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Knowledge Management

Semi-Annual Anti-Corruption, White Collar Crimes & Investigations Compendium 2024

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Introduction

This Compendium consolidates all key developments pertaining to Anti-Corruption, White Collar Crimes & Investigations Practice, which were circulated as JSA Newsletters during the first 2 (two) quarters of 2024 (i.e., from January 2024 to June 2024).

The first two quarters of 2024 have witnessed significant enforcement actions and judicial developments. In addition to multiple arrests, raids and investigations undertaken by the Central Bureau of Investigation (“CBI”) and the Enforcement Directorate (“ED”), there are some notable judicial developments with respect to the Prevention of Money Laundering Act, 2002 (“PMLA”).

Cybercrimes in India

According to the latest National Crime Records Bureau (NCRB) report of December 2023 there is a 24.4% increase in the number of cybercrime cases registered (65,893 (sixty-five thousand eight hundred and ninety-three) cases) in 2022, as compared to 2021 (52,974 (fifty-two thousand nine hundred and seventy-four) cases).

Further, to strengthen the mechanism to deal with cybercrimes in a comprehensive and coordinated manner, the Central Government, through Ministry of Home Affairs has set up the ‘Indian Cyber Crime Coordination Centre’ (I4C) to deal with all types of cybercrime in the country. The ‘National Cyber Crime Reporting Portal’ was launched and operationalised in August 2019, as a part of the I4C, to enable public to report incidents pertaining to all types of cybercrimes, with special focus on cybercrimes against women and children. Cybercrime incidents reported on this portal, their conversion into FIRs and subsequent action thereon are handled by the State/Union Territory law enforcement agencies concerned as per the provisions of the law. The ‘Citizen Financial Cyber Fraud Reporting and Management System’, under I4C, is launched for immediate reporting of financial frauds and to stop siphoning off funds by the fraudster.

Further, the Minister of State for Home Affairs, in a written reply (dated February 6, 2024) to a question in the Lok Sabha published that more than 1.12 million (one point twelve million) cases of financial cyber fraud were reported on the **Citizen Financial Cyber Fraud Reporting Management System** in 2023, with Uttar Pradesh reporting highest cases.

Separately, the Indian Computer Emergency Response Team (“**CERT-In**”) (established under the Information Technology Act, 2000 (“**IT Act**”)) functions as the national agency with respect to cyber security incidents and issues alerts and directions/advisories to body corporates in the interest sovereignty and security of India which are mandatory in nature. Data from the latest CERT-In report of November 2023 shows that 13,91,457 (thirteen lakh ninety-one thousand four hundred and fifty-seven) cyber security incidents were reported in 2022, however lower than 14,02,809 (fourteen lakh two thousand eight hundred and nine) in 2021. The number was 2,08,456 (two lakh eight thousand four hundred and fifty-six) in 2018.

Surat City Police launched the nation’s first AI-powered chatbot, “Surat Cyber Mitra Chatbot,” to combat cybercrime. The chatbot provides instant information, guidance and reporting options related to online fraud and security. Available in Gujarati, Hindi and English, it aims to create a safer digital environment for citizens.

A surge in cybercrime in India

India is grappling with a significant surge in cybercrime, registering an average of over 7,000 (seven thousand) complaints per day up to May 2024. Major cyber fraudsters targeting India are believed to operate from Southeast Asian countries, including Cambodia, Laos and Myanmar. As per media sources, this marks a continued upward trend, with a 113.7% increase in cybercrime complaints from 2021 to 2022 and 60.9% from 2022 to 2023. Further, between January and April 2024, the Indian Cybercrime Coordination Centre received 4,599 (four thousand five hundred and ninety-nine) digital fraud complaints amounting to INR 1,203.06 crore (Indian Rupees one thousand two hundred and three point zero six crore), alongside trading scams worth INR 14,204.83 crore (Indian Rupees fourteen thousand two hundred and four point eight three crore), investment scams totaling to INR 2,225.82 crore (Indian Rupees two thousand two hundred and twenty-five point eight two crore) and dating scams worth INR 132,31,00,000 (Indian Rupees one hundred and thirty-two crore thirty-one lakh), resulting in approximately 10,000 (ten thousand) First Information Report (“**FIRs**”) being filed. Additionally, the World Cyber Crime Index (“**WCI**”), which highlights the substantial contribution of each nation state to global cybercrime, has placed

