transparent and efficient.</p>

	<p>10. The work of CVC needs to be supplemented with a strong legislation.</p> <p>11. Public Private Partnership (PPP) projects should come under the purview of Right To Information (RTI) Act and the special purpose vehicle or any other entity that comes into being as the result of PPP should be a public authority within section 2 of the RTI Act.</p> <p>12. Social Audit and post execution audit should be incorporated in the proposed Bill.</p> <p>13. Need for supervision and guidance during execution of contracts, so that all the rules and regulations are adopted while following the contract.</p> <p>14. Private sector disclose credible data of their procurement process.</p>
Private Sector	<p>15. PPP models are increasingly being adopted in India for speedy and efficient execution of large scale projects. Hence there is an urgent need for uniformity in project execution and clear procurement laws / standards.</p> <p>16. In case of private sector, procurement provisions should be made wherein the bidder clearly demonstrates commitment towards transparency.</p> <p>17. Private sector needs to move beyond code of conduct and develop adequate procurement guidelines.</p> <p>18. Encouragement and incentives to be provided to the private sector to adopt Integrity Pacts.</p>
Collective Action	<p>19. Enhanced collaboration by UN bodies like United Nations Office of Drug and Crime (UNODC) and UN Global Compact (UNGC), as well as industry associations like Confederation of Indian Industry (CII), Federation of Indian Chambers of Commerce and Industry (FICCI), and others in promoting ethical and responsible business.</p>
Policy Measures	<p>20. Concrete measures to be taken by the Government to prevent cartel formation in public procurement.</p> <p>21. Enhanced reliance on technology like cloud computing vigilance system and swift grievance redressal mechanism.</p>

WHISTLE-BLOWER

Whistleblower Protection Act

1. The Whistle-blower Protection Act, does not have the definition of a whistle-blower, so there is a requirement to clearly define the term as per the legal parameters.
2. In India anonymous reporting should be allowed and the law enforcers should be more concerned with the verifiable issues than the details of the whistle blower.
3. There should be incentivization of the whistle blowers.
4. Some of the provisions in line with the above mentioned recommendations which are part of Dodd-Frank Act and the Sarbanes-Oxley Act should be included.

Policy Measures

5. Victimization of Whistle-blower should be penalized and proper whistle blowing structure with information, protection and adequate reward should be promoted, including quantum of fine / imprisonment.
6. The whistle blower policy should be mandatory for all the private and public offices.
7. To make the whistle-blowing mechanism effective, companies can make a portal of filing complains wherein each whistle-blower gets a pin number to check the status and progress made in the case reported by him/her.
8. For encouraging people to open up about the wrong doings, the companies can delegate the duty of handling the whistle blower complains to an audit committee or to an independent agency.

FRAUD AND BRIBERY

Private Sector

1. Capital market watchdogs should be involved in endorsing anti-corruption tools both national as well as international. In the Indian context SEBI, the Indian watchdog should take steps in implementing anti-graft initiatives. SEBI should follow in the footsteps of Securities and Exchange Commission (SEC), American capital market watchdog, and endorse anti-corruption tools.
2. Each company, irrespective of its size, should have their own ethical code of conduct.
3. Private companies, apart from doing their own bit, should also get involved in initiatives implemented by international organizations. E.g.: Private sector should be encouraged to sign the 'Integrity Pact', a tool developed by Transparency International, Berlin.

Legislations

4. External and fair auditing of projects, some of the new changes in the Companies Act 2013, to have stringent monitoring.
5. The Government needs to revisit the Indian law namely the Prevention of Corruption Act which looks at the bribe giver as a victim and not a perpetrator¹. One can look at the Foreign Corrupt Practice Act to upgrade Indian law.
6. Independent Directors should be given an important role in checking the practices of the companies. The Companies Act 2013 has made several provisions in this direction. These provisions can be treated as a testing ground for further and more consolidated efforts.
7. Separate judicial system could be set up for white collar frauds which require speedy prosecution.
8. Any mechanism should have the certainty of dictation, punishment and conviction-all in time bound manner. Conviction should be framed in such a way that it acts as a deterrence to commit graft
9. In terms of legislation, private member bill is an effective way of bringing changes to the legislatures. (In the past few years it has been witnessed that parliamentarians are lobbying for legislative changes for governance, corruption and other related issue)
10. Government should avoid aggressive tax structure.
11. Clause 49 of SEBI should be followed in letter and spirit by companies.

¹The revised law does criminalize bribe giving.

Financial Information & Audit

12. Panchayat level audits in view of huge direct funding by the central government recommended.

13. A new concept was coined in a GCNI consultation “transparency audit”. This concept lays emphasis on the audit of the various checks and balances which have been deployed by businesses. (Implementation and effectiveness).

