



Leading from the front: Combating bribery and corruption risks in times of disruption

June 2020

The recent and unprecedented fluctuations faced by businesses worldwide have created new challenges related to bribery and corruption. Financial constraints on companies and individuals, rapid changes in the business environment, socioeconomic impact and working in 'survival mode' require an immediate reassessment of risks and adjustment to controls. The need for such realignment extends to ethics and business conduct, including bribery and corruption, to reflect the realities of changed business scenarios.

Be cautious while being agile

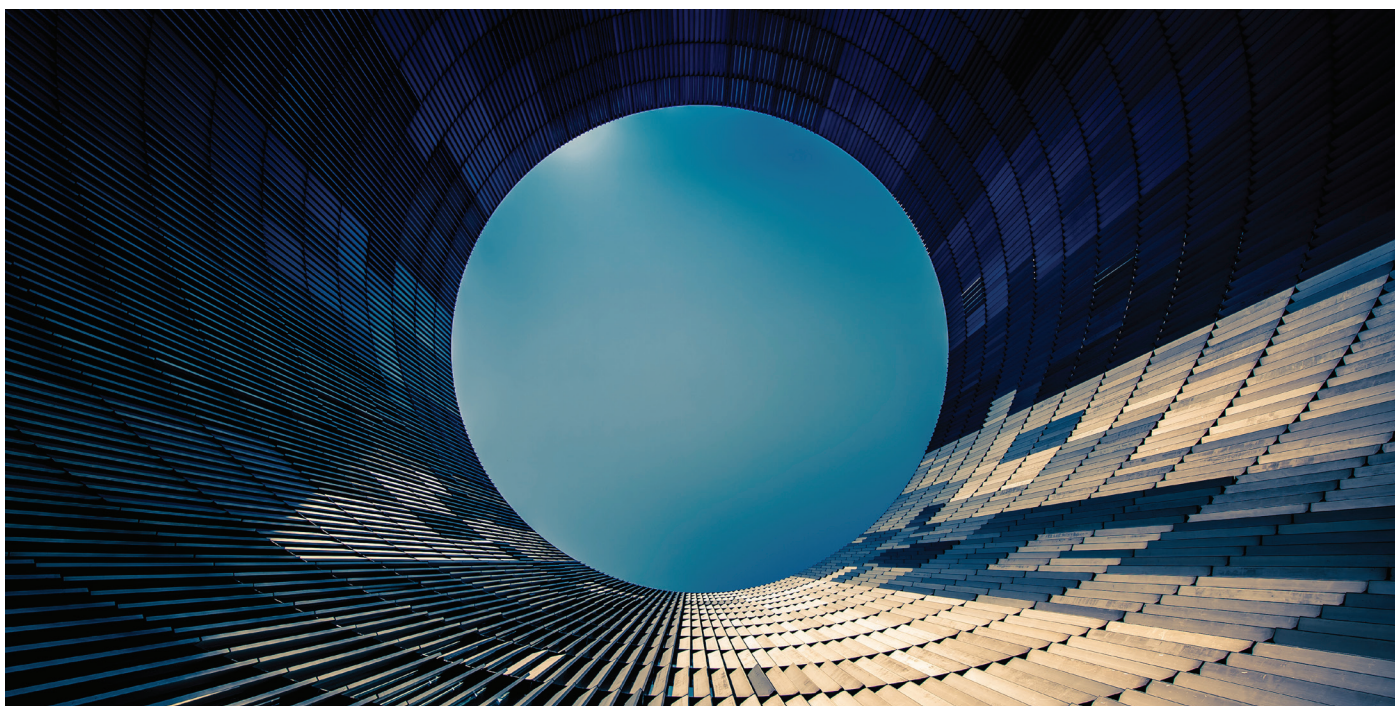
Companies in the business of essential goods and services, e-commerce, pharma and healthcare have been working tenaciously to support society at large over the past few months. Other organisations have gradually started resuming operations. As more organisations look to restart, they need to keep in mind that disruption does not make them immune from exposures to risks of bribery and corruption, or from the long-term consequences of breaching anti-bribery legislations (both in India and internationally, including the Foreign Corrupt Practices Act in the US and the Bribery Act in the UK). The penalties and other reputational consequences of such violations for individuals and businesses would continue to have a more far-reaching impact than any purported short-term benefits.

While it is of paramount importance that companies strive to minimise business disruption, attempts at actual bribery, policy dilution aimed towards smooth business operations or restarting operations in a non-routine manner are likely to be viewed adversely as significant deviations from or breaches of compliance programmes. For example, companies may enter into short-term business arrangements or engage with new and unvetted vendors in order to resume operations quickly, thereby significantly increasing the bribery risks resulting from non-compliant practices or adverse reputation of such third parties.

