

# Implications of the Prevention of Corruption (Amendment) Act, 2018



***Focus Changes  
From  
Bribe Taker  
To  
Bribe Giver***

# Implications of the Prevention of Corruption (Amendment) Act, 2018

Sr. No	Amended Provision	Impact on Commercial organizations	Safeguards and Remedial Measures	Internal Measures to be adopted by an organization.
1.	<p>Any person (<b>includes commercial organization</b>) who:</p> <p>a) <b>Gives OR Promises to give</b> an “<b>undue advantage</b>” to another person or persons</p> <p>b) with intention <b>to Induce Public servant</b> to perform public duty improperly OR</p> <p>c) To <b>reward a public servant</b> for improper performance of public duty</p> <p>Shall be punishable with <b>imprisonment up to 7 years Or fine Or both (Section 8)</b></p> <ul style="list-style-type: none"> <li>○ Person to whom undue advantage is given may not necessarily be the person performing /has performed public duty</li> <li>○ It is immaterial whether such undue advantage is given directly or through a third person</li> </ul>	<p><b>Commercial organization</b> can be an accused of such offence and will be <b>punishable with fine</b> if the offence is proved.</p>	<ul style="list-style-type: none"> <li>○ In the event of such allegations immediate defense is to prove/establish that such person/commercial organization had been <b>compelled to give “undue advantage”</b></li> <li>○ To exercise such defense there is <b>reporting obligation</b>. Within 7 days from giving such undue advantage the person shall <b>report</b> the same to “<b>Law enforcement authorities or investigating agencies</b>”</li> </ul>	<ul style="list-style-type: none"> <li>○ Existence of a Reporting Mechanism – or internal escalations within organization for compliance related threats at sites ‘facilitation’ payments and demands for bribes</li> <li>○ Trainings given to employees and during onboarding trainings to lateral / fresh joiners to not pay and report cases to Compliance Head and MGM</li> <li>○ Escalation to Country / Division Management</li> </ul>

# Implications of the Prevention of Corruption (Amendment) Act, 2018 - continued

Sr. No	Amended Provision	Impact on Commercial organizations	Safeguards and Remedial Measures	Internal Measures to be adopted by an organization.
2	<p><b>Offence by Commercial Organization:</b> Offence is said to be committed by the “Commercial Organization” if <b>any Person associated with Commercial Organization</b> gives /promises to give undue advantage to a public servant with an intention</p> <p>a) To obtain /retain Business for Commercial Organization OR b) To obtain or retain an advantage in Conduct of business of Commercial Organization <b>(Section 9)</b></p>	<ul style="list-style-type: none"> <li>● Definition of Any Person associated is wide and it includes the person who performs services for or on behalf of commercial organization and it includes an <b>Employee Or Agent Or Subsidiary</b></li> <li>● If accused is an <b>employee</b> of the Commercial Organization it <b>will be presumed</b> that he has performed services for or on behalf of the Commercial Organization</li> <li>● Broadly all relevant circumstances will be considered to determine whether person has performed for/on behalf of the commercial organization and not merely the relationship of that person with organization</li> </ul>	<ul style="list-style-type: none"> <li>● <b>Defense:</b> To “PROVE” (in trial) that Commercial Organization had in place adequate procedures in compliance of preventive guidelines</li> <li>● The Government will prescribe necessary guidelines for compliance by the commercial organizations . Yet to be defined</li> <li>● Compliance should be made compulsory not only on the employees but also on the agents and subsidiaries</li> </ul>	<ul style="list-style-type: none"> <li>● Zero Tolerance to Corruption</li> <li>● Existence of a Compliance Organization and Processes</li> <li>● Sign off by employees to adhere to Business Conduct Guidelines</li> <li>● Independence of Compliance Officer               <ul style="list-style-type: none"> <li>□ Existence of a ‘Whistleblower Policy’</li> <li>□ Independent Audit Committee / Board for evaluation of non compliance</li> <li>□ Investigation of compliance violations</li> <li>□ Due diligence of sales intermediaries and their monitoring through audits</li> <li>□ Code of ethics for external stakeholders</li> <li>□ Compliance training given to externals on request basis</li> </ul> </li> </ul>

# Implications of the Prevention of Corruption (Amendment) Act, 2018 - continued

Sr. No	Amended Provision	Impact on Commercial organizations	Safeguards and Remedial Measures	Internal Measures to be adopted by an organization.
3	<p><b>Liability of Person in charge of the organization:</b></p> <p>If it is <b>PROVED</b> in Court that commercial organization has committed the offense <b>with Consent or Connivance of any DIRECTOR, MANAGER, SECRETARY or other officer-</b> such person <b>will be guilty of the offences proceeded against</b> and will be punishable with imprisonment not less than three years and extendable up to seven years and fine <b>(Section 10)</b></p>	<p><b>Consent and connivance</b> of person in charge to commit offence under the Act <b>if is proved</b> the person shall be guilty</p>	<p>Firstly the offence should be proved by the prosecution and to hold person in charge liable for the offence, consent and connivance of that person for commission of offence, should also be proved</p>	<ul style="list-style-type: none"> <li>☐ Compliance Investigation reports independently vetted by General Counsel / Legal Head</li> <li>☐ Disciplinary sanctions against proven misconduct</li> <li>☐ Self declaration to Regulatory Authorities, if required</li> </ul>
4	<p>The Term “<b>Undue Advantage</b>” is also widely defined which includes any gratification other than legal remuneration and it is NOT limited to pecuniary gratification or estimable in money <b>Section 2(d)</b></p>	<p>Any sort of gratification made to the public servant may be construed as an “undue advantage” under the Act</p>	<p>Stringent preventive and safeguarding Policy should be in place</p>	<ul style="list-style-type: none"> <li>☐ Company’s Compliance Guidelines clearly highlights NO such payments to be made and all such demands to be escalated to Compliance officer and Management</li> </ul>
5	<p><b>Previous approval /sanction for enquiry/inquiry by the investigating agency is provided for the prosecution of Public Servant. Commercial Organizations does not enjoy such privilege (Section 17A)</b></p>			



**THANK YOU**

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