14. **Rampant corruption has been witnessed in natural resources, suggestion was floated that independent valuation of natural resources should be done**, which should be over and above the government and bidder. A base data could be prepared for all the resources and then periodically updated for use in future auctions.

Comprehension of Corruption and related Training

15. Grassroots definition of corruption. The definition should try to capture all the dimensions of corruption, emphasis should be given to graft and bribery at lower levels.

16. More research on retail level corruption and fraud.

17. Anticorruption work should follow the marketing principle of addressing the concerns of the consumers first.

18. Business suffers corruption more at the state level than at the center level, so anticorruption efforts should be decentralized at the same time there should be uniformity in devising strategies (should move to the micro level).

19. Comprehensive education for people (it can be employees, vendors and other associated with the company/business) on anticorruption guidelines

20. Collective action amongst different stakeholders to address corruption as a whole. This will help in consolidating the efforts in this direction. This will also contribute in awareness and training of the personnel involved in the process.

SUPPLY CHAIN

Transport	<ol style="list-style-type: none">1. Businesses should focus on asset utilization, route optimization, shipping unit design, consolidating movements, lower emissions in transit, fleet capacity utilization and multi modal network.2. Water transport should be promoted as efficient and economic means of transport3. Ensuring the welfare of unorganized road transport i.e. drivers and their security is important.4. PPP model in coastal shipping should be encouraged.
Training and Education	<ol style="list-style-type: none">5. Training and awareness at industry level to include pro-active training and awareness raising activities for suppliers. This should be an annual affair.6. Education and training between brokers in supply chain and regulators (compliance agencies).
Vendor Management	<ol style="list-style-type: none">7. Appointment of clean vendor and reinventing the vendor management system such as the Siemens Vendor management.8. Adoption of Information and Communication Technology (ICT) could enhance the vendor management in companies.
Infrastructure	<ol style="list-style-type: none">9. More fund needs to be diverted for infrastructure development and judicious channelization of money e.g. development of warehouses, inland motorways, among others.10. To improve Port health, antiquated systems need to be abolished and food safety should be ensured to by way of expediting faster clearance of goods from port.
Company Initiatives and Commitment	<ol style="list-style-type: none">11. Businesses promoting anti-corruption on its agenda could explore signing of Compliance Pacts.12. Preventative applied control to curb corruption to be urged. Purchase to Pay process to increase detection rate and control.13. Information and Communication Technology is the key enabler in supply chain process to bring efficiency and transparency.

SMALL AND MEDIUM SCALE ENTERPRISES (SMEs)

Internal Controls

1. SMEs should have internal mechanism in place to check corruption.

Policy Process

2. SMEs have been out of the anti-corruption policy dialogue for too long. They need to be included in the debate, innovative measures developed for the challenges they face vis-à-vis transparency and their capacity building to be stressed upon.

3. International organizations should develop specific anti-corruption initiatives and tools for SMEs.

SPORTS AND SPORTS RELATED SPONSORSHIPS

Sponsor Companies

1. The Sponsor should be proactive in the governance of the associations and federation to whom sponsorship funds have been diverted. Introduction of well-structured reporting format is advisable.

2. Sports sponsors of a specific event can collaborate to raise standards in sports or sports related hospitality.

3. Ensure accountability lies at the doorstep of the leader of an institution.

4. Sponsor companies should introduce anti-corruption policies such as whistle blowing mechanisms and risk assessment in sports sponsorships.

Collective Action

5. A major federation can pilot transparency measures in the development of sports sponsorship

6. Creation of consortiums should be looked into as it is an important instrument to avoid poaching.

7. India needs a compendium of success stories on curbing corruption in sports sector in India.

8. Sponsoring companies and sports related government body along with Competition Commission should formulate guidelines for all the federation on governance, selection, budget allocation and quality management.

Legislation

9. Sports dedicated Legislations should be introduced in countries, which could address corruption in sponsorship and sports related hospitality.

ETHICAL BUSINESS

Management	<ol style="list-style-type: none"> 1. Top level management should be committed to ethics in business, and set the tone at the top 2. The Management should make and promote the guidelines on ethical corporate governance. 3. Management should encourage adoption of e-governance. 4. Management should encourage adoption of anti-corruption clause all kind of contracts.
Audit	<ol style="list-style-type: none"> 5. Companies should indulge in fair external auditing and strictness should be observed about the selection of external auditors and their rotation. For example chair persons of banks are empowered to select external auditors. Strong management linkage important for the appointment of auditors. 6. Background check of the external auditors should be done to ensure that there is no linkage between them and any person from the management and/or previous auditors.
Time Bound Compliant Mechanism	<ol style="list-style-type: none"> 7. Complaint handling mechanism should be oriented such that complaints are disposed off in a time bound manner. In case, a compliant is not addressed within a time frame concerned officers should be questioned. 8. Overall the entire process of detection-conviction-punishment to have a time limit. This could act as deterrence for people indulging in corruption activities.
Technology Adoption	<ol style="list-style-type: none"> 9. Increased use of technology would do away with human involvement in certain sectors prone to corruption. 10. ICT can also help by improving detection and monitoring of incidents through automation and technological innovation.
Training and Information Disclosures	<ol style="list-style-type: none"> 11. Organise training and education on anti-corruption obligations for all the stakeholders. Mandatory training for suppliers and employees. 12. Delisting of companies who falter the anticorruption clause and publicize such information.

