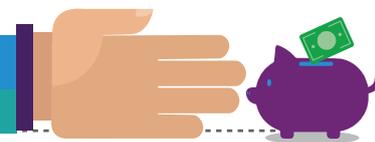




# Forensic and the Law





## World Economic Outlook Projections 2022

The attractiveness of the Indian economy is evident from the International Monetary Fund's (IMF) World Economic Outlook<sup>1</sup>, that projects a GDP growth of 9 per cent in 2022 (estimated GDP growth in 2021: 9 per cent), rebounding from the estimated GDP contraction of 7.3 per cent in 2020. This leap is attributable to the collective efforts of the government and private sectors, and public resilience.

## Corruption Perception Index

India is still considered to be high-risk in terms of its susceptibility towards bribery, corruption, fraud and other misconduct. This is reflected in the results of Transparency International's Corruption Perception Index 2021 where India has been ranked 85 out of 180 countries<sup>2</sup>.

## Pervasive issues faced in India

On account of the following, India continues to be considered a high-risk jurisdiction:

- Dealing with government and regulatory agencies (including influence of politicians or politically connected individuals over business functioning)
- Heavy reliance on third parties and agents
- Lack of transparency and controls, especially with small and medium enterprises
- In certain pockets and sectors, business is still conducted in the traditional way, without adequate compliance mechanism.

# The need for collaboration between forensic investigators and law firms

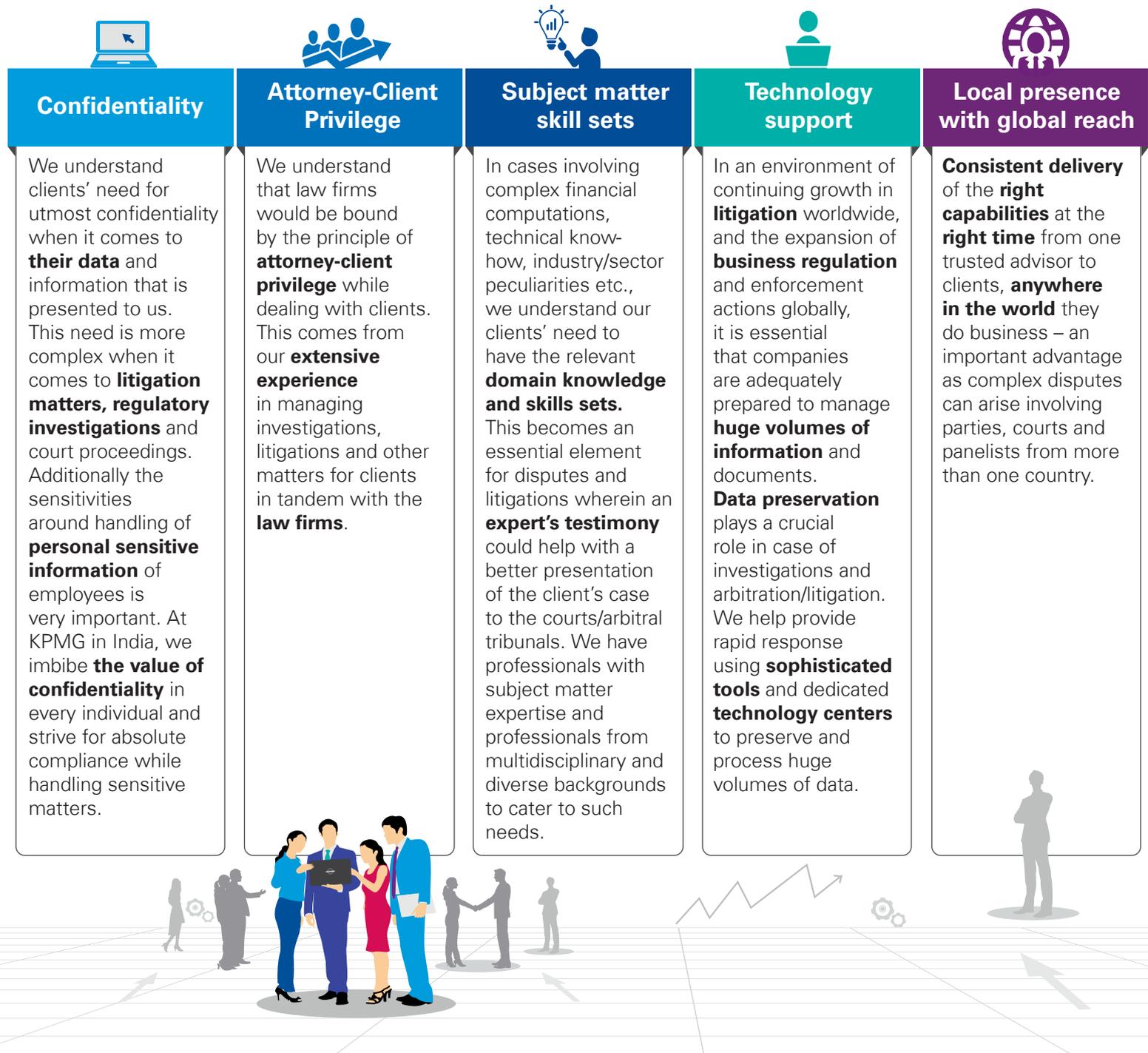
- Law firms often face difficult questions from their clients on various aspects of financial misstatements, fraud allegations, embezzlement and litigations involving complex accounting issues. More often than not, the legal aspects and the financial issues overlap and intertwine. In such scenarios, financial accountants with broad business acumen and forensic experience can help evaluate, analyse and present complex financial data in a clear and concise manner providing valuable insights to lawyers
- The changing dynamics of white collar crime in India, surge in regulatory investigations and continuously expanding web of arbitrations and litigation, further necessitates the need for such collaboration.