India in the 10th position. WCI is developed as a partnership between the University of Oxford and UNSW Canberra which ranks countries based on their contribution to global cybercrime. With Russia placed at the top with the world cybercrime index score of 58.39 (fifty-eight point three nine), followed by Ukraine and China, India ranks 10th with a WCI score of 6.13 (six point one three).

7 (seven) new cybercrime police stations in Telangana to combat rising cybercrimes

In response to rising cybercrimes, the Telangana Government has established exclusive cybercrime police stations (“**CCPS**”), operational from April 2, 2024. These stations will handle cases involving losses of INR 1,00,000 (Indian Rupees one lakh) and above, while smaller cases will be addressed by local police. Each CCPS will be led by a Deputy Superintendent of Police cadre Officer and staffed with sub-inspectors and constables. The Telangana State Cyber Security Bureau will manage high-impact cases involving national security and critical infrastructure, aiming to enhance cybersecurity across the State.

CBI undertakes nationwide search operation against fraudulent application based investment scheme

The CBI in May 2024 undertook nationwide searches ranging across 30 (thirty) locations in 10 (ten) States/Union Territories as part of an ongoing investigation into an app-based fraudulent investment scheme linked to the HPZ Token App. HPZ is an app-based token which promises users high returns through investment in mining machines for Bitcoin and other crypto currencies. Previously, CBI had registered a case under various provisions of the IPC and the IT Act against 2(two) private companies and their directors.

Legislative/Regulatory Developments

On March 20, 2024, the Government of India (“**GoI**”) notified the Fact Checking Unit (“**FCU**”) of the Press Information Bureau (“**PIB**”) under the Information Technology (Intermediary Guidelines and Digital

Media Ethics Code) Rules 2021, with a stated objective of acting as a deterrent to creators and disseminators of fake news and misinformation pertaining to the GoI. Subsequently, the Supreme Court of India (“**Supreme Court**”) stayed the Union Government's notification of the FCU till the Bombay High Court finally decides the constitutional challenge to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2023 (“**IT Amendment Rules 2023**”)¹. The Supreme Court was hearing a challenge against the Bombay High Court’s refusal to stay the notification of the FCU. It observed that the impact of the IT Amendment Rules 2023 on the fundamental right of speech and expression would fall for consideration in the challenge before the Bombay High Court. The decision would also impact social media intermediaries.

Introduction of revamped Penal and Procedural criminal laws i.e., (a) Bhartiya Nyaya Sanhita, 2023; (b) Bharatiya Nagarik Suraksha Sanhita, 2023; and (c) the Bharatiya Sakshya Adhinyam, 2023 to replace the existing Indian Penal Code, 1860 (“**IPC**”), Code of Criminal Procedure, 1973 (“**CrPC**”) and Indian Evidence Act, 1872, respectively.

Public Examinations (Prevention of Unfair Means) Act, 2024



The Public Examinations (Prevention of Unfair Means) Act, 2024 (“**the Public Examination Act**”), enacted by Parliament in February 2024 was officially implemented on June 21, 2024, following its

publication in the Official Gazette. The Public Examination Act seeks to prevent the use of unfair means in public examinations and prohibits collusion or conspiracy to facilitate indulgence in any unfair means. This significant development coincides with ongoing concerns over alleged misconduct during examinations such as National Eligibility cum Entrance Test (NEET) and University Grants Commission National Eligibility Test (UGC NET) which thus questions the integrity in public examinations.

