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Corporate Research and Investigations

**E-BOOK**

# **SOUTH ASIA GRAPPLES WITH ANTI-BRIBERY COMPLIANCE**

**& ISO 37001 PROVIDES SOLUTIONS**

# INTRODUCTION

On the whole, South Asia has a troubled record when it comes to preventing bribery and corruption, and enforcing compliance. Recent cases and statistics show that the problem persists in most countries in the region. Both government officials and private sector business leaders are struggling to adopt policies, control methods and best practices to help reduce bribery and corruption on their watch. High profile cases such as the 1MDB scandal in Malaysia and, more recently, the alleged Meikarta township case in Indonesia underscore this point.

The investigations that were triggered by these cases demonstrate, however, that regulators are serious about addressing the threat of bribery and corruption as more than just a legal issue, but as a societal one, as well. In response, organisations that are committed to being in compliance are adopting the ISO 37001 – Anti-Bribery Management Systems standard as a comprehensive approach to mitigating risk. ISO 37001 and its elements can be tailored to any type of organisation. It prescribes implementing an anti-bribery policy, appointing a person to oversee anti-bribery compliance, training, risk assessments and due diligence on projects and business associates. It also calls for implementing financial and commercial controls, and instituting reporting and investigation procedures.



# BRIBERY PERSISTS,

## With a Shifting Enforcement Landscape

While bribery and collusion appear to be decreasing slightly on a global scale, the unfortunate fact is that they remain steady in the South Asia (also referred to as the Asia Pacific) region. Other than New Zealand, Singapore, and Australia, who scored well in combating corruption, a majority of countries in the region are on the bottom half of the Transparency International Corruption Perceptions Index (CPI) spectrum. North Korea ranks the worst at No. 176. Cambodia ranks No. 161, Vietnam is 117, Thailand and the Philippines are tied at No. 99, and Sri Lanka and Indonesia are tied at 89, just to name a few. In an article presenting the latest rankings, Transparency International asserts that the region's performance over the past three years indicates that "the Asia Pacific region is making little progress in the fight against corruption." The report further states: "Why is Asia Pacific making little to no progress in its anti-corruption efforts? One of the reasons is an overall weakening of democratic institutions and political rights."

This reputation for poor performance on the global stage of anti-corruption measures has spurred government initiatives in several jurisdictions to make new headway in efforts to combat bribery and corruption. Awareness of bribery and corruption is peaking and government leaders, by and large, do not want the perception of being on the wrong side of progress on this issue:

"Corruption is one of the main obstacles to sustainable economic, political and social development, for developing, emerging and developed economies alike. Overall, corruption reduces efficiency and increases inequality. Estimates show that the cost of corruption equals more than 5% of the gross world product, which means estimated fraud losses of £3.65 trillion for 2019 – with over £829 million paid in bribes each year (World Bank). It is not only a question of ethics; we simply cannot afford such waste".

Southeast Asia is seeing countries boost their efforts. This is evident to varying degrees in Vietnam, the Philippines, Cambodia, Indonesia and others – though, as the Transparency International report shows, there is much work to be done. Farther East, South Korea experienced recent high profile corruption scandals, which led to massive public protests and the swift impeachment and prosecution of its President, Park Geun-hye". Three years ago, South Korea passed the sweeping Improper Solicitations and Graft Prohibition Act, better known as the "Kim Young Ran Law" after the former Supreme Court justice who proposed the Act.

# “Shenzhen of Indonesia” Case NEWEST DEVELOPMENTS

One of the latest high-profile bribery cases in the region involves the chairman of Indonesian-based Lippo Group and other figures involved in a major development build called Meikarta township. The project has been touted as the “Shenzhen of Indonesia.” After months of investigation, Lippo Group deputy chairman James Riady appeared as a witness in court in February and denied allegations that he was involved in corruption involving permits for the project. The Corruption Eradication Commission (KPK) Indonesia had already arrested Lippo Group operational director Billy Sindoro, along with Bekasi Regent Neneng Hasanah Yasin and several other top officials in the administration “for their alleged roles in bribery connected to the issuance of property permits for the project.” The allegations involve a promise of Rp 13 billion (US\$856,888) in bribes to the Bekasi regency administration for issuing the relevant permits, of which Rp 7 billion had reportedly been transferred. The case is not yet fully resolved as of this writing.

