

PANORAMIC NEXT

Anti-Corruption

INDIA

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Anti-Corruption

2024

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Panoramic Next: Anti-Corruption

the most prominent recent developments in the global fight against corrupt practices. A panel of legal experts from key jurisdictions discuss enforcement trends, compliance risks and the related practical effects on companies' anti-corruption compliance programmes.

Generated: September 5, 2024

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India

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Kochhar & Co

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ABOUT THE LAWYERS

Madhvi Datta is a partner at Kochhar & Co's Gurgaon office. She has over a decade of expertise in white-collar crimes, ethics and compliance, corporate investigations, and employment law. Before joining Kochhar & Co, Madhvi was with EY, LLP, MZM Legal and AZB & Partners (in Mumbai) and JSA (in Gurgaon).

Madhvi's practice focuses on anti-bribery and anti-corruption laws, with a specialisation in white-collar crime, targeted internal risk assessments, and compliance and corporate/HR investigations. She assists and advises in designing and implementing anti-bribery and corruption compliance policies and procedures, whistleblowing complaints and money laundering issues. She handles various pre and post-acquisition and third-party due diligence including risk assessments, interviews and transaction testing at target companies to identify potential corruption red flags. Madhvi extensively advises and assists with internal and governmental investigations in connection with the Prevention of Corruption Act (PoCA); the Money Laundering Act (PMLA); the US Foreign Corrupt Practices Act; the UK Bribery Act and other local and international anti-corruption laws and sanctions. Additionally, Madhvi assists clients in managing sexual harassment complaints and compliance, including drafting prevention of sexual harassment (POSH) policies, and has conducted numerous POSH training sessions for employees and management. She has also served as an external member of POSH Committees.

In 2021, the Forbes Legal Powerlist honoured her as a Top Individual Lawyer in white-collar crime. Additionally, Madhvi was awarded the Lex-Falcon Global Award for Leading Lawyer of the Year in the categories of labour and employment, risk and corporate governance, and white-collar crime. Madhvi has authored multiple articles for leading publications such as the Economic Times, CNBC, the Society of Corporate Compliance and Ethics, the Society for Human Resource Management and The Indian Business Law Journal.

Her client portfolio spans a wide range of sectors, including defence, trade/e-commerce, energy, pharmaceuticals, healthcare & life sciences, real estate, technology, media and telecommunications.

Madhvi holds a BBA and LLB, as well as an LLM in criminal and security law, from Symbiosis Law School, Pune. She also completed an intensive negotiation programme at Harvard Law School in 2019. Additionally, she is a certified POSH and diversity and inclusion trainer (SHRM, CPD, Protouch certification) and recently attended the Basic Compliance & Ethics Academy 2024 in Singapore, organised by SCCE, USA.

K V Singh is a senior partner at Kochhar & Co and the head of the firm's Gurgaon office. An accomplished litigator with over 27 years of experience, K V represents clients in white-collar matters. He also represents clients in complex commercial disputes and contentious matters both in India and overseas.

KV's core strength lies in the fact that he is well-versed in both criminal and civil litigation/arbitration and is an ideal choice of lawyer to handle white-collar cases with parallel civil and/or regulatory aspects. His expertise in handling these dual aspects of disputes involving both civil and criminal litigation also makes him a favoured lawyer with business clients.

Several matters argued by K V have resulted in judgments that have had a significant impact, particularly on the infrastructure and construction industry.

Besides his litigation practice, K V has considerable experience in conducting investigations into suspected corrupt practices and advising clients on risk mitigation strategies. He has advised clients in respect of some of the most prominent corporate fraud matters reported in India.

K V specialises in ESG matters, and advises clients on environmental, social, governance and control issues. He has conducted investigations into several suspected cases of environmental pollution, including groundwater contamination, and advised clients on remediation and restoration projects. He has in-depth knowledge of laws and regulations, and issues that concern the pharmaceutical sector and is widely regarded as an expert in pharmaceutical laws and regulations.

K V is regularly sought by clients to advise on complex contractual, legal and regulatory issues, and is known for rendering practical and solution-oriented advice to his clients.