1. World Economic Outlook Update January 2022, International Monetary Fund

2. Corruption Perception Index (CPI) 2021 released by Transparency International in January 2022

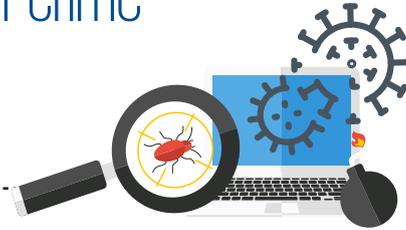
# Our understanding of clients' critical requirements



# Changing dynamics of fraud and white collar crime



During the last decade, the Indian economy has seen a spurt in cases of complex corporate frauds and corruption scandals in the form of large-scale financial misreporting, billions of dollars' worth of funds misappropriated by senior management/promoters, theft of intellectual property, issues of bribery and corruption in large government contracts, complex anti-trust cartels, etc.



The COVID-19 pandemic induced restrictions and increased reliance on technology have further complicated the fraud risk scenario. Conventional frauds have evolved with the advancement of technology. Fraudsters now use technology in unconventional ways to perpetrate frauds, which are more sophisticated and pervasive like cybercrime, identity thefts, etc.



# Regulatory and economic landscape in India

## Whistleblowing activity in India

- Over the past decade, India has seen significant legislative changes aimed at establishing a framework for reporting any wrong doing and enhancing protection of whistleblowers like the Whistleblower's Protection Act
- Corporates have also established reporting platforms where whistleblowers can remain anonymous
- There has been a significant increase in reporting of concerns around ethical misconduct.

## Globalisation and integration

- Free flow of capital between economies
- Increase in Foreign Direct Investment (FDI)
- As more multinational corporations (MNCs) invest in India, risk of cross border investigations increased
- Increased risk of non-compliance with U.S. Foreign Corrupt Practices Act (FCPA) and U.K. Bribery Act (UKBA) and other anti-graft regulations.

