

Bombay Chambers of Commerce and Industry Webinar

Confronting bribery, corruption and
fraud in the new normal: leadership
insights and readiness

EY Forensic & Integrity Services

Restriction of use and liability

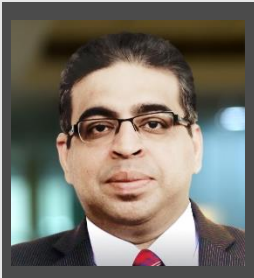


**Building a better
working world**

Presenters



Arpinder Singh is a Partner and Head - India and Emerging Markets at EY Forensic & Integrity Services. He has significant experience spanning 25 years in multi-jurisdiction investigations, forensic accounting and dispute advisory in India, US and other regions. His key areas of specialization include anti-bribery and anti-corruption, fraud risk management, regulatory compliance, anti-money laundering, corporate governance and training. As a trusted advisor, he has also worked closely with regulators and law enforcement officials on a number of high-profile and global investigations across diverse sectors.



Amit Rahane is a Partner with Forensic & Integrity Services at EY. He specializes in assisting investors in pre-acquisition forensic due diligences and has more than 15 years of professional experience. He has experience and a deep understanding of client concerns on the business and regulatory side as it relates to transactions. Amit has worked on a number of forensic and anti-bribery and corruption diligence matters has extensive experience in investigations, forensic accounting reviews, diagnostic reviews and support on litigations involving FCPA.

Discussion overview

Setting the context

Changes in law and regulations

Increasing risks and vulnerabilities
in carrying out business

Your role as a business leader

Q&A



Setting the context



Recent news around frauds

The white-collar fraud pandemic is as serious as Covid

Organised crimes witness a hike amidst coronavirus pandemic

Mumbai Police bust global social media marketing influencers' fraud

Duplicate branch busted; son of ex-bank employee caught running fake division

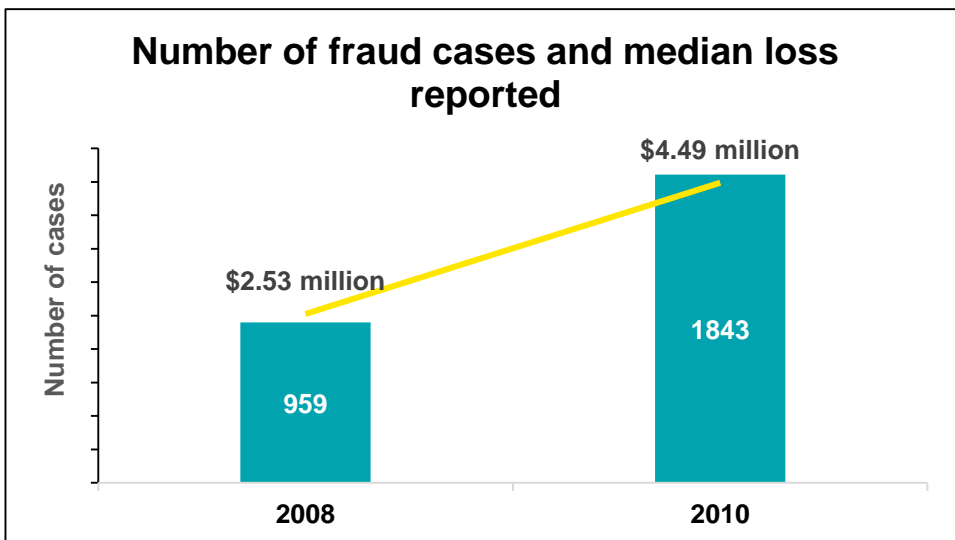
Coronavirus fuels a surge in fake medicines

was hit by ransomware attack, suffered loss of data

History of downturn and fraud risks

- ▶ The COVID-19 pandemic has impacted the entire human fraternity and exposed everyone to situations never envisioned before
- ▶ One of the key challenges right now is the risk of frauds that may rise due to the disruption, operational pressure and exposure from dealing with unknown parties
- ▶ With a sharp fall in markets worldwide, plunging stocks and job losses, many factors present in 2008 are likely to apply today impacting the global economy

Study conducted by ACFE



- ▶ ACFE's study after the **2008 recession** said majority of respondents saw an observable increase in the number of frauds
- ▶ **80%** believed fraud levels increase in times of **economic distress**