Since early 2007, K V has been authoring articles on various contemporary labour and employment issues and responding to queries in 'Human Capital', one of the prominent magazines in India dealing exclusively with HR management issues. He has also written several articles on a variety of subjects published by newspapers and magazines. He received his LLB from Campus Law Centre, University of Delhi in 1996 and his B.Sc from St Stephen's College, University of Delhi University, in 1993.

Q&A

WHAT ARE THE KEY DEVELOPMENTS RELATED TO ANTI-CORRUPTION REGULATION AND INVESTIGATIONS IN THE PAST YEAR IN YOUR JURISDICTION, AND WHAT LESSONS CAN COMPLIANCE PROFESSIONALS LEARN FROM THEM?

India has embarked on a transformative phase in its criminal justice system starting 1 July 2024, with the coming into force of three pioneering laws passed by the Indian Parliament last year: the Bharatiya Nyaya Sanhita to supersede the Indian Penal Code, 1860; the Bharatiya Nagarik Suraksha Sanhita to replace the Criminal Procedure Code, 1973; and the Bharatiya Sakshya Adhinyam to substitute the Indian Evidence Act, 1872. These legislative changes signify a gigantic shift for law enforcement agencies and legal professionals as well as courts. It may take several years for the courts to settle the interpretation of the provisions of these new laws. Besides training investigation officers, law enforcement agencies must learn to satisfy the emphasis in these new laws on the use of modern technology for the collection, storage and preservation of evidence, including mandatory forensic collection and analysis of evidence in case of serious crimes.

Other developments include bolstering efforts against money laundering through the goods and service tax (GST), the Goods and Service Tax Network (GSTN) has been brought within the ambit of the Prevention of Money Laundering Act (PMLA) through a notification dated 7 July 2023. This development enables the Enforcement Directorate (ED) and the Financial Intelligence Unit (under the Department of Revenue, Ministry of Finance) to exchange information with the GSTN. The aim is to establish a centralised platform for analysing critical data related to financial transactions, invoices and tax compliance,

thereby enhancing the detection and investigation of GST-related offences. In recent months various individuals and government departments, such as chartered accountants, company secretaries, the Reserve Bank of India (RBI), the Insurance Regulatory and Development Authority of India (IRDAI), the Ministry of External Affairs and the Directorate General of Foreign Trade have been mandated to share information with the ED. The inclusion of GSTN in the PMLA framework is part of efforts to ensure transparency in the taxation system. Collaborative efforts between enforcement agencies and the GSTN, supported by comprehensive data, are expected to streamline investigation processes and aid in recovering lost GST revenues.

The Finance Ministry tightened anti-money laundering regulations last year by revising the definition of beneficial owners to include partners holding a 10 per cent stake in a firm, down from the previous 15 per cent threshold. Amendments to the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, also introduced the role of a management-level functionary, termed the 'Principal Officer,' responsible for providing information to the financial intelligence unit. Furthermore, the amendment mandated that trustees of trusts disclose their status at the commencement of an account-based relationship or when conducting specified transactions.

In preparation for an assessment by the global watchdog on terror financing and money laundering, the Financial Action Task Force (FATF), the government intensified efforts to strengthen various anti-money laundering provisions last year. In May, amendments to the PMLA provisions expanded liability under anti-money laundering laws to chartered accountants, cost accountants and company secretaries involved in specific financial transactions, such as property transactions and bank account management on behalf of clients. Earlier in March, amendments to the PMLA rules had mandated banks and financial institutions to record financial transactions of politically exposed persons. Additionally, financial institutions and reporting agencies were required to collect information on financial transactions involving non-profit organisations under the PMLA.

Moreover, the government has mandated cryptocurrency exchanges and intermediaries dealing with virtual digital assets to conduct KYC (Know Your Customer) procedures for clients and platform users. These regulatory changes reflect the government's proactive approach to enhancing financial transparency and combating money laundering and terrorist financing risks during the assessment period by FATF.

