



ECONOMIC
LAW
PRACTICE
ADVOCATES & SOLICITORS



WHITE COLLAR CRIME

ABOUT US

Set up in 2001 with the aim of bringing together a diverse set of professionals to deliver effective solutions for clients, Economic Laws Practice (ELP) is today a leading full-service law firm in India with 200+ professionals – lawyers, chartered accountants, cost accountants, company secretaries and economists – assisting clients on transactional, advisory, litigation, regulatory, and tax matters.

OUR JOURNEY

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- 2001** Start of our journey in Mumbai
5 professionals
 - 2003** New Delhi office is set up
17 professionals
 - 2007** Office opens in Ahmedabad
36 professionals
 - 2008** Office opens in Pune
52 professionals
 - 2013** Bangalore and Chennai offices open
ELP crosses the 100 people mark and is home to 108 professionals
 - 2015** Ranked in top-10 Indian law firms
156 professionals
 - 2018** 6 offices pan-India
200+ professionals
Full-service offering with 14 practice groups & sector-focused teams
India -based member firm for Taxand network

Understanding the evolving regulatory framework and potential consequences of non-compliance

- Government of India's sustained efforts toward improving corporate governance and transparency in India Inc. have led to a stricter regulatory regime governing different facets of business. From improved global rankings to heightened industry confidence, these efforts have been well received by the domestic and foreign business community.
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- Mirroring the global spotlight, the evolving narrative on white collar crimes in India is characterized by stricter sectoral regulations; heightened corporate governance and disclosure requirements; intensified scrutiny by domestic and international agencies, shareholders and internal committees; increased exposure stemming from data-related concerns, anti-corruption provisions, including extra-territorial outreach of statutes such as FCPA, UKBA, etc.
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- In an attempt to curb the increasing incidence of white collar crimes, compliance and reporting requirements are being strengthened across most major jurisdictions globally. In India, there is a clear attempt to offset the increased – and often onerous – compliance requirements by streamlining the overall procedure, while simultaneously shifting to a 'self-governance and reporting model', backed by significant criminal sanctions to motivate better adherence.
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- Companies based in India and their key management personnel (KMPs) are now facing a significantly higher exposure and risk of scrutiny and criminal investigations. Potential adverse outcomes can take the form of financial consequences in the form of penalties, blacklisting and voiding of contracts; restrictions on personal liberty, foreign travel or even arrest; personal liability on directors, promoters and other KMPs, all of which warrant a strict and continuing focus on effectively discharging all relevant compliance requirements.
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- In order to stay ahead of the evolving requirements, it is imperative to continually assess compliance status, identify potential gaps and undertake corrective steps as needed. Integrating ongoing compliance checks with standard SOPs can help reduce operational risk as well as risk to promoters and other key management personnel.
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- It is equally critical to understand the criminal consequences of breach or non-compliance, in order to create an effective response strategy to mitigate potential damage to the corporate brand, KMPs or employees, in case the worst-case scenario ever materializes.

Our White Collar Crimes practice group comprises of lawyers and economists who help clients assess potential risk and, thereafter, create appropriate risk mitigation strategies. Starting from compliance audits and responding to show cause notices, our specialists assist clients in investigations by government agencies and represent them before various courts, tribunals, commissions and other quasi-judicial bodies.



Corporate Compliance



Corporate malpractices



Anti-bribery & corruption



Money laundering



Attorney-client privilege



Tax considerations

Potential Triggers

- Multi-faceted, extant compliance requirements impacting financial, operational and strategic decisions
- Re-structured liability thresholds, which trigger civil and/or criminal liability on companies in respect of actions of directors & KMPs, as well as employees, officers, auditors, experts, consultants
- Serious implications for non-compliance, including penalties, forfeiture and arrest
- Multitude of agencies that are empowered to investigate related but distinct offences arising out of the same subject matter
- Typically, these take the form of fraud, insider trading, falsification of accounts and statements
- An expansive definition of fraud and strict liability standards under relevant laws significantly increases non-compliance risk
- Regulatory agencies such as Serious Fraud Investigation Office (SFIO) are vested with wide powers to arrest any person and seize documents
- Increasing focus on governance, accountability, transparency is leading to stricter action by concerned agencies
- Recent amendment to India's primary anti-corruption legislation (Prevention of Corruption Act, 1988) significantly strengthens the applicable legal framework governing public and private corruption
- 'Corporate bribery' – giving bribes to public servants by commercial organisations – has now been made an offence
- Companies also need to consider the compliance requirements mandated by foreign anti-corruption legislations such as the FCPA, UK Bribery Act, etc.
- Enforcement agencies across the globe are increasingly coordinating efforts and exchanging information to prosecute instances of money laundering
- ED has very wide powers of arrest and attach property
- There is a proposal pending before the Indian Parliament to include 'corporate fraud' as defined under Section 447 of Companies Act, 2013 in the list of 'scheduled offences', so as to enable initiation of proceedings under PMLA
- Not all communication between lawyers and clients can be accorded the status of 'privileged and confidential communications' under Indian laws
- Ascertaining whether privilege applies to any material or communication can often prove challenging and depends on specific facts and circumstances
- It is pertinent for companies to understand the specific provisions contained in Evidence Act, 1872
- Tax payer is put at a high risk of tax, interest, penalty and prosecution if purposeful evasion is proved against him
- Government has put in stringent provisions in the tax laws (Income Tax Act, 1961, Customs Act, 1962, Goods and Service Tax and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015) to deal with undisclosed income and assets
- Frequent changes/updates to applicable laws necessitate continuing updation of internal taxation systems

