

The changing dynamics of white-collar crime in India

A white paper by
Forensic & Integrity Services



Building a better
working world



Introduction

Positive market sentiment and increased investor confidence have catapulted India to the forefront of the investment scenario. The Government's 'Make in India' initiative to further liberalize 25 sectors under the foreign direct investment (FDI) policy has boosted business for the nation, putting India on the map for future investments. The 'Make in India' project is expected to act as a catalyst to bolster the ease of doing business by simplifying regulatory requirements and increasing transparency in obtaining licenses and approvals. Private and public sector enterprises have already focused on expanding their horizons, establishing new business opportunities and building sustainable infrastructures. Having said that, they cannot undermine the risk of financial and reputational damage from white-collar crime, which includes fraud, bribery, corruption, cyber threats, counterfeiting, insider trading, embezzlement, racketeering, larceny as well as terrorism.

The high cost of managing fraud and corruption has become not only a national but also a global priority for countries as well as businesses. Stringent anti-fraud and anti-corruption frameworks, coupled with penalties on errant companies and fraudsters, have helped mature markets such as the US and the UK deter such risks at an early stage. That said, emerging markets such as India are not far behind and have taken strides in the right direction to come up with different and effective methods of identification and deterrence, in line with its global counterparts.

The threats have become more complex over time, with fraudsters becoming savvy and sophisticated. Technology is changing the risk landscape and has been challenging the boundaries of white-collar crime. Hence, it is important for both the Government and companies to be in tandem through this continuous state of

evolution and adopt various techniques to battle such risks through enhanced compliance.

An integral part of the equation are anti-fraud fighting professionals that enable both the Government and corporates mitigate risks. The last decade has seen an increase in the number of such professionals, which range across functions such as risk, compliance, legal, internal audit and law enforcement as well as core forensic. Given the current context, EY Forensic & Integrity Services in collaboration with the Association of Certified Fraud Examiners (ACFE) Mumbai Chapter launched the Forensic Trailblazer Award to recognize and applaud the growing talent in the larger forensic ecosystem.

Through this white paper, we intend to demystify white-collar crime, gauge its impact, understand the need to ramp up evidence-gathering mechanisms and trends that will change the future of investigations. The white paper also reflects our endeavor to create an aware and informed ecosystem, at a national, state as well as corporate level, that challenges and mitigates white-collar crime in India.



A Singh

Arpinder Singh

Partner and Head - India and Emerging Markets
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Foreword

The last few years saw a gradual shift in the public perception of doing business in India. Increased public awareness and regulatory changes have led a number of steps being taken at a national, corporate and probably even at an individual level to battle white-collar crime. Transparency and compliance have become key to running and managing business dealings in an ethical manner, mitigate white-collar crime and preserve the international image of the nation globally.

Recent initiatives as well as policies to improve the ease of doing business in India are compelling corporates and departments to build robust internal controls, anti-fraud frameworks and monitor compliance. Regulations such as amendments to the Companies Act 2013, new Insolvency and Bankruptcy Code, and the proposed revisions to the Prevention of Corruption Act and Indian Penal Code are enablers in the battle against fraud, bribery, corruption and other white-collar crimes. Although this shift has instilled a sense of confidence among investors as well as the general public at large, a lot needs to be done at the ground level to curb the increasing cases of white-collar crime.

As India steadily moves up the ladder of development, empowering enforcement agencies such as Central Bureau of Investigation, Serious Fraud Investigation Office, The Enforcement Directorate, The Directorate of Revenue Intelligence, Economic Offences Wing and others will be able to drive more governance, prosecution as well as penalties. To handle the surge in white-collar crimes and protect the larger economic interest of various stakeholders, enforcement agencies are also looking at leveraging technology and deploying forensic techniques to nail fraudsters.

To sum up, enforcement being backed by new and evolved regulatory mechanisms will deter corrupt practices. It is these current trends in anti-corruption enforcement that will set a benchmark for future efforts in the country. Sustaining momentum is critical as we look to bridge the gaps of today for a promising future.