On 26 June 2023, the National Financial Reporting Authority released a circular clarifying the statutory auditors' responsibilities concerning fraud reporting within companies. Key points highlighted in the NFRA circular include the compulsory requirement for auditors to report instances of fraud, guidelines outlining the process for auditors to report fraud, the auditor not being the first person to identify fraud, protocols regarding auditor resignation and an emphasis on maintaining professional scepticism throughout auditing processes.

In early August 2023, the Indian Parliament approved the Digital Personal Data Protection (DPDP) Act, marking India's inaugural comprehensive legislation on personal data protection across sectors, following over half a decade of deliberations. The legislation aims to safeguard the privacy of Indian citizens and imposes penalties of up to 2.5 billion rupees on entities that misuse or fail to protect individuals' digital data. Companies entrusted with user data must ensure its security, promptly reporting any breaches to the Data Protection Board and affected users.

The Ministry of Home Affairs has recently implemented significant reforms aimed at increasing transparency within not-for-profit organisations registered under the Foreign Contribution Regulation Act, 2010. Through the Foreign Contribution (Regulation) Amendment Rules, 2023, effective from 25 September 2023, the amendments specifically target detailed disclosures concerning assets funded by foreign contributions. Entities are now required to provide comprehensive details such as descriptions, values at the beginning and end of the financial year, acquisitions, disposals for movable assets, and specifics including size, location and value of immovable properties acquired. These changes aim to foster greater transparency and accountability in how foreign contributions are utilised.

The Central Bureau of Investigation (CBI) and ED have significantly intensified their efforts in investigating corruption and money laundering over the past decade, and this trend has continued through the past year. According to media reports, from 2014 to 2024, the ED has registered an astonishing 86-fold increase in searches conducted under anti-money laundering laws, while arrests and asset attachments have surged approximately 25-fold. During this period, the ED initiated 5,155 cases under the PMLA, conducted 7,264 searches across the country, and arrested 755 individuals. Assets amounting to 1.229 trillion rupees were attached and 1,971 provisional attachment orders were issued for various assets. The agency also filed 1,281 prosecution complaints and secured convictions in 36 cases.

Similarly, in FY 2022-23, the Serious Fraud Investigation Office (SFIO) under the Ministry of Corporate Affairs concluded investigations in 29 cases (19 main cases and 10 supplementary cases), a significant increase from FY 2021-22 when it concluded investigations in 13 cases. This demonstrates SFIO's enhanced diligence in addressing corporate fraud investigations.

Recent Indian Supreme Court (SC) and High Court rulings have clarified key aspects of PMLA and its application. In *Pavana Dibbur vThe Directorate of Enforcement*, the SC ruled that criminal conspiracy only qualifies as a scheduled offence under the PMLA if it is specifically aimed at committing an offence listed in the Act. If the scheduled offence is quashed or results in acquittal, the money laundering charges under section 3 of the PMLA cannot stand, as there would be no proceeds of crime to substantiate them.

In *Pankaj Bansal vUnion of India & Ors*, the SC emphasised that the ED must provide written grounds for arrest under section 19 of the PMLA. The court affirmed that an arrest not complying with this requirement is invalid, affecting subsequent remand orders and bail considerations. In *Pranav Gupta vUnion of India*, the Punjab and Haryana High Court reinforced the need for timely communication of arrest grounds, even if a formal arrest is made later. *Anoop Bartaria & EtcvDyDirector of Enforcement Directorate & Anr* clarified that knowledge of dealing with proceeds of crime is not necessary for lodging a PMLA complaint and all PMLA offences are cognisable and non-bailable.

In *Directorate of Enforcement vAditya Tripathi*, the SC distinguished between investigations of scheduled offences under the PMLA and predicated offences by other agencies like the CBI, emphasising that the filing of a chargesheet for a predicated offence does not affect bail considerations for PMLA cases. Last, in *YBalaji vKarthik Desari*, the SC likened corruption and proceeds of crime to 'Siamese twins,' asserting that the registration of an FIR for a predicate offence and the generation of proceeds of crime are sufficient for money

laundering charges. This decision also affirmed the PMLA's constitutional validity and the ED's role in investigating corruption-related money laundering.