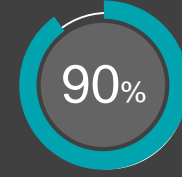
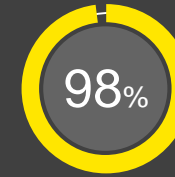
Median loss reported in the 2010 was the highest which covered losses due to fraud cases in January 2008 till December 2009

Source: 2008 and 2010 ACFE Report to the Nations

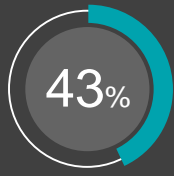
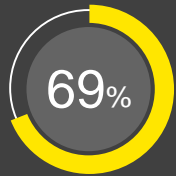
Increase in risks and vulnerabilities for carrying out businesses

- ▶ The prevailing uncertainties because of **COVID-19** may lead to individuals both within and outside the organization resorting to unethical or fraudulent practices
- ▶ Responding to the current crisis with a focus on maintaining trust and continuity of business operations would be paramount

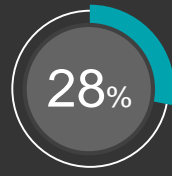
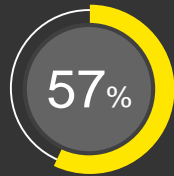
● India ● Global



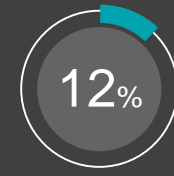
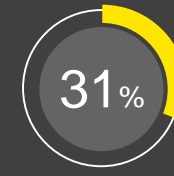
Disruption, as a result of COVID-19, poses a risk to ethical business conduct



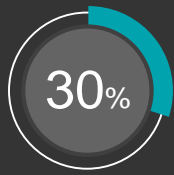
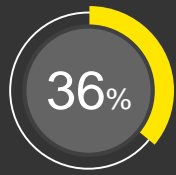
At the height of the COVID-19 pandemic, managers in the organization would sacrifice integrity for short term financial gain



They would be prepared to act unethically to improve their career progression or remuneration package

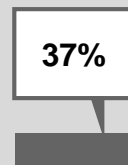


Many would ignore unethical conduct by third parties

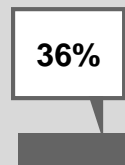


Cyber attacks and ransomware pose the greatest risk to the long-term success of the organization

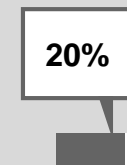
The report highlights several risks to ethical business conduct in India because of the pandemic



Declining financial performance



Disruption to traditional working patterns



Weakening compliance processes and controls

Changes in laws and regulation



Amendments made to strengthen to Indian anti-corruption legislation – Prevention of Corruption (Amendment) Act

The Prevention of Corruption (Amendment) Act, 2018 is the primary source of anti-corruption legislation in India covering bribery of Public/ Government officials. The erstwhile act was strengthened to bring Indian Anti-corruption legislations at par with global laws

01

Covers bribe giver also

- ▶ Any person who offers, promises or gives financial or other advantage to public servant or any other third party to induce a public servant for improper performance of public function or activity shall be punishable under the Act.

03

Covers bribery by Commercial organizations

- ▶ If offence under the Act is committed by a commercial organization, such commercial organization shall be punishable with fine.
- ▶ Commercial organization can defend itself if it can prove that it had adequate procedures designed to prevent persons associated with it from undertaking such offence.
- ▶ Commercial organization includes a body incorporated in India and a body incorporated outside India if it carried out business in India.

02

Covers payments/ offers through employee/ third party





- ▶ Commercial organization shall be guilty of offence if any person associated with it commences the offence.
- ▶ Act covers financial or other advantage offered, promised or given by person/ commercial organization directly or through third party.

04

Covers Director/ Manager of Commercial organization

- ▶ If it is proved that the Commercial organization has committed offence under the Act with the consent/ connivance on part of any Director, Manager, Secretary or other officer of the Organization, such person shall also be deemed to be guilty of the offence.