Judicial Discourse

1. The Supreme Court in *CBI v. Kapil Wadhawan*² has held that the statutory right to default bail gets defeated upon filing of a charge sheet. Once a charge sheet under Section 173(2) of the CrPC is filed against all the accused within the prescribed time limit, it is immaterial if the investigation remains pending with respect to some of the accused or for production of some documents.
2. The Supreme Court in *Mariam Fasihuddin v. State*,³ has deprecated the practice of filing supplementary charge sheets based on pre-existing material. Charge sheets filed pursuant to further investigation conducted under Section 173(8) of the CrPC must necessarily be based on new evidence.
3. The Supreme Court dismissed the review petition against its judgment in *Ram Kishore Arora v. ED*⁴, thereby upholding the position that an ED officer providing grounds of arrest to the accused within 24 (twenty-four) hours after arrest (instead of at the time of arrest) is sufficient compliance of Section 19(1) of the PMLA and Article 22(1) of the Constitution of India.
4. The Supreme Court in *R.K. Gupta vs. Union of India*⁵ has left open the question whether officers of the Serious Fraud Investigation Office (“**SFIO**”) are police officers under the CrPC. However, the Supreme Court did not interfere with the view of the Delhi High Court that if in the course of an investigation by SFIO, offences under the IPC emerge, then the SFIO has the power to investigate such IPC offences as well.

¹ Editors Guild of India vs. Union of India & Ors. | Special Leave Petition (Civil) No. 6717-6719 of 2024.

² 2024 SCC OnLine SC 66.

³ 2024 SCC OnLine SC 58.

⁴ R.P.(CrI.) No. 33/2024 in CrI. Appeal No. 3865/2023.

⁵ SLP (CrI.) No. 451/2024.

5. A 7 (seven) judge Constitution Bench of the Supreme Court in the case of ***Sita Soren vs. Union of India***⁶ has held that members of the Parliament and state legislatures do not enjoy parliamentary immunity for acts of bribery. It was further opined that the offence of bribery is complete at the point in time when the legislator accepts bribe and it is agnostic to the performance of the agreed action/promise.
6. A 5 (five) judge Constitution Bench of the Supreme Court in ***High Court Bar Association, Allahabad vs. State of UP & Ors.***,⁷ overruled the previous decision of the court in *Asian Resurfacing of Road Agency v. Central Bureau of Investigation*⁸, which had held that interim orders passed by High Courts staying trials in civil and criminal cases would automatically expire after six months from the date of the order, unless expressly extended by the High Courts. The Constitution Bench held that directions passed in *Asian Resurfacing* were beyond the scope of Article 142 of the Constitution and interfered with the jurisdiction of High Courts under Article 226 of the Constitution.
7. The Supreme Court in ***Tarsem Lal vs. Directorate of Enforcement Jalandhar Zonal Office***,⁹ gave a *prima facie* view that an accused under the PMLA cannot be arrested under Section 19 of the PMLA after the Special Court has taken cognisance of a complaint under Section 44 of the PMLA.
8. The Supreme Court in ***Najmunisha vs. State of Gujarat***¹⁰ has held that search and seizure powers of officers under Section 41(2) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“**NDPS Act**”) do not violate the fundamental right of an accused against self-incrimination under Article 20(3) of the Constitution of India. The Supreme Court observed that the provision stands regulated by reasonable restrictions within the provision itself.
9. The Supreme Court in ***IBBI vs. Satyanarayan Bankatlal Malu***¹¹ held that a sessions judge acting as a Special Court under the Companies Act, 2013 has the power to issue process for criminal offences under the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) punishable by less than 2 (two) years of imprisonment. The Supreme court rejected the contention of the accused that a Magistrate would be the appropriate court on the reasoning that Section 236 of the IBC had ‘incorporated by legislation’ Section 435 of the Companies Act, 2013 as it stood in 2016, which provision gave sessions judge such jurisdiction.
10. The Supreme Court in ***Tarsem Lal vs. Enforcement Directorate***¹² has held that the ED is powerless to arrest an accused once the Special PMLA Court has taken cognisance of the ED’s complaint if the ED has not arrested such accused till such taking of cognisance. The Supreme Court also held that if an accused appears before the Special Court pursuant to a summons, he need not apply for bail, since he is not to be treated as if he is in custody. The court deprecated the practice of Special Courts requiring the accused to seek bail after cognisance is taken and the accused has appeared upon being summoned by the court.
11. The Supreme Court in ***Prabir Purkayastha vs. State (NCT of Delhi)***¹³ invalidated the arrest of NewsClick editor Mr. Purkayastha on the ground that he was not informed of the grounds of his arrest at the time of arrest or remand. The Supreme Court held that its decision in *Pankaj Bansal vs. Union of India*¹⁴, which mandated intimation of grounds of arrest to the accused in the context of the PMLA, equally applied to the Unlawful Activities (Prevention) Act, 1967. The Supreme Court further distinguished between ‘reasons for arrest’ and ‘grounds for arrest’, observing that an arrest memo with pre-typed ‘reasons for arrest’ is not *per se* intimation of grounds of arrest. ‘Grounds of arrest’ would be personal to the accused and furnish to him the basic facts which may allow him an opportunity to defend himself or seek bail.
12. The Delhi High Court in ***Arvind Kejriwal vs. Enforcement Directorate***¹⁵ has held that political parties are within the scope of Section 70 of the PMLA, which makes every person in charge of and responsible to such a party liable for the offence of money laundering. The court reasoned that Section