Earlier this year, SC ruled that a person summoned by a designated special court under the PMLA is not considered to be in custody and thus does not need to apply for bail under the stringent conditions of the PMLA. The ruling limits the ED's power to arrest. The ED must now apply separately to the special court for custody of the accused and justify the need for custodial interrogation. The Court also stated that while an accused can be required to furnish a bond, this does not constitute bail under section 45 of the PMLA. Furthermore, if an accused appears in court as summoned, they may be exempted from future personal appearances, but failure to appear can result in a bailable or non-bailable warrant. The judgment came from an appeal by Tarsem Lal, challenging the denial of anticipatory bail. The Court emphasised that the ED must provide specific grounds for custody and adhere to procedures under section 19 of the PMLA when arresting individuals not listed as accused in the original complaint.

Lessons for compliance professionals include the following:

- staying updated with legislative amendments and judicial interpretations to ensure compliance programmes are aligned with current legal standards;
- conducting thorough due diligence on business partners, third-party intermediaries and clients to mitigate corruption risks;
- regularly training employees on anti-corruption policies, ethical standards and reporting procedures to foster a culture of compliance;
- implementing robust monitoring and auditing mechanisms to detect and deter potential corrupt activities within the organisation; and
- promoting transparency in business operations and maintaining accurate records to facilitate accountability and demonstrate commitment to ethical practices.

By learning from these developments and implementing proactive measures, compliance professionals can effectively mitigate corruption risks and ensure adherence to anti-corruption regulations in India.

WHAT ARE THE KEY AREAS OF ANTI-CORRUPTION COMPLIANCE RISK ON WHICH COMPANIES OPERATING IN YOUR JURISDICTION SHOULD FOCUS?

Although India has improved its rankings in the Corruption Perception Index Report 2023 to 93 out of 180 countries from 85th position in 2022, it is still considered to have a high corruption risk. Companies operating in India and their compliance professionals must acknowledge the significant strides made in both legislative and enforcement fronts including the increased rigour, sophistication and coordination in government authorities' investigation and enforcement efforts, and focus on the following among other key areas of anti-corruption compliance risk:

- implementing robust policies and procedures to prevent bribery and corruption, encompassing gifts, hospitality, and facilitation payments;

- conducting thorough due diligence on third parties, such as suppliers, distributors, agents, contractors, and consultants, to mitigate risks of their involvement in corrupt activities on behalf of the company;
- ensuring transparency and integrity in interactions with government officials, including compliance with regulations related to permits, licences and approvals;
- properly disclosing and managing political contributions, donations, and sponsorships following applicable laws and regulations;
- maintaining accurate and transparent financial records and implementing internal controls to detect and prevent fraudulent activities;
- providing regular training to employees and third parties on anti-corruption policies, procedures, and ethical standards;
- establishing a confidential and accessible whistleblower mechanism for reporting suspected misconduct without fear of retaliation;
- conducting regular monitoring and auditing of compliance programmes to identify risks and addressing gaps;
- staying updated with changes in anti-corruption laws and regulations in India and abroad, ensuring compliance with all applicable legal requirements;
- fostering a culture of integrity and ethical behaviour throughout the organisation, led by strong commitment and example from senior management; and
- incorporating technological advancements to enhance compliance monitoring and fraud/misconduct detection capabilities.

By focusing on these critical areas, companies can effectively mitigate the risks associated with corruption and strengthen their compliance frameworks to operate ethically and responsibly in India's business environment.

DO YOU EXPECT THE ENFORCEMENT POLICIES OR PRIORITIES OF ANTI-CORRUPTION AUTHORITIES IN YOUR JURISDICTION TO CHANGE IN THE NEAR FUTURE? IF SO, HOW DO YOU THINK THAT MIGHT AFFECT COMPLIANCE EFFORTS BY COMPANIES OR IMPACT THEIR BUSINESS?