Companies (Auditor's Reporting) Order, 2020

Why amend CARO ?	Date of applicability?	Guidance notes issued ?	Are these all the changes ?
<p>Default In Repayment Of Loans/Borrowings Or Payment Of Interest</p> <ul style="list-style-type: none"> ▶ Wilful Defaulters? Default in repaying ? ▶ Were term loans used for the purpose which they were taken? ▶ Short term loans used for long term purposes? ▶ Borrowings to meet subsidiary obligations? ▶ Loan through pledge of securities held by subsidiary? 		<p>Scenarios</p> <ul style="list-style-type: none"> ▶ Bank accounts outside the books ▶ Does RPT cover these aspects of subsidiary ▶ Whether regularised loans escape reporting ▶ How can you know all pledging of securities 	
<p>Proceedings Against Company For Holding Benami Property</p> <ul style="list-style-type: none"> ▶ What is a Benami Transaction and Benami Property? ▶ Any proceedings of Benami transactions? ▶ Disclosures made? 		<p>Scenarios</p> <ul style="list-style-type: none"> ▶ Promoter contracts outside the direct purview of business 	
<p>Fraud And Whistle Blower Complaints</p> <ul style="list-style-type: none"> ▶ Any fraud on the company? ▶ Any fraud by the company? ▶ Any fraud by third parties? ▶ Any report by the auditor filed with the central government? ▶ Whistle-blower complaints considered? 		<p>Scenarios</p> <ul style="list-style-type: none"> ▶ What will construe a WB complaint – media news, random emails, etc.. ▶ What if company says there is no complaints in the given year ▶ Should auditor check operational aspects of WB process 	
<p>Investments, Guarantees, Loans And Advances</p> <ul style="list-style-type: none"> ▶ Investments/guarantees/securities are not prejudicial to the company's interests? ▶ Renewal/extension of loans fallen due during the year? ▶ Any fresh loans granted to settle overdues of existing loans? 		<p>Scenarios</p> <ul style="list-style-type: none"> ▶ Impact of no evergreening of loans ▶ Can arms length transaction still be prejudicial ▶ What scenarios loan extension has happened 	
<p>Additional CARO Clauses</p>	<ul style="list-style-type: none"> ▶ Resignation by Statutory Auditors ▶ Internal Audit System and Internal Audit Reports ▶ Reporting by NBFCs 	<ul style="list-style-type: none"> ▶ Reporting on Cash losses ▶ Non-Cash transactions (Directors / Connected) ▶ Unrecorded income disclosed with Income Tax 	

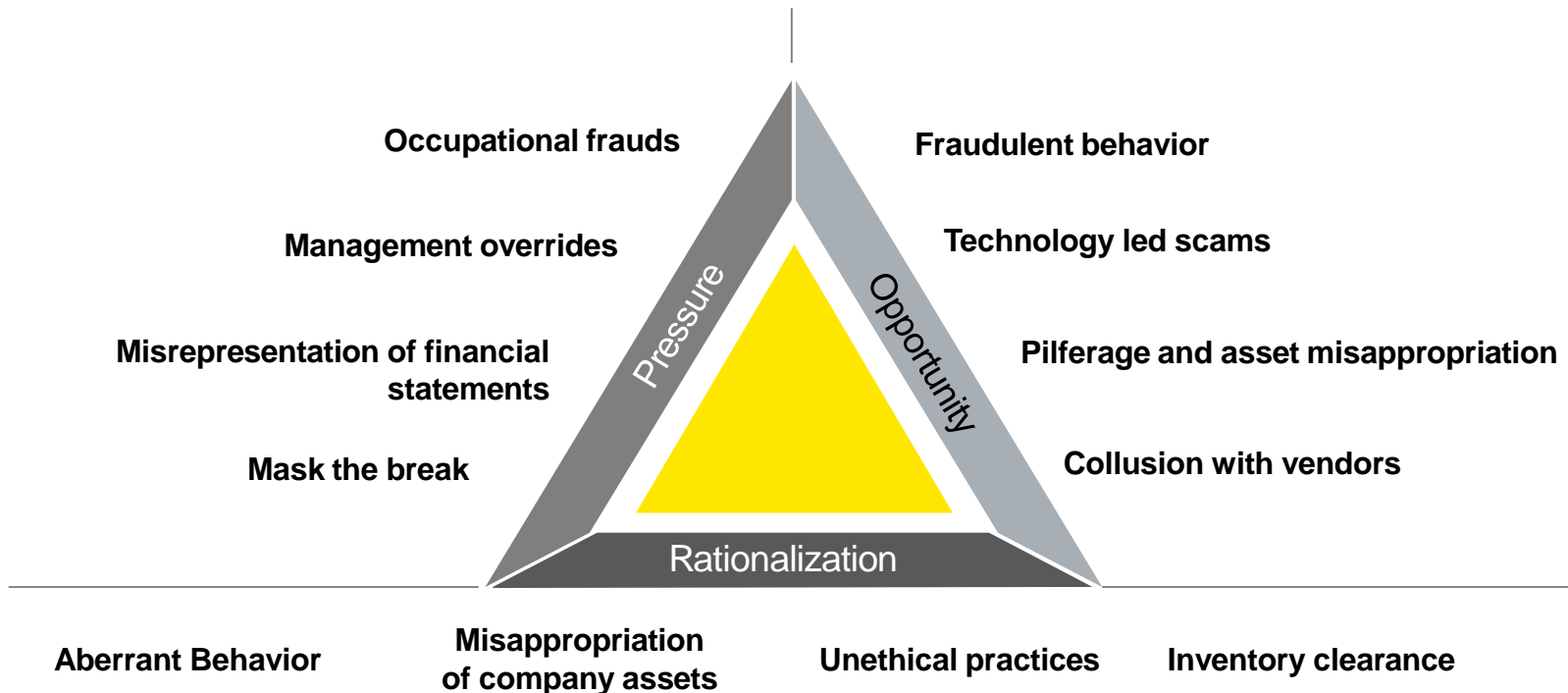
Increasing risks and vulnerabilities in carrying out business