This white paper, covering the implications of white-collar crime would provide some interesting insights and provoke conversations among stakeholders as we collectively look to create a more aware and vigil society.



Satish Mathur

Director General of Police, Maharashtra State

Improved governance through enhanced reforms

The Indian economy is at the cusp of a business revolution. A series of trade-friendly regulations and tax reforms have not only improved the ease of doing business in India, but also made it a bright spot for global investment. India has jumped 32 spots in the Global Competitiveness Index in the last two years, currently standing at 39 in the rankings. It is second among its BRICS (which comprises Brazil, Russia, India, China and South Africa) peers, only after China, which stands at 28. According to the Global Investment Report 2016 by the United Nations Conference for Trade and Development, India attracted FDI inflows of US\$44 billion in 2015, compared to US\$35 billion in 2014, making it one of the top 10 destinations for investments globally.

India is also at the brink of implementing several landmark reforms which will enable the Government to achieve the twin objectives of:

- ▶ Improving the ease of doing business
- ▶ Improving the governance and enforcement mechanisms

In 2013, the Companies Act, a key regulation governing the incorporation and running of a company, was amended to augment governance. The emphasis was on private companies to be more responsible and accountable for their actions.

In 2015, the Insolvency and Bankruptcy Code was introduced to enhance credibility and ease the process of bankruptcy filings. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act also came through, aimed to curb black money in the country and subsequently, an aggressive Income Declaration Scheme as a last window of opportunity to declare black money was launched. The Government also entered into bilateral agreements with several tax havens for disclosure of funds held. The past two years have also witnessed several other regulations focusing on mitigating white-collar crimes such as fraud, money laundering, diversion of funds and boosting ethics and compliance.

Proactive steps from both a regulatory and organizational perspective have proved beneficial and could possibly be the reason for India's improved ranking in Transparency International's (TI) Corruption Perceptions Index (CPI) to the 76th place in 2015, up from the 85th place in 2014.

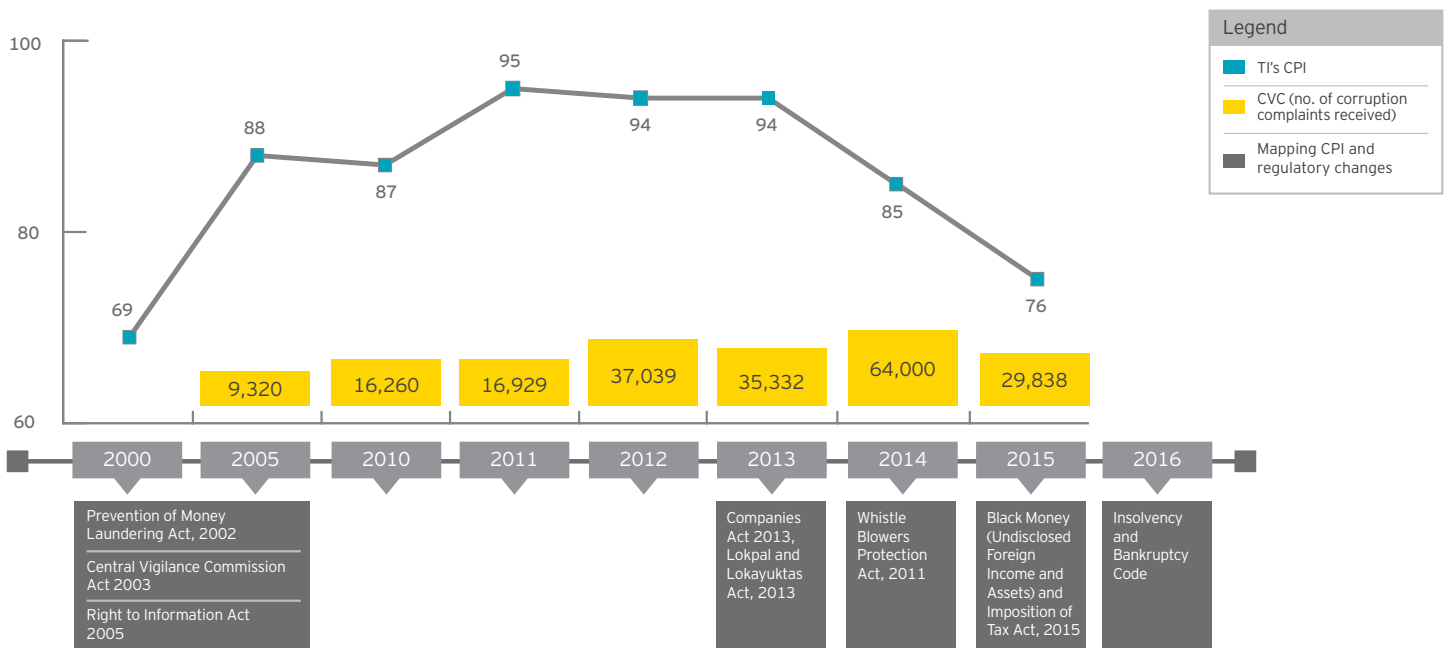
In a nutshell, with the emergence of the Indian economy as a favored business destination, it would be crucial to build a sustainable and robust governance and enforcement mechanism and create a level playing field for all its stakeholders.

