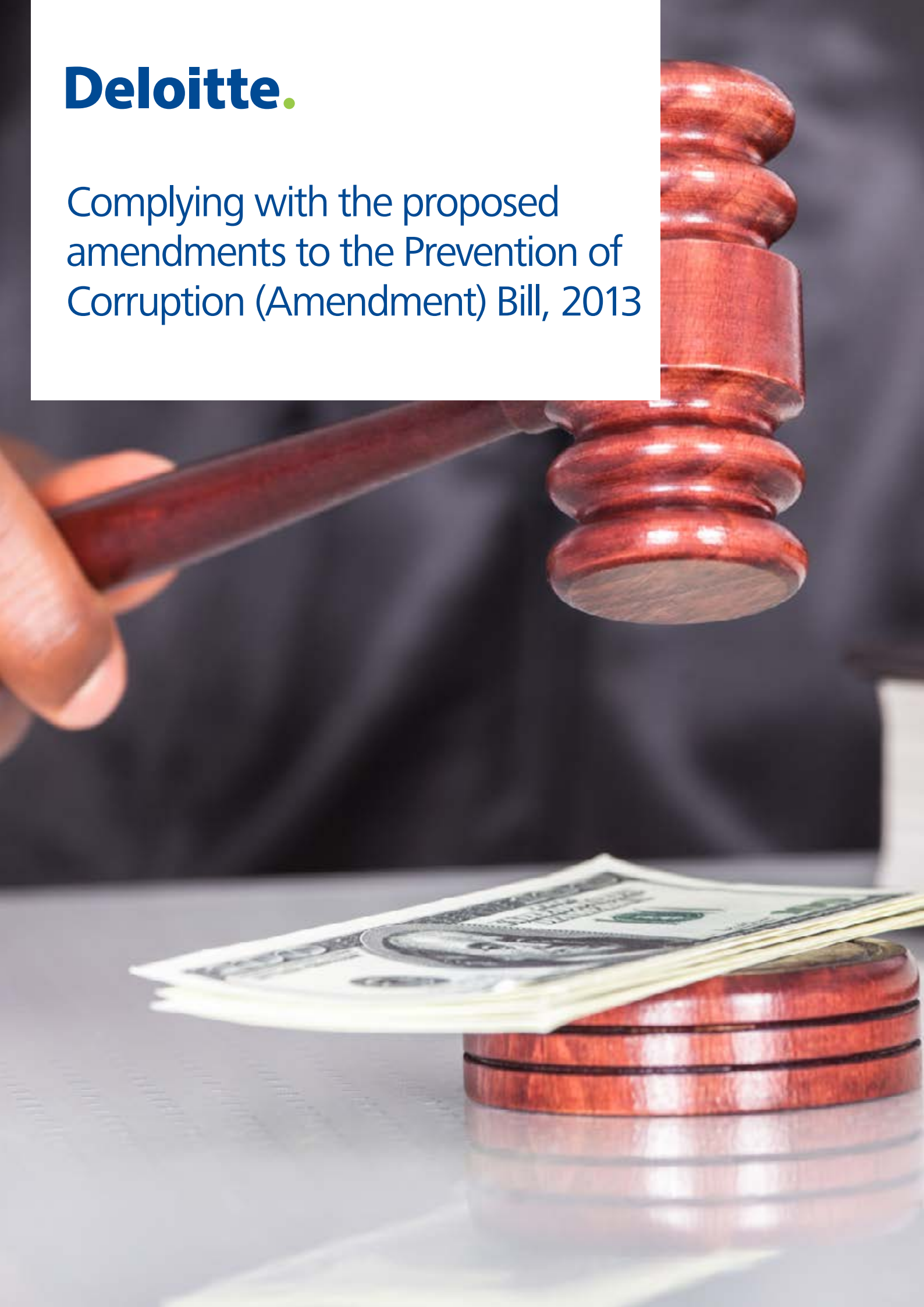


**Deloitte.**

Complying with the proposed  
amendments to the Prevention of  
Corruption (Amendment) Bill, 2013





## Point of view

Taking a cue from anti-corruptions laws and enforcement actions across the globe, the Indian government has set out to amend the Prevention of Corruption Act, 1988 (the "Act") – the Prevention of Corruption (Amendment) Bill, 2013, (the "Bill"). The amendments proposed so far widen the scope of the law as well as its reach. Some of the key amendments proposed and passed by the Lok Sabha <sup>1</sup> and pending before the Rajya Sabha are listed below

Proposed key amendments to the Prevention of Corruption (Amendment) Bill, 2013 :<sup>2</sup>