Impact of pandemic and its impact on fraud triangle

- ▶ The COVID-19 crisis has thrown up inconceivable organizational challenges, catching the business community caught off-guard.
- ▶ Global organizations have been compelled to undergo a complete metamorphosis to adapt to the current environment.
- ▶ On the other hand, fraudsters seem to be ready to skilfully blend the ingredients of uncertainty, fear and business challenges to concoct a perfect recipe which can potentially defraud the community.
- ▶ These tough times can not only create an opportunity for some employees who have been repeat offenders to leverage the situation, but also for the fence sitters who either cave into the pressure or tend to rationalize their actions.

The impact of COVID-19 on fraud can be better understood by connecting it to each component of the fraud triangle:



Dilemma scenarios

“Indicative only”

1 You are the manager of a leading company. One of your customers has paid in advance for the order. You receive an email from the warehouse manager that the consignment is stuck and cannot be delivered till lockdown gets over. Due to immense pressure from management and considering the urgency of closing of the financial year, what will you do?

2 The company is awaiting approval from a local authority to carry out its business, but because of the COVID-19 outbreak everything has come to a halt. The company decides to contribute to the PM Cares Fund, but one of the senior officials from the local authority approaches you and ask for the contribution to the local NGO. What will you do?

3 You are the senior member of your team and one of your junior colleagues wants to buy a software for an urgent customer related task. The Procurement team has finalised the vendor after a vigorous search on the software pricing in the market. However, due to COVID-19, the Finance team is not process the invoice for payment. One of your friends is an IT geek and he suggests using a "crack" version. What would you do to meet the customer's requirement?

4 You are the Corporate Relations head for a remote location. You are approached by the local MLA for allowing them use of your guest house for COVID-19 infected patients. The MLA allows you only an hour to take a decision, as lives are at stake. You try reaching to the Group Corporate Relations Head and the Location Head, but they are not contactable. What would you do?

5 You are a manager in a reputed hotel. There are few guests who are stuck in your hotel due to sudden lockdown announcement. However, since the booking was done only for three days and on their company's account, the customers have no other option rather than to wait until the situation gets better. What would you do?

Increase in frauds due to COVID-19 pandemic

Opportunities and pressures arising out of COVID-19 leading to increased risk of fraud

1. Disruption and changes in the existing business model

2. Pressure of getting the operation running immediately

3. Partial controls / SOPs over critical operations due to reduced manpower

4. Virtual checks and balances

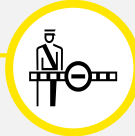
5. Exposure of dealing with unknown parties

6. Increased pressure to meet the targets

Increasing fraud risks

Disruption in supply chain

Diversion of company products to unauthorized channels due increased demand, exposure to unknown supply chain vendors, overcharging by vendor



Cybercrime, phishing and digital frauds

Assessment of impact of cyber attacks as employees would be working from home / outside office



Lapses in integrity

Employee's resorting to unethical activities under pressure of potential job loss / pay cuts



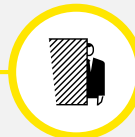
Contract and disputes

Commercial disputes arising out of production delays, supply delays



Misappropriation or window dressing

Non disclosure of risks / uncertainties in financial statements and unethical and unprincipled balance sheet adjustments

