

PSCI Virtual Supplier Conference 2020 (India)

Session 3 – Ethics, Human Rights & Labor

Disclaimer: Compliance with local requirements is the responsibility of companies and their local business areas. The information in these presentations is not intended to supersede, take the place of, or conflict with, local government requirements.

Practicalities

- Switch to audio feed only for better connection
- Breaks
- We'll be using Sli.do for Q&As and polls, please follow the link under the Q&A tab on Livestream webpage (Sli.do event code: **#PSCIIndia**)
- Feedback survey

ANTI-TRUST STATEMENT

While some activities among competitors are both legal and beneficial to the industry, group activities of competitors are inherently suspect under the antitrust/anti-competition laws of the US, UK and other countries in which our companies do business. Agreements between or among competitors need not be formal to raise questions under antitrust laws, but may include any kind of understanding, formal or informal, secretive or public, under which each of the participants can reasonably expect that another will follow a particular course of action or conduct. Each of the participants in this meeting is responsible for seeing that topics which may give an appearance of an agreement that would violate the antitrust laws are not discussed. It is the responsibility of each participant in the first instance to avoid raising improper subjects for discussion, such as those identified below.

It is the sole purpose of this meeting to provide a forum for expression of various points of view on topics described in the agenda and participants should adhere to that agenda. Under no circumstances shall this meeting be used as a means for competing companies to reach any understanding, expressed or implied, which tends to restrict competition, or in any way to impair the ability of members to exercise independent business judgment regarding matters affecting competition.

Topics of discussion that should be specifically avoided are:

- i. Price fixing;
- ii. Product discounts, rebates, pricing policies, levels of production or sales and marketing terms customer and territorial allocation;
- iii. Standards setting (when its purpose is to limit the availability and selection of products, limit competition, restrict entry into an industry, inhibit innovation or inhibit the ability of competitors to compete);
- iv. Codes of ethics administered in a way that could inhibit or restrict competition;
- v. Group boycotts;
- vi. Validity of patents;
- vii. On-going litigation;
- viii. Specific R&D, sales or marketing activities or plans, or confidential product, product development, production or testing strategies or other proprietary knowledge or information.

Operationalizing PSCI Human Rights Principles

Samah Abbasi

Human Rights Manager

GSK

Peter Nestor

Human Rights Manager

Novartis

Speaker Bio – Samah Abbasi

Samah Abbasi, Human Rights Manager, GSK

Experience & Training

- Samah has over 15 years' experience of policy and advocacy work on human rights, international development and corporate responsibility.
- Prior to joining GSK she was Head of Private Sector Policy and Advocacy at UNICEF UK, working with business, civil society and government to advance corporate respect for children's rights.
- Samah holds a BA (Hons) in Politics and East European Studies from University College London.



Speaker Bio – Peter Nestor

Peter Nestor, Human Rights Manager, Novartis

Experience & Training

- Peter joined Novartis after 8 years as Director of Human Rights at BSR, a non-profit organization advising companies on corporate responsibility and human rights.
- Peter is currently the Co-Chair of the Human Rights and Labor Sub-Team of the PSCI, where he has spearheaded projects to investigate pharmaceutical supply chains, develop human rights training, and delivered webinars to the PSCI membership on modern slavery supply chain risks.
- He has published over 20 articles on business and human rights and is a frequent contributor and guest lecturer in universities on business and human rights.
- Peter holds a BA from Middlebury College, and law degree from the University of Washington School of Law.



AGENDA

1. What are Business & Human Rights Issues?

2. Four Steps to Implement the UNGPs

3. Resources

4. Case Study



Poll – To submit your responses, please go to <https://app.sli.do/> and enter the event code: #PSCIIndia

In each of the situations below, whose responsibility is it:

- The Government?
- The company?
- Both?

1. A country's minimum wage is below a "living wage" and is not enough to pay for living expenses of workers and their families.
2. A country has a lack of access to affordable primary education.
3. There is a lack of affordable and safe of transportation to a company's work site, especially for women working the night shift.
4. Some workers are dismissed who attempted to form a union.
5. National laws do not define a limit on overtime work.

Human Rights in the PSCI Principles

“The term “human rights” in these Principles is defined in accordance with the UN Guiding Principles on Business and Human Rights, which we accept as the internationally agreed standard for the corporate responsibility to respect human rights. The PSCI supports the UNGPs and will offer and promote implementation guidance to members and the pharmaceutical sector to encourage their widest adoption.”



THE PSCI PRINCIPLES FOR RESPONSIBLE SUPPLY CHAIN MANAGEMENT

This document outlines the PSCI Principles for Responsible Supply Chain Management (the “Principles”) for human rights*, ethics, labor, health and safety, environment and related management systems. The Principles may be voluntarily supported by any business in the pharmaceutical industry.

Companies supporting the Principles:

- will integrate and apply these Principles in a manner consistent with their own supplier programs.
- understand that society and business are best served by responsible business behaviors and practices. Fundamental to this understanding is that a business must, at a minimum, operate in full compliance with all applicable laws, rules and regulations.
- are aware of differences in culture and the challenges associated with interpreting and applying these Principles globally. While companies supporting the Principles understand that what is expected is universal, it is understood that the methods for meeting these expectations may differ dependent on size and location.
- understand the Principles are best implemented through a continual improvement approach that advances supplier performance over time.

The [PSCI Implementation Guide](#) provides examples of business practices and performance related to the Principles.

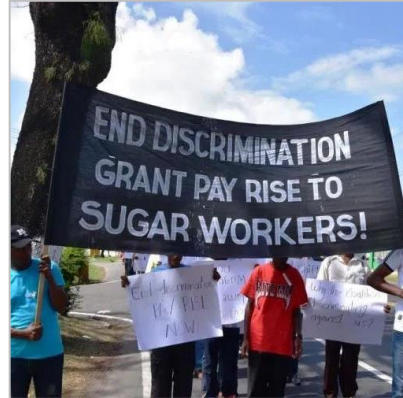
*The term “human rights” in these Principles is defined in accordance with the UN Guiding Principles on Business and Human Rights, which we accept as the internationally agreed standard for the corporate responsibility to respect human rights. The PSCI supports the UNGPs and will offer and promote implementation guidance to members and the pharmaceutical sector to encourage their widest adoption.

What are human rights, in practice?

Water discharge



Inadequate wages



Vulnerable workers



Impacts on community health



Workplace health & safety



Harassment



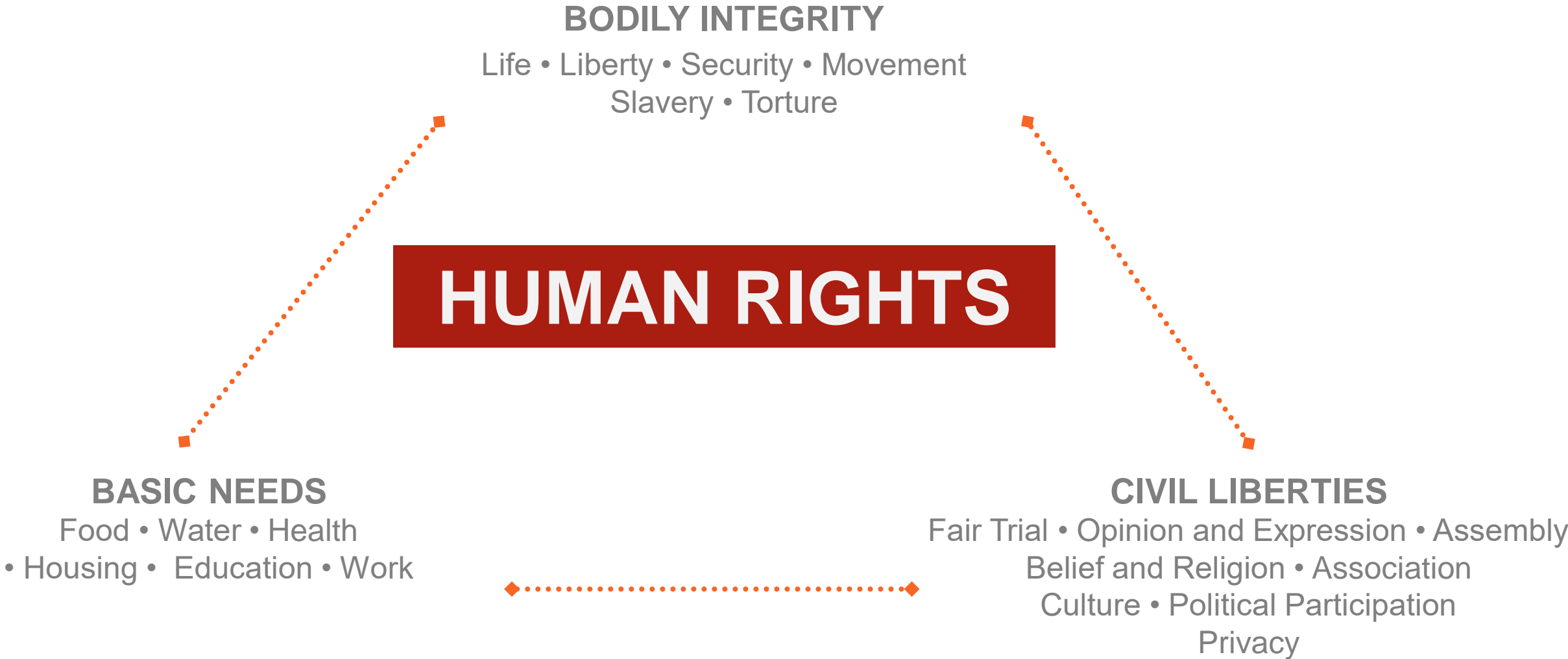
Child labor



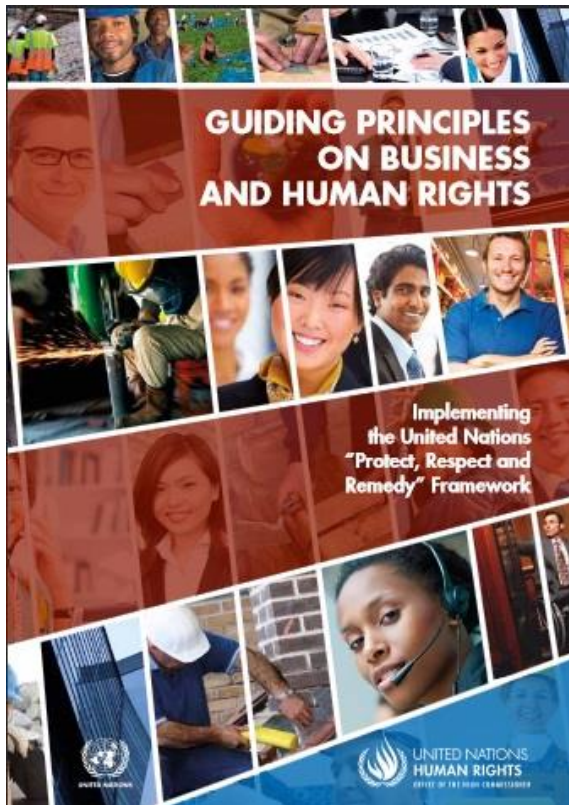
Privacy



What are human rights?



UN Guiding Principles on Business & Human Rights



Pillar I
States have a duty to
PROTECT human rights

Policies, legislation,
regulations and
adjudication

Pillar II
Businesses have a
responsibility to
RESPECT human rights

(Regardless of size)
Avoid violations,
conduct due diligence

Pillar III
Individuals whose
rights are harmed
must have access to
REMEDY

(Joint responsibility of States and businesses)

Judicial / non- judicial

AGENDA

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How to Manage Human Rights Risks

The UNGPs suggest a set of core areas for managing Human Rights, covering the following dimensions:

1

Commit to respecting human rights

2

Understand your risks and mitigate your impacts

3

Provide access to remedy

4

Communicate on your efforts

1. Commit to respect human rights

What can you do?

