



Anti-bribery and corruption services



Introduction

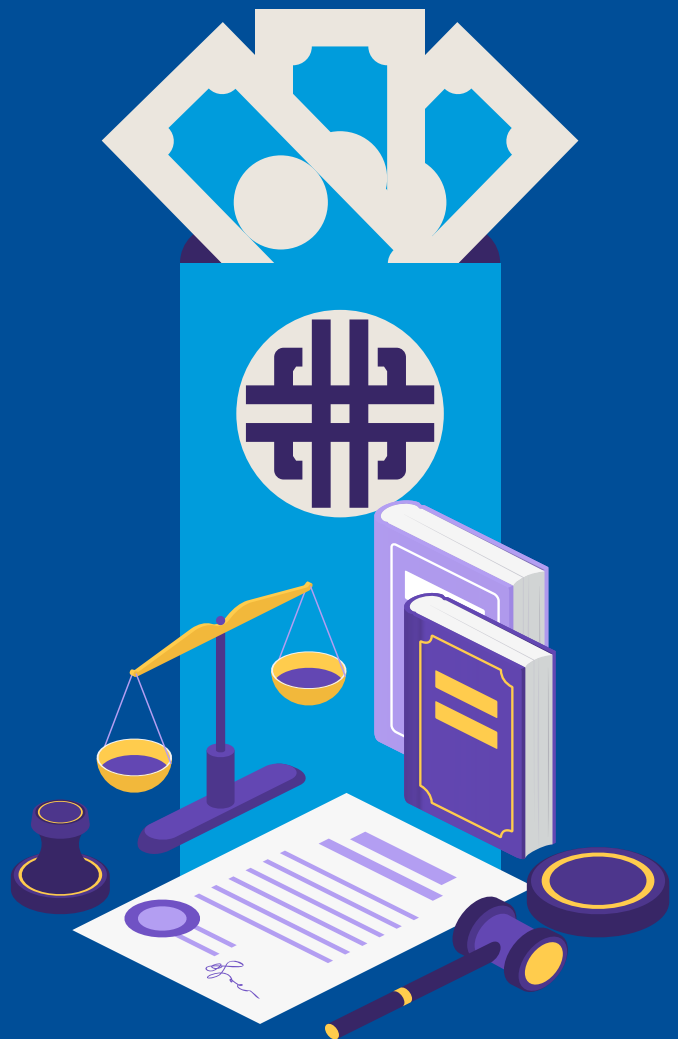
Corruption can weaken the socio-economic fabric of any country. It is a global phenomenon and not restricted to any one country or region. In recent years, the fight against corruption of public officials has gained momentum due to globalisation, active media and role played by international groups and organisations in publicising the problems of corruption and in trying to create anti-corruption framework and sentiment in many countries.

In 1977, the US enacted a federal law – Foreign Corrupt Practices Act (FCPA) – that prohibits the payment of bribes to foreign officials by US companies, acting anywhere in the world, directly or indirectly, in order to obtain or retain business. The FCPA also requires organisations to maintain accurate books and records and have a system of internal controls sufficient to provide reasonable assurances that transactions are executed and assets are accessed and accounted for in accordance with management's authorisation. The US Department of Justice and the US Securities and Exchange Commission, jointly enforce the FCPA. The sanctions and penalties for FCPA violations can be significant. The organisations may also be subject to oversight by an independent consultant.

After members of the OECD signed the Convention in 1997 on Combating Bribery of Foreign Public Officials in International Business Transactions, a growing number of governments has passed anti-bribery and corruption (ABC) laws. UK introduced a Bribery Act 2010 (UKBA) that is now among the strictest legislations internationally on bribery. The UKBA legislation is of great significance for organisations incorporated in or carrying on business in the UK. Other European governments have implemented ABC regulations, too, as have emerging economies including China and Brazil.

India is no exception to the ill-effects of corruption. Historically, India has been ranked low in the corruption perception index published by Transparency International. India currently has Prevention of Corruption Act, 1988 that prohibits public officials from accepting bribes and supply side of bribery by commercial organisations. Further, there are other relevant laws for curbing corruption in public spaces such as The Benami Transactions (Prohibition) Act, 1988 and The Prevention of Money Laundering Act, 2002.

With globalisation, there has been a growth in multinational companies (MNCs) having operations in multiple jurisdictions. The biggest challenge for these MNCs is to meet the compliance requirements of applicable international and local legislations.



Protection against violations of anti-bribery and corruption laws

Global corporations stand the risk of non-compliance with the above laws. The only defence available for commercial organisations in most of the global anti-corruption laws is to implement effective and adequate procedures to prevent, detect and mitigate bribery and corruption risks. Hence, decision makers at these commercial organisations need to ask the following questions to check whether they have adequate safeguards to protect against bribery and corruption risks:

Has the organisation conducted a bribery and corruption risk assessment to identify the potential high-risk areas?



Does the organisation have a well-designed anti-bribery and corruption programme?



Does the organisation have a proper complaint redressal mechanism?



Does the organisation have a proper education and training programme to create awareness on anti-bribery and corruption policies and legislations among all employees and third parties, including agents, business partners and associates? Do they obtain annual certification from third parties and employees on compliance with anti-bribery and corruption policies and legislations?



Do they have adequate third-party due diligence procedures to minimise risk of non-compliance through third parties?



KPMG in India's value proposition

KPMG in India provides a gamut of services which can help organisations in identifying the high-risk factors of bribery and corruption at an early stage and institute proper mitigating steps.