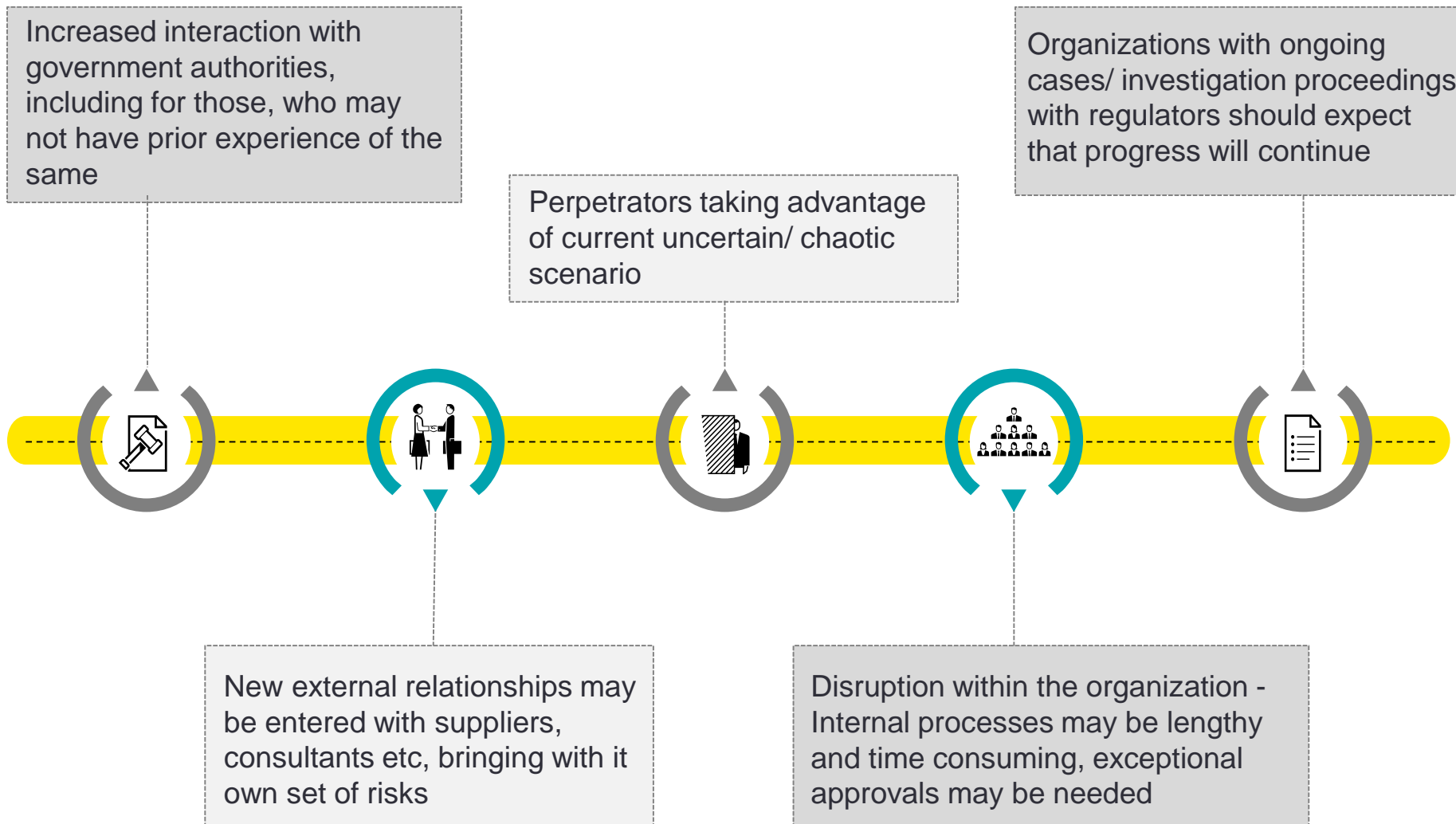


Counterfeiting

Opportunity to capitalize on the consumer vulnerabilities, given the shortage in multiple product categories because of supply chain disruptions



Business exigencies vs compliance – impact of COVID-19 on compliance



Some policies which government introduced for ease of doing business during lockdown

01

Collateral free loan to MSME

02

Delay in filing statutory returns

03

Extension of validity of prior issued environmental clearances

04

No fresh insolvency will be initiated for one year under the Insolvency and Bankruptcy Code

05

Reduction in PF contribution of both employer and employee

06

Six months of loan EMI moratorium

07

Expeditious clearance of refund claims

Bribery and corruption risks during COVID-19

Bribery and corruption, just like fraud, can spike during extraordinary global events such as natural disasters, wars and pandemics, resulting in disruption to normal business and individual activities. The COVID-19 crisis has led to a great deal of uncertainty, especially in jurisdictions that are not well-equipped to deal with large-scale business disruptions.