## The Prevention of Corruption (Amendment) Act, 2018

- Introduces the offence of 'giving a bribe' as a direct offence on par with 'taking a bribe'
- Enhanced punishment of minimum three years extendable up to seven years with fines for bribe givers and bribe takers
- Protection against coercive bribery provided the victim comes forward within seven days
- Corporate bribery criminalised, superior functionaries to be held responsible if their employee/agent is proved to have bribed public servants with their approval
- Defined undue advantage i.e. any gratification whatever, other than legal remuneration
- Immediate attachment and forfeiture of illegal property of a public servant under Prevention of Money Laundering Act
- Provision for timely trial, to be concluded within two years extendable up to four years.

## Companies Act 2013 and Companies (Auditor's Report) Order ('CARO'), 2020

- Extensive definition of fraud incorporated in the act
- Authorises the auditor to act as a whistleblower and report fraud to the board or regulatory agencies
- Places the primary responsibility for prevention and detection of fraud on the company's board of directors and management
- Empowers the Serious Fraud Investigation Office (SFIO) to probe companies suspected of fraud
- Mandatory requirement to have a vigil mechanism for certain classes of companies
- Declaration of compliance with the requirements under this law is now also a part of the Board's reporting\*.

*\*As per MCA notification on Companies (Accounts) Amendment Rules, 2018*

*CARO 2020 has changed the landscape of reporting of frauds by the auditors*

# Arbitration/litigation

The growing liberalisation in India and extraordinary business growth in the last decade has increased the interaction between Indian and international organisations.

This has resulted in remapping of global borders for organisations across industries. Such growth and interaction has considerably increased the number of disputes taking place in India.

Private equity firms which are fast gaining ground in India have encountered several cases of management fraud followed by disputes and loss of investment.

## Evolving arbitration landscape

- Recent amendments to The Arbitration and Conciliation Act, 1996 have focused on the promotion of India as a hub for domestic and global arbitrations
- In addition to entry of international institutions like the ICC and SIAC in India, arbitration centres have been set up in Mumbai and Delhi with state-of-the-art facilities at par with London, Paris, Geneva, Singapore, and New York
- To accommodate the COVID-19 pandemic induced financial stress, the Indian government suspended select provisions of the Insolvency and Bankruptcy Code, 2016 for initiation of corporate insolvency resolution process, for a period of one year ended 31 March 2021
- While this resulted in decline in the insolvency applications admitted from 1,978 in FY2019-20 to 499 in FY2020-21, there has been a surge in arbitration cases filed during this period<sup>3</sup>
- India tops the list of foreign users at the SIAC, with over 67% of the international cases filed at the SIAC in 2020, indicating increased reliance on alternate dispute resolution mechanism<sup>4</sup>.

### The need for experts:

Expert reports are gradually becoming a norm in arbitration proceedings since subject matter experts are seen as independent, professional and unbiased. Quantification of settlement amounts in many disputes, particularly those involving international arbitration, involve analysis of complex financial and economic data, technical issues, cultural diversity, language complexities and currencies. The determination of such settlement amounts requires specific subject matter expertise and therefore necessitates the presence of an expert witness. The latter can provide an objective and simple assessment of the case and help resolve the dispute effectively and efficiently.

#### Need for experts

- Articulates client's position in a clear and concise manner
- Provides specific subject matter information
- Helps the Tribunal take an informed decision
- Can be an economist, architect, engineer or a forensic accountant, among others.

#### Importance of evidence

- Essential element in commercial arbitrations
- Favourable impact on the outcome of a dispute
- Can be oral or documented.