⁶ Cri. Appeal No. 451 of 2019.

⁷ Criminal Appeal No. 3589/2023.

⁸ AIR 2018 SC 2039.

⁹ SLP (Crl.) No(s). 121/2024.

¹⁰ 2024 SCC OnLine SC 520

¹¹ 2024 SCC OnLine SC 560

¹² 2024 SCC OnLine SC 971

¹³ 2024 SCC OnLine SC 934

¹⁴ 2023 SCC OnLine SC 1244

¹⁵ 2024 SCC OnLine Del 2685

70 of the PMLA includes an association of individuals such as a political party registered under the Representation of the People Act, 1951. The observation was made while upholding the legality of arrest of Delhi Chief Minister Mr. Kejriwal. The decision is important since it opens up new jurisprudence by extending vicarious liability, a concept known typically in corporate criminal law, to political parties.

13. A Full Bench of the Bombay High Court has held in ***Awadhesh Kumar Parasnath Pathak vs. State of Maharashtra***¹⁶ that despite the IT Act being special legislation having overriding effect, offences under the IPC may still be attracted if ingredients of the IPC offences are not otherwise covered. In particular, it observed that Sections 43 read with 66 of the IT Act may not cover the ingredient of 'deceiving' present only in the offence of cheating under Section 415 of the IPC. Similarly, Section 72 of the IT Act that punishes breach of confidentiality or privacy may not cover the ingredients of securing access dishonestly or for personal gain that are present in the IPC offences of misappropriation and breach of trust.
14. The Karnataka High Court in ***Dhanashree Ravindra Pandit vs. Income Tax Department***¹⁷ quashed the offence under Section 50 of the Black Money Act, 2015 on the ground that the Act came into force in 2015 and would not retrospectively apply to the offence of non-disclosure of income/assets held outside India that took place prior to 2015.

Enforcements Landscape

Jal Jeevan Mission Scam

The ED in January 2024 conducted follow up search operations at 8 (eight) locations in Jaipur and Banswara, Rajasthan under the PMLA at the residential premises of a former minister (Government of Rajasthan) and other government officials along with private individuals who have been accused in the Jal Jeevan Mission ("JJM") Scam. As per publicly available sources, unaccounted cash worth INR 39,00,000 (Indian Rupees thirty-nine lakh) along with various incriminating documents including property details, digital evidences, mobiles were seized by the

department during search operations. Total confiscations and seizures amounting to INR 11,42,00,000 (Indian Rupees eleven crore forty-two lakh) have been reported so far, which includes gold and silver items worth INR 6,50,00,000 (Indian Rupees six crore fifty lakh) as well.