Enforcement policies and priorities of anti-corruption authorities in India are expected to evolve in a way that the ambit of enforcement is extended to more and more companies/firms, irrespective of their size or sector. This evolution will be shaped by various factors including shifting political landscapes, international pressures and domestic economic considerations.

India is increasingly viewed as a favourable investment destination, and the general direction of change is likely to focus on creating business-friendly environment by decriminalising minor non-compliances and easing licensing procedures that often create opportunities for corruption while adopting stricter enforcement approaches to usher in greater transparency and accountability for businesses. This might include enhanced scrutiny of corporate practices and stricter penalties for professional misconduct. Such a shift could compel companies to adopt more robust compliance frameworks, investing more resources into anti-corruption measures such as training programmes, internal controls and thorough due diligence processes.

The impact on businesses would largely depend on how effectively companies can adapt to these potential changes. Increased enforcement could lead to higher costs associated with compliance and legal risks, potentially affecting profitability and operational efficiency.

Overall, the anticipated changes in anti-corruption enforcement in India highlight the growing importance of ethical business practices and the need for companies to proactively address compliance issues. By staying informed, engaging in dialogue with regulatory authorities, and investing in comprehensive compliance strategies, businesses can better position themselves to mitigate risks and seize opportunities in an evolving regulatory environment.

HAVE YOU SEEN EVIDENCE OF CONTINUING OR INCREASING COOPERATION BY THE ENFORCEMENT AUTHORITIES IN YOUR JURISDICTION WITH AUTHORITIES IN OTHER COUNTRIES? IF SO, HOW HAS THAT AFFECTED THE IMPLEMENTATION OR OUTCOMES OF THEIR INVESTIGATIONS?

In recent years, there has been a significant increase in cooperation between Indian enforcement authorities and their global counterparts, reflecting a broader trend towards collaborative efforts to address transnational crimes, financial fraud, and cross-border illicit activities. India has established Mutual Legal Assistance Treaties (MLATs) and agreements with 42 countries and is a signatory to key international conventions, including the United Nations Convention against Corruption (UNCAC) and the United Nations Convention against Transnational Organized Crime (UNTOC).

The Ministry of Home Affairs serves as the central authority, facilitating international assistance through Mutual Legal Assistance Requests, Letters Rogatory, and the service of Summons, Notices, and Judicial documents to individuals abroad.

Some recent examples of effective international cooperation include the following.

CBI and INTERPOL: CBI, India's primary agency for tackling corruption, collaborates with INTERPOL to locate and extradite individuals accused of economic crimes. A notable advancement in this area was the August 2023 integration of the CBI Academy into the INTERPOL Global Academy Network, which has enhanced local capabilities in addressing transnational crimes.

CBI and FBI: the CBI also collaborated with the FBI on a complex financial fraud case involving entities in both India and the US. This cooperation was vital for the cross-border exchange of evidence and coordination of legal actions, significantly advancing the investigation and aiding in the prosecution of key suspects.

ED and US DOJ: the ED partnered with the US Department of Justice (DOJ) to tackle large-scale money laundering operations. This collaboration involved the exchange of financial intelligence and evidence, which was instrumental in tracing illicit funds and prosecuting those involved. The joint efforts of the ED and DOJ significantly advanced the investigation, leading to legal actions against key individuals engaged in money laundering activities.

Narcotics Control Bureau (NCB) and EMCDDA: the NCB worked with the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) on operations targeting international drug trafficking networks. This joint effort led to significant drug seizures and the disruption of trafficking operations.

Cyber Crime Cell and Europol: the Cyber Crime Cell of India collaborated with Europol on a major international cybercrime crackdown. This cooperation included sharing cyber intelligence and conducting coordinated raids, resulting in the arrest of key members of ransomware gangs and the dismantling of their infrastructure.

Financial Action Task Force (FATF) in Singapore: this year, the FATF held a crucial meeting in Singapore that included participation from Indian authorities. Discussions focused on enhancing global anti-money laundering (AML) and counter-terrorist financing (CTF) measures. Indian officials engaged with FATF representatives and other member countries to address global financial crime challenges, share best practices and strengthen international AML/CTF frameworks. This engagement helped India align its practices with international standards and improved collaboration on financial crime issues.