INR 65,250 crore

the amount of undisclosed assets declared through the Income Declaration Scheme, a one-time compliance window in October 2016¹

INR 100 crore

Budget allocated to strengthen the Central Bureau of Investigations' (CBI) capabilities for investigating financial crimes of a significant size²



¹ The Economic Times 'Black money haul: Rs 65,250 crore disclosed through Income Declaration Scheme'

² The Financial Express 'Govt okays Rs 100 cr special unit in CBI to probe financial crimes'

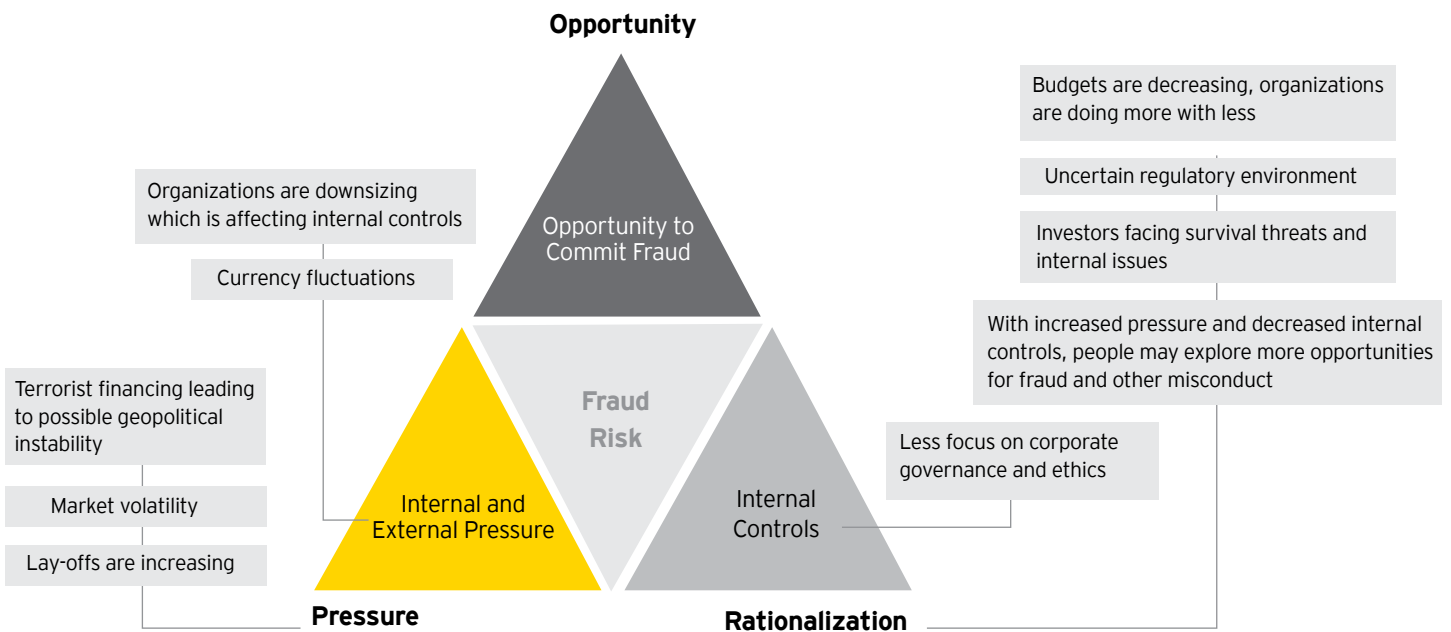
Corporate India and its tryst with white-collar crime