Collective Action

13. Government needs to play a much bigger role in Collective Action by ensuring a political environment is created which would be prone to business ethics.

14. There should be transparency in Government permissions and licenses especially in issues related to land which is fertile ground for corruption in India.

15. Business Associations to be more proactive in promoting ethical business.



INTEGRITY PACT

Independent External Monitors (IEMs)

1. IEMs should be given broad guidelines for the proper implementation of Integrity Pact (IP).
2. There should be complementarity in the intervention of IEMs and Chief Vigilance Officers (CVOs) and clear demarcation of responsibility e.g. complaints under IP could be categorized in two categories – Vigilance angle and Terms & Conditions. CVOs should be responsible for Vigilance while IEMs should look into T&C.
3. IEMs should not be restricted to retired bureaucrats, but should represent expertise from diverse sectors.
4. Role of IEMs not limited only to handle IP related complaints. Engagement with IEMs for Process/System improvements based on their experience in dealing with IP issues.

Expanding the purview of IP

5. IP to extend to post-award period
6. Making IP as a System-improvement tool from its present complaint-handling orientation.
7. Entire process from procurement to delivery has to be extensively monitored.
8. Clauses of IP should be amended according to the present day needs in a transparent way.
9. Restructuring and business process re-engineering of defense procurement is required to respond to knowledge gap in defense procurement.

Vendor Involvement

10. Institutional Arrangement for regular Vendor Meets for periodic feedback from vendors on effectiveness of IP to bring about continual improvement.
11. Increased awareness generation among contractors/vendors/suppliers/sub-contractors.
12. It is imperative to have capacity building of bidders in pre-bid cases along with other stakeholders, as prequalification criteria is important in the procurement process.

Training and Knowledge Sharing

13. General and particular specifications of tenders should be defined properly.

14. There is a need for a platform for sharing of IP related information across organizations on case studies, success stories, implementation challenges, data on defaulting bidders/suppliers, among others.

15. Periodic training to be provided all the stakeholders of IP; IEMs, Vigilance Officers, Nodal Officers and Suppliers.

Good Governance

16. Good governance, institutional checks and balances, transparency mechanisms, and inculcating values and ethics in individuals to be stressed upon.

17. An independent tool should be set up in each organization to check level of corruption and whether it is being reduced or not, and at what rate. For e.g. Steel Authority of India Limited mentions that IP has brought down the threshold values/limits and other aspects.

ANTI-CORRUPTION MECHANISM

Knowledge Repository

1. A knowledge repository for all fraud and bribery related cases should be created, which is easily accessible by stakeholders.
2. There was consensus that organizations should conduct regular training for their work force employed in vigilance, irrespective of their background. Private sector companies mandate training of their vigilance staff once in three years. However such provisions are not present in Indian public sector.
3. An independent tool should be set up by each business house to check the level of corruption and help gauge the performance of the Anticorruption mechanism.

Evaluation of Country's Natural Reserves

4. Extraction of natural reserves have seen a number of big ticket scams; Coal Scam, Sand Scam and recently reported Iron-ore Scam. One of the biggest reasons for such scams has been dearth of knowledge about the amount and kind of natural reserves. It was recommended that the Geological Survey of India (GSI) should be equipped and funded to strengthen their technological competences.

Transparency Audit

5. Audit effective implementation of anticorruption and transparency tools and mechanisms in businesses. The argument being that procedures laid on paper are very good but the actual issue comes during its implementation.
6. Anticorruption efforts should be decentralized from Centre to state level, at the same time there should be uniformity in devising strategies. Audit process should be penetrated to lowest level such as the panchayats.

Redressal Mechanism

7. Anticorruption mechanism of detection, conviction and punishment should be clearly defined and time bound, so that the complainants are encouraged to report.
8. It was suggested that special fast track judicial courts should be established for white collar frauds (crimes).
9. The focus should be to address the concerns of the 'stakeholders', in this case it could be the vendors, shareholders, employees and the end users (customers).
10. Anticorruption to aid in brand recognition.

