






# Introduction

## Bribery and corruption


Recent numbers released by the government, pegs India to be one of the fastest growing economies in the world<sup>1</sup>. While the business environment has improved; many operational and structural challenges need to be addressed. One of those challenges is bribery and corruption, which remains a significant fraud risk for businesses across the world, including India.

The cost of corruption is estimated to be 5 percent of the global GDP (US\$3.6 trillion), with over US\$1 trillion paid in bribes each year<sup>2</sup>. As per an UN estimate, of the approximately US\$13 trillion that governments spend on public spending, up to 25 percent is lost to corruption<sup>3</sup>.


## Recent developments in the anti-bribery and corruption regulatory space



The United States has elevated their fight against corruption as a core national security interest. As a result, various departments and agencies have accelerated their efforts to prevent and combat corruption. Numbers indicate that Securities and Exchange Commission (SEC) and US Department of Justice (DOJ) have taken enforcement action against more than 40 companies and individuals in the last five years for violating the Foreign Corrupt Practices Act 1977 (FCPA)<sup>4</sup>.




Enforcement agencies are more connected now and are cooperating with their counterparts in other jurisdictions to facilitate cross-border enforcements, using technology to uncover instances of corporate bribery.




The United Nations has listed corruption as "one of the biggest impediments" to achieving its 2030 Sustainable Development goals<sup>5</sup>.

The US DOJ recently updated its guidance document, 'Evaluation of Corporate Compliance programs<sup>6</sup>', which provides a set of guidelines for prosecutors and corporations to evaluate the effectiveness of their corporate compliance programmes, including remedial efforts to improve an existing programme.

The document acknowledges that while each company may differ on the risk profile, size, geography, regulatory landscape, etc. which invariably has an impact on the compliance programme; however, fundamental questions based on which compliance programmes tend to be evaluated by prosecutors remains the same:



Is the organisation's compliance programme well designed, i.e., is it adequately designed for maximum effectiveness in terms of prevention, detection, and remediation of the potential wrongdoings?



Is the organisation's compliance programme being implemented effectively?



Does the organisation's compliance programme work in practice?

<sup>1</sup> <https://economictimes.indiatimes.com/news/economy/indicators/india-seen-fastest-growing-among-7-largest-emerging-developing-economies-world-bank/articleshow/96890524.cms>

<sup>2</sup> <https://thecommonwealth.org/news/curbing-trillion-dollar-cost-corruption-more-important-ever-commonwealth>

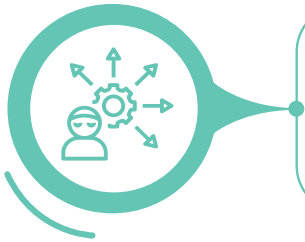
<sup>3</sup> <https://undp.medium.com/the-cost-of-corruption-a827306696fb>

<sup>4</sup> <https://www.sec.gov/enforce/sec-enforcement-actions-fcpa-cases>

<sup>5</sup> <https://press.un.org/en/2021/ga12329.doc.htm>

<sup>6</sup> <https://www.justice.gov/criminal-fraud/page/file/937501/download>

## Two key themes from the updated guidance document are:



Under the Guidance, a section titled 'Compensation structures and consequence management' covers the establishment of incentives, such as promotions, rewards and bonuses, in demonstrating ethical leadership and driving compliance. It also covers disincentives such as disciplinary measures for engaging in non-compliance; and failing to take reasonable steps to prevent and detect criminal misconduct, including provisions to claw back or recoupment of compensation due to compliance violations or misconduct.



Appropriate compliance policies and procedures governing the use of personal devices, communication platforms and messaging applications, including ephemeral messaging applications.

## Updates on bribery and corruption in India

India ranked at 85, with a risk score of 40 in the 2022 Corruption Perceptions Index published by Transparency International<sup>7</sup>.

We have seen an uptick in enforcement actions on US based companies operating in India by the DOJ, many of which have been sanctioned and/or settled, leading to huge fines and penalties. Most of these cases have been on account of violations of the books and records, and internal accounting provisions of the FCPA. This trend may continue as regulators across the world become more coordinated, coupled with the desired push and prominence by governments across the world.

Recently, there has been a lot of emphasis from the Indian government and regulators on anti-corruption, with one such important initiative being the G20 Anti-Corruption Working Group ("ACWG"), within the Sherpa Track. The G20 ACWG meetings are being attended by top officials of CBI, ED, CAG, CVC besides officials from Interpol, OECD, FATF, UNODC amongst others<sup>8</sup>.

In addition to the above, India is preparing an Accountability Report for 2023 with a unique focus on analysis of efficiency of Mutual Legal Assistance ("MLA") procedures for corruption and other criminal offences<sup>9</sup>.

## Way forward

Some organisations tend to believe that maintaining the bare minimum in terms of policies and procedures could result in no regulatory scrutiny and penal actions. While this approach may have been sufficient in the past, recent upward trends in corruption cases, combined with the changing regulatory landscape, governance standards, stakeholder expectations, and public sentiments around bribery and corruption, require organisations/ compliance officers to re-look at their compliance framework and establish a robust anti-corruption programme.