In early 1940s, American sociologist Edwin Sutherland coined the term “white-collar crime,” describing it as “a crime committed by a person of respectability and high social status in the course of his occupation.” Since then, the perception and understanding of white-collar crime has changed in the business ecosystem. Stefan Heissner’s book *Managing Business Integrity* states that the speculative media presence in response to fraud and corruption

related cases has led to the development of a very keen sense of social awareness and understanding for white-collar crime.

Today, the understanding of white-collar crime is far wider and covers fraud, bribery, corruption, embezzlement, forgery, insider trading, kickbacks, money laundering, racketeering, larceny, diversion of funds, counterfeiting and cyber threats such as ransomware, spear phishing, to name a few.

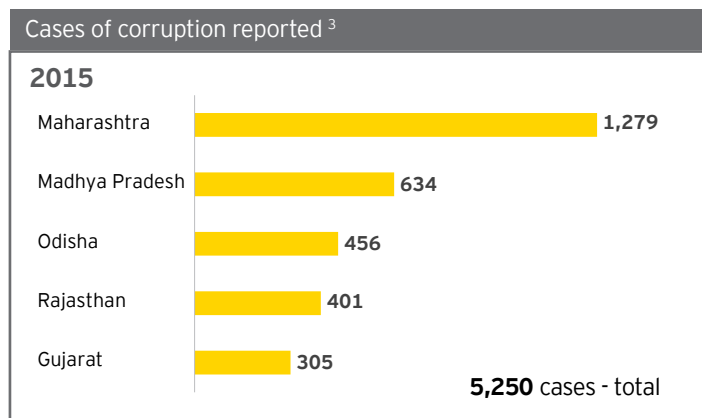
Pictorially, the current environment for white-collar crime can be summarized as follows:



The impact of white-collar crime on corporate India is significant. Today, fraudsters are motivated by greed and financial gain more than ever before, exhibiting deviant and exploitative behavior. Some of the new trends seen include:

- ▶ Average age of fraudsters is getting lower
- ▶ Increasing cases of fraud or other wrongdoings being detected by whistle-blowers
- ▶ Proliferation of technology to evade detection, e.g., using instant messengers and social media networks instead of emails
- ▶ Innovative modes of kickbacks and favors obtained

It has been seen that the typical perpetrators of white-collar crime do not have a prior criminal record and believe that their act will go undetected because they are not being observed. They also do not consider themselves culprits, tend to continue the misdemeanors until detected. Typology also suggested that these are typically committed by individuals in positions of trust.



469

number of companies Serious Fraud Investigation Office (SFIO) asked to probe between 2004 and 2016

184

were between 2015-2016 ⁴

6,533

corruption cases prepared by CBI over last 10 years

517

corruption cases referred to CBI in last two years

62%

conviction rates ⁵

Bribery still rampant ⁶



1071

Total cities



104511

Total reports



INR 2873.42 crore

Total amount



35,729

Bribes paid

³Data released from National Crime Records Bureau (NCRB)

