



cutting through complexity

# Forensic FOCUS

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## Legal counsel and forensic accountants fight bribery and corruption

### Combining forces creates a powerful dynamic duo

When legal counsel and forensic accountants work together, they create a powerful team that can help clients with anti-bribery and corruption (AB&C) related matters. The array of skills and services that these professionals bring to the table help organizations by applying their unique analytical capabilities and global experience to address AB&C challenges.

With deep accounting and investigative experience, forensic accountants when teamed up with counsel help clients perform AB&C data analytics, conduct control-level risk assessments, review AB&C policies and procedures and remediate internal control weaknesses. In addition, when a bribery and corruption issue comes to light either through discovery by the company's own control processes or as a result of a regulatory or law enforcement enquiries or investigation, there is a clear need for both legal and forensic accounting assistance. Clients will need to quickly assess the seriousness of the issue and this will require, for example, securing and examining usually vast amounts of electronic data and other information. The technological resources and investigative expertise of significant and global forensic accounting firms will be critical throughout an investigation. For counsel to provide the needed legal advice and representation this forensic support will be central.

### TODAY'S REALITY

- Forensic accountants work closely with legal counsel and their clients to provide insight, analytical and investigative expertise
- To mitigate bribery and corruption risks, legal counsel need to understand the accounting and control environment
- Data analytics can be invaluable to companies and their legal counsel to help identify potential exposure to bribery and corruption and to develop investigative or due diligence procedures



### Investigating Bribery and Corruption

Working closely with independent legal counsel, KPMG Forensic was retained by an independent committee of the Board. KPMG assisted counsel with investigating the suspected issues and to understand the true shape and extent of the corruption. This involved extensive

collection and review of data and participation in interviews and analysis. The concerns were found to be very real and our information helped legal counsel advise the company on addressing the issue from regulatory, civil and criminal contexts.



Qualified forensic accountants<sup>1</sup> with AB&C experience are essential to helping a company's legal counsel understand technical accounting and internal control matters so they can assess whether a client has complied with laws and regulations relevant to the jurisdiction and its specific issues. For example, in Canada, the Corruption of Foreign Public Officials Act ("CFPOA") requires companies to maintain accurate books and records. The US Foreign Corrupt Practices Act ("FCPA") also requires accurate books and records as well as maintaining a system of internal controls that are reasonably designed to prevent and detect bribery and corruption.

In the US, the vast majority of FCPA enforcement cases involve allegations that the books and records were inaccurate and/or that the internal controls were deficient. These cases demonstrate that a critical aspect of bribery and corruption cases hinge on whether a company has complied with applicable accounting standards. Experience has shown in Canada that CFPOA investigations can involve complicated financial reviews involving transactions that can extend through many countries with record keeping questions often at the forefront.

In investigations, these and other issues usually require the direct involvement of forensic accountants. Detailed

## AB&C Risk Assessment

In anticipation of an acquisition, KPMG Forensic was retained by legal counsel to the acquirer to conduct an AB&C risk assessment and transactional review of the target company as part of the due diligence process. Our work included the use of data analytics, policy and procedure review, transactional testing, interviews as well as integrity due diligence (see next page). While no actual bribery and corruption was noted, these procedures indicated specific AB&C risks and highlighted required remediation through improving policies and procedures.

transactional testing and analytical procedures to trace and reconcile suspicious payments are usually central to the assistance provided by forensic accountants. Assisting legal counsel to assess the quantitative financial impact that suspected bribery or corruption events had on a client is an important role of the forensic accountant. Forensic accountants need to dive deep into the books and records for the true trail of transactions and to identify process-level risks and control weaknesses. It is through this detailed analysis and the resulting information that legal counsel will best be able to advise its client and develop the most effective strategy to address these difficult and significant corporate issues and exposures.

Structured dashboards can be an effective way to summarize important findings and to focus attention on relevant issues, as indicated in this example dashboard.



Dashboards illustrate the dynamic nature of AB&C data analytics. This illustrative screenshot of a dashboard presents an overview of vendor transactions by country, vendor profiles and statistics, and disbursements by type and risk. Each of the fields on the dashboard is linked to transaction data that can be accessed by a single click to drill down into individual vendors or transactions.

Similar summaries for key AB&C-related data, such as travel and entertainment expenses, procure-to-pay, and order-to-cash transactions may also be available. AB&C data analytics can be configured in ways to help legal counsel and clients highlight risks on a proactive basis or to identify suspicious payments during an investigation.

Link analysis: Data analytics can be used to help investigate suspicious payments through link analysis procedures, which cull through large databases of transactions to highlight certain relationships and transaction flows. These procedures can be used to identify payments made between a company to government officials, politically exposed persons, and third-party intermediaries.

<sup>1</sup> In Canada, forensic accountants are qualified through the IFA (Investigative and Forensic Accountant) designation and the CFF (Certified in Forensic Financials) credential.



## Forensic accountants arm lawyers with valuable insights

Forensic accountants with significant AB&C experience have developed sophisticated AB&C data analytic tools that add considerable power and efficiency when examining financial and accounting data. These tools can mine large volumes of data, such as travel and entertainment expenses or vendor payments with a view of identifying anomalies and areas of higher risk. This information can be invaluable to legal counsel to help their clients identify bribery and corruption risks and to help develop investigative or due diligence plans. Data analytics also help with investigating suspicious payments through link analysis, which cull through large databases of transactions to highlight certain relationships and transaction flows. These procedures can be used to identify payments made between a company to government officials, politically exposed persons, and third-party intermediaries.

Integrity due diligence of a company's business partners, suppliers, agents, and other representatives is a vital element of an effective AB&C compliance program. However such information can be difficult to find especially when the individuals or entities are located in foreign jurisdictions. Enhanced due diligence intelligence tools are available that can scour worldwide public and proprietary databases such as sanctions



lists, litigation dockets, legal judgments, and adverse media reports—and very often in local languages. These solutions are powerful tools to help companies and their legal counsel assess AB&C risks or to investigate allegations of bribery and corruption.

When bribery and corruption matters involve reviewing electronic data, eDiscovery tools and the skills required to perform the timely collection, processing, and searching of this data wherever in the world it might be located can be critical. In these cases, counsel having access to consistent tools and full-service forensic technology

abs and personnel across the globe provides the needed coverage and flexibility required to quickly and efficiently handle data in foreign countries.

As AB&C issues often have a global reach, there is frequently a need for assistance in countries involving local languages, translation and understanding local practices, culture and customs. Having “boots on the ground” with investigative expertise and experience can be critical for Canadian counsel when advising their clients.

After an AB&C assessment or an investigation, there are usually accounting-related issues that need to be identified and remediated. For example, books and records might need to be corrected, internal controls enhanced, and accounting processes implemented. The direct and close involvement of experienced forensic accountants is needed to assess weaknesses in a control environment, to design appropriate remediating controls, and to help implement and test the controls.

### KPMG's Integrity Due Diligence

KPMG Corporate Intelligence is in the business of conducting Integrity Due Diligence. By harnessing broad research and investigative tools and approaches, we assist legal counsel and their clients to really understand who the company is doing business with, anywhere in the world. KPMG's Astrus™ platform provides a consistent, thorough public-source research tool to gather and analyze information about business partners, agents, and other third parties. Information obtained by us about relevant third parties is central to assessing a company's AB&C risks.



# Collaboration is the key to meeting client needs

At the end of the day, solving the broad range of expected AB&C issues requires the integrated expertise and services of legal counsel and forensic accountants. By working together, counsel and forensic accountants create a dynamic collaboration that will help their mutual clients with their evolving AB&C-related needs.



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