

# Conducting an Effective Internal Investigation

Udai Bajaj  
Luthra & Luthra  
Law Offices

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# Background

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- Dynamic and changing corporate requirements:
  - foreign national laws such as FCPA,
  - global legal trends, UNCAC and OECD Convention,
  - corporate governance and minority rights.
- Scope and ambit of offences under the Prevention of Corruption Act. Potential liabilities for the individuals and corporate.
- Multi-disciplinary approach towards dealing with the problem of improper payments/ corruption.
- Investigative action should address legal issues and be in conformity with practical reality, sensitivities.



# Moving Beyond the Trigger

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- **Can we afford to stay quiet?**
  - legal obligation to act,
  - responsibility of employees,
  - contractual obligations vis-à-vis third parties.
  
- Basic steps in an investigation:
  - 1) Hiring a professional.
  - 2) Gathering preliminary information.
  - 3) Detailed fact finding and employee interviews.
  - 4) Assessment of findings.
  - 5) Corrective measures/ reporting obligations.



# Hiring a Professional

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- Independence and credibility is a must for any investigation.
- Clear mandate, purpose.
- In case the subject company has cross border operations, a global network should be available.
- Preservation of confidentiality and **attorney-client privilege**.



# Gathering Preliminary Information

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- Look into your business:
  - identify all dealings with government agencies,
  - identify all agents and their potential dealings,
  - examine all transactions with a potential to create unaccounted cash,
  - accumulate all possible details of known payments.
- Examine practices/ records in a close group.
- Compilation of list of relevant documents/ employees.





# Fact Finding/ Employee Interviews

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- Dispatch of notices to relevant employees to preserve necessary documents. Simultaneous scanning of laptops/ work systems of employees.
  
- Planning for interviews:
  - required to be on a voluntary basis,
  - most relevant employees first,
  - questioning from general to specific,
  - familiarity with the vernacular language,
  - follow up with more rounds, if required.



## Fact Finding (contd.)

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- Focus on trends, practices and estimates rather than excessive details of every transaction.
- Go as far back as *practically* possible. Limitation period may not apply.
- Key legal challenges:
  - all employment/ labour law issues, including any disciplinary proceedings, to be kept separate,



## Fact Finding (contd.)

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- personal information of employees to accessed/ examined/ used in accordance with terms of disclosure and fairly,
- access to personal information may raise concerns under the Information Technology Act and law of torts.



# Assessment

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- Connect the dots. Examine the scale and depth of improper transactions.
- Action against concerned employees. Crucial step for corporate policy.
- Distinguish bribes from *speed money*, as relevant.
- Review the business operations affected by such payments/ transactions.

# Corrective Measures/ Reporting Obligations

- Determine if it is possible to carry on affected operations in compliance with law going forward. Planning of an exit.
- Indian criminal law- the obligation to inform.
- Income Tax Act- provides for filing of correct returns within the prescribed time period.
- Revision of annual accounts.
- In case of a US based parent, determine the need to disclose to SEC/ DOJ, as per advice of relevant counsel.



# Staying Compliant

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- Draft and preparation of a robust compliance program. The program should be exhaustive (to include gifts, expenses etc.) and be effectively communicated to all employees.
- At least initially, need for onerous approval requirements.
- **Be careful.**

*The Prevention of Corruption Act prohibits acceptance of any valuable thing (which includes cash) by a government servant, without consideration or for consideration which he knows is inadequate, from any person having any connection with his official functions*



# Thank You

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Udai Bajaj  
Luthra & Luthra Law Offices



103, Ashoka Estate, 24, Barakhamba Road, NEW DELHI 110 001

**Tel:** (91) (11) 4121 5100; **Fax:** (91) (11) 2372 3909

704-706, 7th Floor, Embassy Centre, Nariman Point, MUMBAI 400 021

**Tel:** (91) (22) 6630 3600; **Fax:** (91) (22) 6630 3700

408, 4th Floor, Barton Centre, M. G. Road, BANGALORE 560 001

**Tel:** (91) (80) 4112 2400; **Fax:** (91) (80) 4112 2332

**Email:** [ubajaj@luthra.com](mailto:ubajaj@luthra.com)

