

# Prevention of Corruption (Amendment) Act, 2018

Keeping corruption in check

September 2018





## Background

Bribery is a deep-rooted problem that has stalled the growth of economies across the globe, and continues to do so, despite sustained efforts to tackle it. Besides putting at stake political and economic stability, it severely impacts the ease of doing business in the country. At an enterprise level, corruption can have toxic consequences. It can result in regulatory action, reputational loss, reduced employee morale and so on.

In India, bribery has been an especially pressing challenge and acts as a roadblock to conducting business. In this context, the Prevention of Corruption (Amendment) Act, 2018, enacted and brought into force on 26 July 2018, advances the march towards ushering in an anti-corrupt framework.

## Objective

The Amendment Act primarily amends provisions of the Prevention of Corruption Act, 1988. It aims to keep serious and ordinarily faced corruption concerns in check, making bribes to a public servant and bribery by a commercial organisation an offence. Another objective is to provide relief to bankers by protecting honest bankers from prosecuting agencies. Overall, the crucial amendments, amongst others, seek to invigorate the archaic anti-corruption law.

## Salient features of the Prevention of Corruption (Amendment) Act, 2018

- **Bribe-giving a substantive offence:** As per the Amendment Act, **any person who gives or promises to give an undue advantage to another person or persons, with intention:**
  - a to induce a public servant to perform improperly a public duty; or
  - b to reward such public servant for the improper performance of public duty;

shall be punishable with imprisonment and the term may extend to seven years or with fine or with both.
- **Quantum of punishment for bribe-takers:** For bribe-takers, the punishment is higher – a minimum jail term of three years, which may extend to seven years, along with a fine. For repeat offenders, imprisonment is for a term of not less than five years and may extend to ten years, along with a fine.
- **Bribery by a commercial organisation:** The Amendment Act attempts to bring sweeping changes with respect to the responsibility of commercial organisations to safeguard ethical conduct. Bribing a public servant by a commercial organisation is an offence. A commercial organisation shall be guilty of an offence **if any person associated with such commercial organisation gives or promises to give any undue advantage to a public servant intending:**
  - a to obtain or retain business for such commercial organisation; or
  - b to obtain or retain an advantage in the conduct of business for such commercial organisation.

Such organisations shall be punishable with a fine and the person in charge, including director, manager, secretary or other officer, will be guilty of the offence. Thus, it poses direct liability for commercial organisations in India and has a far-reaching impact on the officers guilty of such conduct; punishable with imprisonment for a term not less than three years and extendable to seven years in addition to a fine.

The only defence for such commercial organisation would be to prove that it had in place adequate procedures in compliance with the recommended guidelines to prevent such conduct. The responsibility of companies to put in place stringent and effective guidelines to ensure compliance and keep in check corrupt practices, thus, increases heavily.

- **Redefining criminal misconduct: A public servant is said to commit the offence of criminal misconduct:**
  - a if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property

- b if he intentionally enriches himself illicitly during the period of his office.

- **Prior sanction for prosecution to safeguard 'honest' public servants:** The Amendment Act includes a provision for seeking prior approval before proceeding with initiating investigation against any government officer; it is applicable to retired public servants as well. Thus, a police officer cannot begin a probe without seeking prior government approval. Earlier, these approvals were to be sought only to the position of Joint Secretary and above.
- **Time-bound trial:** The Amendment Act introduces a timeline of up to two years within which a case has to be decided.
- **Forfeiture of property:** The Amendment Act inserts a separate chapter on attachment and forfeiture of property of public servants by a 'Special Judge'.

## Our point of view

The Prevention of Corruption (Amendment) Act, 2018 seems to have borrowed cues from global anti-corruption laws like the US Foreign Corrupt Practices ACT (FCPA) and the UK Bribery Act (UKBA). Provisions relating to keeping corruption in check have been widened in scope, especially with bribe-givers being effectively covered in the ambit. Similarly, protection of persons who give bribe under coercion and provision of speedy trials ensure increasingly effective enforcement. It also sends a signal to organisations to keep in place robust compliance procedures. Having in place anti-bribery guidelines as 'adequate procedures' to prevent such conduct would be their only valid defence. Therefore,

strengthening their compliance policies, procedures and anti-bribery policies is the best bet for organisations.

Organisations can adopt and implement the ISO 37001 standard to explicitly demonstrate their compliance. Through the rigors of a well-defined anti-bribery and anti-corruption policy, periodical risk assessment, training and internal compliance audit, the standard quintessentially helps organisations to comply with the Amendment Act as well as the FCPA and the UKBA.

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Sources:

1. Prevention of Corruption (Amendment) Act, 2018, Gazette of India

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