

L E X

# WITNESS

Volume 10 Issue 12 | July 2019

₹65 US \$6 UK £4

## ■ the pondering pill



**Krishna Venkat**  
Co-founding Partner, Anoma Legal

P52

## ■ expert speak



**Sumit Makhija**  
Partner,  
Deloitte India

P17



**Aurelia Menezes**  
Principal Associate,  
King Stubb & Kasiva

P36



**Maneesha Dhir**  
Managing Partner,  
Dhir & Dhir Associates

P22



**Karan Kanwal**  
Sr. Associate,  
Dhir & Dhir Associates



**Niraj Singh**  
Partner, RNS Associates

P56

## ■ ipr corner



**Vikrant Rana**  
Managing Partner,  
S.S. Rana & Co.



**Isheta Srivastava**  
Associate,  
S.S. Rana & Co.

P42

## ■ let's arbitrate



**S. Ravi Shankar**  
Sr. Partner,  
Law Senate

P66

# Budget 2019

A New India  
in the Making?

P08

## expert speak



**Hardeep Sachdeva**  
Senior Partner, AZB & Partners  
**Ambika Khanna**  
Associate, AZB & Partners

P30

## expert speak



**Rohan Swarup**  
Senior Associate,  
Singh & Singh

P46

## expert speak

**Shantanu Malik**  
Partner, Hammurabi & Solomon  
**Shuchi Sejwar**  
Sr. Associate, Hammurabi & Solomon

P62



**Group Business Head**  
Akshay Alagh | 98993 32111

**International Consultants**  
**USA**

Lokanath Mohapatra  
Dr. Rajeev Mehta

**UK**

K. S. Sreekumar

**Assistant Editors**

Rajesh Srivastava  
Rahul Vaid\*

**Editor (Features)**

Vineeta Jerath

**Senior Manager – Brand Innovation**

Bhupinder Kaur | 96541 55065  
Neelima Maheshwari | 88008 41600

**Circulation & Subscription**

Sunil S Chauhan | 98712 76447

**Art & Creative**

Vipin Rai

**Admin. and Finance**

Sunil Kumar

**Head Office**

Building No 426,  
2nd Floor, Ghitorni  
MG Road, New Delhi - 110030

**Registered Address**

B1/6 Lower Ground Floor  
Hauz khas, New Delhi - 110016

## ADVISORY BOARD

**Dr. Justice AR Lakshmanan**

Former Chairman  
Law Commission of India

**Amarjit Singh Chandhiok**

Former Additional  
Solicitor General of India

**Justice R. S. Sodhi**

Retired Delhi High Court Judge

**Dr. Lalit Bhasin**

President - Society of Indian Law Firms

**Badrinath Durvasula**

Vice President & General Counsel,  
HCC Ltd.

## EXPERT PANEL

**Prof. Madabhushi Sridhar**

Central Information Commissioner,  
New Delhi

**H. V. Ramadas**

Advocate, Karnataka High Court

**Kumar V. Jahgirdar**

President-CRISP

# contents

## 20 INSIGHT

### Data Governance Best Practices: How to Oversee Your Content

What is good data governance? It is ensuring the quality, availability, security, and usability of data within an organization. The MDM Institute defines data governance as "the formal orchestration of people, processes, and technology, to enable an organization to leverage data as an enterprise asset." Have an interesting read through.

## 40 SPECIAL

### Provakil – The New Headliners for LegalTech!

As technology unleashes its whip and hits hard the innovation benchmarks for the legal industry, Lex Witness brings into the limelight one of the major path-breaking entrepreneurial showcases that have whispered several vows in the industry recently. Watch out for Provakil if you have not as yet. Here's a brief write up on them and their clapping achievements so far.

