



Ethical and fair business practices in India

A survey report

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Foreword

Globalisation, disruptive technologies, and the current macroeconomic environment has made businesses more competitive and complex. Economies have become more inter-related and interdependent, thereby disproportionately increasing variables that may cause seismic shifts. Companies are under tremendous pressure to thrive in this dynamic business environment. The continuous onslaught of scandals has been another challenge for the business ecosystem. Not only has it eroded the faith of the shareholders, it has also put every action of the leadership under a microscope.

This brings to fore the relevance and need of ethical and fair business practices, especially in these turbulent times. Ethics, essentially is to oversee the spirit of the law with the expressed intent to do what is right. Going by this, in order to uphold and preserve the spirit of corporate

governance, the drive has to come from individuals who have a strong sense of purpose and are driven by a strong moral compass. As we have seen time and again, the aftermath of unethical behaviour can cause significant reputational and financial impact for a company. Therefore, emphasising on both ethics and compliance is crucial for businesses.

While in a fast moving world, some may see ethics and fair practices as a drag on resources that impedes growth, in reality, companies that follow a 'values-based' approach to ethics and compliance actually have an advantage in the marketplace in the long-term. Such an approach requires the leadership to focus on building a culture of ethical behaviour and also to go 'beyond the minimum'.

Through this survey report KPMG in India has attempted to study the current state of initiatives taken by companies in

India to ensure ethical business practices and its impact on their performance drivers. The survey report also aims to analyse the efforts made by companies in the last five years of regulatory changes to implement ethical business practices and to understand benefits that these companies have witnessed due to an enhanced ethical practice framework. During the course of the survey we found that building a culture of working ethically and with integrity is the first step towards addressing the scrutiny and challenges that companies face today.

We hope that you will find this survey report insightful to initiate discussions at your organisation and make corporate boards in India focus on ethics as a performance enabler, rather than just a 'tick in the box'.



Nilaya Varma
Partner and Leader,
Markets Enablement
KPMG in India



Pankaj Arora
Partner, Governance Risk and
Compliance Services, and
Leader, Board Leadership Center
KPMG in India



Executive summary

82 per cent of the respondents believe in a positive impact of ethical business practices, which is mostly felt on long-term sustainability and reputation of a company. **Cost of implementing** such a framework continues to be the most prominent challenge followed by lack of awareness in an organisation.

1

Code of conduct was considered the most popular building block of an ethical ecosystem, focusing on aspects such as bribery and corruption, conflict of interest, health and safety etc. However, **20 per cent** of the respondents still lack in having an active monitoring process for assessing compliance to the code.

2

While board practices on conflict of interest, independence and diversity were fairly prevalent amongst the respondent group, **board evaluation practices**, especially relating to the use of third party facilitated evaluations and peer review of individual directors **need more traction**.

3

Only **60 per cent** of the respondents claimed that their companies **are aware of all applicable compliances**. While **internal expertise seemed to be the preferred choice** for identifying compliances, the utilisation of external experts would be critical for adoption of compliance management tools and establishing a robust framework for bottom-up reporting.

4

Internal audit is considered an integral governance tool and recognising the complexities of today's business, impact of technology, volume of data and disruption in operations, increased adoption of auditing automation tools, data analytics and Control-Self Assessment is imperative **to strengthen internal audit function**.

5

Though employee background checks and whistle-blowing mechanism were considered **most prevalent tools for fraud risk management**, there is still an opportunity to increase use of data analytics, third-party due diligence and periodic fraud and misconduct reviews.

6

Some relatively surprising outcomes of the survey relate to the following aspects:

- 25 per cent of the respondents claimed that their companies still do not have policies relating to bribery and corruption
- One-third of the respondents from financial services companies showed negligible progress in implementation of anti-money laundering policies
- Respondents seemed to understand the importance of diversity and inclusion but majorly restricted its context to prevention of sexual harassment at workplace.

7





Business ethics and its perception



While every individual possesses an inherent understanding of the meaning of an ethical ecosystem, varying backgrounds, experiences, exposures and perceptions influence its implementation. To ensure consistency in understanding and implementation across all levels, organisations often establish frameworks and policies to shape processes, practices, interactions, and behaviours which govern the day to day operations of an organisation.