Further the ED, in June 2024 arrested Public Health and Engineering Department ("PHED") contractor - during a raid in Jaipur. The contractor's name was also included in the case registered by Anti-Corruption Bureau, Jaipur. However, he could not be arrested previously as he was absconding for about 9 (nine) months. As per the media reports, this brings the total number of arrests in the case to 3 (three). Previously, the ED had made some arrests of people allegedly involved in securing tenders pertaining to JJM works based on purported fake and fabricated work completion by bribing senior PHED officials.

CBI raids former Jammu and Kashmir Governor in hydroelectric project case

The CBI in February 2024 raided former Jammu and Kashmir ("J&K") Governor in connection with malpractices and alleged corruption charges relating to the awarding of a civil work contract for the INR 2,200 crore (Indian Rupees two thousand and two hundred crore) Kiru Hydro Power Project in J&K to a private firm in 2019. Reportedly, the CBI has conducted searches across 8 (eight) States and Union Territories, including J&K. Digital and documentary evidence of huge cash deposits, investment in fixed deposits, investment in properties in various cities were recovered by CBI, as per media sources.

Massive Aadhaar- goods and services tax scam unveiled in Gujarat

In February 2024, the State Goods and Services Tax ("GST") department (in collaboration with the local police authorities) arrested 14 (fourteen) people in Gujarat for the Aadhaar-GST fake billing scam. The provisions of the Gujarat Control of Terrorism and Organised Crime Act 2015 ("GUJCTOC") were invoked against 20 (twenty) repeat offenders, who have also been linked to previous GST-Aadhaar scams. For the first time ever, provisions of the GUJCTOC have been invoked against 20 (twenty) suspects in Gujarat for a

¹⁶ 2024 SCC OnLine Bom 1074

¹⁷ 2024 SCC OnLine Kar 58

GST scam, involving the illegal use of Aadhar cards to generate fake GST identification number (“**GSTIN**”) numbers. The State authorities were brought to attention about this scam upon discovering 13,345 (thirteen thousand three hundred and forty-five) fraudulent GSTINs nationwide, of which around 4,308 (four thousand three hundred and eight) bogus GSTINs were traced back to Gujarat (representing the highest number in India). Consequently, a racket involving a novel modus operandi to obtain fake GST registrations, issue bogus bills for fictitious firms, claim Input Tax Credit (“**ITC**”) and evade taxes was uncovered and busted. The scam is reported to be over INR 15,000 crore (Indian Rupees fifteen thousand crore), as per media sources. It has become a serious matter with potential angles of money being laundered through hawala. The individuals booked have largely been found to be repeat offenders and some of them have been released on bail. The department is currently in the process of terminating the fake GSTIN in Gujarat while other states’ GST officials were also informed. The officials are also probing to find out who are the beneficiaries of ITC gained by using the fake GSTINs.

ED Attaches properties of former Punjab Minister

In March 2024, the ED filed a prosecution complaint against a former minister (Government of Punjab), under the PMLA before a Special Court in Mohali. The investigation was initiated based on FIRs registered by the Vigilance Bureau, Punjab, regarding various irregularities in the Forest Department of Punjab. The ED had alleged that the former minister had demanded and received significant bribes for issuing permits to cut down Khair trees, transferring/posting officers in the Forest Department and issuing no-objection certificates. As per media sources, it was revealed during the investigation that he had acquired proceeds of crime amounting to approximately INR 1,67,00,000 (Indian Rupees one crore sixty-seven lakh) during his tenure as Forest Minister. Earlier searches conducted on November 30, 2023, led to the seizure of incriminating material and he was subsequently arrested by the ED on January 15, 2024. Reportedly, the ED has provisionally attached properties worth INR 4,58,00,000 (Indian Rupees four crore fifty-eight lakh) owned by him and his sons under the PMLA. The matter is currently sub-judice and the investigation is currently ongoing as of date.