3. Know About Insolvency and Bankruptcy Board of India as on March, 2021 - Published by Insolvency and Bankruptcy Board of India

4. Annual report 2020 - Singapore International Arbitration Centre ([https://www.siac.org.sg/images/stories/articles/annual\\_report/SIAC\\_Annual\\_Report\\_2020.pdf](https://www.siac.org.sg/images/stories/articles/annual_report/SIAC_Annual_Report_2020.pdf))

# Our service offerings



# Our service offerings

## 1- Investigations

### a. Whistle-blower and internal investigations

Conduct fact finding investigations covering preservation of evidence, forensic review of transactions, review of electronically stored information (ESI), interviews and provide factual reports to the assist management

### b. Compliance investigations

KPMG in India provides proactive (risk assessment) and reactive (investigations) compliance investigations services under various anti-bribery, anti-corruption and anti-money laundering regulations applicable under different jurisdictions such as The Prevention of Corruption Act, 1988 (PCA), The Prevention of Money Laundering Act, 2002 (PMLA), The FCPA 1977 and The UKBA 2010

### c. Intellectual property investigations

Help clients collate, preserve and present evidence to protect and enforce their IP rights, investigate IP infringements, conduct market research and assessment of the reverse supply chain.

KPMG in India also provides software asset management services to ascertain potential non-compliances, IP advisory and open source software services.

### d. Due diligence support

KPMG in India conducts pre-investment and post investment due diligence to help multinationals manage the potential risk of non-compliance when they collaborate with their Indian business partners.



## 2- Arbitration and litigation support services

In India, KPMG's forensic professionals assist litigants and their legal counsel with potentially costly and disruptive disputes and litigation. They identify and analyse key accounting, economic and financial issues around which the dispute revolves. KPMG in India offers a wide range of Dispute Advisory Services, including:

### a. Expert witness programme

- KPMG in India has a wide range of experienced forensic accounting advisory professionals who provide impartial and independent testimony to assist in resolution of disputes, whether in litigation, arbitration or mediation
- Our 'expert witnesses' are widely recognised as credible on technical and financial aspects of disputes. Our compelling and easy to understand reporting of issues at hand, opinions and conclusions are supported by reliable, strong and robust oral evidence.

### b. Accounting and financial analysis

- Financial statement analysis to ascertain fund diversion or siphoning and financial misstatement, if any
- Forensic data analytics to identify red flags and potentially fictitious revenue and expenditure items and / or assets and liability items.

### c. Valuations and quantification of profit/loss

- Professionals with sound accounting knowledge and expertise to help with claims quantification under dispute, fair and just assessment of loss of profit/ damages

### d. Assessment of construction delays

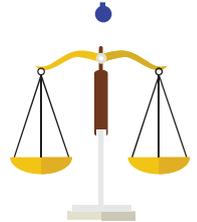
- Assist clients in computation and/or validation of claims pertaining to extension of time by performing delay analysis on the ground of substantiation records, merit, tenability and correctness of computations.
- Experienced professionals having commensurate experience with reference to relevant standards and methodology as specified in the protocols of Society of Construction Law or Association for the Advancement of Cost Engineering.

### e. Technology support for arbitration/litigation

- Forensic preservation and review of documents, correspondence, email data, server data and other information deemed useful to dispute resolution

### f. Asset tracing

- Assist clients in gathering information on individuals and assets through public domain searches, access to databases, field enquiries and investigations across the globe.



### 3- Competition Law

#### a. Anti-trust investigations

- The Competition Commission of India (CCI) is an aggressive and an active regulator in India that imposes hefty penalties in case of anti-competitive practices like cartelisation, price manipulation etc. KPMG in India offers the following services to help companies respond to such investigations:
  - Proactive review of agreements, business practices and internal communications to identify documents that may be flagged by the regulators
  - Implement robust compliance programmes to prevent, detect and respond to potential issues

- Assist companies facing regulatory investigations and cartelisation charges, examine internal records and ascertain the financial and reputational impact on account of violation and preserve relevant information
- Persuade regulators to drop any alleged antitrust charges and help reduce the damages if charges are not dropped based on an independent assessment.

#### b. Economic and financial analysis

- Analysis of internal records and publicly available data to ascertain the existence of price manipulations, cartels and other such anti-competitive practices or to assess the relevant market.