Disruptions and changed business conditions have also resulted in businesses experiencing a sudden increase in interactions with Government departments. These interactions may range from securing urgent approvals/permits for operations, movement of workforce or materials, manoeuvring through different risk zones, additional inspections at premises, resolving complexities associated with import, clearance of goods in a disrupted global supply chain, etc. Interactions with Government representatives also increase while representing the needs of a business or interpreting and applying for Governmental assistance, including assistance packages related to restarting of operations. In the foreseeable future, additional compliance and/or interactions may also be needed with respect to increased health and safety measures, and operation-related clearances and inspections. Anti-bribery and anti-corruption (ABAC) programmes will require to be revalidated to make sure that these additional and changed scenarios are taken into consideration.

Increased Government touchpoints (directly and through third parties) could also increase the risk of inappropriate or questionable payments potentially made to 'manage' business operations in a disrupted environment. The risk of facilitation payments or speed money paid to reduce delays in obtaining permits/new licensing/approval requirements, to overlook violations in the deployment of number of workers, to bypass/override the logistics and time/zone restrictions, or to manipulate documents to match regulatory requirements are possible scenarios that need to be addressed in revalidating anti-corruption preparedness.





What's next: Reassess, recalibrate and reinforce compliance measures

To ensure ABAC compliance even during extraordinary and disruptive times, organisations can look at the following enhanced **proactive measures**:

Stronger and louder tone at the top

- Employees are expected to face unique and frequent compliance dilemmas that they may have not faced before or are not covered by their organisation's code of conduct FAQs. It is important that the leadership and senior management lead by example and maintain a strong tone at the top by emphasising the importance of compliance without fear of retaliation. Specific communication reaffirming business conduct policies should be a key aspect of the tone.

Operational scrutiny, reassessment of risks and enhanced oversight

- Compliance units need to assess additional corruption risks arising from changes in the ways of doing business or changes to key business processes. Businesses could identify areas/activities where Government interaction has increased and other areas of high ABAC risks and re-evaluate sufficiency of controls around these emerging areas. At a time when working from home/remote working has been widely adopted, businesses could also change other procedures related to approvals, review of invoices and payment processing, and assess them from an ABAC controls perspective.
- Key activities related to third parties brought on board during the disruption period would need to be reviewed from an ABAC perspective. Conducting due diligence/risk management throughout the lifespan of engagement of third parties will be critical and should be continuous and not be a one-time activity during onboarding.

Real-time task force

- During any disruption, it is important that all dilemmas are resolved in a timely manner to avoid business delays. Companies may route such urgent matters relating to ABAC issues through a seasoned single point of contact (SPOC) for early resolution. Alternatively, if a high volume of such matters/queries is anticipated, companies may need to establish a special compliance task force, such as an ABAC helpdesk, for near real-time advice and guidance on policies and procedures to be followed in each situation.
- The task force should also continuously monitor and strengthen the existing compliance controls framework based on learnings during this period.

Leveraging technology for proactive ABAC compliance

- It is recommended that organisations conduct data analysis for enhanced scrutiny of compliance-sensitive expenses. Intelligent analytics can identify anomalies and enhance controls around areas such as donations and corporate social responsibility (CSR) expenditure, track expenses incurred during visits by Government officials, track expenses related to newly appointed agents/third parties and review petty cash and facility management expenses incurred during the lockdown.

Ongoing training and awareness

- Organisations should send periodic reminders to employees about organisational code of conduct and ABAC policies.
- Reinforcement of a culture of ethics and integrity by conducting virtual ABAC training sessions for employees and third parties should not be deferred but instead accelerated.
- With respect to whistleblowing, there will be a need to spread awareness and incentivise employees for early risk identification. Companies may need to adapt to the current scenario of off-site working by opening additional electronic channels or other measures without comprising the integrity and security of existing systems.

Recently, in June 2020, the Department of Justice, United States of America, issued updated guidance on corporate compliance programmes. The timing of release of this guidance serves as an indicator that regulators continue to view ABAC compliance with seriousness and attention. The guidance continues to emphasise the quality and effectiveness of consistent and holistic risk-based compliance programmes. It also stresses the importance of ensuring that compliance functions and related programmes are adequately resourced, dynamic and trackable during all situations, and are able to demonstrate how they have evolved.

The unprecedented disruption we face today has added an additional layer of complexity in an already complex compliance environment. Bribery and corruption continue to remain top risks for organisations and have changed how business is done. It is thus imperative that companies stay vigilant in these disruptive times and do not compromise on their commitment to anti-bribery and anti-corruption measures.

Authored by Rahul Lalit and Moushumi Vaidya.

Contact us



Gagan Puri
Partner and Leader, Forensic Services
PwC India
M: +91 9818756955
gagan.puri@pwc.com



Rahul Lalit
Partner, Forensic Services
PwC India
M: +91 9811806905
rahul.lalit@pwc.com



Moushumi Vaidya
Director, Forensic Services
PwC India
M: +91 9619663676
moushumi.vaidya@pwc.com

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Data Classification: DC0 (Public)

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KS/June 2020 - M&C6373