Bribe paid to bank officials to obtain increased credit line



Bribe paid to government officials to obtain licenses/ permit/ approvals to meet exigency



Giving gifts to quality head at customer location to pass poor quality products



Bribe paid to procurement employees to obtain **competitive pricing**



Risk of **approving credit limit** of customers by giving lesser weightage to their liquidity parameters due to kickbacks received



Emergency purchases bypassing procurement controls and policies



Acceptance of limited documents with invoice to escape **regular level of scrutiny**

Fostering an ABAC culture within organizations

Benefits of adopting an ABAC compliance program



Setting the **right tone at the top** within the organisation to indicate zero-tolerance to bribery and corruption



Streamlined processes and policies which captures ABAC aspects



Strengthening the third party ABAC compliance framework including due diligence– For instance contractors, consultants



Increased awareness amongst employees and third parties; **Consistent communication** on ABAC across locations



Finance and audit teams better equipped on **maintenance of records and identification of red flags**



Strengthening the overall **vigilance mechanism**



Establishing a **culture of integrity, transparency and compliance**



Enhancing the **perception of the organisation**



Demonstrating to enforcement agencies and regulators that the organization is seeking to be in line with the latest standards



Leading by example within the **government sector**



Increased transparency amongst stakeholders on dedication and intent towards ABAC



Addressing **on-the-ground challenges** faced by personnel in their day-to-day activities

Your role as a business leader



Tone at the top (1/2)

The responsibility and accountability of the management is increasing, demanding a refresher in their roles and approach to deal with new risk and challenges. With the new normal of remote working, it is of paramount importance for the top management to exercise proper oversight on the employees, vendors and customers

01

Encourage reporting of unethical practices by senior management

02

Pandemic will test top management's capability in decision making capabilities when there are ethical dilemmas

03

Ensuring data privacy in the times of remote working

04

Special care to ensure ethical boundaries are not overstepped when handling personal data

05

Emphasis of importance of compliances

06

Holding the perpetrators accountable

Tone at the top (2/2)

Demonstrate commitment to organizational values and integrity in these unforeseen circumstances

Conduct virtual training on ethics and integrity

Boost employee morale

Create an open door policy for employees

Encourage to report any wrongdoings without the fear of loss of job

Stress on the importance of being compliant to internal controls laid down for various business processes and financial reporting

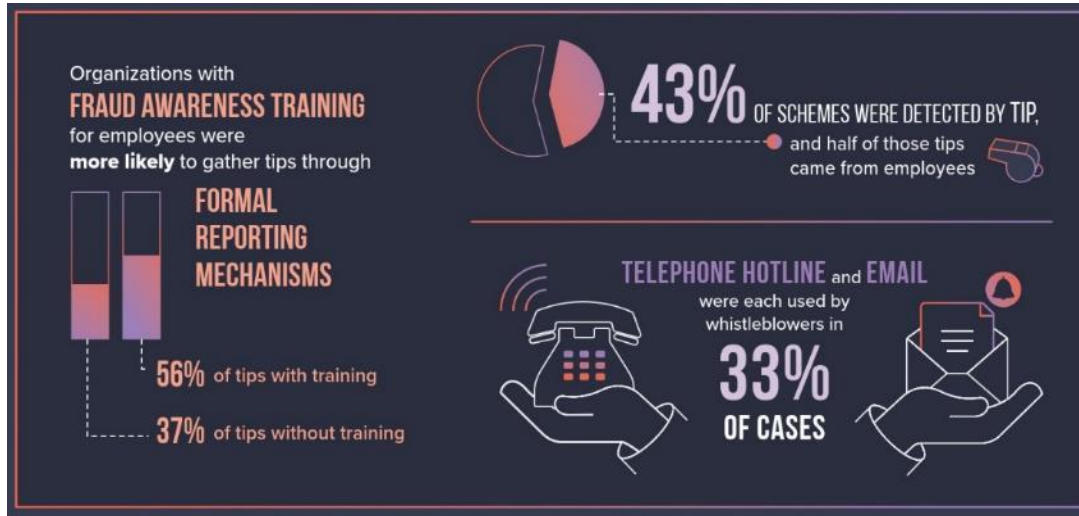
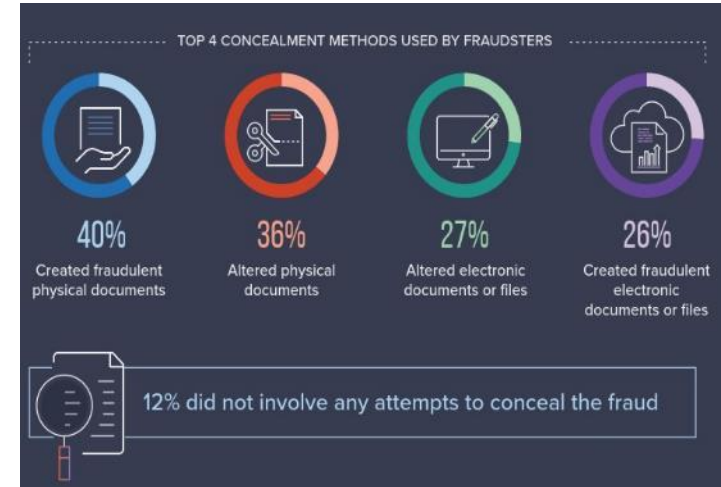
Have regular sessions with employees at all level to obtain feedback