### 4- Privilege consulting

Globalisation and an increasingly aggressive enforcement environment requires an understanding of complex, overlapping and sometimes contradictory international regulations. It also requires a deep understanding of the investigative methods used by government regulators and their investigating arms. KPMG in India offers the following services to help clients manage the significant legal, commercial and reputational risk arising from regulatory investigations:

- Support on cross-border, domestic regulatory and criminal investigations by conducting internal fact finding reviews through company appointed law firms

or in-house counsels

- Preservation of electronically stored information
- Assist with internal fact finding exercises through forensic assessment of transactions and information that are subject matter of any investigation
- Conduct employee interviews to gather facts around the subject matter of any investigation
- Forensic technology support to help respond to requests from regulatory agencies
- Provide trainings to key employees on topics around regulatory investigations.



### 5- Other services

**a. E-discovery hub:** In India, KPMG's e-discovery hub provides infrastructure, tools and a multidisciplinary team with extensive experience. Services include acquisition of targeted and system specific data, processing, review and reporting.

**b. Investigations under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act:** KPMG in India can help organisations set up robust preventive frameworks, investigate complaints and assist in case of a legal action as well as conduct in-person workshops and online awareness modules.

#### c. Advisory services

- **Corporate governance framework and ethics helpline:** Assist in establishing a vigilance mechanism and ethics helpline and manage it
- **Advising on policies and procedures:** Advising management on policies and recommendations on preventive and detective practices across geographies and industries
- **Training on corporate governance, ethics and code of conduct:** Employee training on compliance with organisations' ethics policies and code of conduct and Anti-Bribery and Corruption (ABAC) training.



# Why KPMG in India

KPMG in India works with law firms to help their clients achieve the highest level of integrity. Enhanced by technology and infused with real-world insights, our Forensic professionals seek to transform how companies identify, mitigate, and respond to risk, saving time and money.

We bridge the gap between law firms and their clients and help them effectively manage the costs and risks of complying with new regulations and enforcement activity.

We help assess, design, and implement internal controls and compliance programmes to mitigate vulnerabilities to fraud and misconduct and assist in the prevention, detection and response to fraud, waste, abuse, and other forms of misconduct.