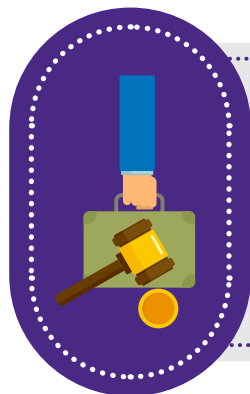
Transaction due diligence

In a merger and acquisition deal, companies with US FCPA and UKBA applicability, need to ensure that pre-transaction due diligence is undertaken thoroughly on the target entity with all anti-corruption checks in mind. KPMG in India can help these organisations with pre-transaction due diligence on the target to assess its anti-corruption policies, procedures and compliance. KPMG in India can also help organisations in reducing risk of successor liability for any FCPA violations by identifying red flags at the diligence stage and assist to resolve the issues. Further, KPMG in India can assist in post-transaction due diligence by ensuring that proper anti-corruption framework exists and is effectively implemented and monitored.



Anti-bribery and corruption risk assessment

KPMG in India can help organisations in conducting anti-bribery and corruption risk assessment to identify high risk areas and suggest recommendations on reducing those risks. This involves understanding of the geography risk, industry risk and the culture and compliance of the organisation. Further, KPMG in India uses data analytics tools to identify potential red flag transactions that is reviewed on a sample basis.



Anti-bribery and corruption compliance programme advisory

KPMG in India can help organisations in maintaining compliance with anti-bribery and corruption laws by helping in developing effective firm-wide policies, systems and controls that comply with the legislation and manage bribery and corruption risks. Further, KPMG in India also assesses compliance with the organisation's anti-bribery and corruption policies, procedures and controls, including compliance of field offices.



KPMG Anti-Corruption Compliance Tool

KPMG Anti-Corruption Compliance Tool is a digital solution that helps organisations automate their anti-bribery and compliance programme for better and effective implementation and monitoring. It has been developed in-house by KPMG in India and hence, can be customised as per organisations, policies and requirements.

Such compliance programmes are mandatorily implemented in all organisations pursuant to statutes such as the Indian Prevention of Corruption Act, US Foreign Corrupt Practices Act, United Kingdom Bribery Act, etc. ABC is also an important part of the Board's governance agenda. Key features of the tool include

1. Automated and centralised monitoring of ABC activities and controls
2. Management dashboards for near real-time assistance and informed compliance decision making
3. Reminder capabilities to ensure timely sign-offs of declarations and library of ABC policies, advisories and notices
4. Request based unique case creation and documentation
5. Flexible and scalable to adapt with changing compliance requirements and work scenarios
6. Ease of integration with organisation's existing ERP.



Third party due diligence programme

Past enforcements by US DOJ and US SEC show that third parties, including agents, consultants and distributors, are commonly used to conceal the payment of bribes. US DOJ in its guiding principles of enforcement states that risk based due diligence of third parties is important to show the effectiveness of an organisation's compliance programme. KPMG in India can assist organisations with design and set up of a risk based third party due diligence programme.

KPMG in India can also help organisations in conducting the background and reputation check of the third parties to identify any potential corruption risks.





Training and education programme

One of the ways to test the effectiveness of an organisation's compliance programme, is to assess awareness among its employees and third parties on compliance with the anti-corruption policies and legislations. Hence, it is important for organisations to have an effective training and awareness programme. KPMG in India can assist organisations by design and development of the training programme, both face to face and web based. This would include development of the training content and conduct of the training sessions. Web based training would include conversion of the training content into animated version with voiceovers and graphics; and integrating the training module in the organisation's e-learning system.



Investigations

KPMG in India also assists organisations with investigations into allegations of violations of anti-corruption policies and legislations. We can help organisations with a proper investigation through our deep experience in forensic accounting and forensic technology involving electronic evidence discovery and management techniques.



Why KPMG in India?

KPMG in India has a team of more than 1000 forensic professionals from varied backgrounds such as forensic accountants, technology professionals, investigators, chartered accountants, regulators and former law enforcement officials. The team has a rich experience of handling investigation of corruption cases and assisting organisations with anti-corruption advisory services. We have worked on some of the biggest and high-profile engagements in India.

Transaction due diligence

Assisted a leading global content provider in conducting FCPA pre-transaction due diligence of the target entity.

The due diligence helped the organisation in identifying potential FCPA high risk areas and instituting an appropriate FCPA compliance programme. We worked closely with the organisation's global counsel and other senior management.

KPMG in India has also helped one of the world's largest e-commerce companies with pre-transaction due diligence of the target entity. This helped the organisation to identify and assess the nature and extent of bribery and corruption risks to which the target entity was exposed.

Further, KPMG in India was retained by private equity (PE) companies to conduct pre-acquisition due diligence of the target entities, operating in road and power sector. KPMG in India also helped these PE companies with post transaction due diligence.



Training and education

KPMG in India has been assisting PE companies in implementation of a training programme for their newly acquired assets. This includes design and development of training content in English as well as local language. KPMG in India has also designed their training calendar and conducted face to face training sessions at various locations.



Compliance risk assessment and advisory programme

A leading solar power organisation in India was planning to get listed in the US. The organisation approached us to assist them in bribery and corruption risk assessment. The work performed by us helped them in identification of high-risk areas of bribery and corruption. KPMG in India also supported the organisation in design and development of anti-bribery and corruption policies, systems and controls to mitigate the risks identified. Further, we are providing ongoing support to the organisation in monitoring the effective implementation of the anti-bribery and corruption compliance programme. The organisation got listed in the US.



Investigations

Assisted one of the world's largest chain of departmental and retail stores with investigation into possible cases of corruption through e-discovery, data analytics, transaction forensics and interview of the suspect individuals. The investigation helped the organisation in assessing the nature and extent of possible violations of the FCPA by or on behalf of the organisation in relation to procuring licences for wholesale or retail store operations or for any other purpose. This helped the organisation in identifying high risk corruption.

KPMG in India has also helped regulators in conducting investigation into high profile corruption scams.



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