ED conducts search operations in online forex trading case

The ED in April 2024, conducted searches across Mumbai, Chennai, Kolkata and Delhi as part of an ongoing investigation under the provisions of the PMLA involving the OctaFx Trading App and website (“**OctaFx**”), allegedly accused of defrauding investors to the tune of INR 500,00,000 (Indian Rupees five hundred crore). As per publicly available sources, the ED froze INR 2,70,00,000 (Indian Rupees two crore seventy lakh) in funds and seized documents and digital devices related to the international forex scam involving brokers and traders. Total confiscations and seizures of assets amounting to INR 35,00,00,000 (Indian Rupees thirty-five crore), including cryptocurrencies, bank funds and gold coins, have been reported so far. The probe was initiated pursuant to the FIR filed at Shivaji Nagar Police Station, Pune, alleging that OctaFx manipulated trade activities on its platform, causing losses to investors. The illegal forex operations are alleged to have been conducted without approval of the Reserve Bank of India and the funds were managed and diverted to shell companies associated with OctaFx entities in Spain, Russia, Georgia and Dubai.

CBI arrests the assistant director of Food Safety and Standards Authority of India in bribery case

The CBI in May 2024 reportedly arrested an Assistant Director (“**AD**”) of Food Safety and Standards Authority of India (“**FSSAI**”) and 3(three) private sector employees for demanding and accepting bribes amounting to INR 1,20,000 (Indian Rupees one lakh twenty thousand) for the purpose of clearing pending bills of a private company. A case was registered by CBI under the Prevention of Corruption Act, 1988 (“**PC Act**”) against the AD, FSSAI, who was involved in illegal and corrupt practices of demanding and accepting bribes for dishonest discharge of public duty in his capacity as a public servant. As per publicly available sources, searches were conducted at the office and residential premises of the accused which led to the recovery of INR 1,80,00,000 (Indian Rupees one crore eighty lakh) (approx.) cash, about 45 (forty-five) grams of gold and other incriminating documents. The arrested individuals have been remanded to police custody as the investigation continues.

CBI files final chargesheet in 'Land-For-Job-Scam'



In June 2024, CBI had filed the final charge-sheet in connection with 'Land-For-Job Scam' allegedly involving former Union Minister of Railways, Lalu Prasad. A total of 78 (seventy-eight) accused individuals (comprising of the former Union Railway Minister Lalu Prasad Yadav, his family members, high-ranking public officials and other private individuals) have been charged under the provisions of the IPC and the PC Act.

Former Indian Administrative Service officer arrested in Chhattisgarh liquor scam probe

The ED has uncovered an alleged liquor scam in Chhattisgarh, implicating a former Indian Administrative Service ("IAS") officer as the 'kingpin' of the liquor syndicate operating in Chhattisgarh. The investigation revealed that between 2019 and 2022, bribes were paid through the distillers, off-the-books sales of kacha liquor, cartel formation and commissions from foreign liquor license holders. These corrupt practices led to proceeds estimated at over INR 2,100 crore (Indian Rupees two thousand one hundred crore). As per media sources, ED has asserted evidence of INR 14,41,00,000 (Indian Rupees fourteen crore forty-one lakh) receipts by the former IAS officer. Subsequent to these revelations, the former IAS officer was arrested.

International Developments

United States Department of Justice adopts new whistleblower policy

In March 2024, the United States Department of Justice ("DOJ") announced the Whistleblower Rewards Program, which seeks to target the corporate and financial misconduct by encouraging individuals to report previously undisclosed wrongdoing. It goes beyond the existing programs of the same genus run by various other enforcement agencies such as the Securities and Exchange Commission ("SEC") and the Commodities Futures Trading Commission in scope. It targets major misconduct involving the U.S. financial system, foreign corruption cases outside the jurisdiction of the SEC, including Foreign Corrupt Practices Act ("FCPA") violations by non-issuers and violations of the recently enacted Foreign Extortion Prevention Act and domestic corruption cases, especially those involving illegal corporate payments to government officials.