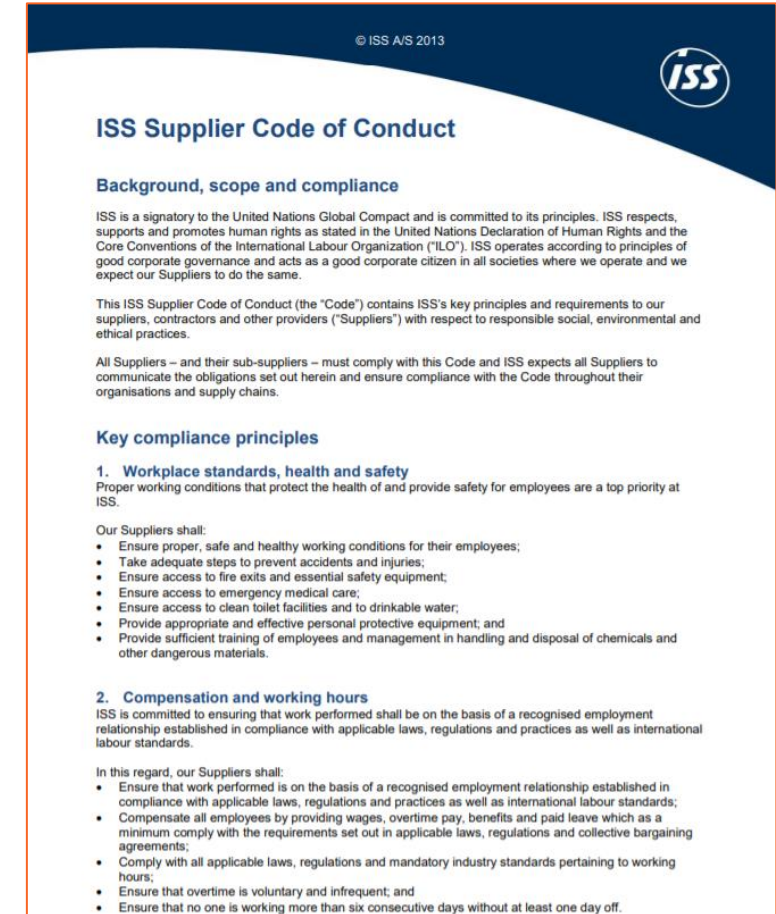
- Consider adopting a **human rights policy** if it makes sense to formalize your commitment to respect human rights in a standalone document
- Embed human rights into relevant policies and procedures: HR policies, EHS policies, compliance policies and procedures, procurement policies and procedures
- Raise awareness among your **employees** on expectations related to human rights – through town hall meetings, team meetings.



LINKAGE TO OTHER POLICIES AND PRACTICES

As an essential element of Sodexo's broader commitment to Responsible Business Conduct, this Statement of Respect for Human Rights informs and is supported by the following Sodexo policies, statements, and agreements:

- Sodexo Human Rights Guide for Managers (forthcoming)
- Sodexo Human Rights Guide for Employees (forthcoming)
- Sodexo Statement of Business Integrity
- Sodexo Business Integrity Guide (forthcoming)
- Sodexo Fundamental Rights at Work Charter and Guide
- International Framework Agreement with International Union of Food and Allied Workers (IUF)
- Sodexo-IUF Joint Commitment on Preventing Sexual Harassment
- Sodexo Global Diversity & Inclusion Guidelines
- Sodexo Supplier Code of Conduct



2. Understand risks and mitigate impacts

What can you do?






- Identify relevant stakeholders who can help you understand the impacts of your activities: rights holders (employees, communities), relevant internal functions, external stakeholders (suppliers, NGOs,...)
- Identify potential human rights risks related to your operations: Do your employees work long hours or night shifts? Do they use dangerous chemicals? Does your company operate manufacturing sites with communities living nearby?
- Identify vulnerable and marginalized groups: like women, persons with disabilities, religious/ethnic minorities?

External Resources:

- [Guidance for Implementing PSCI Principles](#)
- [UN Global Compact Self Assessment Tool](#)
- [Danish Institute for Human Rights Human Rights Compliance Assessment Quick Check](#)
- [M&S Modern Slavery Toolkit for Suppliers and Partners](#)
- [BSR 10 Human Rights Priorities for the Healthcare Sector](#)
- [BSR 10 Human Rights Priorities for the Transport and Logistics Sector](#)
- [BSR 10 Human Rights Priorities for the Information and Communications Technology Sector](#)

2. Understanding risks – who to interview?

In order to help you understand your risks and impacts, here are key questions to ask colleagues in various functions:

- 
Human Resources
 - *Do we employ migrant workers or other vulnerable workers?*
 - *What's our overtime policy?*
 - *What's the lowest wage paid in our company? Is it enough to guarantee a decent standard of living for an employee and his/her family?*
- 
Procurement
 - *Who are our high-risk suppliers? (in terms of sourcing countries and categories)*
 - *What human rights expectations do we set for our suppliers? How are those communicated to them?*
 - *How do we monitor their practices? How can we know if anything goes wrong?*
- 
HSE
 - *Do we have employees performing high risk tasks? (working at height, in confined space, ...)*
 - *Are they trained on procedures to minimize risks? Are they equipped with personal protective equipment and do they wear it as appropriate?*
 - *What are our environmental impacts? How do we manage those?*
- 
Legal / Compliance
 - *Are we facing bribery / corruption risks with some of our business partners? If yes, how are we managing them?*
 - *What is the level of awareness of our teams when it comes to those risks?*
 - *Do we have effective channels to ensure that challenges related to corruption, conflict of interest, facilitation payment requests are brought to our attention?*
- 
Employees
 - *Do you receive your salary on time and is it reflective of the hours you worked?*
 - *If you had a concern about your job, who would you speak with first?*
 - *If you could improve one thing on your job, what would it be?*

2. Understand risks and mitigate impacts

Local regulations do not always align with international human rights standards and buyers' expectations



UNITED STATES

Just as there are no rights to **paid annual leave or maximum hours**, the United States federal law does not include rights to paid time off for childcare or family leave or sickness. There are minimal rights in some states. Most collective agreements, and many individual contracts, provide paid time off, but employees who lack bargaining power will often get none.



GULF COOPERATION COUNCIL

Under the Kafala system, migrant workers' immigration status is legally bound to their employer or sponsor for their contract period. Migrant workers cannot enter the country, transfer employment nor leave the country for any reason without first obtaining explicit written permission from their employers.



CHINA

While the law permits **collective bargaining**, the only legal unions would continue to be those affiliated with the All-China Federation of Trade Unions, the Communist Party's official union organization.



INDIA

While the Constitution makes it clear that no form of **discrimination** is allowed at workplaces of the government, there is no anti-discrimination umbrella law to regulate private workplaces.

3. Provide remedy and access to remedy

What can you do?

- Consider different options for grievance channels:
 - ❑ **Formal:** *Ethics hotlines; customer complaints; Human Resources; Management; workers' committees employee resource groups...*
 - ❑ **Informal:** *informal conversations (team meetings, employee town hall meetings)*
 - ❑ **Third Party:** *Unions; Worker Voice Apps; Audits; NGO Reports; Media Reports*
- **Communicate on channels available** for employees / communities / business partners on a regular basis
- **Assess effectiveness of those channels:** Are the various channels effective at raising problems? Use UNGP #31 "Effectiveness Criteria" as a guide.

LI & FUNG

An innovative **voice app** called **Apprise Audit** is being tested in factories in Thailand in a move to protect workers against exploitation. Apprise Audit's goal is to enhance worker interviews during social audits – by increasing frequency, inclusivity, confidentiality and consistency of worker screening. The app allows questions in multiple languages to be asked through audio recordings, answered through a smartphone and saved on a server. The app's testing is being backed by global corporations VF Corporation and Li & Fung.

4. Communicate on your efforts

What can you do?

- Focus on the greatest risks to people that are connected to the company's operations and value chains, and use these issues to guide the company's reporting and actions.
- Share examples of work that provide meaningful insight into how policies and processes are implemented in practice.
- Identify and explain challenges and dilemmas faced by the company in working to respect human rights.
- Develop a clear narrative about the company's approach to understanding and addressing human rights risks.

OUR STRATEGY

Phase I

Setting our Social Sustainability Ambition: We set our social sustainability ambition, created a new human rights pillar – Fairness in the Workplace, for our USLP and strengthened Unilever's Human Rights policy framework across functions and geographies to include new policies aimed at guiding our relationships with Unilever employees, suppliers, partners and stakeholders.

Status: **Achieved**

Phase II

Building Capacity and Public Reporting: The focus is on creating awareness, engagement, training, effective implementation of our expanded Human Rights policy framework and related programmes across functions and geographies and delivering our commitments including public reporting under the UN Guiding Principles Reporting Framework.

Status: **Advanced**

Phase III

Moving from Do No Harm to Do Good: Once the foundational human rights work is well-established, our focus shifts to promoting and driving best practices across industries where we operate with target areas that we believe are critical but in no way exhaustive and in partnership with others.

Status: **In progress**

OUR FIVE FOCUS AREAS

We continue to have five areas of focus for our work in embedding human rights across our business:



Source: Unilever Human Rights Progress Report

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Resources

Country Human Rights Risk

- [Human Rights and Business Country Guides](#)
- [ITUC Global Workers' Rights Index](#)
- [Amnesty International country profiles](#), [Human Rights Watch country profiles](#)
- [Verite Responsible Sourcing Tool](#)

Working hours

- [ILO – Decent Working Time Balancing Workers' Needs with Business Requirements](#)

Wages

- [Wageindicator Foundation](#)

Child Labor

- [US Department of States List of Goods Produced by Child Labor or Forced Labor](#)
- [Global Mica Mining and the Impact on Children's Rights – SOMO, Terre des Hommes, 2018](#)

Migrant workers, recruitment

- [Building Responsibly Guidance Notes](#)
- [Verite Fair Hiring Toolkit](#)
- [EU Guidance for Employment & Recruitment agencies](#)

Communities

- [IFC Performance Standard 4 - Community Health, Safety, and Security](#)
- [IFC Good Practice Handbook – Use of Security Forces: Assessing and Managing Risks and Impacts](#)

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Our company manufactures pigments used in medicine...



How can we apply the 4 steps to manage this issue?

We source mica from India. I read a few articles about cases of child labor in mica mines in India. Should I be concerned about this?

Human Rights Management Approach

Top human rights risks in this situation

Commit to respecting human rights

Understand your risks and mitigate your impacts

Provide access to remedy

Communicate on our efforts

- Child labor in mining is considered to be one of the Worst Forms of Child Labor by the International Labour Organization (ILO).
- Adopt a policy regarding child labor in the supply chain
- Train procurement team to identify high risk suppliers and engage them adequately on this topic
- Cascade expectations across your supply chain (Tier 1 and beyond) with a supplier code of conduct, and consider adopting specific contractual clauses and delivering appropriate training for high risk suppliers
- Map high risk suppliers based on sourcing countries and known risks of child labor in those countries
- Consider engaging civil society organizations to further understand risks related to mica sourcing
- Consider performing onsite risk assessments with one or two high risk suppliers
- If you/ your supplier identify a child laborer, don't dismiss them immediately without support to avoid further potential harm to the child
- Engage high risk suppliers to identify relevant grievance channels that could be used by their employees and that they can share with their own suppliers
- Report on how procurement teams are trained and on how your company is working to build suppliers' capacity on that issue
- Report on risk assessment performed at suppliers
- Report in a transparent manner on cases of child labor identified in your supply chain and on actions taken with suppliers when such cases are found



BREAK 1

Conference resumes at 14:25. Please come back in 10 minutes.