The survey brings to light that independent whistle-blower programme, anti-money laundering policies and workplace policies on discrimination and harassment were considered least significant for building an ethical framework amongst the pool of respondents.

Our survey revealed the following as building blocks of an organisation's ethical ecosystem, in order of ranking.

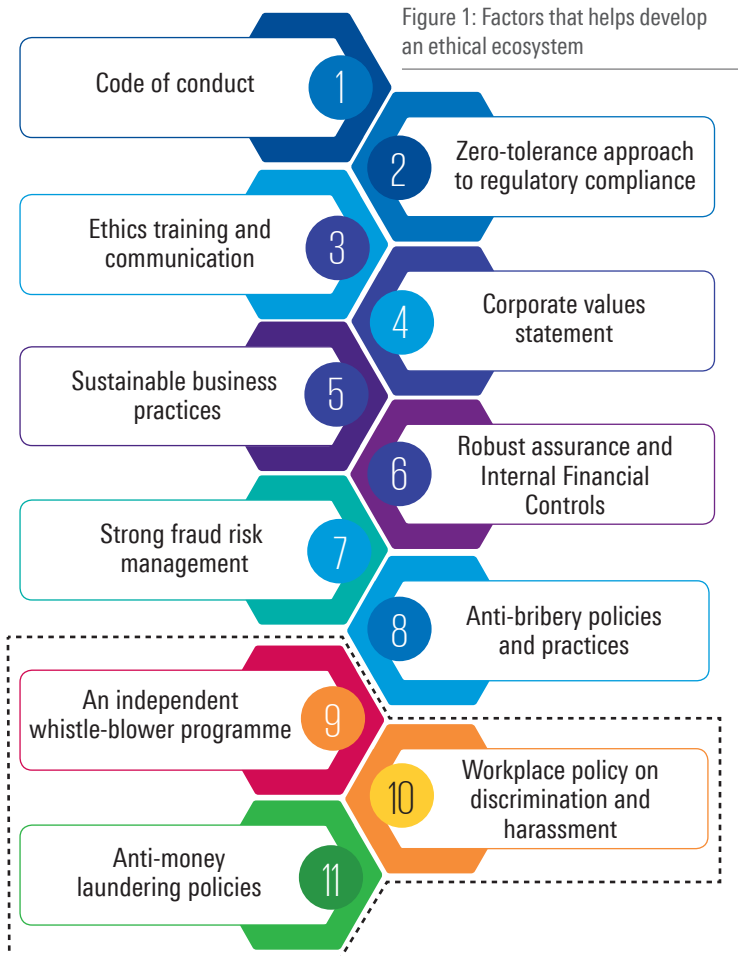
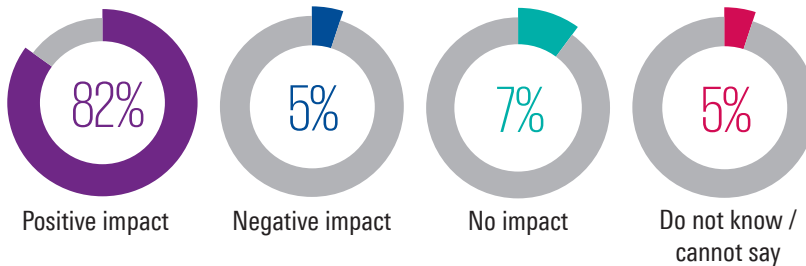


Figure 2: Impact of ethical business practices on business performance



82 per cent of the respondents believe in a positive impact of ethical business practices. The positive impact is experienced most on the following attributes:

- **long-term sustainability**
- **reputation**
- **credit ratings**

While there is a cost attached to implementing an ethical framework, **90 per cent** of the respondents believe that the benefits outweigh the cost. This cost-benefit equation poses a challenge, mostly in cases of small companies, which may not have adequate resources and scalability to put in place a comprehensive ethical framework.