Provisions	The Act in 1988 <sup>3</sup>	The Bill in 2013 <sup>4</sup>
Person covered	Any public servant, who attempts to accept or accepts a gratification	<ul style="list-style-type: none"> <li>Any person who offers or pays a financial consideration to a public servant to influence his decisions</li> <li>Any person acting on behalf of a commercial organization* – employee or otherwise - who offers or pays financial consideration to a public servant to influence his decisions</li> <li>Any public servant who attempts to accept or accepts a financial consideration for improper performance of duties</li> <li>All management personnel in charge of the company at the time of the offense will be considered guilty</li> </ul>
Actions considered as offence	Only attempting to receive or receiving a gratification is considered as an offence	<ul style="list-style-type: none"> <li>Offering to pay or paying a bribe/improper payment (in cash or kind) to gain financial advantage</li> <li>Attempting to accept or accepting a monetary/non-monetary benefit which induces decisions taken at work place</li> </ul>
Fine and Penalty	Imprisonment ranging from six months to five years with fine.	Imprisonment ranging from three years to six years with fine.

\* The definition of a commercial organization is all encompassing and includes a body incorporated in India and which carries out business operations in India or outside of India; any other body which is incorporated outside India and which carries on a business, or part of a business, in any part of India; a partnership firm or any association of persons formed in India and which carries on a business (whether in India or outside India); or any other partnership or association of persons which is formed outside India and which carries on a business, or part of a business, in any part of India.

<sup>1</sup> Source: <http://www.thehindu.com/news/national/cabinet-clears-amendments-to-anticorruption-act/article7154111.ece>

<sup>2</sup> The Bill was passed by Lok Sabha on April 29, 2015. The Bill has now been introduced in the Rajya Sabha and is pending before the Rajya Sabha. It is likely that some of the proposed provisions may be modified and/or new provisions added.

<sup>3</sup> Source: [www.persmin.gov.in/DOPT/EmployeesCorner/Acts.../PCAct/pcact.pdf](http://www.persmin.gov.in/DOPT/EmployeesCorner/Acts.../PCAct/pcact.pdf)

<sup>4</sup> Source: <http://www.prsindia.org/billtrack/the-prevention-of-corruption-amendment-bill-2013-2865/>

## Impact of the proposed amendments on commercial organizations



Prior to the introduction of the Bill in the Lok Sabha, we have observed that Indian companies with primarily domestic operations did not fear enforcement action while engaging in interactions with government officials or public servants. Upon the discovery of bribery and corrupt practices involving government officials, companies could pass on the blame to intermediaries/ third parties and distance themselves from the issue. The possible enactment of the Bill is likely to challenge this status quo.

By placing the responsibility of corrupt actions (even acts by third parties acting on behalf of a company) on the company management, the Indian Government is trying to send a strong message to corporate India that corrupt business practices hampering economic growth will not be tolerated. Combined with the provisions under the Companies Act, 2013, organizations are now obligated to proactively identify and mitigate instances of corruption, fraud and malpractice.<sup>5</sup>

In our view, a robust anti-bribery and corruption compliance program can help organizations ascertain their current preparedness to tackle bribery and corrupt practices, and help devise a program to improve compliance with the proposed provisions of the Bill. The presence and effective functioning of such a program is increasingly becoming a pre-requisite for companies seeking to do business with organizations outside India. We have observed cases where organizations without a robust anti-bribery and corruption compliance program have been deemed 'risky' and 'fraud prone' by overseas business partners, investors and clients.



## Is your current ABC program likely to comply with the provisions of the Prevention of Corruption (Amendment) Bill, 2013? - Key questions to consider

### Q1

**Do you have a zero tolerance approach to bribery and corruption? Has your senior management clearly demonstrated the tone at the top and communicated the minimum ethical values to be displayed in business dealings?**

Corruption is a vicious cycle and cannot be effectively tackled without adopting a zero tolerance approach. This means organizations need to set up effective measures and be able to demonstrate these measures to avoid payment and/ or offer of bribes/improper payments. We have observed that leading organizations often identify a set of ethical values that they want employees and business partners to follow and periodically run training programs to ensure that these values have top of the mind recall. Ethical values can include integrity, law abiding behavior, putting the organization before oneself in business dealings, commitment to quality, building a good reputation, self-discipline, being accountable for one's actions, being impartial, and upholding confidentiality.

Conducting regular training programs, establishing a safe vigil mechanism for reporting issues, forming a disciplinary committee for tackling corrupt behavior and rewarding people for integrity and ethical values displayed while discharging their duties are some of the channels through which the management demonstrates its commitment towards an ethical business environment.

