The Institute of Company Secretaries of India
Northern India Regional Council
Seminar on
Fraud Risk & Governance: Professionals’ Responsibility & Liability

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Cutting edge techniques in fighting corrupt practices
Corruption means any abuse of a position of trust in order to gain an undue advantage.

This involves the conduct of both sides: that of the person who abuses his position of trust as well as that of the person who seeks to gain an undue advantage by this abuse.
White collar crimes

• White Collar Crime
  – A crime committed by a person of respectability and high social status in the course of his occupation

• Edwin Sutherland (1939)

• Definition evolved over time

• To distinguish from “common” or “street” crime

• Economic Crime and White Collar Crime
White collar crimes

• Economic Crime and White Collar Crime
  – White Collar Crimes: crimes committed by professionals in the course of their occupation
  – Economic Crimes: crimes committed by intelligent but devious individuals involving huge sums of public or government money
Impact of white collar crimes

• Negative Effects on
  – Political Stability
  – Welfare
  – Economic Development
  – International Trade & Investment
  – Market becomes unfair

• Negative Impacts on organization
  – Decrease the efficiency of doing business
  – Impact negatively on the bottom line of a company
Impact of white collar crimes

• Regulations to curb crimes
  – Decrease efficiency of doing business

• Collateral damage
  – Reputation/Brand
  – Share price
  – Employee morale
  – Business relations
  – Relations with Regulators
Types of fraud

• Economic Crime or Fraud
• Asset Misappropriation
• Accounting Fraud
• Corruption and bribery
• Money laundering
• IP infringement
• Insider Trading
Corrupt practices in various domains in India

• Legal System in India
• In trade and industry
• In various professions:
  • Legal/Consulting
  • Engineering
  • Educational Institutes etc.
• Financial Institute Fraud
• Corruption in government and politics
• Forgery
• Violation of FEMA/Import Export Act/Tax Laws
Myths of corporate compliance

• Organisation
  – Family run organisation
  – Professional run organisation

• Why corporate compliance?

• Compensation Structure

• Regulatory Mechanism
  – Companies Act
  – Listing Agreement
  – CARO
UNCAC & OECD Convention

• UNCAC
  – United Nations Convention Against Corruption
  – 200 signatories & 137 ratifications, in force since December 2005

• OECD Convention Against Bribery
  – The Organisation for Economic Co-operation and Development (OECD) Convention on Bribery of Foreign Public Officials in International Business Transactions
  – 37 signatories, in force since February 1999
UNCAC & OECD Convention

UNCAC

- Preventive measures
- Criminalisation
- International cooperation
- Asset recovery framework
- Technical cooperation and information exchange
Effects of convention guidelines

- Globalisation – Attitude towards bribery/corruption
- Increased regulatory enforcement
- Increased regulations in most parts of the world
- Signatories to international anti-corruption frameworks such as the UNCAC and the OECD Convention
- Increased collaboration between governments
- Creation of anti-corruption bodies
Effects of convention guidelines

• Investigating and prosecuting individual executives, not just organisations

• Creating effective legal systems for seizing, freezing and confiscating the assets or proceeds of a crime

• Developing transparency in
  – government operations
  – public procurement
  – establishing enforceable codes of conduct for officials
Measures to prevent corrupt practices

Organizational measures:

• Transparent business processes.
• Record and archive procedures.
• Specify competencies in job description.
• Identify activities and jobs that are especially at risk in relation to corruption.
• Principle of dual control.
• Add an “integrity clause” to your contracts.
• Due diligence for the selection of “local agent.”
Measures to prevent corrupt practices

Measures relating to staff and management

• Employee awareness
• Special training
• Job rotation
• Checklist for corrupt activities
• Reporting mechanism
• Integrity Pact/Integrity Clause
• Code of Conduct
• Pay your employees appropriate salaries
Measures to prevent corrupt practices

Supervisory measures

• Proper implementation and supervision
• Check on compliance with directives
• Regular inspections and random tests
• Contractual and accounting provision
• Regular tests for employees’ awareness
• Evaluate any incidences of bribery in a systematic manner
• Compile a collection of examples for successful problem solving (best practices)
Measures to prevent corrupt practices

Traditional Measures

• Internal Controls

• Internal Audit

• Whistle Blower Policy
Techniques to prevent corrupt practices

Continuous Transaction Monitoring

CTM means that fraud schemes involving change/change-back of data, which would probably go undetected by conventional audit programs, are indentified.
Techniques to fight corrupt practices

- IPR protection
- Channel partners management
- Fraud and misconduct investigation
- Data driven intelligence
- Fraud risk and loss management
- Pre-employment screening
- Integrity due diligence
- Enhanced due diligence
Recent Trends

US FCPA (Foreign Corrupt Practices Act, 1977)

UK Bribery Act
Recent Trends

UK Bribery Act

• General Offences
  - Active offence
  - Passive offence

• A separate offence of bribing a foreign public official; &

• A new corporate offence of failing to prevent bribery.
To conclude...

- Political will to take action
- Technical support for reform
- Regulations to create public opinion
To conclude...

Be informed

• Anti-corruption strategy
• Collecting information
• Nature, source and risk of corruption
• What you personally can do about it

Take appropriate measures

• Form and range of measures – can vary
• Size and Nature of organization
Thank you!