⁴Data released by Ministry for Corporate Affairs

⁵Data released by the Lok Sabha

⁶Data from www.ipaidabribe.com

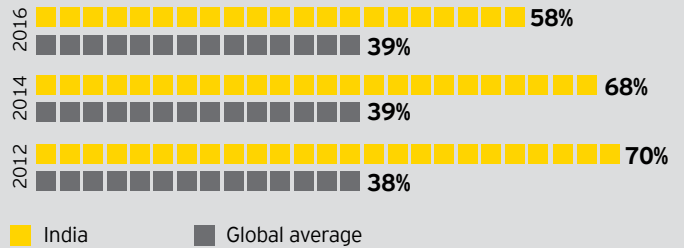
Industry snapshot



White-collar crimes can be a crucial factor that could affect economies ahead of geo-political risks, misuse in offshore jurisdictions, terrorist financing and migration. EY's 14th Global Fraud Survey 2016, titled *Corporate misconduct - individual consequences*, reinforced the sentiment, highlighting that bribery and corruption are ongoing challenges. While globally, this view was shared by 39% of the respondents, in India the percentage stood significant higher at 58%.

Bribery and corrupt practices happen widely in business in this country ⁷

India ranks 17th in the top 29 markets which consider bribery and corruption to be an ongoing challenge



Individual accountability matters ⁸

Survey shows that prosecuting individual executives will help deter future fraud, bribery and corruption



⁷ EY Global Fraud Survey 2016, *Corporate misconduct - individual consequences*

⁸ EY Global Fraud Survey 2016, *Corporate misconduct - individual consequences*



The challenging boundaries of today's dynamic landscape have persuaded companies to undertake several measures to combat white-collar crimes. Some key trends in this regard are as follows:

The e-commerce boom

Increased digitization has led to the movement from conventional brick and mortar stores, to online marketplaces, which are selling products as well as services. The transformation from physical sales to the online platform has further complicated the risk scenario, making modern e-tail more susceptible to white-collar crimes. While factors such as increased internet penetration, declining data tariffs, widespread use of smartphone devices, introduction of 4G, payment models such as cash on delivery have been drivers for growth, but have also created challenges in handling risks. Key issues include third party risks such as sale of counterfeit goods, collusion with employees, logistics fraud such as theft or diversion of funds, data security, supply chain fraud to name a few.

Stepping up anti-money laundering efforts

The issue of black money has been around for a long time, and with a significant impact on the economies of BRICS nations. In India, recent news around Know Your Customer (KYC) violations, gaps in compliance monitoring systems and processes, and trade-based money laundering has led to increased pressure.

Typically in the financial services sector, white-collar crime can be in the form of identity theft, which means stealing personal and confidential information from an individual, without their approval or knowledge, to dupe them. This can be in the form of credit cards or bank accounts; or even using false or forged documents. In case of organized crime, the impact of identity theft can be particularly adverse as it can be used as a way to commit money laundering, tax evasion, trafficking and even terrorist financing.



200

number of e-commerce companies that are engaging in potentially fraudulent practices and are under the scanner of the Department of Industrial Policy and Promotion ⁹



US\$ 6-7 trillion

Amount of black money that may be concealed across global tax havens

India's share is estimated to be amounting to US\$ 181 billion ¹⁰



4,000 crore

amount trading on the Bombay Stock Exchange by using fake or duplicate PAN card numbers ¹¹

⁹ The Economic Times '200 suspected ecommerce companies under DIPP radar'

¹⁰ Business Today 'How Big Data and Analytics can help India fight against money-laundering'

¹¹ DNA Money 'IT dept to swoop down on tax evaders in stock market'

Taking on the cyber challenge

The disruptive force of technology has redefined business, but it has also brought a host of challenges under its wing. Today, individuals, businesses and even Governments have fallen prey to cybercrime. Cyber criminals are getting sophisticated with each passing day and are wreaking havoc by defacing websites, and stealing confidential and privileged data for financial gain.