The Meikarta case isn’t the only alleged corruption scandal plaguing Indonesia. The head of a state power utility and a senior politician were implicated in a bribery scandal involving the awarding of a major public works contract. KPK officials suspect that Perusahaan Listrik Negara (PLN) President Sofyan Basir agreed to award a contract to build a 600 megawatt coal-fired power plant in exchange for a kickback of Rp 4.75 billion (\$332,800). And, in yet another recent bribery case, the KPK arrested the head of the United Development Party, or PPP.

Perhaps the defining bribery case for the region in recent years is the 1MDB case in Malaysia. Malaysia’s state-owned investment fund, 1MDB, was supposed to attract foreign investment. Instead, it “spurred criminal and regulatory investigations around the world that have cast an unflattering spotlight on financial deal-making, election spending and political patronage under former Prime Minister Najib Razak. The figures are mind-boggling: a Malaysian parliamentary committee identified at least \$4.2 billion in irregular transactions related to 1MDB. In May, Najib was ousted from power in a general election as the scandal fueled a voter backlash that ended his party’s 61 years of rule. As the investigations continue, Najib faces trial on corruption charges and U.S. prosecutors have implicated at least three senior Goldman Sachs Group Inc. bankers in a multiyear criminal enterprise”.

The 1MDB case has implications that spread far beyond Malaysia and the South Asia region. In the U.S., federal prosecutors announced that one of the implicated former Goldman Sachs bankers had pleaded guilty, with bribery and money laundering charges lodged against a second banker as part of the investigation. U.S. prosecutors “also brought charges against the Malaysian businessman they believe stole some of the money: Jho Low, who spent millions of dollars on gifts to celebrities like the actor Leonardo DiCaprio and the model Miranda Kerr. The money was used to buy a Picasso painting, diamond necklaces and Birkin bags as well as to pay for the Hollywood blockbuster ‘The Wolf of Wall Street.’”.

Cases like the 1MDB scandal demonstrate that investigation and enforcement are stepping up. The Foreign Corrupt Practices Act (FCPA), UK Bribery Act 2010 and other laws on the books provide tools for regulators to bring action against companies doing business overseas, and even those principal actors in foreign organisations if they run afoul of anti-corruption laws. In Malaysia, the Malaysian Anti-Corruption Commission (Amendment) Act 2018 added a provision on corporate liability. The amended act (formerly the Malaysian Anti-Corruption Commission [MACC] Act 2009) gives more power to the MACC in fighting corruption in the private sector, as it includes penalties for firms that can now be held liable if their employees commit bribery.

Speaking in Kuala Lumpur, Malaysia, at the Anti-Bribery Anti-Corruption (ABAC) Summit 2018, Mohd Nur Lokman bin Samingan, Assistant Commissioner at Malaysian Anti-Corruption Commission, explained some of the key objectives of the 2018 Amendment Act. Among them, the new provisions are meant “to encourage business and commercial activities being carried out in a corruption-free environment; to encourage all commercial organisations to take adequate measures in order to prevent corruption in their respective organisations; and to promote better corporate governance and legal compliance by requiring corporations to take proactive roles in preventing corruption”. Mr. Mohd Nur Lokman went on to explain that punishment for bribery and other corrupt acts under the amendment can include fines “of not less than 10 times the sum of value of the gratification which is the subject matter of the offence”, or one million ringgit (whichever is higher) – and can also include imprisonment for a term not exceeding 20 years.

# ISO 37001:2016 ABMS TO TACKLE BRIBERY

At last year (2019) Malaysian Anti-Corruption Commission (MACC) Seminar Benchmark on Governance, Integrity & Anti-Corruption, leaders and luminaries in anti-bribery and anti-corruption gathered to speak on compliance issues affecting the region. The event was held in conjunction with the British High Commission (BHC). The seminar provided examination and discussion of UK’s best practices in governance, integrity and anti-corruption, including a focus on the ISO 37001 Anti-Bribery Management System Standard.