If your question could not be addressed, please feel free to email it to info@pscinitiative.org and the relevant speaker will provide an answer in writing.

A Conversation on Forced Labor and Modern Slavery

Laura Greene

Program Technical Officer

ILO Global Business Network on Forced
Labour

Peter Hall

Senior Manager Human Rights &
Sustainability Compliance

Johnson & Johnson

Speaker Bio – Laura Greene

Laura Greene, Program Technical Officer
ILO Global Business Network on Forced Labour

Experience & Training

- Laura is currently managing the International Labour Organization's (ILO) Global Business Network on Forced Labour (GBNFL). Based in Geneva, Switzerland, Laura oversees the ILO GBNFL's activities focussed on promoting collective action towards the elimination of forced labour and human trafficking.
- Prior to this, Laura was based in Ho Chi Minh City, Viet Nam with the International Organization for Migration (IOM) on a regional project working collaboratively with companies to address the vulnerabilities of migrant workers in recruitment and employment.
- In addition, Laura has also worked with the ILO in Bangkok on topics such as women in business and management, and the future of work.
- Laura is from South Africa where she completed a Master of Philosophy in Decision-making, Knowledge Dynamics and Value Studies at the University of Stellenbosch.

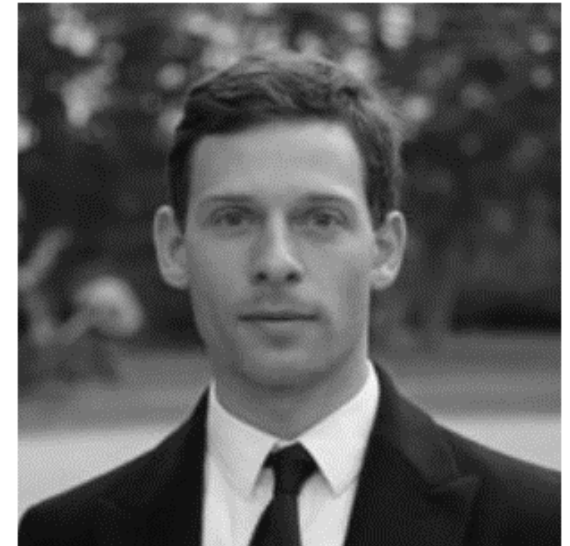


Speaker Bio – Peter Hall

**Peter Hall, Senior Manager for Human Rights and Sustainability Compliance,
Johnson & Johnson**

Experience & Training

- Before taking up this role in April 2020, Peter was an Adviser on Business and Human Rights and Responsible Business Conduct at the International Organisation of Employers (IOE).
- Prior to that, he worked on the same topic at the UN's Human Rights Office (OHCHR), the non-profit center Shift, and the UK Government.
- He is formerly an international journalist in Europe, the Middle East, and Africa,



Overview

1. ILO and FPRW
2. Forced labor and statistics
3. ILO indicators of forced labor
4. ILO Global Business Network on Forced Labor

The International Labor Organization (ILO)

- Specialized agency of the United Nations - tripartite in structure
- Establishes and oversees international labour standards
- Promotes opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity.

ILO Fundamental Principles and Rights at Work

1

Freedom of Association and Protection of the Right to Organise Convention, 1948 (C. 87)

Right to Organise and Collective Bargaining Convention, 1949 (C. 98)

2

Forced Labour Convention, 1930 (C. 29)

Abolition of Forced Labour Convention, 1957 (C. 105)

3

Minimum Age Convention, 1973 (C. 138)

Worst Forms of Child Labour Convention, 1999 (C. 182)

4

Equal Remuneration Convention, 1951 (C. 100)

Discrimination (Employment and Occupation) Convention, 1958 (C. 111)

What is forced labour?

All work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself or herself voluntarily

ILO Forced Labour Convention, 1930 (No. 29)



Almost 25 million people
are in forced labour globally

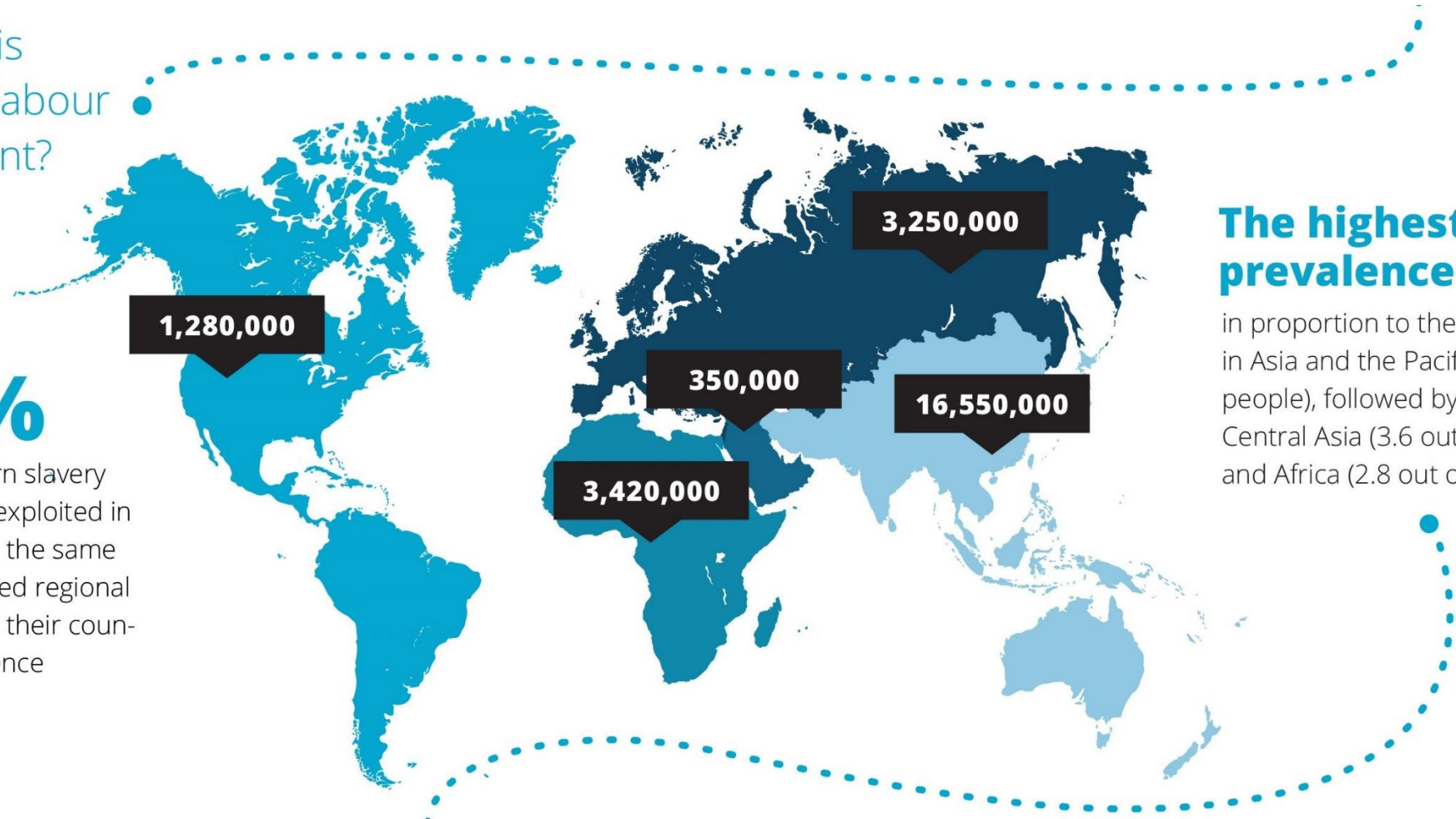


Some 4.3 million
are children

Where is forced labour prevalent?

94%

of all modern slavery victims are exploited in a country in the same income-based regional grouping as their country of residence



The highest prevalence

in proportion to the population is in Asia and the Pacific (4 in 1,000 people), followed by Europe and Central Asia (3.6 out of 1,000) and Africa (2.8 out of 1,000)

(Modern) Forced labour

- Every region is affected
- Often linked to discrimination against minority groups and women, and to poverty
- Often associated with sub-contracting arrangements, use of labour agents and recruitment intermediaries
- Increased vulnerabilities of workers, including irregular migrant workers
- Hidden in thriving informal and illegal economies
- Subtle forms of coercion

Forced labor in India

- Ratification of ILO Forced Labour Convention C29 and Abolition of Forced Labour Convention (C105)
- Informality and poverty are root causes
- Prevalent indicators include: unpaid wages, confiscation of identity documents, long working hours without days off, restrictions on movement, deception about terms and conditions of work, sexual violence, and intimidation.
- Bonded labour still prevalent despite laws (informal economy, agriculture)
- Socio-economic effects of COVID-19 are likely to worsen the situation

11 ILO Indicators

1. Abuse of vulnerability
2. Deception
3. Restriction of movement
4. Isolation
5. Physical and sexual violence
6. Intimidation and threats
7. Retention of identity documents
8. Withholding of wages
9. Debt bondage
10. Abusive living and working conditions
11. Excessive overtime

1. Abuse of Vulnerability

- Anyone can be a victim of forced labour and trafficking
- But certain characteristics make people more vulnerable:
 - Disabilities (physical or mental)
 - Age (children or minors)
 - Residence/work permit tied to employer
 - Irregular work status
 - Poverty/lack of education
 - Migrants/nationality status
- Situations of “multiple dependency” (housing, food, jobs of family members)
- Ask: Does the employer take advantage of the worker’s vulnerability? Did the employer/recruiter create or contribute to the worker’s situation of vulnerability?

2. Deception

- Often related to recruitment, e.g. false promises regarding wages, housing and living conditions, nature of work, job location, legal status
- Signs:
 - so-called “substitution” contracts (new contract upon arrival)
 - contracts in another language
 - no employment contract or terms and conditions poorly defined
- Possible Questions:
 - How did worker learn about the job?
 - What was the worker promised?
 - Is the worker vulnerable to deception?
 - If he had known real conditions, would he have accepted the job?

11. Excessive Overtime

- Long hours (in excess of national law) are not enough to amount to forced labour
- But they should prompt further investigation
- Look for the following signs:
 - Work is “piece rate” and bound to unrealistic production targets
 - Overtime needed to reach minimum wage
 - Working hours are loosely defined, if at all
 - Person works “on call” (24 hours a day, 7 days a week)
 - Denied breaks, days off, free time
 - Overtime beyond national law or collective agreement
 - Penalty if overtime is refused (for ex. blacklisted)

Is this a case of forced labor?

Scenario 1

In order to meet production deadlines, the Chemical Company A obliges its employees to work overtime, beyond the monthly limits permitted by law. Chemical Company A said to the workers that they won't get their monthly salary if they do not accept to work overtime.

Scenario 2

Ramesh is an employee of Manufacturer B. He is unhappy with his salary and poor working conditions and he would like to leave his job. However, he feel obliged to keep working as he does not have other real work opportunities and he would not be able to sustain himself without a job.

What would you have done?

In 2018, a large company was sourcing generic drugs from India and became concerned about forced labor in the factory after reports in the media. The company investigated further and discovered that there were many workers who were working 14 hours per day some of which were internal migrants and/or young workers. The workers reported that they were not able to refuse overtime due to fear of losing their jobs. Other workers reported not receiving wages but repaying debt repayments to their employer.