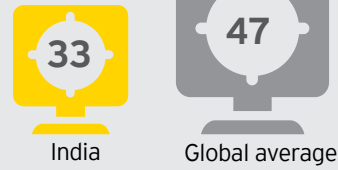
One of the key threats that have emerged is ransomware, which is a highly sophisticated malware that bypasses the traditional layers of security and makes the user's computer files inaccessible, by either locking them up or encrypting them. The user is then asked to pay a "ransom" to the cybercriminals to regain access to the data. The severity of the problem can be fathomed by the fact that reports have suggested that cyber criminals could ask for US\$500 as the "first offer" per computer, which can go up significantly from there to regain access. Other exploitative threats include spear-phishing, which involves targeting certain people or enterprises to create email payloads that deceive the target into payments to fraudulent bank accounts.

Destressing "stressed assets" by battling the NPA problem

Rising issues around non-performing assets (NPAs) continue to plague the banking and financial services industry. Estimates from the Reserve Bank of India (RBI) have pegged the amount of bad loans at a staggering INR 624,119 crore at the end of December 2015.

According to an EY report, *Unmasking India's NPA issues - can the banking sector overcome this phase?*, 72% of the respondents stated that the NPA crisis in India is set to worsen before it gets better. While the regulator has taken several steps to tackle the NPA issue, banks can also focus on investing in certain areas such as technology and data analytics, conducting independent borrower background checks, enhancing internal skill sets on credit assessment and evaluation and formulating separate teams for monitoring of accounts to curb the problem.

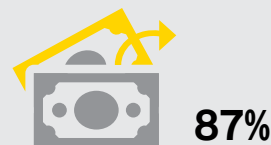
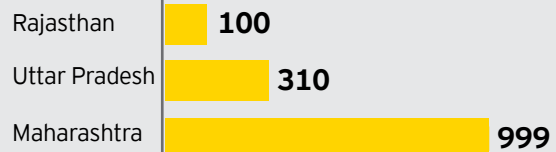
Based on the above challenges, corporate India as well as the Government need to join forces, and come together to tackle the current and imminent problems around white-collar crime. With the nature of such crimes becoming complex, piercing new sectors and becoming increasingly trans-border, there is a dire need to have more technologically advanced platforms to battle these risks. In addition, multi-jurisdiction fraud will demand closer collaboration not just between corporate and enforcement agencies within a country, but could transcend borders to assume a global nature. Going forward, there will also be increased collaboration between global enforcement agencies, as well as corporates whose operations spans geographies, to detect and deter perpetrators of white-collar crime. Investigators probing into such cases will therefore have to develop skill-sets which can enable them to not only understand the psyche of the perpetrator, but also regulations in different jurisdictions.



Companies are still not recognizing cybercrime as a risk to their business ¹²

Online fraud on the rise

1593 cases in India over the last three years ¹³



of the respondents believe that the rise in NPA or stressed asset numbers is due to the diversion of funds to unrelated business or fraud ¹⁴



cases involving more than INR 5 lakh crore are pending in Debt Recovery Tribunals ¹⁵

¹² EY Global Fraud Survey 2016, *Corporate misconduct - individual consequences*

¹³ The Times of India 'State tops in online fraud; 999 cases in three years'

¹⁴ EY report, *Unmasking India's NPA issues - can the banking sector overcome this phase?*

¹⁵ The Economic Times 'Changes in recovery law to expedite disposal of 70k NPA cases'

Tackling the white-collar crime menace

Keeping in mind the challenges mentioned above, it is essential to ramp up and undertake radical initiatives in terms of technology set-ups, skill development, compliance framework, changing people's mind-set and improving processes to combat white-collar crime. Some suggestions to make way for India to become a digitally advanced country in terms of white-collar crime investigations are as follows:



Establishment of institutions specialized in imparting forensic skills

Forensic investigations have become an intrinsic part of the larger governance framework. However, most forensic professionals do not necessarily have a formal training in investigations, as it ideally should be. Many start off with general accounting, business or law backgrounds, and hone their skill sets through experience over the years. However, with increasing cases of white-collar crime, it is becoming critical to have "formal" training and skill-building exercises around forensic investigations. Setting up specialized courses in colleges at a graduate or a master's level, designed to exclusively cater to the needs of the modern day forensic professionals, would be an ideal scenario. Setting up of an apex forensic investigation training institute, which could be involved in the training of personnel of various enforcement agencies, as well as research and identification of best practices in the field of forensic investigations is another way to tackle the perils of white-collar crime.