Respondents claim that in implementing ethical frameworks, they are faced with the following key challenges:



Furthermore, when respondents had to select factors likely to impact ethical and fair business practices in 'Corporate India' the most, going forward, the following were stated (in order of their ranking):

Strengthening of local laws against bribery and corruption 1	Increasing disclosure requirements 2	Adoption of a business ethics code by industry bodies 3	Extraterritorial reach of bribery and corruption laws of mature economies 4
Strengthening of competition laws 5	Increasing shareholder activism 6	Geographical expansion of Indian companies to more mature markets 7	Increasing access to funds from global financial markets 8

Board governance



It is the ultimate responsibility of the chairperson and the board members to set governance tone at the top.

When asked about the already-implemented practices, it was observed from the survey

that while certain practices had been adopted before being made mandatory by the Companies Act, 2013, some of them have seen a major push after the implementation of the act. On being asked about

the board level practices which respondents have implemented in their organisations, following practices were ranked in order of their implementation timelines (the bars denote the prevalence of board practice):

Table 1: Adoption of board practices

Category of board practices	Implemented before the Companies Act, 2013	Implemented post the Companies Act, 2013	Not implemented yet
Conflict of interest <ul style="list-style-type: none"> • Directors voluntarily disclosing conflict of interest • Recusing directors with conflict of interest from participating in discussions 			
Board evaluation <ul style="list-style-type: none"> • Independent committee/directors' evaluation • Third party facilitated evaluations • Peer review of individual director evaluation • Documented set of parameters and criteria 			
Independence <ul style="list-style-type: none"> • Executive sessions among independent directors • Annual/quarterly affirmation of independence of directors • Executive sessions between the Board/Audit Chairperson with internal and statutory auditors • Executive sessions between independent directors with relevant management personnel 			
Diversity			

The point that the above table denotes is that there is not enough adoption of board evaluation practices specifically with regard to:

Third party facilitated evaluations

Peer review of Individual Directors



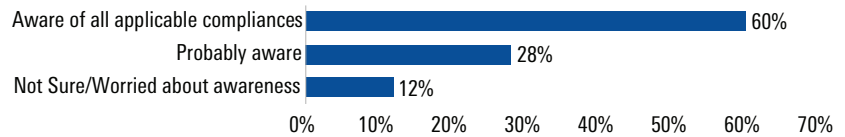
Assurance and regulatory compliance



In an ever changing business environment, managing risk is an integral part of the corporate governance framework. With a plethora of laws and regulations surrounding the framework, ensuring proper and timely compliance requires identifying and understanding risks associated and establishing effective controls. It is observed that the importance of compliance is proportionate to the penal provisions attached to the regulations.

Basis the survey responses, it was observed that **majority of them are aware** of all the compliances applicable to them (see graph). On further analysis, those who are partly or fully aware of the applicable compliances, their preferred choice for identifying compliances is through an internal team of experts, which further examines the validation

Figure 3: Awareness of compliances applicable to your business



and completeness of the compliance framework.

Respondents were asked to list their **top four regulatory compliances** as per importance to their companies where labour and employment related compliances were given the highest importance followed by fiscal compliances related to tax and FEMA. In addition to penalty, respondents consider reputational damage as the top priority risk associated with non-compliance.



Given the multitude of regulations, in addition to formulating a comprehensive compliance framework,

respondents still need to focus on:

- Adopting compliance management tools and
- Bottom up compliance reporting.

Internal audit is an independent function which helps to direct efforts on key processes, risks and controls in an organisation. To ensure effective governance in organisations, internal audit has emerged as a prerequisite. In terms of review of internal audit practices and recognising complexities of today's business, impact of technology, volume of data and disruption in operations, the following factors are imperative for increased adoption in order to strengthen the internal audit function:

- Leverage technologies such as continuous auditing and continuous monitoring for routine audits
- Leverage data analytics for identifying certain exceptions from transactional data
- Harness technology for knowledge sharing and management within the function
- Use Control-Self Assessment (CSA) framework for key operational, financial and compliance processes.