## 64 VINTAGE LANE

### Dr. Saifuddin Kitchlew - Lawyer, Freedom Fighter & the Real Hero of Jallianwala Bagh

Saifuddin Kitchlew was an Indian freedom fighter, barrister, politician and a Nationalist Muslim leader. A member of Indian National Congress, he first became Punjab Pradesh Congress Committee (Punjab PCC) head and later the General Secretary of the AICC in 1924. Here's an interesting read through.

## CUTTING EDGE



## Budget 2019 – A New India in the Making?

The cover story this month revolves around the budget presented by finance minister Nirmala Sitharaman earlier this month. The positives, negatives and promises made by the govt have been explored for their feasibility towards realization of the country's economic growth in the next 5 years.

**PAGE 08**

Corrigendum - The June 2019 issue inadvertently published the designation for Ms. Smita Paliwal as Associate. She holds the position as a Partner at King Stubb & Kasiva. Lex Witness regrets the error and inconvenience caused.

\* Responsible for selection of news under PRB Act. Owned, Printed and Published by Shyam Grover and printed by JK Offset Graphics, B 278. Okhla, Industrial Area, Phase -1, New Delhi 110020 and to be published at B1/6, Lower Ground Floor, Hauz Khas New Delhi 110016 by the Editor - Shyam Grover. The publishers regret that they cannot accept liability for errors & omissions contained in this publication, howsoever caused. The opinion & views contained in this publication are not necessarily those of the publisher. Readers are advised to seek specialist advice before acting on the information contained in the publication which is provided for general use & may not be appropriate for the readers' particular circumstances. The ownership of trade marks is acknowledged. No part of this publication or any part of the contents thereof may be reproduced, stored in a retrieval system, or transmitted in any form without the permission of the publishers in writing.

## expert speak



17

**SUMIT MAKHIYA**

Partner, Deloitte India

## counsel corner



27

**PERSIS HODIWALLA**

Senior Manager Legal, Reliance Big Entertainment

## tête-à-tête



33

**S. MAHADEVAN**

Executive Vice President – Legal, Secretarial and Compliance, Hinduja Global Solutions

## REGULARS

**50 CAPSULES**

**60 SNIPPETS**

**64 VINTAGE LANE**

**68 TAROT TALKS**

**70 BUZZ SQUARE**

**72 JOBS ARENA**

**75 COFFEE BREAK**

**77 EVENT CALENDAR**

**78 TRIVIA**

# Building an Effective Anti-bribery and Corruption Framework

■ Sumit Makhija

**B**ribery and corruption have traditionally been seen as the cost of doing business in many developing nations, including India. Delays in enforcement action with respect to the Prevention of Corruption Act (PoCA), 1988 and absence of a specific provision in the previous anti-corruption legislation of India (to bring corporates under its purview) have prevented Indian companies from reporting bribery instances and creating robust anti-bribery programmes. The increased globalisation of businesses, strong enforcement of cross-border legislation pertaining to bribery (such as the US Foreign Corrupt Practices Act and the UK Bribery Act), and the Indian government's commitment to fight corruption have led to several measures in this area. These measures include enabling digitisation, relooking at tax structures, centralising procurement for certain critical government departments, and amending the PoCA (with a view to combat bribery and corruption).

While these measures help reinforce an ethical business environment in the country, they need to be supplemented by the Indian business' efforts to create anti-bribery and corruption programmes to weed out corruption at the organisational level.

## BUILDING A ROBUST COMPLIANCE PROGRAMME

An effective anti-bribery management system/programme (ABMS) requires organisations to assess external and internal factors that are relevant for creating a corruption-free organisation and assess the ability (in terms of their current organisational level skills, policies, and mechanisms) to achieve the objectives of their system. The programme includes policies and procedures needed as well as key stakeholders who would be responsible for implementation. A necessary aspect of the ABMS is regular scrutiny of control measures and periodic audits to identify ever evolving areas of risk and ensuring compliance with ever-changing legislation and regulatory environment.