Take corrective actions

Create a recognition and reward system

Reinventing internal controls (1/3)

- ▶ The implications are multi-faceted and will impact the administrative, commercial, legal and relationship aspect as businesses gear up to survive and face the new normal
- ▶ The prevailing uncertainties because of **COVID-19** may lead to individuals both within and outside the organization resorting to unethical or fraudulent practices
- ▶ Understanding the methods used to conceal their crimes can help organizations to detect and deter similar schemes in the future
- ▶ It is important to focus on the existent controls and augment them as required
- ▶ Responding to the current crisis with a focus on maintaining trust and continuity of business operations would be paramount



Case Study - Reinventing internal controls (2/3)

“Indicative only”

Questions for consideration

- ▶ Has your organization’s existing anti-fraud and compliance framework been tweaked to adjust to a new business model during the disruption?
- ▶ Does your organization have adequate access and anti-fraud control measures built into IT systems?
- ▶ Is your organization monitoring the funds allocated for new CSR projects and relief ventures?
- ▶ Has your organization re-examined employee related policies and procedures, including social distancing, privacy and remote working?



Case Study - Reinventing internal controls (3/3)

“Indicative only”

Questions for consideration

- ▶ Has your organization’s existing anti-fraud and compliance framework been tweaked to adjust to a new business model during the disruption?
- ▶ Does your organization have adequate access and anti-fraud control measures built into IT systems?
- ▶ Is your organization monitoring the funds allocated for new CSR projects and relief ventures?
- ▶ Has your organization re-examined employee related policies and procedures, including social distancing, privacy and remote working?

The role of compliance, ethics and governance will gain prominence in these turbulent times

Re-evaluation of third party risks

- ▶ Conduct due diligence of suppliers and customers
- ▶ Reassess the financial health of third party

Approval matrix

- ▶ Evaluate the effectiveness of segregation of duties
- ▶ Revisit maker-checker controls in remote work environment

Review of existing controls

- ▶ Revamping anti-bribery, anti-corruption clauses covered in existing policies
- ▶ Creating a policy for data privacy and confidentiality
- ▶ Enhancing governance and transparency by integration among different departments

Compliance

- ▶ Design and conduct virtual trainings for employees and third parties
- ▶ Design and regular review of various compliances
- ▶ Set up and review whistleblowing hotline

Cybersecurity resilience throughout COVID-19 pandemic



Prepare the workforce and promote well-being

Set expectations

Relax always “available” demands, but set clear goals and expectations

Establish social channels

Social channels keep employees and clients feeling connected and focused

Track, monitor and provide updates

Updates avoid spread of misinformation, panic, and decline in productivity

Awareness trainings

Provide employee training to protect against social engineering by hackers who attempt to exploit COVID-19

It's not too late. Your organization can take proactive steps now to adapt to changing workspace needs in the face of pandemic and to ensure continuity of business operations.