Values and code of conduct



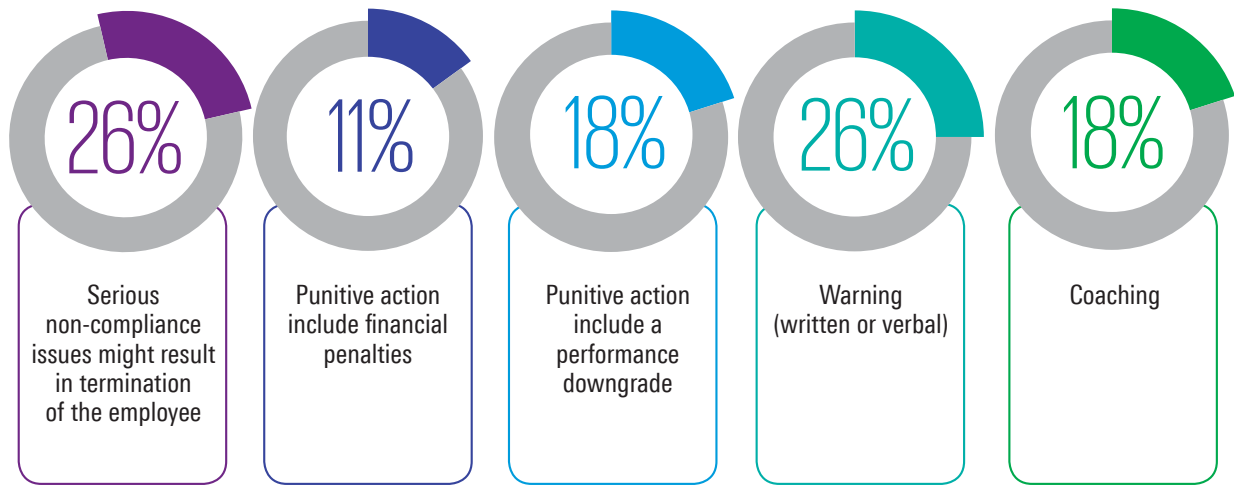
Organisations often have a code of conduct and a set of values which reflect the way they operate and carry out their engagements. When respondents were asked to assess the success of their ethical frameworks in day to day operations, it was observed that **a majority of companies have a code of conduct in place, though in some cases it may be loosely documented as a set of core values.** Additionally, it was observed that the applicability of code of conduct at the time of implementation is largely restricted to internal stakeholders excluding suppliers and business associates. It was also observed that **20 per cent** of the respondents who have a formal code of conduct did not have an active process for assessing compliance to the code in place.

Furthermore, respondents were asked to identify the aspects covered under their established code of conduct; the following results were obtained (ranked in order of priority):

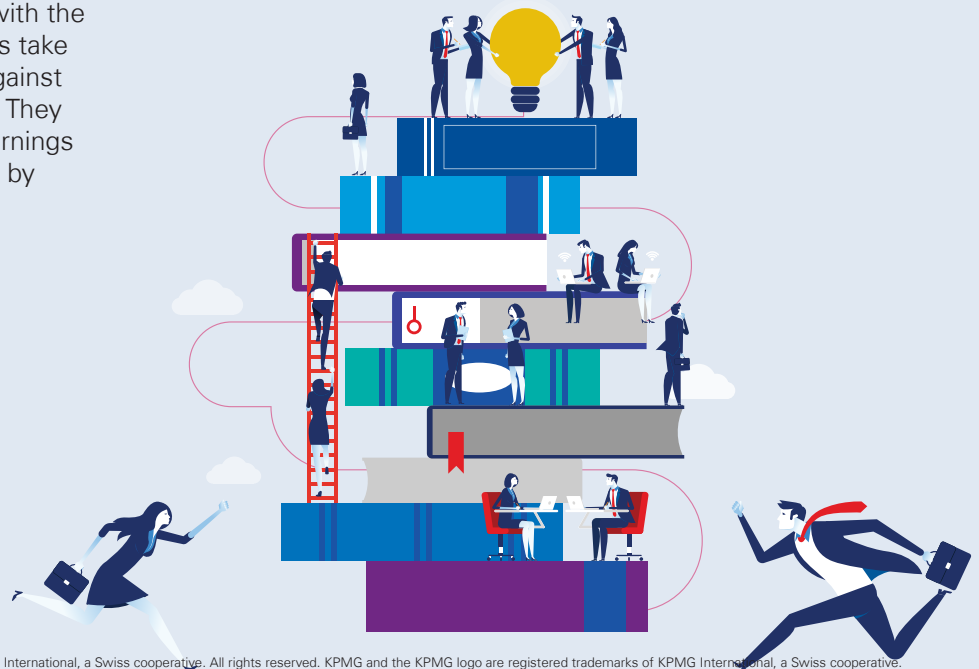
Figure 4: Aspects covered under code of conduct



Figure 5: Disciplinary actions for non-compliance



In case of non-compliances with the code of conduct, respondents take various disciplinary actions against the concerned (see figure 5). They resort to written or verbal warnings and punitive actions followed by termination of the concerned employee in cases of serious non-compliance.