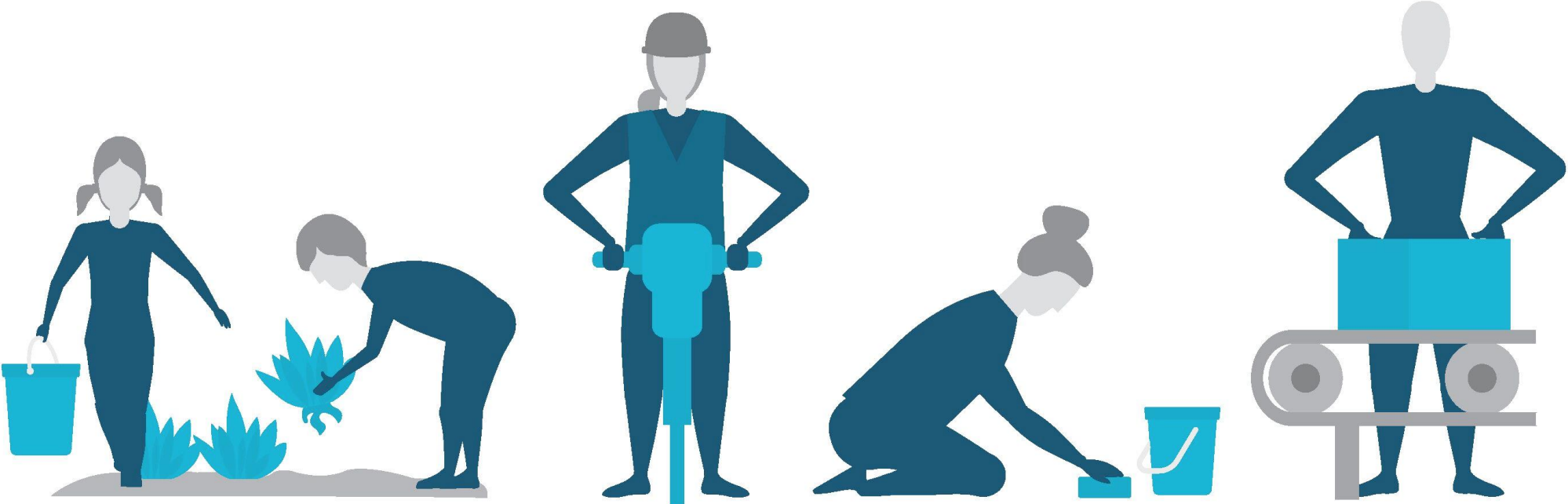
ILO Global Business Network On Forced Labor

Doing things differently:

- SMEs come first
- Locally-owned and driven solutions
- Collective business voice for government advocacy on forced labor elimination
- A network of networks



We are the global business network building a future without forced labour



MEMBERS

Companies



Business networks



PARTNERS



Useful Resources & Contact

- [ILO Indicators of Forced Labour](#)
- [ILO GBNFL Resource webpage](#)
- [ILO Checkpoints App](#)
- [ILO helpdesk: Q&As on Business and Forced Labour](#)
- [General principles and operational guidelines for fair recruitment & Definition of recruitment fees and related costs](#)
- [ILO Handbook for Employers and Business](#)
- Country/region specific guides:
 - [Malaysia](#)
 - [Viet Nam \(textiles and garments\)](#)
 - [Middle East \(construction\)](#)

• **Contact**

- flbusiness.network
- fl-businessnetwork@ilo.org
- @ILOFLNetwork

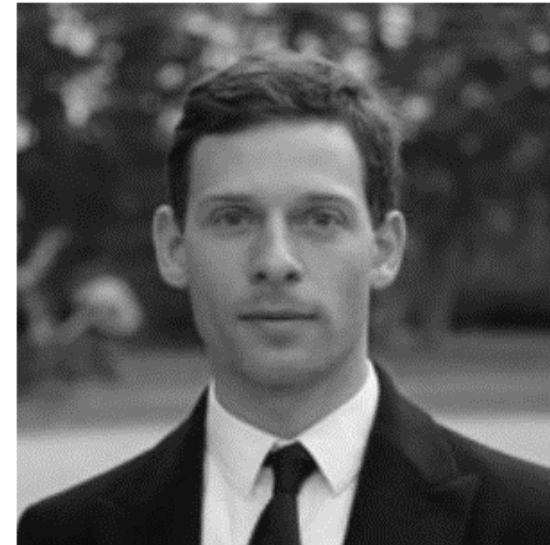
A Conversation on Forced Labor and Modern Slavery



Laura Greene

Program Technical Officer

ILO Global Business Network on Forced Labour



Peter Hall

Senior Manager Human Rights & Sustainability Compliance

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BREAK 2

Conference resumes at 15:25. Please come back in 10 minutes.

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Evolving Ethics Best Practices in the Pharmaceutical Industry: Introduction to PSCI Principles & Antibribery and Corruption

Sumit Makhija

Financial Advisory Services Forensic Partner

Deloitte

Speaker Bio – Sumit Makhija

Sumit Makhija, Financial Advisory Services Forensic Partner, Deloitte

Experience & Training

- Sumit Makhija is a partner in the Forensic Service at Deloitte India, based in New Delhi. He leads the Anti Bribery services for India.
- Sumit has over 25 years of professional experience out of which nearly 20 years are in the areas of anti-bribery reviews and investigations, forensic audits, dispute assistance and investigations for a wide spectrum of organizations. Sumit has handled a few of the largest FCPA investigations in the country, where his role included representing clients in front of Government authorities both in US and India. He has also handled forensic audit in some of the large IBC cases in the country.
- Sumit is a fellow member of the Institute of Chartered Accountants of India, a Commerce graduate from Delhi University and a Certified Fraud Examiner from the Association of Certified Fraud Examiners, USA.
- Sumit is a regular contributor to articles and view-points on various matters and a regular speaker on topics pertaining to Forensic and Anti Bribery issues in various conferences and events. Sumit also serves as a Vice President on the India Chapter of Association of Certified Fraud Examiners.



Agenda

Global Trends

Supply chain and Third-Party risks

Mitigation of Third-Party risks

Compliance – Way Forward



Global Trends



Global view on corruption

CORRUPTION PERCEPTION INDEX for INDIA

Year	Rank	Score
2019	80	41
2018	78	41
2017	81	40
2016	79	40
2015	76	38
2014	85	38

2/3 of countries score below 50/100

43/100 Average Country Score

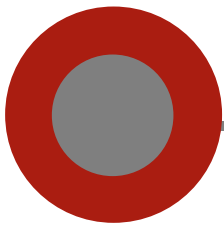
80 India's ranking in the annual corruption index, released by Transparency International (TI), among a group of 180 countries.

Source: Transparency International, Corruption Perception Index 2019

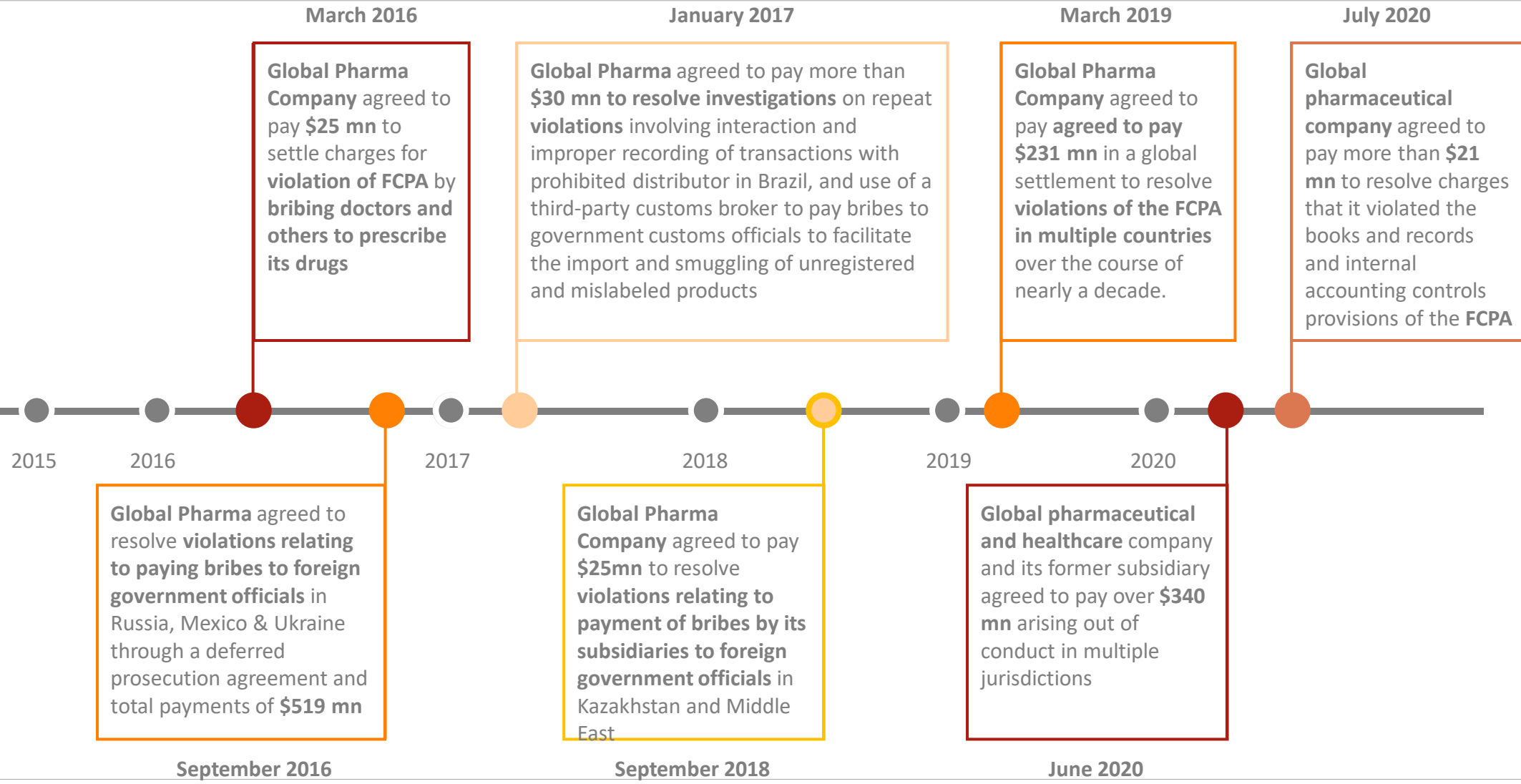
World Bank estimates the total cost of corruption globally to be around?