We at Deloitte India, have significant experience in assessing and strengthening anti-corruption compliance programmes, conducting anti-corruption risk assessments, FCPA reviews and investigations, continuous monitoring and anti-corruption trainings.



<sup>7</sup> <https://www.transparency.org/en/countries/india>

<sup>8</sup> <https://economictimes.indiatimes.com/news/india/india-to-suggest-4-principles-to-check-economic-offences/articleshow/98283755.cms?from=mdr>

<sup>9</sup> <https://pib.gov.in/PressReleasePage.aspx?PRID=1926947>

**Our key services include:**

**1 Managed compliance services**



- Working with compliance teams to assist and manage their compliance activities throughout the year.
- Strengthening of anti-corruption policies, procedures and controls and remediating gaps.

**2 Anti-corruption due diligence (pre or post acquisitions)**



- Pre-acquisition: Assessment of “As is” state of the target’s compliance framework by reviewing its anti-corruption policies and procedures, training framework, anti-corruption controls and transaction testing.
- Post-acquisition: Assistance to the newly acquired entities in implementing the compliance framework of the investee entity. It involves adoption of policies, procedures, training key stakeholders, transaction testing to identify if there is any transaction which may trigger reporting requirements under FCPA, identifying legacy Third Party Intermediaries (TPI’s) and suggesting revisions to the TPI contracts by lawyers, if required.

**3 Anti-corruption risk assessment/ Anti-corruption investigations**



- Risk assessment: Identify the risk areas along with likelihood and impact of such anti-corruption risks. Categorising such risks into different buckets and providing actionable recommendations to mitigate such risks.
- Anti-corruption investigation: We use a combination of industry leading tools and best practices to carry out ABC investigations covering risk areas affected by bribery and corruption.

**4 Trainings – Online and Classroom**



Conduct trainings to educate/ assess an employees understanding of the organisation's anti-corruption policies and procedures. Various modes of training include:

- Classroom training sessions, including practical case studies
- Quiz to ascertain understanding of relevant anti-corruption issues
- Online learning and training modules
- Ethical dilemma workshops

**5 Assistance in ISO 37001 “Audit readiness”**

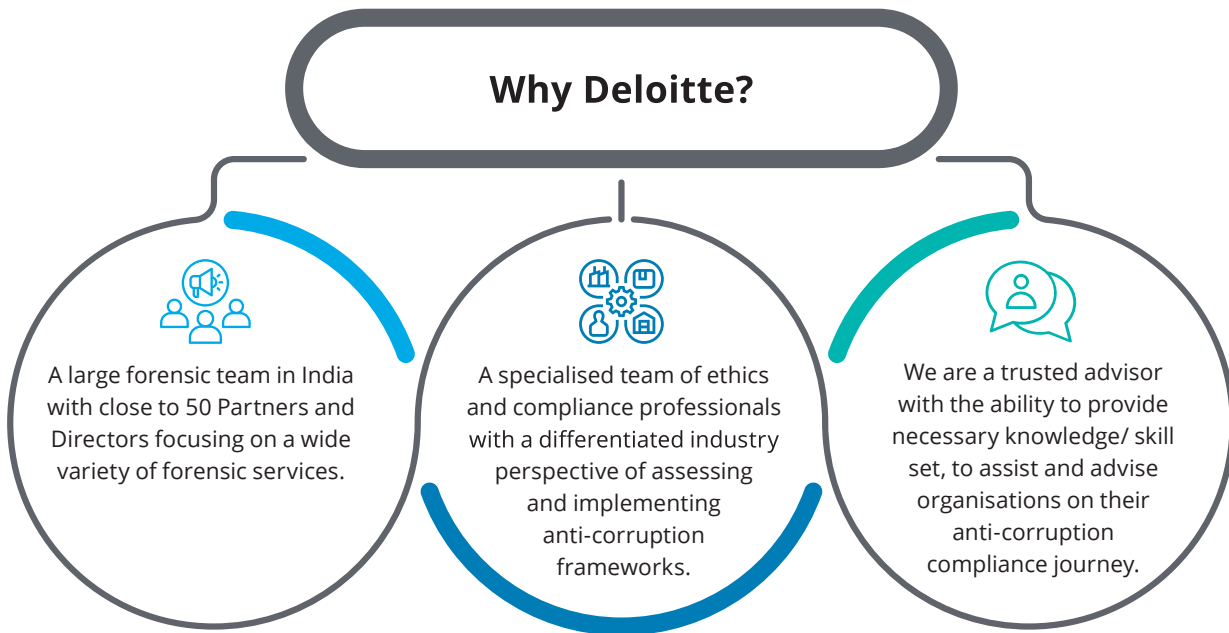


Understanding the business risks and review existing anti-corruption policies in line with the requirements of ISO 37001. Assistance in drafting/ enhancing policies, implementation of framework, and conducting risk assessments under an exhaustive framework in compliance with ISO 37001.

**6 License and Permits assistance**



Streamlining the existing License and Permits framework, including process optimisation, gap assessment, creating the framework and preparation of license and permits tracker.



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