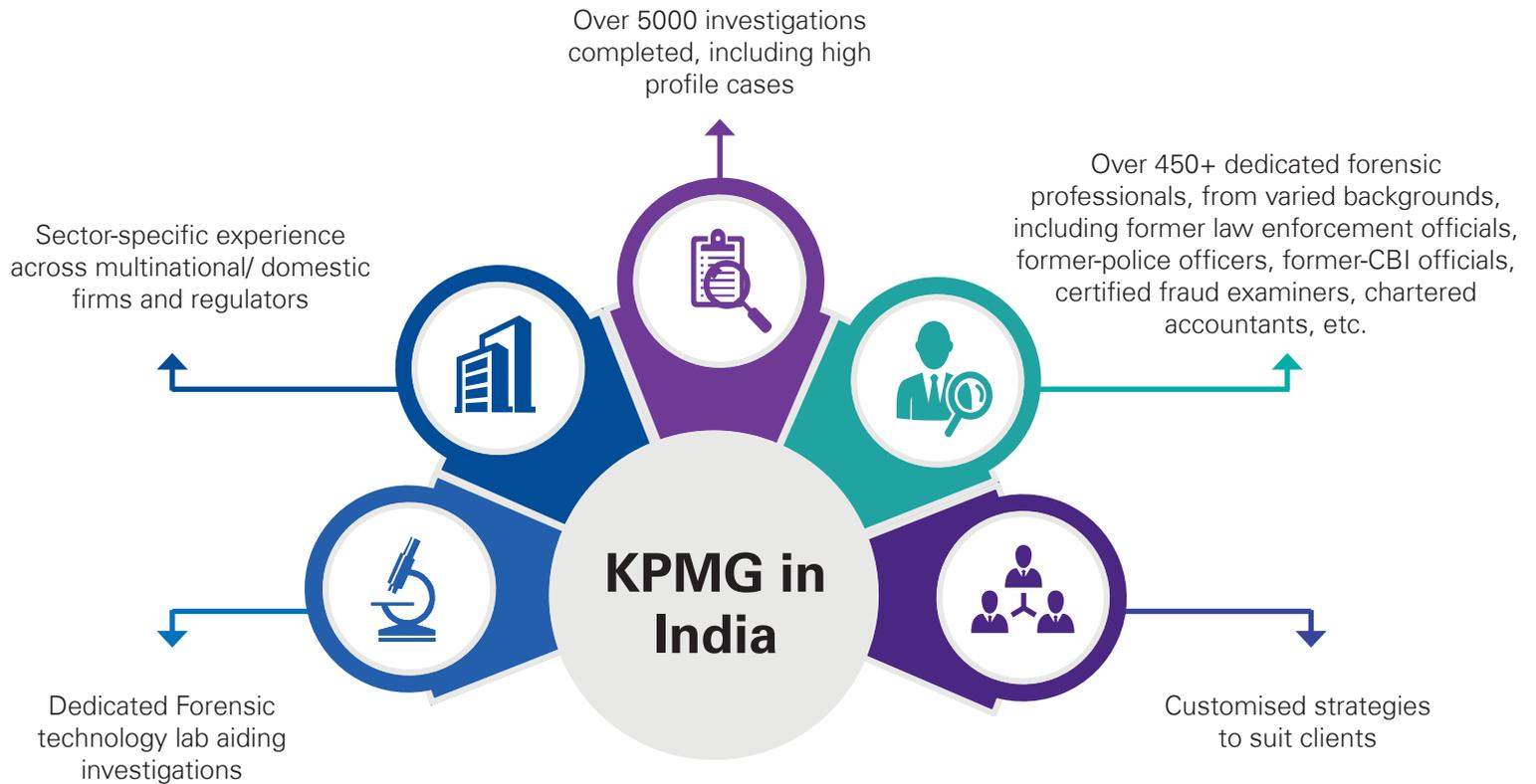
We understand that helping businesses meet their unique challenges, manage risks, and navigate the dangers of costly

and disruptive litigation and investigations begins with an in-depth understanding of the industries in which they work. We bring together the right industry experience to better meet the distinct needs of businesses and deliver real results.

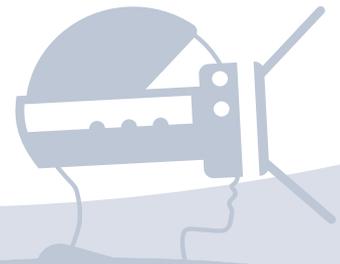
Our global network of member firms provide access to deep forensic capabilities around the world. In the forensic space, we have over 3,600 multidisciplinary professionals who work out of 42 forensic accredited practices. Our professionals not only help businesses discover the facts underlying concerns about fraud and misconduct but also assist them in assessing and mitigating the vulnerabilities to such activities. We help manage costs and efficiencies of complex and troubled projects, and we also deliver a broad range of services to help prevent and resolve commercial disputes, including the assessment of damages; the resolutions of accounting, audit, and finance related issues; and expert witness services.



# Our capabilities



Using a wide range of sophisticated technology tools, KPMG Forensic also helps organisations address the risks and costs involved with evidence and discovery management. Our professionals work alongside clients and their legal counsel to handle information from the time of its creation to its preservation, collection, analysis, and presentation in discovery.

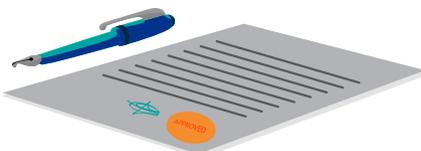


# Select credentials



## Oil and gas dispute on cost recovery and other claims

KPMG was appointed by a leading international law firm to act as a forensic expert witness and provide assistance on a dispute between two leading Oil and Gas companies (an Indian Oil and Gas Company and a global leader in oil and gas segment) and the Government of India. The dispute centers on the proposal to increase the Cost Recovery Limit (CRL) among other claims like royalty, service tax and interpretation of certain provisions of the Production Sharing Contract (PSC). We have been asked to quantify the cost incurred for development activity, ascertain the excess cost incurred over and above the CRL and quantify other claims forming a part of the dispute and act as an expert witness in the international arbitration proceedings.