- 1. \$ 500 Bn
- 2. \$ 250 Bn
- 3. \$ 1 Trillion
- 4. \$ 2.6 Trillion

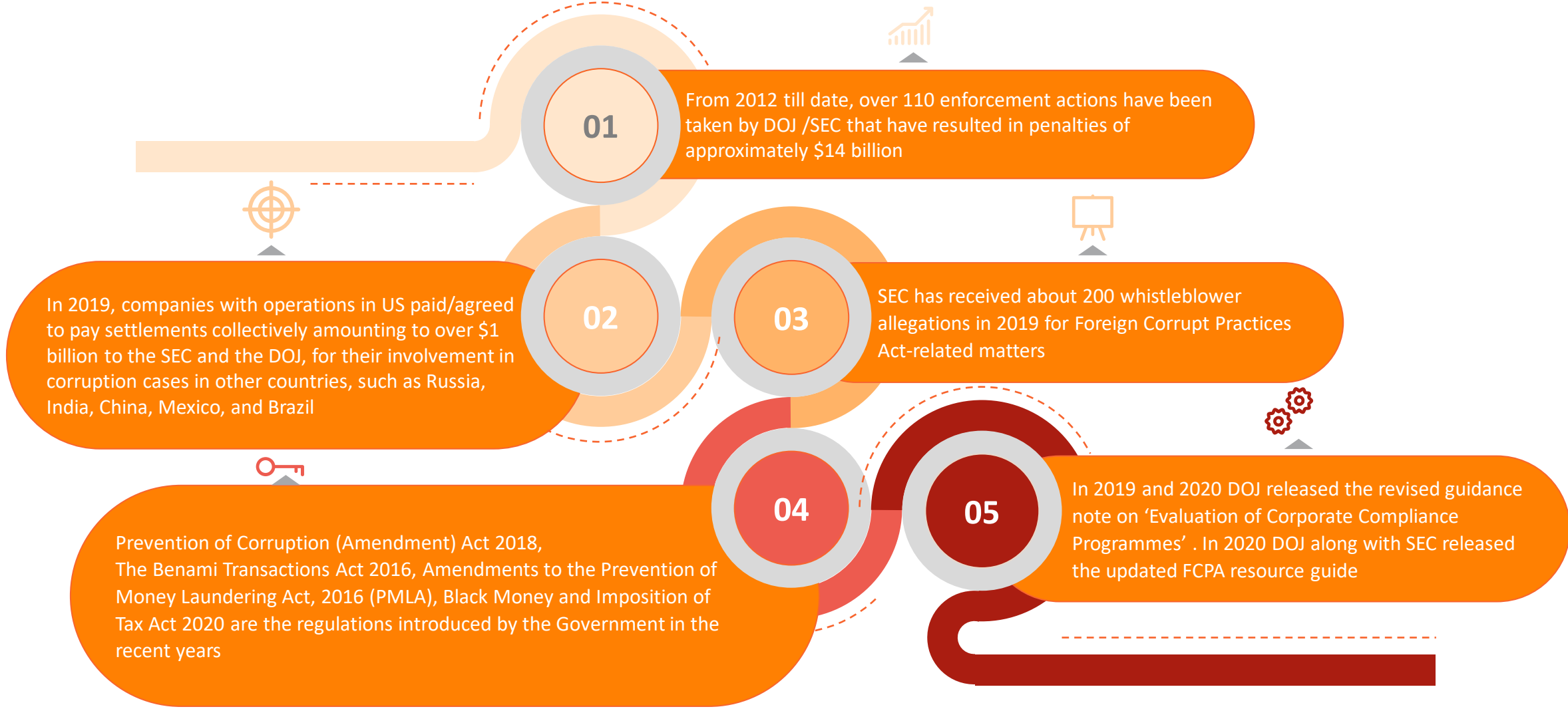
From the news...



Last 5-year view



Recent developments in the Anti-Bribery and Corruption Regulatory Space



Prevention of Corruption (Amendment) Act, 2018

Key Provisions

The Prevention of Corruption (Amendment) Act, 2018 lays down the following key provisions which are summarized below:

Bribe to Public Officials

Gratification given in kind also now included apart from money
However, in case of coercion, relief is available if reported within 7 days

Offence by a corporate

The act introduces the concept of corporate liability wherein a commercial organisation can be found guilty under the act of giving/making promises with the intention to obtain/retain business or obtain/retain undue advantage while conducting business

The act extends liability to foreign organizations with India operations

Directors, managers, secretaries or other officers of such organizations will be liable if offence is committed with their consent or connivance and may be imprisoned with a period of three to seven years and penalized



Criminal Conduct

Misappropriation of property disproportionate to the public officials income is an offence
Intentional enrichment of self illicitly during the period of office is also considered an offence

Other Provisions

Both bribe giving and receiving has been included in the Act.
Enhanced penalties - Minimum time increased from 6 months to 3 years and Maximum time increased from 5 to 7 years
Corruption trials to be concluded within a period of two years and can be extended by six months upto maximum four years
Prior approval required from the relevant government authority before prosecuting a public official; Exception permitted includes cases of immediate arrest on charges of accepting or attempting to accept an undue advantage
Repeated offence under this act will be punishable with imprisonment for five to ten years with a fine

Key suggestions in the DOJ guidance with respect to third parties

Department of Justice (“DOJ”) guideline in 2019 and 2020 mentions suggestions with respect to management of third parties as summarized below:



Supply Chain & Third Party



Poll 1

– To submit your responses, please go to <https://app.sli.do/> and enter the event code: #PSCIIndia

You have just been transferred to a new location in the middle of the year. You have been informed that it is difficult to get admission to any good school in the middle of the year. A key supplier offers to have your child admitted to a good school

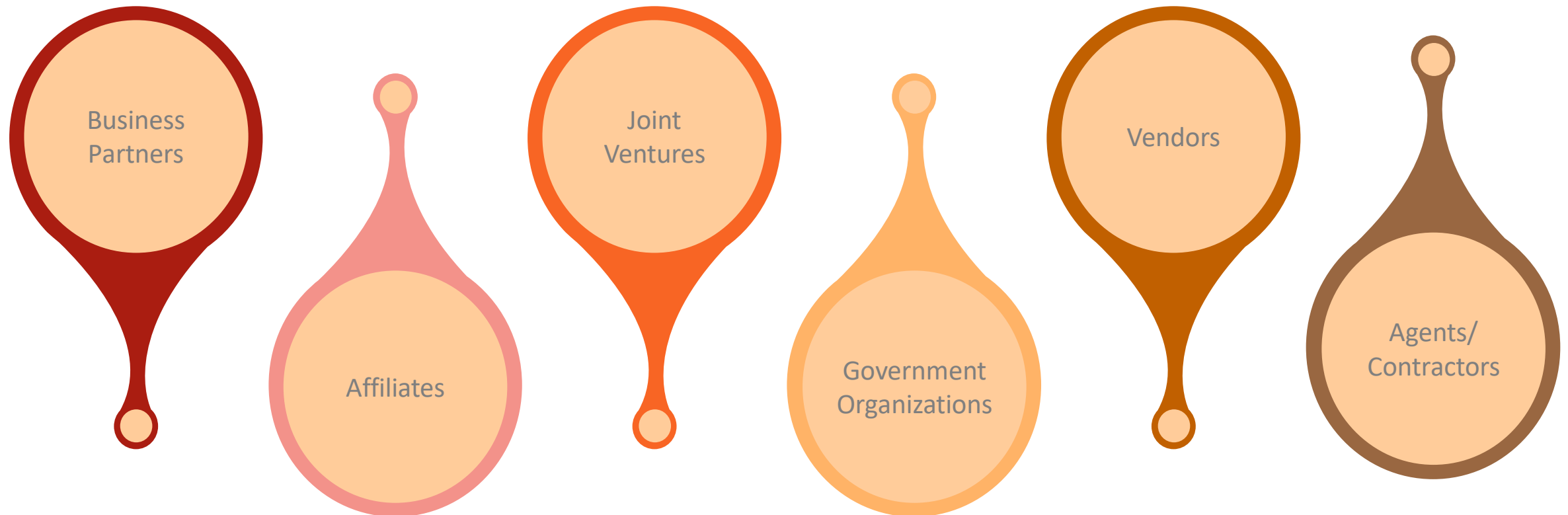
A. Take his help because your child's career is very important.

B. Make sure there are no strings tied to the offer.

C. Refuse his help and discuss it with your immediate superior.

D. Take his help but resolve not to be partial towards him.

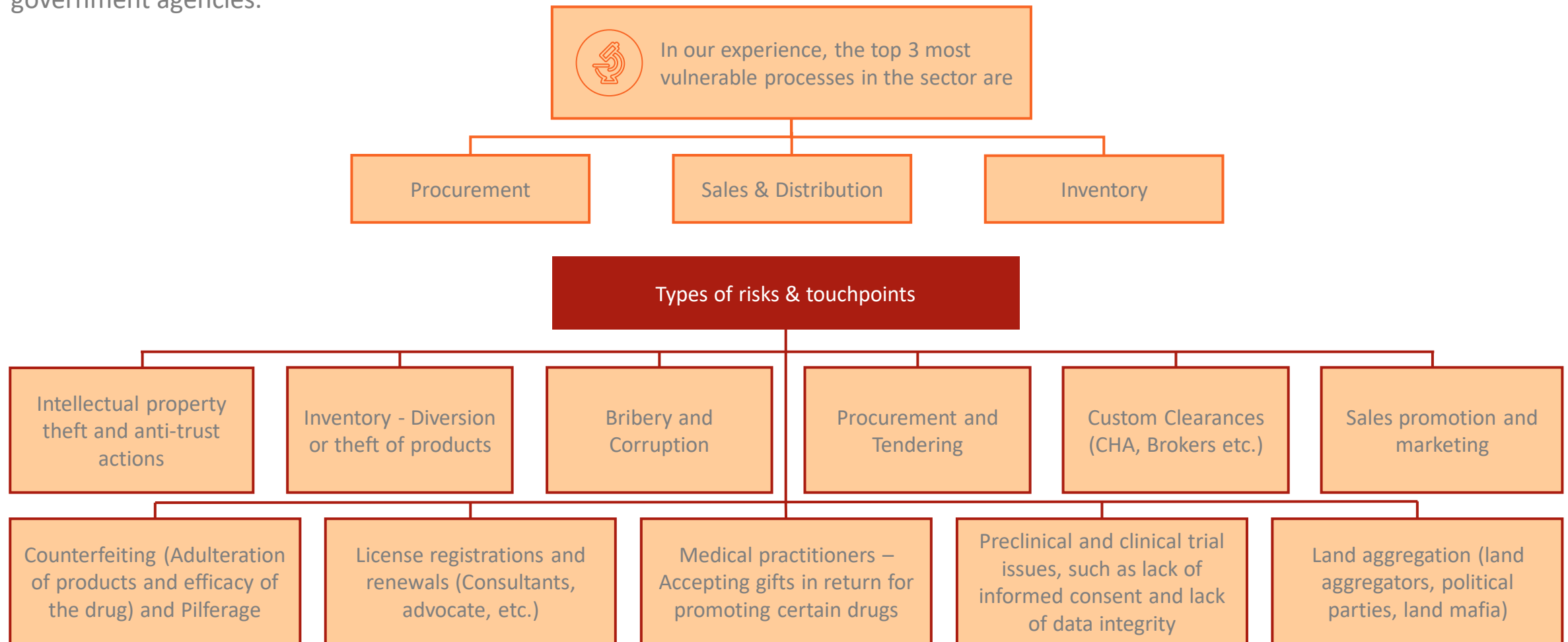
What is a third party?



Third Party Universe (Illustrative)

Risks associated with third parties

Risks are compounded by the inherent nature of the business ecosystem that has multiple touchpoints with vendors, middle-men and government agencies.



Poll 2

– To submit your responses, please go to <https://app.sli.do/> and enter the event code: #PSCIIndia

You are in the process of setting up a plant and have hired the services of a local legal firm to help you with all the regulatory clearances/approvals. You are informed that certain regulatory clearances cannot happen without paying bribes. You get the requisite permissions within a very short time frame.

A. Do nothing as you have not bribed anyone.

B. Take a confirmation from the firm that they have not broken any laws while helping you with the approvals.

C. Carry out a diligence to check if the legal firm paid bribes and take corrective measures if that is found to be true.