Leverage technology to expand digital workspace capabilities

Ramp up remote work capabilities

Enhance remote work infrastructure to scale and support business operations

Plan for response and business continuity

Review response plans and contingencies, such as alternate employee communication channels (e.g., phone, social media)

Secure communication and collaboration

Establish platforms that enable employees to work on day-to-day activities remotely

High touch technology for self service

Establish self-service platforms such as chatbots and IVR for issue management

Secure internet and Wi-Fi connections, virtual private networks (VPN) to connect to company's secured network when accessing company data, not installing new or unwanted software without the IT team's permission



Make cybersecurity a top priority

Ensure data security and backups

Review remote workforce data security needs, update policies and procedures, and communicate data handling practices

Secure virtual infrastructure

Review and fortify infrastructure security, such as for Virtual Private Networks and Virtual Desktop Infrastructure

Revamp endpoint and mobile security

Deploy or enhance end point and mobile security to monitor and respond to threats

Third-party sustainability

Get regular updates from dependent third-party security service providers; Revise SLA's as needed

Q/A

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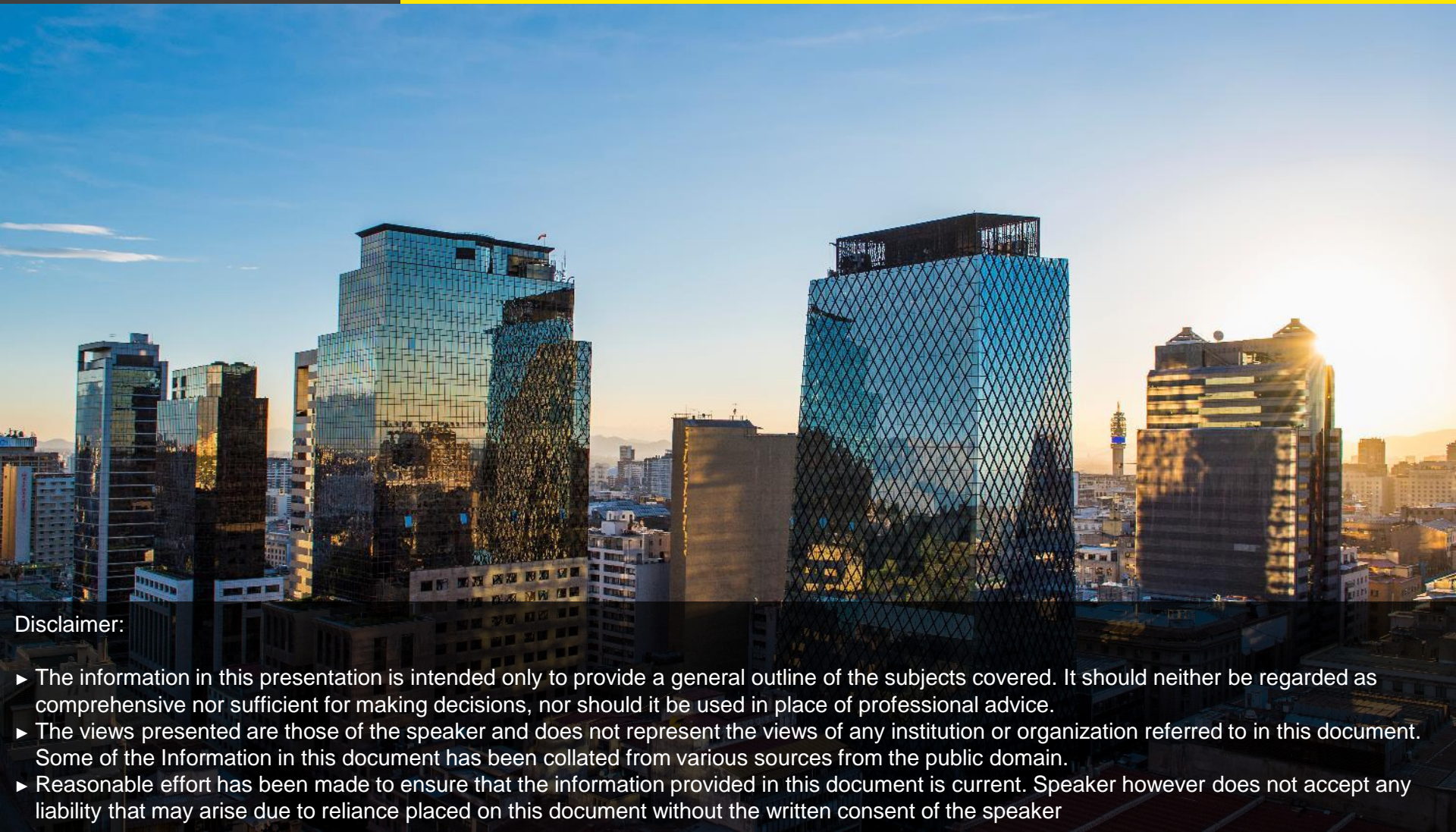
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