

# Corruption in India

Individuals and businesses routinely face demands for bribes leading to calls for government reform

**L**ow labour costs and a stable political climate make India one of the most popular countries for foreign investment. Its economy has been liberalised over the last 20 years and successive Indian governments have actively pursued business-friendly policies. The country has an efficient financial system, good railroads and a convenient location on a number of shipping routes, making it highly attractive to global businesses wishing to expand into new markets.

However, a combination of cumbersome bureaucracy and byzantine regulations that date back to independence has rendered India particularly susceptible to corruption. Public procurement, licencing and public utilities, tax and customs administration, the police force and judiciary are particularly prone, with politics also widely perceived to be rife with rigged elections and vote-buying. As a consequence, demands for bribes are commonplace.

In the 2013 Transparency International Global Corruption Barometer, individual and household respondents stated that in the past 12 months, 62% had bribed the police, 61% bribed registry and permit services, 58% bribed land services, 48% bribed utilities services, 48% bribed educational institutions, 41% bribed tax revenue services, 36% bribed the judiciary and 31% bribed medical and health services. These bribes are often paid for the most basic of services, such as the provision of electricity or clean water. It is therefore not surprising, perhaps, that businesses routinely face similar demands.

Prior to the economy opening up in 1990, bribes were regularly paid to government officials to ensure that a failure to comply with regulations was overlooked or in response to a demand for a pay off. Post 1990s, bribes have regularly been paid to ensure that work is unfairly expedited. However, recent multibillion dollar scandals, such as the mis-selling of telecoms licences, the fixing of government

appointments and the alleged corrupt purchase of defence equipment/helicopters, would indicate that corporate corruption has escalated to epic proportions. Even the revered sport of cricket is dogged by allegations of match fixing.

Last year's Transparency Global Corruption Barometer also found that 71% of Indian respondents felt corruption had increased in the country in the past two years, with 40% of these stating that it had increased 'a lot'. In fact the high profile cases seem to have made matters worse: if politicians and senior civil servants higher up in the pecking order are clearly getting away with such large scams, why shouldn't officials lower down the ranks make similar, if smaller, demands?

The good news for businesses is that there are signs that things are starting to change. The Right to Information Act (RTI) has empowered individuals interested in uncovering corruption to demand all related information to a government decision, allotment or deal. The fear of being put under a microscope in the case of an RTI request is a potential deterrent to misbehaviour. There have been investigations as a result of these requests, but the long-drawn-out process often fails to impose sanctions.

Interestingly, the emergence of a mass movement of public outrage is forcing the government to acknowledge that corruption is a major concern for the Indian public. In the past two years, hundreds of thousands of Indians, including those of the burgeoning middle class, have taken to the streets in peaceful protests demanding accountability, reform and legislation to combat graft.

There are signs that this is starting to have an impact on government. In February 2011, the Supreme Court ordered all trial courts to expedite corruption cases and ordered state High Courts to seek quarterly reports from lower courts on the progression of corruption cases. In addition, there have been changes to the country's anti-corruption legislation,

which has encouraged disclosure, made bribing foreign public officials illegal and given the Indian Serious Fraud Investigation Office greater powers to investigate. The Lokpal Bill in particular, which aims to establish ombudsmen to bolster the implementation of the legislative framework, is expected to increase prosecution levels. However, although 75% of respondents to Ernst & Young's Indian Fraud Survey 2012 represented multi-nationals, less than half of them were aware of international anti-graft legislation such as the US FCPA and the UK Bribery Act, both of which have extraterritorial reach.

## Avoiding bribes

Most often bribes are paid to overlook improper conduct or process. The first rule for corporations to avoid paying bribes is to abide by the regulations and rules of doing business in India. Even in the face of unanticipated regulatory obstacles, ensure that the company does not resort to bribery.

## Zero tolerance

Put in place a zero-tolerance policy to corruption, in line with the strictest standards of the United Nations Convention against Corruption, the United Nations Global Compact and the World Economic Forum Partnering Against Corruption Initiative. The policy should be comprehensive and especially clear about the guidelines regarding gifts and hospitality.





Indian law is broad when it comes to payments, gifts or other benefits. It is illegal to offer a bribe or a gift in order to influence an official, regardless of whether it is accepted or later withdrawn, irrespective of whether the service requested is delivered. Any valuable object granted to a public servant with whom one has official dealings may be constituted as a bribe. There is no prescribed value up to which a payment or gift is permissible under Indian law, but any payment to influence or obtain an action is illegal. Hospitality or gift items of nominal value, not intended to influence an official, are exempt.

Ensure that the zero-tolerance policy is applied throughout the supply chain. Educate all employees and suppliers about the corporate

policy against corruption, as well as laws and regulations covering graft and fraud. Conduct due diligence checks on suppliers and partners prior to contracting them and on an ongoing basis to ensure that all attempts are being made to hold third parties accountable for anti-corruption practices.

#### Reporting

Have a clear process for reporting incidents and responding to them. There should be consistent disciplinary outcomes and a process to investigate root causes. A post-investigation report should be produced to identify and eradicate root causes and vulnerabilities. Where relevant, this should be circulated to alert other branches within the business. The business should ensure that unanticipated regulatory hurdles do not incentivise engagement in corruption.

#### Whistleblowing

Establish a confidential hotline to report corruption and protect whistleblowers against retaliation within the company. Safe channels for whistleblowing will aid detection along

with effective auditing of business processes. Transparent reporting will also make it clear to government and other business partners that anti-bribery policies are taken seriously and are strongly implemented. Set up an effective internal monitoring mechanism to check illegal acts and conduct periodic external audits to ensure compliance, uncover illegal activity and raise awareness. Report findings to stakeholders and the authorities.

#### Training

None of this is virgin territory in India; companies can make headway with implementing policies and procedures. However, while companies and individuals feel prosecution is unlikely, India will struggle to reduce its corruption levels and people will continue to think they are exempt from the rules, so businesses should be on high alert.

Training and monitoring are essential if an organisation is to be properly protected. This may seem burdensome, expensive and time-consuming, but with public opinion expressing outrage at India's high corruption levels and government initiatives to encourage disclosure and expedite prosecution, companies should be aware that the corruption landscape in India is changing. Companies must ensure that their anti-corruption procedures have been tightened up accordingly. ■

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