Fraud risk management and whistle-blower/vigil mechanism



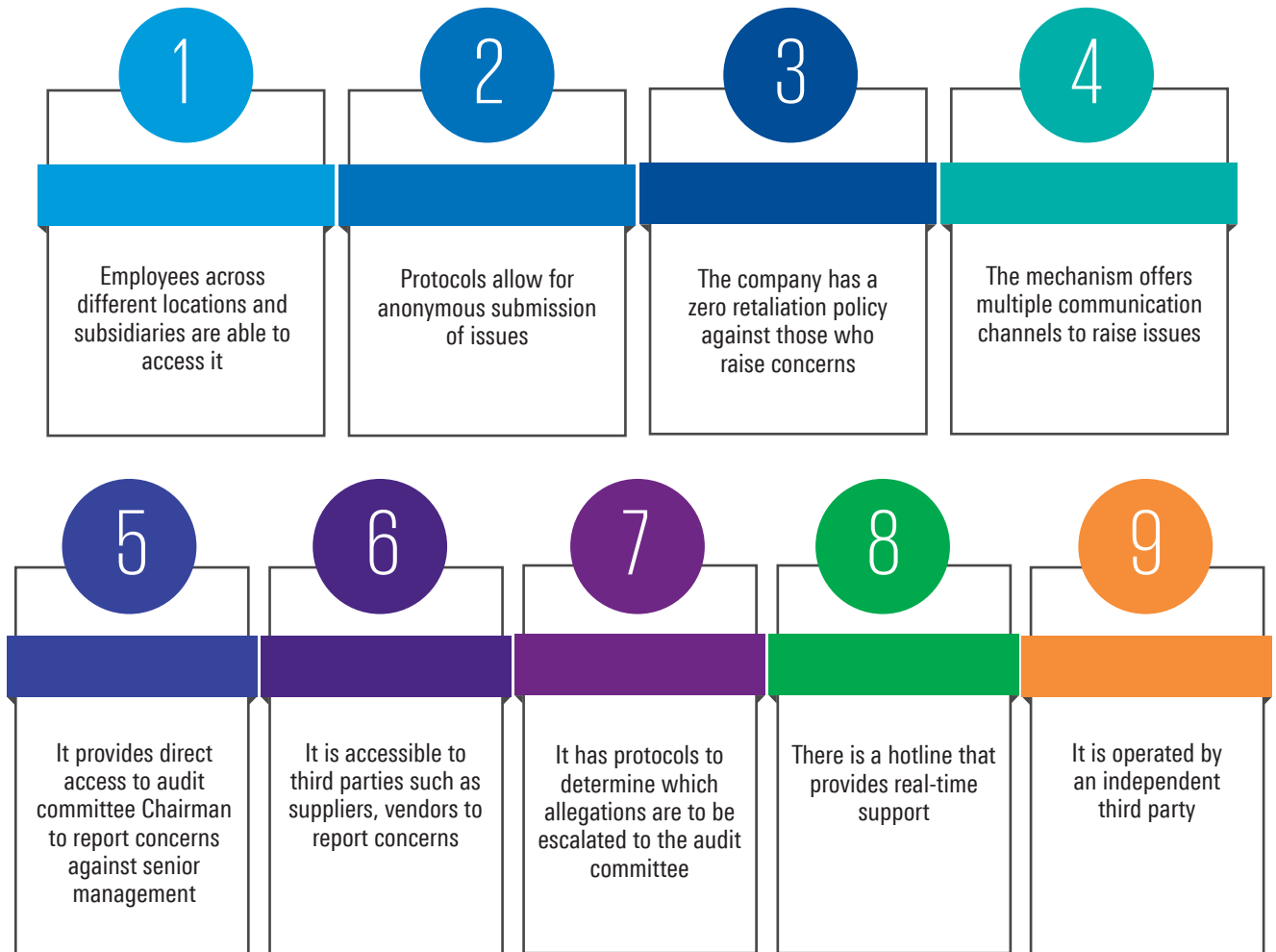
Corporate misconduct remains a looming threat which restricts public from investing in capital markets. Organisations need to focus on formulating a comprehensive strategy to detect and prevent the threats emanating from fraudulent activities.