What We Offer

- Risk identification, assessment and mitigation for compliances mandated by sector-specific laws as well as Companies Act, 2013
- Advise on risk mitigation strategies, including compounding, disclosures, cooperation and penalties and assessment of impact on businesses
- Devising customised solutions for simultaneous engagement with multiple regulatory and enforcement agencies such as SFIO, SEBI, RoC, MCA, RBI, CBI and ED
- Advise on creating robust internal policies for prevention, detection and investigation of corporate fraud/misconduct, including codes of conduct, anti-bribery policies and accounting policies.
- Capability to work with forensic auditors and experts for devising effective risk mitigation strategies
- Representation during proceedings before judicial, adjudicatory and appellate fora
- Devising engagement strategy with enforcement agencies during investigations
- Representation and conduct of proceedings initiated under Prevention of Corruption Act before judicial fora, including CBI Special Courts, High Courts and the Supreme Court
- Securing timely reliefs (anticipatory bails, bails) for directors, KMPs and officers
- Advise on compliance with the anti-corruption legislations in force in the USA and UK
- Advice on engaging with the Directorate of Enforcement during investigations, and ability to secure reliefs such as anticipatory bails, bails for directors, key managerial personnel and other officers
- Representation and conduct of proceedings initiated under Prevention of Money Laundering Act before judicial fora, including ED Adjudicating Authority, ED Appellate Authority, PMLA Special Courts, High Courts and Supreme Court
- Strict adherence to the mandate of Sections 126-129 of the Evidence Act in relation to privileged and confidential communications with clients
- Depending upon sensitivity of the issue at hand, advisable to enter into formal representation agreements at the outset
- Review of show cause notices/queries and allegations contained therein
- Undertaking in-depth research and drafting responses in relation to show cause notices and other communication from the tax authorities
- Capability to work with forensic auditors and experts for devising effective risk mitigation strategies
- Representation before the relevant authorities at the departmental level as well as different judicial fora

PREVENTION OF CORRUPTION (AMENDMENT) ACT, 2018: KEY TAKEAWAYS

Giving of a bribe to a public servant

- Giving of bribe by any person to a public servant for improper performance of public duty or to improperly perform a public duty, has specifically been made an offence. This also covers giving bribe to a 3rd person (intermediary) for inducing/rewarding a public servant for such purpose.
- While there was no specific provision earlier making 'giving of a bribe' an offence, the amendment specifically addresses the supply side of corruption, thereby bringing this legislation in line with other international standards.
- The law now distinguishes between a collusive bribe giver and a coerced bribe giver. In the latter case, the person is not guilty of the offence, provided he reports the same to the enforcement agency/investigating authority within seven days of giving the bribe.
- Furthermore, when a person gives a bribe to a public servant after informing the law enforcement agency/investigating authority to assist them in such investigation, it will not be an offence.

Condition of *Mens Rea*

- A public servant will be said to have committed an offence of criminal misconduct only where the intention to enrich himself illicitly is proven.
- Earlier, there was no element of *mens rea*, or 'criminal intent' required as a threshold to initiate prosecution. Resultantly, *bona fide* decisions made by public servants were considered the same as *mala fide* ones. This protective provision will encourage honest public servants to take *bona fide* decisions without the fear of being prosecuted.

Pre-investigation approval

- The police cannot conduct any inquiry or investigation in relation to an offence alleged to have been committed by a public servant without the prior approval of the relevant authority or Government.
- Prior approval is not required where the public servant is caught red-handed.
- This provision has attracted adverse scrutiny, given its potential for delaying investigation by the regulatory authorities against public servants.

Offences by commercial organisations

- It will be an offence by the commercial organisation where any person associated with it gives a bribe to a public servant with an intention to obtain/retain business/advantage in conduct of business for the organisation. This offence is punishable with a fine. A person said to be associated with a commercial organisation includes an employee, an agent or subsidiary of such an organisation.
- Where the offence is committed with consent or connivance of any director, manager, secretary or any other officer of the organisation, any such person shall be punishable with imprisonment for a term of not less than three years, which may extend to seven years and a fine.
- It shall be a defence for the commercial organisation to prove that it had in place adequate procedures in compliance with prescribed guidelines to prevent persons associated with it from undertaking any corrupt conduct.
- This is a positive development and places the onus on the organisations to set up a comprehensive, clear, practical and accessible anti-corruption compliance program in line with adequate procedures and guidelines to be prescribed by Central Government. Generally, such programs involve having anti-corruption compliance and ethics codes, training of employees, conducting third party audits, whistle-blower mechanism, monitoring mechanism, etc.

Other Key amendments

- Specific powers have been given to the Special Judge conducting a trial under the POCA to pass orders in relation to the attachment/confiscation of money or property procured by means of an offence under POCA.
- Trials under POCA are to be concluded within two years, which can be extended by the Special Judge after recording reasons for such extension, provided that the trial should not extend beyond a period of four years.

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