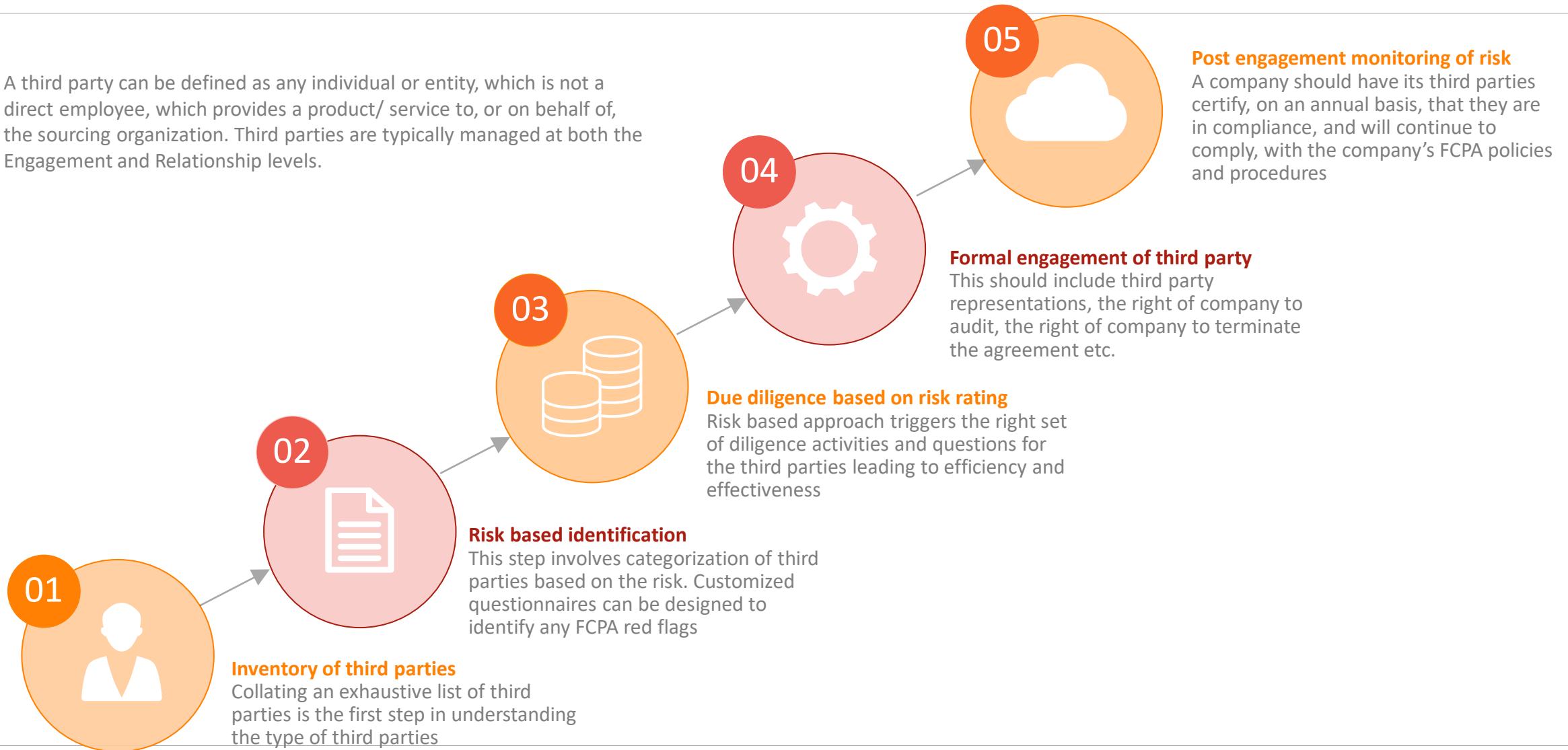
D. Make a note of not enlisting the services of this firm in the future and report the non-compliance internally.

Mitigation of third-party risks



Mitigation of third-party risks

A third party can be defined as any individual or entity, which is not a direct employee, which provides a product/ service to, or on behalf of, the sourcing organization. Third parties are typically managed at both the Engagement and Relationship levels.



Mitigation of third-party risks

Inventory of third parties

Collating an exhaustive list of third parties is a big undertaking. Risks cannot be assessed and mitigated until they are found, but most companies have tens of thousands of third-party relationships. The company should have an understanding of who their third parties are and the activities they perform.

The term third party includes all the entities that have entered into a business relationship with the company.

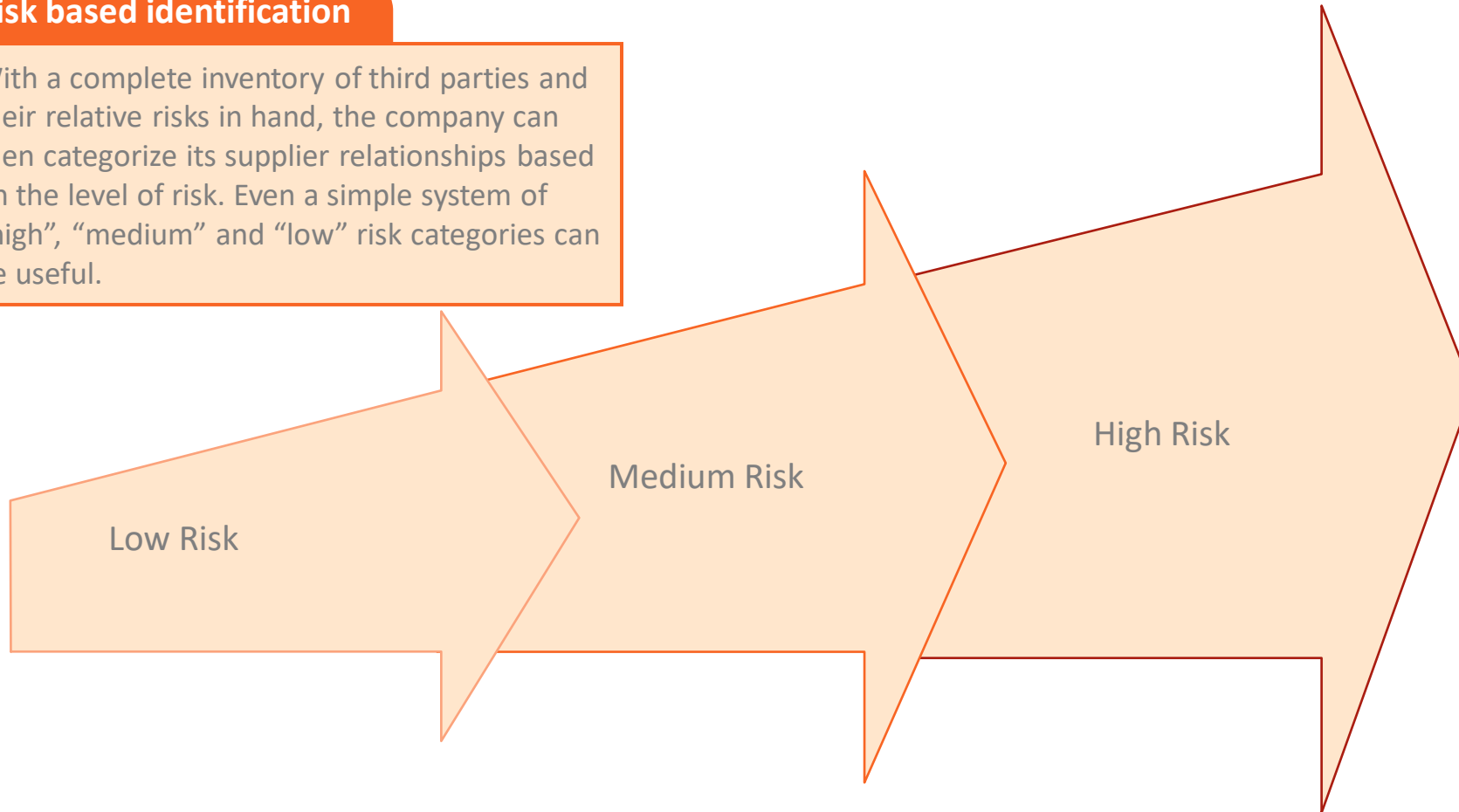


Third Party Universe (Illustrative)

Mitigation of third-party risks

Risk based identification

With a complete inventory of third parties and their relative risks in hand, the company can then categorize its supplier relationships based on the level of risk. Even a simple system of “high”, “medium” and “low” risk categories can be useful.



- TP is related to foreign officials
- TP is has a very high interaction with the customers
- TP is incorporated in an offshore jurisdiction
- TP requests payment to offshore accounts

High risk parameters (Illustrative)

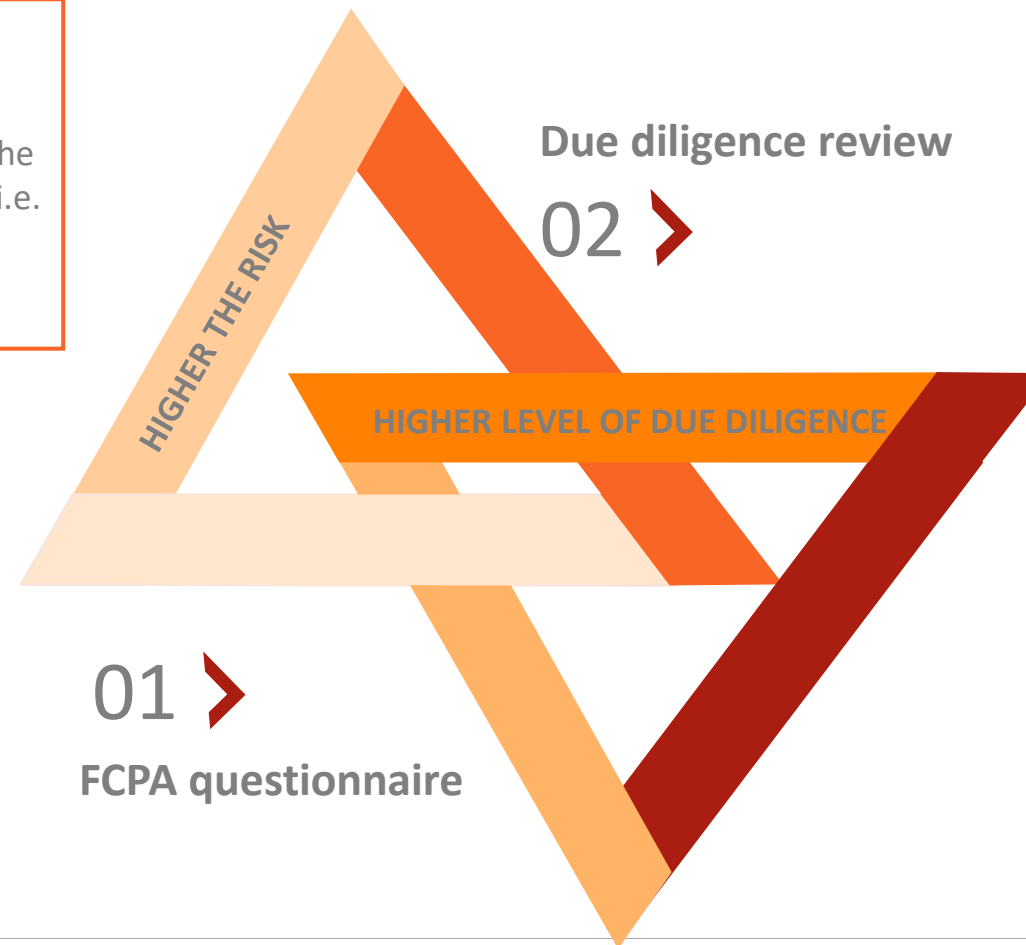
Mitigation of third-party risks

Due diligence based on risk rating

Risk based approach triggers the right set of diligence activities and questions for the third parties leading to efficiency and effectiveness. The diligence exercise can be divided into two parts i.e. completion of a FCPA questionnaire by the third party and a review exercise