Keynote speaker Zafar Anjum, founder and CEO of CRI Group and ABAC Center of Excellence, presented “Anti-Bribery Management System (ABMS 37001) Case Study and Implementation – UK Experience”. Anjum provided an overview on ISO 37001 ABMS Accreditation & Certification as an effective and “adequate procedure” for organisations in the region and beyond. First, Anjum provided some stark statistics. He said that according to the International Monetary Fund, “An estimated \$2 trillion in bribes is paid annually in both developing and developed countries”. Anjum also noted that the Association of Certified Fraud Examiners (ACFE) 2018 Report to the Nations - Global Study on Occupational Fraud and Abuse found that “Organisations lose an average of 5% of their annual revenue to fraud each year”.

To combat the threat, organisations around the world are turning to ISO 37001. The International Organization for Standardization (ISO) issued ISO 37001 in 2016 to help organisations worldwide increase and measure their efforts against bribery and corruption.

Anjum explained that ISO 37001 ABMS implements standards in organisations at every level through measures that include adopting an anti-bribery policy, appointing a person to oversee anti-bribery compliance, training, risk assessments and due diligence on projects and business associates. It also involves implementing financial and commercial controls and instituting reporting and investigation procedures. Anjum described the work of the ABAC (Anti-Bribery and Anti-Corruption) Center of Excellence, a global network of certified ethics and compliance professionals, qualified auditors, financial and corporate investigators, certified fraud examiners, forensic analysts and accountants, as a tool for organisations to prevent bribery and corruption. ABAC Certification is an accredited provider of ISO 37001 ABMS Certification and Training for organisations of all types and industries.

The ISO 37001 standard specifies requirements and provides guidance for establishing, implementing, maintaining, reviewing and improving an anti-bribery management system. The system can be stand-alone or can be integrated into an overall management system. ISO 37001 addresses the following in relation to the organisation's activities:

- Bribery in the public, private and not-for-profit sectors
- Bribery by the organisation
- Bribery by the organisation's personnel acting on the organisation's behalf or for its benefit
- Bribery by the organisation's business associates acting on the organisation's behalf or for its benefit
- Bribery of the organisation
- Bribery of the organisation's personnel in relation to the organisation's activities
- Bribery of the organisation's business associates in relation to the organisation's activities
- Direct and indirect bribery (e.g. a bribe offered or accepted through or by a third party)

The ISO 37001 process helps companies and government organisations reduce the risk of bribery by establishing, implementing, maintaining and enhancing internal anti-bribery and anti-corruption systems. When administered by an accredited provider of ISO ABMS certification and training, the protocol can:

- Provide needed tools to prevent bribery and mitigate related risks
- Help an organisation create new and better business partnerships with entities that recognize ISO 37001 certified status, including supply chain manufacturing, joint ventures, pending acquisitions and co-marketing alliances
- Potentially reduce corporate insurance premiums
- Provide customers, stakeholders, employees and partners with confidence in the entity's business operations and ethics
- Provide a competitive edge over non-certified organizations the organisation's industry or niche
- Provide acceptable evidence to prosecutors or courts that the organization has taken reasonable steps to prevent bribery and corruption.

As the ISO documentation states, "Conformity with (ISO 37001) cannot provide assurance that no bribery has occurred or will occur in relation to the organization, as it is not possible to completely eliminate the risk of bribery". ISO ABMS certification is, however, a potential mitigating piece of evidence to regulators or even prosecutors and the courts that the entity has taken meaningful steps in its efforts to prevent bribery and corruption.

# CONCLUSION

Which organisations need ISO 37001? Despite the slow progress in combating bribery and corruption, the South Asia region remains an attractive market for organisations looking to expand. New laws and enforcement efforts are providing an increasing emphasis on compliance. In such a climate, organisations must stand ready to demonstrate their implementation of internal processes, policies and controls to prevent and detect bribery and corruption and remain in compliance.

The ISO 37001 ABMS standard is an established, tried and tested program that addresses those issues head-on through a comprehensive program of training and certification. The training process is tailored to the organisation, while still following the developed curriculum and documented best practices. Certification requires the demonstration that processes have been implemented effectively, with follow-up evaluations. Developments in the South Asia region and worldwide have demonstrated that there isn't time to wait to implement controls and compliance procedures – the next investigation and/or prosecution may be too late. The harm caused by bribery and corruption to an entity's reputation, investments and business can be far-reaching and long-lasting.

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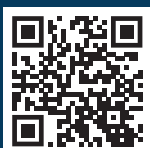
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