The survey highlights the below factors that have been implemented by organisations as part of their fraud risk management programmes (The size and color of the bubble denotes the prevalence of the factors in the respondent group).

Figure 6: Factors implemented under fraud risk management



Respondents are focused on improving internal fraud control processes – those respondents whose companies have established a whistle-blower programme, describe the top features of the programme:



Anti-bribery and Anti-Money Laundering (AML)



The global legislations around corruption and bribery continue to strengthen, with many countries developing their own set of rules and regulations, best suited to their business environments. As per a global Alix Partners study conducted in 2017 on 361 financial institutions, it was found that AML awareness is a concern of the boards. Nearly 20 per cent of respondents do not provide training to their board or are unaware whether the board is being briefed¹.

The most distinguished of legislations include US Foreign Corrupt Practices Act, 1977 (FCPA), UK Bribery Act, 2010. Stringent laws in India include, The Prevention of Corruption Act, 1988 and Prevention of Money Laundering Act, 2002. Till now, there has been a lackadaisical attitude to bribery and corruption in India but the recent amendments made to

the Prevention of Corruption (Amendment) Act, are expected to provide a push to anti-corruption penal provisions in India. In such a regulatory environment, companies need to make ensure that they are accommodating with these laws.

Elaborating on the state of evolution of a company's policies and procedures against bribery and corruption, a staggering **25** per cent of the respondents said that their organisations do not have policies and procedures against bribery and corruption.

Financial institutions are exposed to a greater level of risk for money-laundering and corruption. For our survey, when respondents from financial services' companies were asked on the steps taken by their companies to prevent money laundering, around one-third of the organisations did not show much progress in the implementation of Anti Money Laundering (AML) practices, especially in the areas of:

- Risk based AML programmes
- Mechanisms for monitoring and reporting suspicious transactions, including a dedicated officer, and
- Periodic training for employees on anti-money laundering processes.



1. 2017 global anti-money laundering and sanctions compliance survey, Alix Partner, 2017



Diversity and inclusion



As India Inc. moves ahead, workplaces continue to evolve not just in terms of technology but also in terms of diversity and inclusion. LinkedIn's Global Recruiting Trends 2018 report found that diversity is a key trend and companies which make meaningful efforts towards diversity, inclusion and belonging perform better in their industries. In the last few years, there has been a conscious effort to promote diversity but it is clear that corporate India has not yet won the battle and has a long way to cover.

Though, most organisations understand the importance of diversity and inclusivity as observed from the survey results but the practices are majorly limited to policies and trainings, given the Prevention of Sexual Harassment at Workplace Act (POSH, 2013) and recent effects

of #MeToo movement. However, organisations that truly aspire to be progressive, have to focus on creating an LGBTQ-friendly workplace and including people with disabilities in the workforce – the recent decision of the Supreme Court to recognise the rights of the LGBTQ community has been a bold move. Having a workforce comprising of people with varied skills and experiences also comes under the domain of diversity which leads to generation of fresh ideas, in turn fostering innovation and creativity. Organisations need to have a more broad-based understanding of the issue – **managing sensitivities and lending an empathetic ear to all employees** despite their backgrounds, sexualities and ethnicities has become necessary for the long-term success of an organisation.

Respondents through this survey, were asked about the practices their companies have adopted to further diversity and inclusion, the results were as follows:



Policies on sexual harassment, including appropriate escalation and investigation protocols



Workforce diversity policy applicable to all business units



Mandatory, organisation-wide periodic training on sexual harassment.