India-UK Mutual Legal Assistance Treaty: under the India-UK Mutual Legal Assistance Treaty, Indian authorities collaborated closely with the UK's Serious Fraud Office (SFO) on a high-profile multi-million-dollar financial fraud case. This cooperation involved the rapid exchange of crucial evidence and witness testimonies, significantly accelerating the investigation and aiding in legal actions against key suspects.

The aforesaid collaborative efforts demonstrate that law enforcement authorities in key jurisdictions are engaging closely with each other, including streamlining and improving processes for information and evidence-sharing to combat global crime challenges.

HAVE YOU SEEN ANY RECENT CHANGES IN HOW THE ENFORCEMENT AUTHORITIES HANDLE THE POTENTIAL CULPABILITY OF INDIVIDUALS VERSUS THE TREATMENT OF CORPORATE ENTITIES? HOW HAS THIS AFFECTED YOUR ADVICE TO COMPLIANCE PROFESSIONALS MANAGING CORRUPTION RISKS?

As such, there have been no recent changes in how the enforcement authorities handle the potential culpability of individuals versus the treatment of corporate entities. While enforcement authorities continue to charge corporate entities for offences committed by their managers and vice versa, courts have not fully subscribed to the view that a corporate entity is capable of possessing a guilty mind where mens rea is an essential ingredient of an offence. Further, where an offence has been committed by a corporate entity, courts in India continue to hold the view that unless the statute in question provides that the directors or managers of the corporate entity in charge of its affairs will be guilty of the offence, such individuals cannot be automatically charged for offences committed by the corporate entity.

The consistent practice of the enforcement authorities to charge corporate entities for offences which require a guilty mind may eventually push the courts in India to recognise, as have the courts in UK, Canada and other jurisdictions, that a corporate entity cannot be let off for not having a mind of its own even though offences have been committed by the corporate entity as the guilty mind of the managers of the corporate entity is the guilty mind of the corporate entity.

Depending on the facts and circumstances of each case, a single set of facts relating to corruption may give rise to liability under a multitude of legislation and regulations including amongst others, liability under the Companies Act, Prevention of Corruption Act (PCA), Indian Penal Code (now replaced with Bhartiya Nyaya Sanhita), securities laws and the PMLA. For instance, an act of bribery may also involve facts which give rise to an offence of criminal breach of trust, criminal conspiracy, etc.

Given the global developments in the law about the guilty mind of a corporate entity, since enforcement authorities continue to charge corporate entities for most, if not all, the offences with which the executives have been charged, it is likely that the Supreme Court will constitute a larger bench to reconsider the legal position in one or more cases that reaches it.

As a general principle, if a statute makes corporate entities liable for offences committed by their employees, charges for the commission of the said offences may be sustainable against corporate entities. For instance, section 9 of the PCA, introduced in 2018, holds a commercial entity accountable if 'any person' associated with it—such as employees, agents, service providers and even subsidiaries—offers undue advantages to a public servant to obtain business or other benefits. This inclusion potentially extends the liability for fines under section 9 to parent companies for offences committed by their Indian operations. Thus, a corporate entity could be charged, and if found guilty, may be punished with a fine under section 9 of the PCA. Furthermore, section 10 of the PCA holds directors, managers, secretaries, or other officers responsible for bribery if the offence is committed with their consent or connivance.

Compliance professionals managing corruption risks must focus on developing comprehensive policies and internal controls that demonstrate the organisation has 'adequate procedures in place to prevent individuals associated with it from engaging in bribery and corruption', as outlined in the Proviso to section 9 of the PCA. Although the procedures have not been implemented yet, best practices involve establishing clearly defined board-delegated authorities to manage and mitigate risks associated with top management actions. Additionally, it is crucial to implement regular top-down messaging to reinforce a commitment to anti-corruption and ethical conduct, and to foster a culture of integrity. By integrating these elements, compliance professionals can effectively safeguard against corruption risks and ensure the organisation is well-positioned to demonstrate adherence to the PCA and other applicable laws.