The FCPA questionnaire should be designed to identify FCPA “red flags”. At a minimum, the third party should provide:

- Contact information of its owners and board of directors, including % ownership by each, and other businesses in which each might have interest
- Information on related companies
- Information on relationship with current or former government officials



At a minimum, the due diligence review should cover:

- Types of license, registration & renewals required by third party
- The identification & resolution of any FCPA red flags
- An acknowledgement from the third party agreeing to abide by the FCPA & other relevant laws

Mitigation of third-party risks

Formal engagement of third party

All high-risk relationships with third parties should be memorialized in a written agreement. Below are illustrative provisions, which can be included in the agreement:

1 Third party representations and warranties that it is not owned or controlled by a foreign government, that no foreign official holds an ownership interest in it, and that it will abide by company's FCPA compliance policies and procedures

2 The right of the company to audit, at its discretion or at least based on reasonable suspicion of a violation, the third party's books and records and other business records

3 The right of company to terminate the agreement if it has a good-faith belief that the third party has made improper payments, and to have all funds previously paid under the arrangement returned

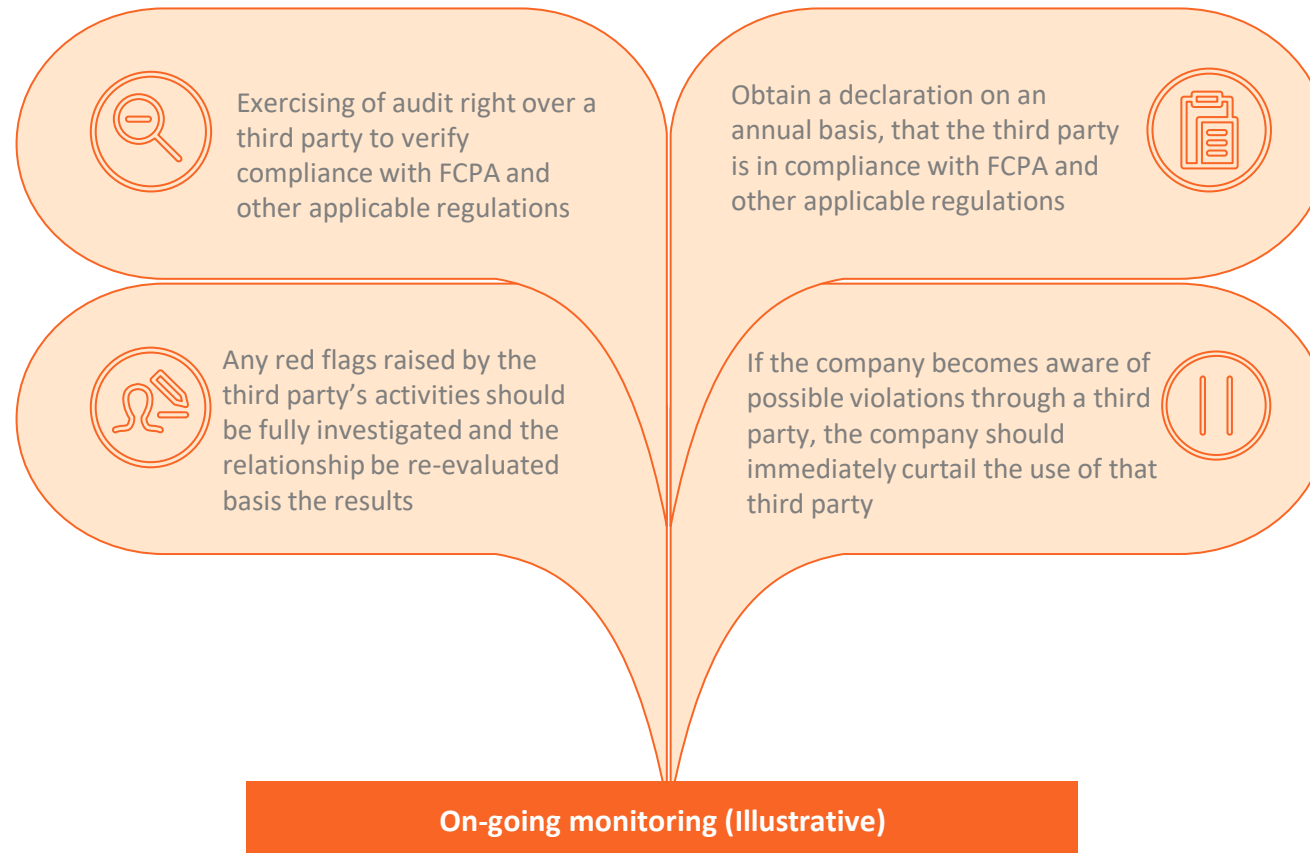
4 The right of company to disclose the third party's conducts to regulators

5 The right of the company to require annual certifications of prior and future compliance with the FCPA to be signed by all significant members of third party (Directors, people with regular contact with government etc.)

Mitigation of third-party risks

Post engagement monitoring of risk

Vigilance over a third party's activities does not end when the third party is engaged. Rather, it continues during the period the third party is engaged by the company



Poll 3

– To submit your responses, please go to <https://app.sli.do/> and enter the event code: #PSCIIndia

A vendor sends you a 5-gram gold coin as a Diwali gift. The gold coin carries the vendor's logo and name. He informs you that he has sent similar coins to all his Business Associates.

A. Bring the gift to the attention of the Company.

B. Return it to the vendor with a thank you note.

C. Accept the coin believing it to be a standard gift sent by the vendor to all his business associates.

D. Give one of your Company's corporate gifts in return.

Case Study

Background: Our client (pharmaceutical company) was worried about few of its third parties and wanted to conduct an ABAC risk assessment on these third parties to understand any potential irregularities and red flags with respect to their procurement of services.

Proposed Approach for third party risk assessment

Step 1 | Background and Process Review

- **Review policies and procedures** of vendor/s pertaining to the government interactions, payment approvals, Anti-bribery and compliance etc.
- **Process walkthrough** with key stakeholders including process owners
- **Data Collection** from the Client and the third party
- **Identify known issues** by review of past internal audit reports, statutory audit reports etc, if available

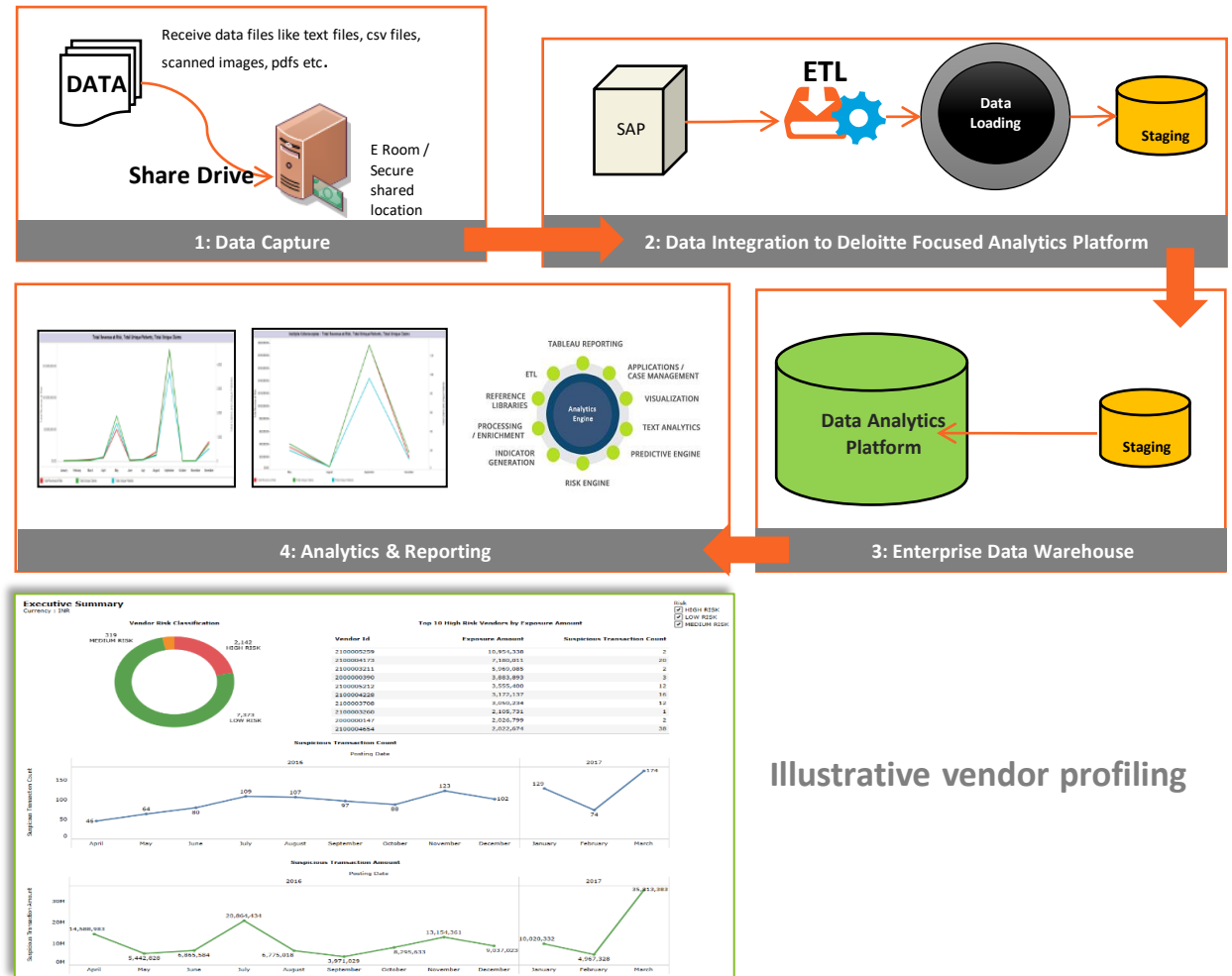
Step 2 | Data Analysis and Transaction Review

- **Focused data analytics**- Processed the obtained accounting/ transactional data and performed data analytics tests
- **Sample selection** – Basis the outcome of data analysis and understanding obtained from the management discussions and policy reviews, selected sample transactions
- **Transaction testing**- Reviewed documents such as agreements, comparative price quotations, invoices, proof of service/GRN, proof of payment etc.

