

Frequently Asked Questions

RJC System Implementation in India

23 March 2010



This document has been prepared to answer questions that have been raised about RJC System implementation in India. These questions, summarised in the 'Description' column, have been raised by a variety of sources and do not represent the views or position of the RJC as an institution or that of its Members.

More detail on the requirements of the RJC System can be found in the 'Core System Documents' available at www.responsiblejewellery.com/certification

Training is also available for RJC Members and Auditors. For session availability please contact training@responsiblejewellery.com

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The Responsible Jewellery Council is the trading name of the Council for Responsible Jewellery Practices Ltd, The Council for Responsible Jewellery Practices Ltd, First Floor, Dudley House 34-38 Southampton Street, London, United Kingdom WC2E 7HF. The Council for Responsible Jewellery Practices is registered in England and Wales with company number 05449042.

Common Concern	Description	RJC Response
<p>Compliance with Applicable Law</p>	<p><i>“The Applicable Law in India is often contradictory, onerous, and not enforced, therefore instances of legal non-compliance can frequently be found. Full legal compliance is not realistic.”</i></p>	<p>RJC Members must comply with the Applicable Law. This is stated clearly in the Principles and the Code of Practices.</p> <p>Auditors will not conduct detailed legal compliance audits, but will seek evidence that Members have systems in place to ensure compliance.</p> <p>A situation of legal non-compliance does not prevent certification, providing corrective actions plans are in place. Impediments or difficulties in complying with Applicable Law can be addressed through the content and timing for implementation of Corrective Action Plans.</p> <p>If the law appears to be contradictory, the Member should provide substantiation for why this is the case and what their position is on interpretation.</p> <p>Note: The definition of a Major Non-conformance includes a situation of non-compliance with legislation or regulations.</p>
<p>Provident Fund and Employees’ State Insurance</p>	<p><i>“Diamond companies in India often do not pay the required contributions under the Provident Fund and the Employees’ State Insurance Act.</i></p> <ul style="list-style-type: none"> - Compliance is time consuming and bureaucratic - High cost - Workers don’t want to accept the deductions - Parallel programs are sometimes provided instead.” 	<p>Some diamond companies do comply with these requirements.</p> <p>Payment of statutory benefits to Employees is required under the Code of Practices. As these are legal obligations, lack of implementation would be a situation of Major Non-Conformance.</p> <p>Members who do not comply will need to take the necessary corrective actions. With Corrective Action Plans in place agreed with the auditor, these Members will still be eligible for certification.</p>

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Bribery	<i>"It is very difficult to obtain necessary permits and authorisations in India without paying bribes to government officials, yet the Code of Practices prohibits bribery."</i>	<p>Bribes involve paying to obtain something that you are not otherwise entitled to receive. This is prohibited under the Code of Practices, and is illegal in virtually all countries where RJC Members operate.</p> <p>If the payment is to receive something the business is entitled to, then it would be considered a Facilitation Payment. This is permitted under the Code of Practices.</p> <p>In some countries, facilitation payments are customary to conduct business and personal activities, and may even be legal. The Code of Practices has been written to accommodate this.</p> <p>Where facilitation payments are being made, Members are still required to maintain records and controls and work to ensure they are of limited nature and scope.</p>
Anti Money Laundering	<i>"The Code of Practices requires Members to follow the FATF 40 + 9 Recommendations if there is no anti money-laundering legislation. India's Prevention of Money Laundering Act (PMLA) does not apply to gemstone dealers, so do Members in India have to follow the FATF?"</i>	<p>The Code stipulates that Members must adopt the FATF Recommendations where no Applicable Law exists. India's PMLA is not considered to be Applicable Law in this context because it does not apply to gemstone dealers, therefore the relevant parts of the FATF Recommendations apply. The Code also requires Members to operate according to the principles of "know your customer".</p> <p>If Members have undertaken to voluntarily comply with the PMLA, it is likely that the actions necessary to comply with the FATF have been covered. The FATF Financial threshold is 15,000 Euro/USD. The PMLA reporting threshold is 10 lakh rupees (approx 21,500 USD). Since there is no relevant reporting authority in India for gemstone dealers, records should be kept in-house and made available to the authorities (and auditors) if requested. .</p> <p>Note: Members should be aware that international transactions may be subject to anti-money laundering laws in other jurisdictions.</p>