HAS THERE BEEN ANY NEW GUIDANCE FROM ENFORCEMENT AUTHORITIES IN YOUR JURISDICTION REGARDING HOW THEY ASSESS THE EFFECTIVENESS OF CORPORATE ANTI-CORRUPTION COMPLIANCE PROGRAMMES?

In June 2023, the Institute of Chartered Accountants of India (ICAI) adopted the 'Compendium of Forensic Accounting and Investigation Engagements,' effective from 1 July 2023. This new standard is expected to set the benchmark for forensic investigations in India, requiring auditors to comply with specific requirements for conducting forensic audits and investigations.

While Indian enforcement authorities have not yet issued specific guidance on assessing anti-corruption compliance programmes, companies operating in India are expected to proactively implement and maintain effective measures aligned with international standards and best practices. To establish robust anti-corruption compliance, companies should draw on a range of internationally recognised frameworks and guidelines.

In addition to adhering to the US Foreign Corrupt Practices Act (FCPA), the UK Bribery Act (UKBA), and OECD guidelines, companies should also integrate additional standards, such as the United Nations Convention against Corruption (UNCAC), which provides a global framework for preventive measures, criminalisation and

international cooperation. ISO 37001:2016 offers practical guidance for establishing an anti-bribery management system, while the World Bank Group's Integrity Compliance Guidelines highlight best practices for compliance and due diligence. The European Union Anti-Corruption Guidelines set expectations for transparency and enforcement, and Transparency International's Business Principles for Countering Bribery offer a comprehensive framework for anti-bribery programmes.

Furthermore, companies directly or indirectly coming within the ambit or jurisdiction of the US Securities and Exchange Commission (SEC) and the Department of Justice (DOJ) should adhere to the respective guidelines issued by these agencies, which provide additional requirements and expectations for anti-corruption compliance.

HOW HAVE DEVELOPMENTS IN LAWS GOVERNING DATA PRIVACY IN YOUR JURISDICTION AFFECTED COMPANIES' ABILITIES TO INVESTIGATE AND DETER POTENTIAL CORRUPT ACTIVITIES OR COOPERATE WITH GOVERNMENT INQUIRIES?

Developments in data privacy laws in India, particularly with the enactment of the Personal Data Protection Act, 2023 (PDPA), have significantly impacted companies' abilities to investigate and deter potential corrupt activities or cooperate with government inquiries. The PDPA imposes stringent requirements on how organisations handle and process personal data, aiming to safeguard individuals' privacy rights, which directly influences corporate investigative practices and interactions with regulatory authorities.

Under the PDPA, companies must adhere to rigorous data protection principles throughout the lifecycle of personal data, including lawful and transparent processing, purpose limitation, data minimisation, and ensuring data security and confidentiality. Internal investigations aimed at uncovering corrupt activities within organisations should remain cognisant of these requirements to maintain the integrity of the investigation process.

Data localisation mandates under the PDPA compel companies to store and process the personal data of Indian citizens within India unless specific conditions for cross-border transfers are met. This requirement can pose challenges for multinational companies conducting global investigations into their operations, including evidence collection, data processing, preservation and use.

Furthermore, the PDPA grants individuals significant rights. These include the right to get a summary of all the collected data and to know the identities of all other data fiduciaries and data processors with whom the personal data has been shared, along with a description of the data shared. Individuals also have the right to correction, completion, updating and erasure of their data. Besides, they have a right to obtain redress for their grievances and a right to nominate persons who will receive their data. While these rights enhance transparency and empower individuals, they also introduce complexities in maintaining confidentiality and protecting sensitive investigative information during ongoing inquiries.

To navigate these challenges, companies are advised to implement robust data governance frameworks and compliance programmes aligned with the PDPA and other relevant data privacy regulations. This includes conducting comprehensive data protection impact assessments for investigative activities, implementing strong encryption practices and establishing secure protocols for data sharing with authorities while respecting individuals' privacy rights.