Global Software Company (SAP) pays DOJ and SEC USD 222,000,000 (US Dollars two hundred and twenty-two million) to resolve FCPA violations

In January 2024, SAP (a DAX 30 (thirty) listed Company) agreed to pay the DOJ and SEC around USD 222,000,000 (US Dollars two hundred and twenty-two million) in penalties and disgorgement to resolve FCPA violations related to (a) bribing government officials around the world and (b) books/record keeping provisions. SAP had made improper payments (between 2013 to 2018) to government officials at State-owned entities in South Africa and Indonesia to secure and retain software and professional services contracts. The bribes were made directly or through third-party intermediaries and took the form of cash, political contributions, luxury goods and shopping trips for government officials and their family members. Furthermore, the corporation had inaccurately recorded these bribes as legitimate business expenses. The DOJ's resolution includes a 3 (three) year Deferred Prosecution Agreement with SAP.

Transparency International's – Corruption Perception Index 2023

Transparency International (TI) recently published its 2023 Corruption Perceptions Index (CPI). The CPI evaluates the perceived levels of public-sector corruption in 180 (one hundred and eighty) countries

and provides one of the major data points used by compliance professionals, outside counsel and enforcement authorities in assessing the anti-corruption risk of doing business in particular countries. Countries and territories receive scores ranging between 0 (zero) (highly corrupt) and 100 (one hundred) (very clean). The top 10 (ten) countries for 2023 were Denmark, Finland, New Zealand, Norway, Singapore, Sweden, Switzerland, Netherlands, Germany and Luxembourg. Notably, in the Asia Pacific (APAC) region, India was ranked at 93 (ninety-three) with an overall score of 39 (thirty-nine) for 2023, which is one point lower than 2022.

European Union notifies Artificial Intelligence Act

On March 13, the European Parliament passed a draft of the Artificial Intelligence (“AI”) Act (“AI Act”) which is designed to delicately balance the promotion of innovation alongside the protection of citizens' rights. While adopting a risk-based approach, it recognises that different AI applications pose varying levels of risk which may be categorised into the following:

1. Minimal or No Risk AI systems (e.g., spam filters) will follow voluntary requirements and codes of conduct
2. High-Risk AI applications (e.g., medical devices or autonomous vehicles) face stricter requirements to ensure safety, transparency and accountability

Failure to comply with the provisions of the AI Act may lead to significant fines, up to 6% of the global annual turnover. The AI Act features a phased approach for implementation and enforcement. It will enter into force 20 (twenty) days after its publication in the Official Journal of the EU and become fully applicable²⁴ (twenty-four) months after its entry into force.

The Corporate Transparency Act goes into effect in United States

The Anti-Money Laundering Act of 2020, which is part of the National Defense Authorization Act for Fiscal Year 2021 (“NDAA”) and includes the Corporate Transparency Act (“CTA”), became a law in January 2021. The CTA aims to combat illicit activity including tax fraud, money laundering and financing for

terrorism by capturing more ownership information for specific U.S. businesses operating in or accessing the country’s market. Further, the new legislation which went into effect on January 1, 2024, mandates businesses (fulfilling certain criteria) must submit a Beneficial Ownership Information (BOI) Report to the U.S. Department of Treasury’s Financial Crimes Enforcement Network (FinCEN), providing details identifying individuals who are associated with the reporting company.

DOJ, Criminal Division announces self-disclosure pilot program for individuals



On April 15, 2024, the DOJ, Criminal Division introduced a pilot program on voluntary self-disclosure (“VSD”) for individuals, setting stringent criteria for individuals to qualify for a Non-Prosecution Agreement (“NPA”). To be eligible, individuals must voluntarily report a covered offense, such as violations under the FCPA or the Foreign Extortion Prevention Act, provide complete and original information previously unknown to the DOJ, repay all proceeds of the offense and offer full cooperation with the DOJ’s investigation. Additionally, the individual must not be the leader of the misconduct, an executive-level manager, or a domestic government official.