Periodic analysis of the nature of complaints received by the ethics committee, and surprise checks on employees and vendors can help organizations ascertain if their communication on ethical values is being implemented. Discreet inquiries conducted by an external agency on specific third parties, employees and mystery shopping can also provide critical insights to the management.

### Q2

**Are you confident that your fraud risk management program is detecting instances of bribery and corruption?**

A robust fraud risk management program comprises of several aspects such as periodically conducting fraud risk assessment, background screening for new vendors/ business partners, carefully crafted segregation of duties, appropriate internal controls at each step of financial transactions, rotation of duties, and training and communication to internal and external parties on the organization's position on fraud and malpractice. An effective fraud risk management program can detect several anomalies in transactions including indicators of bribery and corruption such as inflated invoices, bid rigging, and vendor favoritism.

We have seen organizations benefit from data analytics programs, focused on anti-bribery and corruption compliance and customized to the organization's business environment and processes. When regularly conducted, data analytics can reveal results such as potential vendor-employee relationships, transactions booked on public holidays, multiple codes for the same customer and/ or vendor, unusual transactions with a particular vendor, unusually high invoice booking patterns, etc. – all of which can indicate potential bribery or corrupt practices.

Another leading practice is to ensure that vendors sign declarations and are encouraged to disclose any payments made to government officials on an annual basis. Developing stringent contractual clauses for vendors operating in high risk areas can also help organizations comply with the provisions so far outlined in the Bill.



**Are you aware of the background of the entities/ individuals with whom you interact regularly for business purposes? Are they aligned with your company's policies on anti-bribery and corruption?**

Q3

Under the proposed provisions of the Bill, companies shall be responsible for the corrupt actions of entities / individuals acting on their behalf. This is likely to prompt organizations to undertake due diligence to know the reputation of the parties they employ to deal with government bodies. Know your Employee ("KYE"), Know your Vendor ("KYV"), and Know your Customer ("KYC") are some of the due diligence procedures that can be performed initially to gather preliminary information. Further, at the time of appointing third parties, it is important to communicate the ethical values and processes followed by the organization, as well as share tips on how to deal with difficult situations that inhibit them from performing their duties.

It is a good practice to maintain and update a government interaction tracker for all employees and third parties. Specific checks and tests for such employees and vendors, such as mystery shopping and heat tests, can also provide crucial inputs on their behavior and help in adopting preventive measures in time.

**Has your company opened various channels for employees and/ or external parties to communicate potential bribery or corruption related issues? If yes, is there a robust incident response mechanism within the company?**

Q4

An effective vigil mechanism indicates the management's intent to promote transparency, integrity and commitment towards a fair and just attitude towards business practices. Despite the Companies Act, 2013, mandating the need for a vigil mechanism, the Deloitte India whistleblowing survey report, released in 2014, indicates that most organizations deploy vigil mechanisms merely as a tick in the box, with little means to capture, filter, resolve and report the complaints received. Organizations short on resources, can consider outsourcing the vigil mechanism management to an external party assuring confidentiality.

Organizations committed to receiving feedback from their employees and/ or vendors, rely heavily on vigil mechanisms such as whistleblowing hotlines, and put in place a rigorous process of dealing with complaints. A leading practice is to take an MIS approach towards the management of complaints received via whistleblowing channels. First, all complaints received are categorized according to their nature. Complaints involving high risk and sensitive matters such as corruption matters are likely to be outsourced to external agencies to handle, given the requirements of maintaining independence and confidentiality in such cases.

A dashboard of all cases received, open, in progress and closed are reported to the audit committee on a quarterly basis and documented. Documents related to decisions taken on each case are archived for at least eight years. Results from the investigations conducted on complaints are then integrated into the anti-bribery and compliance program to make necessary policy and or procedure changes.



## Conclusion

Traditionally the issue in India has not been the absence of a law, but the poor enforcement of the laws prevalent. In line with that, the Prevention of Corruption Act, 1988, while being somewhat effective on paper, also suffered from poor enforcement. With the introduction of the Bill, it is expected that the government will be as enthusiastic about enforcing it, as it was about amending its provisions to make it more pervasive.

Organizations should view this as an opportunity to evaluate their anti-bribery and corruption compliance programs and plug any gaps in controls. The presence of a robust anti-bribery and corruption compliance program, along with the ability to demonstrate that suitable measures were taken to prevent instances of bribery (both by employees and third parties), is perhaps the only defense that may be available to companies should they face prosecution for non-compliance under the current proposed provisions of the Bill.



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