The Inside Track

WHAT ARE THE CRITICAL ABILITIES OR EXPERIENCE FOR AN ADVISER IN THE ANTI-CORRUPTION AREA IN YOUR JURISDICTION?

An effective adviser in India's anti-corruption landscape must possess sound legal acumen and an understanding of applicable Indian laws and regulations as well as the Indian judicial system and criminal law procedures. Experience in dealing with laws encompassing corruption, money laundering, cybercrime and data protection is essential for providing robust counsel. The adviser should know which facts disclosed or unearthed would be admissible in evidence, the rigours of proof required to establish criminality, limitations on the powers of the enforcement authorities and remedies in case such powers are exceeded. In our view, the aforesaid knowledge is a prerequisite for advising on policies, controls, SOPs or even investigation into suspected corrupt practices.

Besides Indian anti-corruption laws and regulations, advisers should also be well-versed in international regulations such as the Foreign Corrupt Practices Act and the UK Bribery Act. Further, advisers should possess investigative powers and a nuanced understanding of cultural and ethical considerations within Indian corporates. Understanding local cultural nuances is crucial for navigating complex corporate environments and ensuring compliance with ethical standards. Practical knowledge of the operational dynamics of enforcement agencies enables advisers to effectively engage with authorities and devise proactive compliance strategies. Embracing technology is also pivotal in enhancing investigative capabilities and implementing preventive measures against corruption risks. This multidimensional expertise equips advisers to offer comprehensive and practical guidance to companies operating in India's diverse business landscape.

WHAT ISSUES IN YOUR JURISDICTION MAKE ADVISING ON ANTI-CORRUPTION COMPLIANCE CHALLENGING OR UNIQUE?

Advising on anti-corruption compliance in India presents several unique challenges due to a combination of systemic, cultural and regulatory factors. First, the diversity and complexity of India's business landscape, encompassing various industries and regions with differing levels of governance maturity, require tailored approaches to compliance strategies. Cultural norms and practices, which can vary significantly across states and sectors, influence perceptions of acceptable business conduct and pose challenges in establishing universal ethical standards. Additionally, the intricate regulatory environment, including overlapping laws and bureaucratic processes, necessitates a deep understanding of anti-corruption statutes and their practical application. Enforcement inconsistencies and delays further complicate compliance efforts, requiring advisers to navigate the nuances of interacting with multiple enforcement agencies effectively. Moreover, the rapid pace of technological advancement and digital transformation introduces new avenues for corruption, demanding continuous adaptation of compliance frameworks to address emerging risks. Addressing these challenges requires advisers to adopt a holistic approach that integrates legal expertise, cultural sensitivity, technological acumen and proactive engagement with stakeholders to foster a culture of integrity and transparency across organisations operating in India.

WHAT HAVE BEEN THE MOST INTERESTING OR CHALLENGING ANTI-CORRUPTION MATTERS YOU HAVE HANDLED RECENTLY?

Recently, our firm undertook a challenging anti-corruption matter involving a leading packaging products manufacturer and its Indian subsidiary. The case centred around suspected cash generation through fictitious transactions and alleged bribery spanning at least eight years by senior management of the Indian subsidiary. Partnering with Baker & Mackenzie's e-discovery team, which helped process and host data as per our requirements, we conducted a rigorous fact-finding exercise and forensic audit, leveraging advanced AI-based software for Electronic Stored Information (ESI) review on RelativityOne. Our investigation included extensive interviews with senior employees and relevant individuals, culminating in a comprehensive report detailing findings, supporting evidence, and legal remedies available under applicable laws.

Our role extended beyond investigation; we provided strategic counsel on pursuing legal and disciplinary actions against implicated stakeholders and advised on policy enhancements to mitigate bribery and misconduct risks. This matter was particularly significant on account of various complexities and intricacies, substantial financial implications and potential damage to the client's global reputation, given its extensive international operations and significant presence in India. Our successful management of this case underscores our firm's effective legal strategy and the proficiency of our lawyers and digital forensics team in safeguarding clients against adverse exposures.



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