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<p>Child Labour and Young Persons, Documentation</p>	<p><i>"It is difficult to prove what a person's age is because workers come from small villages and often do not possess a birth certificate."</i></p>	<p>The Verification Assessment will establish whether effective systems are in place to prevent the employment of Children, including an effective mechanism for verifying age.</p> <p>For example an effective system could include a written policy, written agreements with contractors, written procedures for assessment and authorisation of employment, and acceptance of other official documents showing age, etc.</p>
<p>Collective Bargaining</p>	<p><i>"Unions in India are frequently political and militant. There should not be requirements for particular forms of representation or formal agreements."</i></p>	<p>The Code requires that Members not prevent employees from associating freely or collectively bargaining.</p> <p>There are no requirements regarding how such employees associations might be formed, or that agreements must be in place. However any collective bargaining agreements that have been developed must be adhered to.</p>
<p>Factories Act, 1948 (Amended 1987)</p>	<p><i>"The Factories Act is obsolete and overly prescriptive (floor space, spittoons, lighting, paint, etc). It is not followed by the industry and there is little enforcement by government."</i></p>	<p>The Factories Act is part of the Applicable Law and must be followed. Compliance with the Act is particularly important to the RJC System because it covers employment conditions and worker health and safety (Code of Practices provision 2.6). Such aspects of the Act that may be considered overly prescriptive are subject to exemptions by the Chief Inspector and/or alternative requirements by the State Government.</p> <p>RJC Accredited Auditors will not be conducting a full compliance audit on the Factories Act for RJC certification. Auditors will seek evidence of a system for legal compliance, such as a legal register, and inspectors' reports or certificates, but will not investigate compliance at the level of another inspector. However in areas of particular relevance to the Code of Practices, auditors will look for evidence that Members have systems in place to ensure they are aware of and comply with the applicable laws and regulations.</p>

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Health & Safety – Fire Exits	<i>“Several major buildings used by the diamond industry do not provide sufficient fire exits to meet current legal requirements. Compliance would require new construction and may not be in the Member’s control.”</i>	<p>This situation would be a non-conformance with Applicable Law.</p> <p>Under the RJC Code, fire exits must also be unlocked and unblocked.</p> <p>Corrective Action Plans must be reasonable and realistic, and should take into consideration cost and timing issues. Where construction and/or relocation may be required, the timeframes of the corrective action may extend beyond the certification period.</p>
Working Hours	<i>“Workers in the diamond industry typically work 60 hours or more per week, particularly during the peak season. This exceeds the legal limits. Workers want to work longer hours to earn extra income. Legal overtime is often not paid.”</i>	<p>The Code of Practices and the Applicable Law restrict the number of hours that can be worked per week except in special circumstances. Working hours that exceed legal limits, and failure to pay legal overtime, are non-conformances and must be corrected.</p> <p>Some companies use voluntary collective agreements with workers, approved by government, to negotiate additional seasonal working hours when required. Licenses from state government can also be obtained for seasonal working hours. Such arrangements, if approved by government, would be consistent with the Applicable Law and must be followed by the Member.</p>
Piece Rate Workers	<i>“The Code requires workers to be paid at least the legal minimum wage, but it is common for workers in the diamond industry to be paid on a piece rate. Less experienced workers may not earn the minimum.”</i>	<p>The use of piece rate schemes, or conversion of piece rate to time rate, should not result in workers being paid less than the applicable minimum wage. The Applicable Law requires all workers, including piece rate workers, to be paid at least the minimum wage.</p> <p>The conversion calculations used under other standards usually include overtime worked. The main point is that the use of piece rate schemes should not be used as a means to avoid payment of the minimum wage (plus associated statutory benefits).</p>

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Remuneration, Apprentices and Trainees	<i>"It is common practice to pay trainees below the minimum wage. New employees must be trained and there are no training institutes. It is legal to pay apprentices below the minimum wage."</i>	<p>The practice of paying trainees below the minimum wage is open to abuse and does not comply with Applicable Law. The Code requires Members to pay at least the legal minimum wage plus associated statutory benefits.</p> <p>This applies to workers who the employer considers to be in training.</p> <p>Training does not mean that there is an apprenticeship. Apprentices must be properly documented and registered in accordance with the Apprentices Act.</p>
Contract Workers – General Employment Terms	<i>"The diamond industry relies extensively on contractors and contract workers. Use of contract workers should not be considered a non-conformance."</i>	<p>The use of contract workers would not constitute a non-conformance, providing that it is not done for the purpose of avoiding legal obligations to employees.</p> <p>Members are responsible for ensuring that contract workers working on their premises are paid correctly.</p> <p>Members should verify that their contractors maintain proper records for contract workers working on their premises, and that the workers are receiving the proper payment.</p>

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