- ▶ Digitization of the ombudsmen by creating mobile applications and other electronic interface
- ▶ Use of the data collated to monitor suspicious behavior and perform predictive analysis during investigations, whenever required

These centers can be equipped with state-of-the-art forensic tools for cybercrime attacks, e-discovery process and other sophisticated technologies.



Driving transparency

Driving transparency is key to creating a sustainable ethical framework. Berlin-based corruption watch-dog Transparency International, in its latest CPI has ranked India 76 out of the 168 countries, compared to 85 in the previous index. This highlights a positive perception of transparency in the country, driven by factors such as new and improved regulations, greater enforcement activities, improved public awareness and the Government's initiatives to promote the country as an investment hub.

The last couple of years have seen a positive push from the Government through revisions, amendments and regulations focused on combating white-collar crime. However, the agenda should be pushed further by creating mechanisms of self-reporting by corporates, along the lines of the models in the UK and other countries. Due credit should also be given for steps taken by companies to mitigate any potential non-compliance or fraudulent activities.



Setting up forensic technology centers of excellence

Of the various initiatives taken by the Government, the digital revolution, a part of the Digital India initiative, could be taken to the next level by setting up forensic technology centers of excellence. These may be set up at state-level or even at the center-level to potentially streamline the following processes:

- ▶ Creation of a central data repository by collating various data points, including spending behavior of individuals and information of critical financial transactions



Public-private partnership

Forensic is increasingly emerging as a specialized skillset and domain of knowledge, and various private organizations are investing in creating a wider pool of forensic professionals in the country. The Government could explore the benefits here by possibly recruiting such professionals in a lateral manner to support its regulatory and enforcement framework. Allowing participation could help capitalize on the specialized skillsets acquired by investigators and also support in understanding key governance challenges faced.



Augmenting awareness and incentivizing whistle-blowers

Public service announcements are one of the oldest and most successful means to create awareness among the masses. It has gained popularity in the recent past due to the emergence of social networking sites, making it easier to share video content. This platform could be utilized as a vehicle of communication to spread awareness among the masses about sound governance, common laws governing corruption and accessibility to ombudsmen. An announcement of bounty for whistle-blowers on the lines of countries such as the US may also encourage more people to come forward and report irregularities.

Conclusion

Investigating white-collar crime and pursuing culprits is akin to a game of hide and seek, and will continue to be so in the future. Perpetrators will attempt to find new and innovative ways to indulge in fraud, bribery, corruption, cybercrime, money laundering and other white-collar crimes. Companies could deploy innovative technologies for early detection as well as deterrence of such crimes. For instance, the use of forensic data analytics can mitigate, detect, monitor or investigate potentially improper transactions, events or patterns of behavior related to misconduct, fraud and non-compliance issues. The use of artificial intelligence and predictive analytics could emerge as the future of anti-fraud controls.

The nature of investigations will also transform and the role of forensic investigators will continue to evolve, moving from a predominant reactive one to a proactive one. This pool of anti-fraud-fighting professionals with the right skill-sets, capabilities, acumen and conviction will see a surge from private corporations, public sector as well as government departments.

Going forward, forensic professionals will look to build and monitor robust internal fraud management systems, promote ethics, compliance and sound governance, and, at the same time, liaise with enforcement agencies to catch perpetrators. However, speed is of the essence here, especially with global investors pumping in more to drive the business ecosystem.

About EY's Forensic & Integrity Services

Dealing with complex issues of fraud, regulatory compliance and business disputes can detract from efforts to succeed. Better management of fraud risk and compliance exposure is a critical business priority – no matter the size or industry sector. With approximately 4,500 forensic professionals around the world, we will assemble the right multidisciplinary and culturally aligned team to work with you and your legal advisors. We work to give you the benefit of our broad sector experience, our deep subject-matter knowledge and the latest insights from our work worldwide.

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