Organisations and compliance officers can consider the recently introduced ISO 37001:2016 standard as a guideline to help build a robust ABMS. The standard specifies requirements and provides guidance for establishing, implementing, maintaining, reviewing, and improving an ABMS. Focusing on the risk of bribery by the organisation and business associates (acting on the organisation's behalf or for their benefit), the standard ensures that both direct and indirect instances of bribery (e.g., a bribe offered or accepted through or by a third party) are

Deloitte.

Deloitte India  
Indiabulls Finance Centre, 27th  
floor, Tower 3, Senapati Bapat  
Marg, Elphinstone Mill Compound,  
Elphinstone (W), Mumbai - 400 013

E: [infoforensic@deloitte.com](mailto:infoforensic@deloitte.com)  
T: 022 6185 4000





treated equally. This is also a requirement under the Prevention of Corruption (Amendment) Act, 2018.

The standard proposes some key components that should form part of an effective ABMS. These include elements such as an anti-bribery policy and the appointment of an anti-bribery Compliance function with appropriate competence, authority, and independence to set objectives. The standard explicitly

assigns roles to the board of directors, top management, and the Compliance function.

- **Board of directors** – Responsible for oversight, including approving anti-bribery policy and reviewing information about its operation

- **Management** – Responsible for implementation, communication of the policy, integration of the system in the

organisation's processes, and deployment of adequate resources

- **Anti-bribery compliance function** – Responsible for oversight of design and implementation of the ABMS and offering advice and feedback to the board and top management about its functioning

**Other best practices for building an ABMS are mentioned below:**

1. Establish an anti-bribery policy, including a gifts policy. The gifts policy needs to be labelled separately. It should also prescribe documentation of aspects and the value of permissible gifts, as well as a register to record gifts received and sent.

2. Appoint an independent anti-bribery compliance function with appropriate competence, authority, and independence. Organisations typically share resources between the ABMS and other functions that can be challenging as members may not be independent and may find it difficult to prioritise their commitment towards the ABMS.

3. Undertake bribery risk assessment on a periodic basis (for example, every year). Such an assessment can include relooking at the bribery and corruption risks in the business ecosystem, in the light of developments such as new legislation and new business models, including cross-border trade.

4. Conduct adequate due diligence, including pre-employment and third-party due diligence in case of business relationships to protect against bribery risks by/on behalf of the organisation. This due diligence should also extend to monitoring political and charitable donations, and making the public disclosure of payments.


5. Establish a whistleblowing mechanism and commissioning independent investigations into complaints. It is also a good practice to

address bribery and corruption risks.

Developing an anonymous whistleblower mechanism helps encourage the reporting of suspicious activities as the mechanism protects whistle blowers from the threat of retaliation.

6. The standard calls for a segregation of duties to serve as a control measure to ensure that a single person cannot both initiate and approve a payment. Similarly, developing a transparent and competitive tender process to award contracts, where possible and reasonable, is a good measure to ensure fairness and reduce the risk of bribery. The standard also discourages the use of cash and requires organisations to implement effective cash control/restriction methods. Rotating auditors and conducting independent investigations are also important for organisations to continuously evaluate and strengthen the ABMS.

Finally, organisations should have adequate provisions to ensure ongoing training/coaching and awareness campaigns for personnel and business partners. Encouraging a zero-tolerance culture by setting a clear tone at the top is also an important way to curb bribery and corruption in business.

Following these best practices guided by the ISO 37001:2016 standard could help organisations establish bribery and corruption prevention mechanisms. These mechanisms have a strong foundation but are agile enough to keep pace with frequent changes in the business and regulatory environments. 



**Sumit Makhija** is a Partner and leads anti-bribery and corruption services within Deloitte's Forensic practice in India. He is a Fellow member of the Institute of Chartered Accountants of India and a Certified Fraud Examiner from the Association of Certified Fraud Examiners, USA. He also serves a Director on the India Chapter of Association of Certified Fraud Examiners.