## Dispute on wrongful termination of a Rights Agreement

KPMG was appointed by a Singapore-based sports marketing company. The customer, as part of International arbitration proceedings filed a claim for loss of profit claim against the Cricket Control Board of a major test playing nation for a wrongful termination of the Rights Agreement. We were asked to appear as Expert Witness in the arbitration proceeding in the Singapore International Arbitration Center. Our client was awarded loss of profits nominally less than what was computed by us.



## Claim for termination of agreement

KPMG was appointed by a Singapore-based sports marketing company. The customer, as part of International arbitration proceedings filed a claim for loss of profit claim against the Cricket Control Board of a major test playing nation for a wrongful termination of the Rights Agreement. We were asked to appear as Expert Witness in the arbitration proceeding in the Singapore International Arbitration Center. Our client was awarded loss of profits nominally less than what was computed by us.



### **Allegation of rigged bidding process in the real estate sector**

KPMG was appointed by a construction and real estate company in India which faced allegations of an inappropriate award of contract for one of the largest townships in the country. We were asked to provide an expert accountant's report on the qualifying criteria and eligibility of our client as well as the bidder who was challenging the tendering and bidding process adopted by the state government authorities. Our report has been submitted to the Supreme Court of India.



### **Intellectual property infringement**

A leading metering technology company in the energy sector engaged KPMG Forensic to provide an expert opinion on future losses due to intellectual property infringement and breach of contract by its technology strategic alliance partner. We provided an expert accountant report on the quantum of potential future loss claims submission in the Singapore International Arbitration Centre. We also appeared as an expert witness in the arbitration proceedings.



### **Investigation**

KPMG was appointed by a leading law firm in the country to assist in investigating one of the largest frauds in the country in one of the leading IT companies having global operations. We helped in securing evidence through electronic discovery management and digital evidence recovery, conducting a detailed investigation and forensic data analytics to gather facts, assessing the true financial position of the company and restating the financial statements. We also helped in dealing with multiple regulators in India and overseas as well as liaise with the legal counsel.



### Quantification and expert assistance in claim for delayed completion

An Indian company and a foreign company executed a contract for construction of a thermal power plant. KPMG in India was engaged by the Indian company's legal counsel to assist in the quantification of claims for delayed completion and appear as an expert witness in arbitration proceedings. We reviewed various agreements, project schedules, resource deployment for delay events, etc. and identified various heads of claims. We also reviewed the claims and evaluated their contractual admissibility against commercial terms, events of delay and claim amounts. We also assisted in window analysis for delays attributable to the client and their overall impact on the baseline schedule using PRIMAVERA P6 software.



### Assistance to legal counsel in asset tracing

KPMG in India was appointed by the legal counsel of a global pharmaceutical company to assist in the identification and recoverability of assets, for the enforcement of an arbitral award in the client's favour. We assisted in the tracing of funds by analysing and reviewing financial information pertaining to a complex web of multiple companies and conducted public domain searches and field enquiries to identify assets, which were subsequently disclosed before the Delhi High Court by the client's legal counsel. We also helped in identifying a direct/indirect nexus between the client's erstwhile owners and a Singapore trust.



### Complex accounting fraud investigation

KPMG in India was appointed by a leading law firm in the country to assist in investigating one of the largest frauds in the country in a leading IT company having global operations. We helped in securing evidence through electronic discovery management and digital evidence recovery, conducting a detailed investigation and forensic data analytics to gather facts, assessing the true financial position of the company and restating the financial statements. We also helped in dealing with multiple regulators in India and overseas as well as liaising with the legal counsel.

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