Step 3 | Consolidate findings

- Discussions with the management on the findings
- Summarized the findings in a written report

Forensic Data Analytics



Illustrative vendor profiling

Compliance – Way forward



Key considerations for compliance teams in India

Consideration to each company's unique circumstances

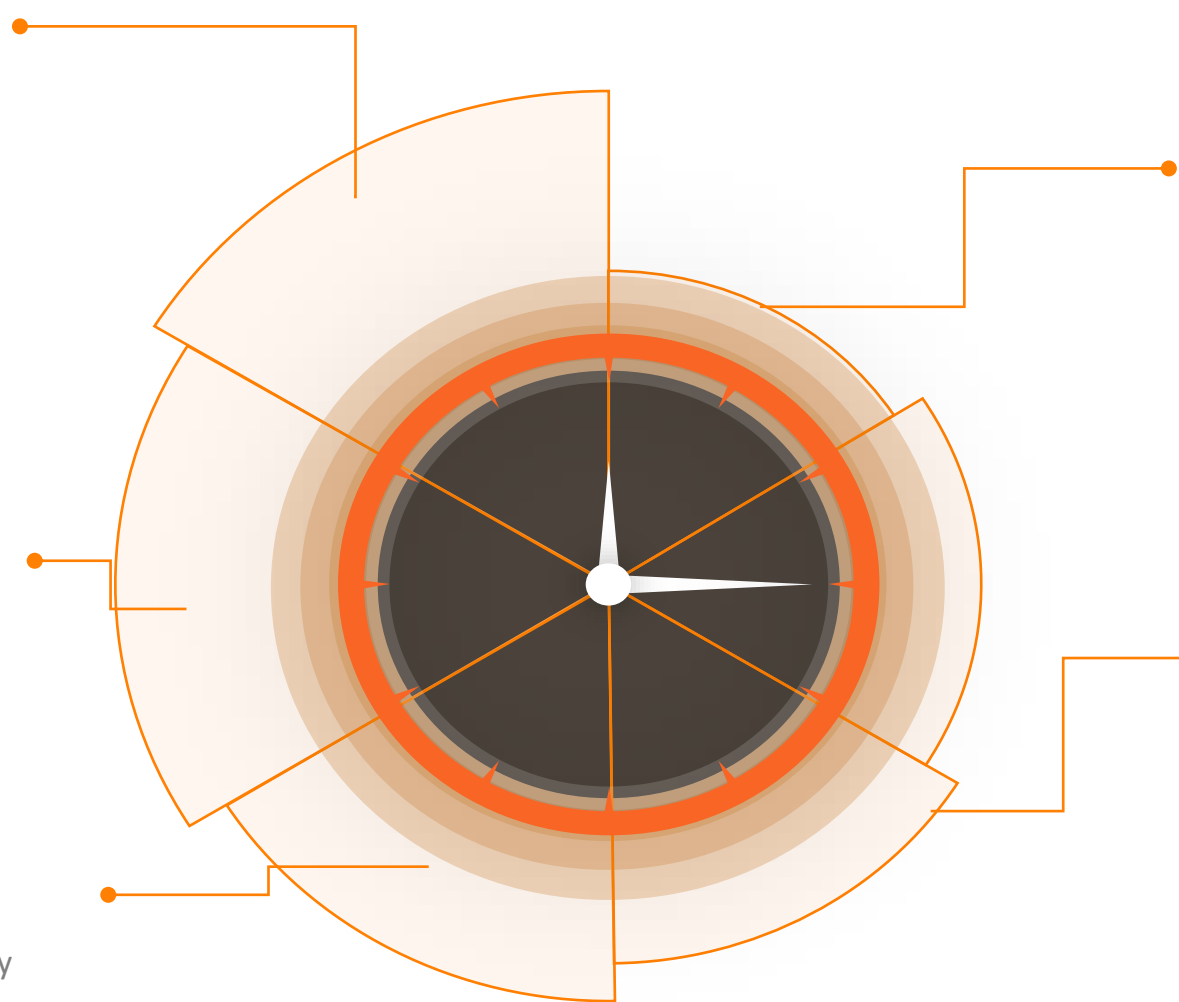
Was your compliance program built after considering the risks associated with the uniqueness of your industry, relevant market, geographical presence etc.?

Sufficiency of necessary manpower and resources?

Considering your responsibilities and expectations do you have enough resources to implement and monitor the effectiveness of the compliance program in this changing dynamic environment?

Periodic/Regular risk assessment

How often do you perform a risk assessment for the third parties after they have been on boarded to identify any potential issues?



Sufficient direct or indirect access to data for the compliance resources

- Do you have a centralized mechanism to pull out the data across the geographies or businesses to perform focus compliance analytics?
- Do you analyse the data manually or is there any platform to do it on a continuous basis?

Integration of the acquired entity into existing compliance structures

How often do you perform an exercise for a timely and orderly integration of compliance standard into the acquired entities? Or is it just restricted to the pre-acquisition due diligence?



BREAK 3

Conference resumes at 16:40. Please come back in 10 minutes.

If your question could not be addressed, please feel free to email it to info@pscinitiative.org and the relevant speaker will provide an answer in writing.

Introduction to GDPR

Helene Millenaar

Global Risk and Compliance Director

Centrient Pharmaceuticals

AGENDA

What is GDPR?

GDPR grants rights to data subjects

Responsibilities of companies under GDPR

What if your company does not comply with GDPR?

Status of data protection in India



Speaker Bio – Helene Millenaar

Helene Millenaar, Global Risk and Compliance Director, Centrient Pharmaceuticals.

Training & Experience

- Helene Millenaar is Global Risk and Compliance Director with Centrient Pharmaceuticals. She is responsible for all compliance related topics at Centrient Pharmaceuticals, which include anti-bribery, corruption, export control, privacy and competition law.
- Before that she was global head of investigations and director competition law at Nouryon (formerly AkzoNobel Specialty Chemicals) where she conducted internal investigations on a wide variety of compliance-related topics. She also advised Nouryon and before the split, the AkzoNobel businesses on the full range of competition law issues that include behavioral issues, merger control, and competition law compliance. Prior to joining AkzoNobel, Millenaar was a senior associate at the Dutch law firm Stibbe in Amsterdam and at Clifford Chance in Amsterdam and Brussels, advising clients on EU and Dutch competition law.
- In 2017 Helene finalized a two years' executive master of compliance and integrity management at the VU in Amsterdam (NL). She studied at the Universities of Leiden (NL), Barcelona (SP) and London (UK).



What is GDPR?

- GDPR is the European Union's General Data Protection Regulation (GDPR)
- It is the toughest privacy and security law in the world
- GDPR was put into effect on May 25, 2018
- If an organization processes personal data of EU citizens or residents, or if it offers goods or services to such people, then **the GDPR applies even if the organization is not in the EU**
- Fines for violating the GDPR are very high



Some important terms...

- **Personal data** — Personal data is any information that relates to an individual who can be directly or indirectly identified

Examples of personal data: names and email addresses but also location information, ethnicity, gender, health, biometric data, religious beliefs, web cookies, and political opinions

- **Data processing** — Any action performed on data, whether automated or manual. The examples cited in the text include collecting, recording, organizing, structuring, storing, using, erasing... so basically anything
- **Data subject** — The person whose data is processed. These are your customers or site visitors
- **Data controller** — The person who decides why and how personal data will be processed. If you're an owner or employee in your organization who handles data, this is you
- **Data processor** — A third party that processes personal data on behalf of a data controller. The GDPR has special rules for these individuals and organizations

GDPR grants rights to data subjects

The GDPR grants several new rights for the data subjects, being

- Control over when, how, and why companies can collect and use a subject's personal data
- Access to the personal data that companies and organizations collect from him or her

Right to be
informed

Right of
rectification

Right of
access

Right to
erasure

Right to
restrict
processing

Right to
object

Right to
data
portability

Right in relation to
automated
decision making
and profiling

Responsibilities of companies under GDPR

The GDPR restricts how, why, and when companies can use the personal data of data subjects

According to the GDPR a company is responsible for the personal data that it uses. This means that:

- Companies will need to assess whether the processing of personal data is allowed
- Companies must know how to conduct privacy maintenance
- Companies must embed privacy within their organization
- Companies must communicate about privacy



Is the processing of personal data allowed?

It is important to consider:

- Lawfulness of processing personal data
- Principles applicable to processing of personal data (being (i) lawfulness, fairness and transparency, (ii) purpose limitation, (iii) data minimization, (iv) accuracy, (v) storage limitation, (vi) integrity and confidentiality and (vii) accountability)
- Demonstrable consent of data subject (if consent is used as the legitimate ground for the processing)
- Transfer of personal data outside the EU
- Special categories of personal data (such as ethnicity, political opinions, religious beliefs, health, sexual orientation)
- Additional protection for children under 16



How to conduct privacy maintenance?

It is important to consider:

- Implementation and documentation
- Data Processing Agreements (DPA)
- Risk analysis and Data Protection Impact Assessments (DPIA)
- Policies and implementation of technical and organizational measures to protect personal data
- Systems and processes to ensure data subject's rights, such as data portability
- Retention



How to embed privacy within your company?

It is important to consider:

- Data Protection Officer
- Rights of data subjects (access, correction, deletion, objection)
- Data breach notification
- Trained staff
- Data protection by design / default: relevance of privacy for (developing) products and services
- Certification
- Supervision



How to communicate about privacy within your company?

It is important to consider:

- Clear and comprehensible communication, e.g. Privacy Statement
- Data breach notification procedure
- Contact details of DPO
- Objection to profiling
- Openness about records of processing activities
- Communication with the Supervisory Authority



What if your company does not comply?






Not complying with the GDPR is a risk for everyone


If an EU Supervisory Authority traces a breach back to your company organization, it can have severe consequences, such as:

- Your company could face steep fines
- Impact on your company's reputation
- Increased risk of scams and financial damage to the people whose data was exposed

TOP 5 BIGGEST GDPR FINES

*Only includes final & binding fines

 Google Inc.	€50,000,000
 TIM - Telecom Provider	€27,802,946
 Austrian Post	€18,000,000
 Deutsche Wohnen SE	€14,500,000
 1&1 Telecom GmbH	€9,550,000

+ British Airways – €204,600,000 

+ Marriott International – €110 390 200 

Status of data protection in India

- Information Technology Act of 2000
- Personal Data Protection (PDP) Bill was introduced in Parliament in 2019 which incorporates many elements of GDPR, such as:
 - Requirements of notice and prior consent for the use of personal data
 - Limitation on purposes for which data can be processed
 - Data minimization
 - Compliance requirements for data processors
 - Appointment of DPOs within companies
 - Right to data portability
 - Regulation and supervision by a proposed Data Protection Authority
- There are two main differences between PDP Bill and GDPR, being:
 - Provision of criminal penalties for harm arising from violations of PDP Bill
 - Relationship between a data processor and its consumer is a fiduciary relationship
- Revised draft of the PDP Bill is expected to be issued in 2021



Status of data protection enforcement in India

Enforcement

- No national regulatory authority for protection of personal data
- PDP Bill proposes a Data Protection Authority

Fines

- IT Act: fines of up to INR 500,000 when there is disclosure of personal information in breach of a lawful contract or without consent
- PDP Bill: penalties linked to worldwide turnover. Those penalties can range from 2% or 4% of the worldwide turnover, depending on the type of breach

Criminal liability

- IT Act: imprisonment of up to three years when there is disclosure of personal information in breach of a lawful contract or without consent
- PDP Bill: imprisonment of three years for re-identifying personal data or sensitive personal data without the consent of the concerned individual



Case law on data protection in India

Supreme Court Privacy Judgment



There have been a number of judgments in the courts on privacy matters but there is no significant court regulatory practice on the application of these provisions

Some useful links

- GDPR (including useful recitals): <https://gdpr-info.eu/>
- FAQ about GDPR: <https://gdpr.eu/faq/>
- Checklist for organizations to achieve GDPR compliance: <https://gdpr.eu/checklist/>
- UK Information Commission's Office (handy tools): <https://ico.org.uk/>
- Resources on IAPP which is global information privacy community: <https://iapp.org/resources/>
- Overview of data protection in India: <https://www.linklaters.com/en/insights/data-protected/data-protected---india>



Thank you for working with the PSCI

To help the PSCI capability building work better for you, please follow the link (<https://www.surveymonkey.com/r/7NWTQTT>) under the Survey tab on the livestream webpage to provide your feedback. Thank you!

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About the Secretariat

Carnstone Partners Ltd is an independent management consultancy, specialising in corporate responsibility and sustainability, with a long track record in running industry groups.