Call to Action: Anti-Corruption and the Global Development Agenda

A Call from Business to Governments to Address Corruption and Foster Good Governance

The Call to Action is an appeal by the private sector to Governments to promote anti-corruption measures and to implement policies that will establish systems of good governance. The Call to Action urges Governments to underscore anti-corruption and good governance as fundamental pillars of a sustainable and inclusive global economy.

View list of signatories.

Why Companies Should Sign the Call to Action

What Happens after a Company Signs the Call to Action

How to Sign the Call to Action

Why business is advocating for Anti-Corruption in the Global Development Agenda

Spread awareness on the importance of the Call to Action!

The Call to Action asks Governments to:

1. Fully implement and enforce the tenets of the UN Convention against Corruption by strengthening anti-corruption policies, laws and enforcement mechanisms to create a level playing field and incentivize good behaviour;
2. Make a commitment to reducing corruption risks from procurement and contract processes of large-scale projects that are designed to support sustainable development;
3. Commit to engaging in competitive and transparent procurement processes through public advertising of all government procurement cases;
4. Achieve greater transparency in relation to revenues received by Governments from private sector companies;
5. Support corporate efforts to enhance anti-corruption implementation, corporate governance, innovative collective action and public-private partnership initiatives.

The Call to Action is the result of over six months of development and consultation by a taskforce comprising members from the UN Global Compact Anti-Corruption Working Group, the World Bank Institute, the Open Contracting Initiative and Transparency International that explored the private sector's perspective on anti-corruption and good governance in the global development agenda.

Why Companies Should Sign the Call to Action

Signing the Call to Action offers a unique opportunity for businesses to:

- Demonstrate leadership in advancing good governance and anti-corruption;
- Contribute to reducing the cost of corruption to doing business and to creating a level playing field for all;
- Seek a competitive advantage by attracting responsible investors, shareholders and consumers;
- Shape the anti-corruption policy agenda and influence future laws and regulations

What Happens after a Company Signs the Call to Action

A company signing the Call to Action can also take action to continuously improve and increase its anti-corruption efforts by:

- Integrating anti-corruption efforts into its business and operational strategy, as well as its organizational culture;
- Setting the tone from the top-management of the organization towards zero-tolerance of bribery and corruption;
- Sharing good practices in the fight against corruption;
- Collectively engaging with businesses and other stakeholders through the UN Global Compact and its Local Networks, as well as other relevant initiatives;
- Engaging in policy dialogue to encourage more robust disclosure, transparency and enforcement mechanisms.

Signatories of the Call to Action will be acknowledged at the UN Global Compact's 10th Principle Anniversary event to be held in New York on 10 December 2014. Your company's name will also be featured as a signatory on the UN Global Compact's Call to Action Website. The Call to Action – which is supported by the UN Global Compact, the UN Office on Drugs and Crime, Transparency International, the Open Contracting Initiative, the World Bank Institute and the Global Organization of Parliamentarians against Corruption – will be forwarded to UN Secretary General Ban Ki-Moon to highlight the private sector's continuing efforts to work with other stakeholders to address corruption.

How to Sign the Call to Action

All companies – from learners to leaders committed to advancing anti-corruption efforts – are invited to sign the Call to Action. A company wishing to become a signatory to the Call to Action should:

1. Submit a letter signed by a C-suite level executive or Board Member responsible for corporate governance stating the company's support to the Call to Action and its commitment to prevent corruption in all its forms, including extortion and bribery.
2. Send the signed letter to anticorruption@unglobalcompact.org

Why business is advocating for Anti-Corruption in the Global Development Agenda

Corruption is the single greatest obstacle to economic and social development around the world. It has adverse impacts on sustainable development, with a disproportional impact on poor communities. Corruption has considerable and costly impacts on the private sector as it raises transaction costs, undermines fair competition, distorts development priorities, and impedes long-term foreign and domestic investment. To prevent future development efforts from being undermined by corruption, it is critical to leverage good governance and anti-corruption into the global development agenda.

Spread awareness on the importance of the Call to Action!

Your company's participation in this Call to Action promotes your continued efforts to integrate anti-corruption into your strategies and operations. Integration of anti-corruption not only brings about change in your organization, but also inspires peers in your industry to do the same.

You can publicly communicate your commitment to the Call to Action by having your company's name featured on the Global Compact's Call to Action website. You can also show your support and encourage others to sign the Call to Action by sharing the image below through social media, on your website and in your email signature, or by using the campaign hashtag: #BizAgainstCorruption

Contact

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The Ten Principles of the United Nations Global Compact

Human Rights

- Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
Principle 2: make sure that they are not complicit in human rights abuses.

Labour

- Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
Principle 4: the elimination of all forms of forced and compulsory labour;
Principle 5: the effective abolition of child labour; and
Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment

- Principle 7: Businesses should support a precautionary approach to environmental challenges;
Principle 8: undertake initiatives to promote greater environmental responsibility; and
Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

- Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.



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