Diversity is being invited to the party, inclusion is being asked to dance, and belonging is dancing like no one's watching²

2. LinkedIn Global Recruiting Trends, LinkedIn, 2018



Health, Safety and Environment (HSE)



Organisations that extend their vision and commitment to strong health and safety performance, avoid considerable business costs pertaining to injury and illness exposures in turn, being highly regarded by markets, investors, employees and other key stakeholders. Additionally, companies which invest in robust health and safety management systems have significantly improved business performance – including stronger share market performance³. In India, the health and safety function has evolved with time, majorly after the adoption of Companies Act, 2013.

When asked about the environment-friendly measures that have been adopted by organisations, the following practices were notable:

Measures to keep emissions or waste generated by the company within permissible limits given by central and state pollution boards

Investments in clean technology or renewable energy

Sustainable product development

Sustainable sourcing

Introduced business responsibility reporting (reporting on environment and sustainability) as part of annual reports

Process to identify and assess potential environmental risks

3. Tracking the Market Performance of Companies That Integrate a Culture of Health and Safety. Journal of Occupational and Environmental Medicine, 2016

When the respondents were asked to give their view on the evolving 'health and safety' function in their organisation, the following areas were stated as needing more focus:

- Trainings on HSE for contractors, suppliers and casual/temporary workers
- Processes to measure and audit 'health and safety' performance
- Establishing a practice of benchmarking health and safety standards at the company with local and global peers
- Publically releasing reports on 'health and safety' performances.

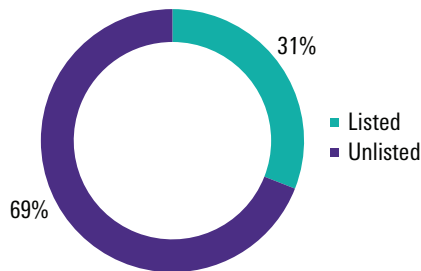




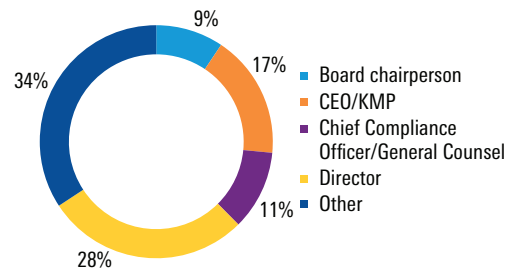
Survey respondent profile



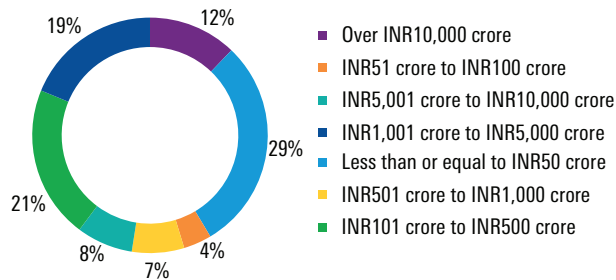
Listed v/s unlisted respondents*



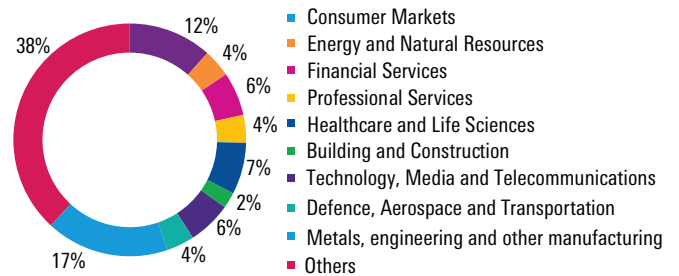
Designation of the respondents*



Turnover of the respondent companies*



Industry expertise of the respondents*



*N=181

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Compliance Team: Sameer Hattangadi, Sharon D'silva

Design Team: Anupriya Rajput



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KPMG in India contacts:

Nilaya Varma

Partner and Leader,

Markets Enablement

KPMG in India

T: +91 124 669 1000

E: nilaya@kpmg.com

Pankaj Arora

Partner,

Governance Risk and Compliance Services, and

Leader, Board Leadership Center

KPMG in India

T: +91 124 336 9462

E: pankaja@kpmg.com



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