New European Union Regulations to combat money laundering adopted

On April 24, 2024, the European Parliament adopted a comprehensive anti-money laundering legislative package aimed at bolstering the European Union’s (“EU”) efforts to combat money laundering and terrorist financing. This package includes the establishment of a new central supervisory authority, the Anti-Money Laundering and Terrorist Financing

Authority (“**AMLA**”). Key aspects include extended access to beneficial ownership data, stricter due diligence obligations for entities such as banks, asset managers and crypto asset service providers and a new EUR 10,000 (Euro ten thousand) limit on cash payments. Professional football clubs will also be subject to these regulations from 2029. AMLA, based in Frankfurt, will oversee high-risk financial companies and coordinate national supervisory authorities. The formal adoption by EU Council is pending, after which the regulations will be published in the EU official journal.

Australia’s attorney general’s department publishes draft guidance on newly enacted ‘Failure to Prevent’ Bribery Law

On April 29, 2024, Australia’s attorney general’s department released preliminary guidance on compliance procedures for the newly enacted ‘failure to prevent’ foreign bribery law, introduced through the Crimes Legislation Amendment (Combatting Foreign Bribery) Bill 2023. Adopted by parliament in February 2024, this law mandates that the government provide guidance on what constitutes ‘adequate procedures’ to prevent foreign bribery, which companies can use as a defense against charges. The draft guidance covers 6 (six) key areas including proportional and effective bribery-prevention controls, senior management responsibilities, risk assessments, due diligence, communication, training and reporting. It emphasises that the ‘adequacy’ of a company’s procedures will be

judged on a case-by-case basis by the courts, rather than being assessed strictly as a checklist.

First declination under new corporate enforcement policy: DOJ demonstrates willingness to reward self-disclosing and cooperative companies in export control violations

On May 22, 2024, DOJ made a groundbreaking announcement by declining to prosecute MilliporeSigma, a biochemical company, for an employee’s export control violation, due to the company’s VSD and cooperation under the new National Security Division Enforcement Policy (“**NSD Policy**”). The case involved 2 (two) individuals, who fraudulently obtained and exported discounted products to China. MilliporeSigma’s swift actions led to the guilty pleas of the perpetrators and the disruption of the illegal activities. Deputy Attorney General Lisa Monaco emphasised this case as a clear message that businesses uncovering and reporting internal wrongdoing can avoid prosecution, reinforcing the DOJ’s prioritisation of sanctions and export control enforcement. The revised NSD Policy mainly modifies and broadens the DOJ’s VSD programs, incorporating extra safeguards specifically for mergers and acquisitions. This marks the first declination under the NSD Policy, which encourages companies to self-disclose, cooperate fully and remediate promptly, unless aggravating factors exist.



Anti-Corruption, White Collar Crimes & Investigations (AWCCI) Practice

JSA has a well-established and extensive White-Collar Crimes and Investigations practice which assists clients in dealing with diverse issues arising in relation to fraud, white collar crimes and violation of internal codes of conduct. We represent and advise domestic and multinationals corporates in India and across the globe. The AWCCI practice also complements our other practice areas which provide legal advice to corporates on diverse matters, including representation before other regulators such as the Reserve Bank of India (RBI), the Ministry of Corporate Affairs (MCA), the Department of Industry Policy and Promotion (DIPP) and the Securities & Exchange Board of India (SEBI) and the Directorate of Enforcement (ED) under the (Indian) Prevention of Money Laundering Act, 2002 (PMLA).

Our experienced white-collar teams:

1. undertake independent internal investigations or fact-finding exercise into claims of suspected misconduct including bribery, fraud, white collar crimes, breach of fiduciary and statutory duty, data privacy, and/or conflict of laws.
2. undertake interviewing and discussions with management and other employees of the company (including screening of representatives of agents and third parties) identified for investigation and as witnesses in such investigation.
3. advise on best practices for strengthening compliance programs to prevent and remediate corporate misconduct, including advice on implementation of internal controls to minimise the possibility of fraud, misuse or diversion of company funds, and fund channelisation.
4. advising on treatment of abettors, whistle-blowers and cooperating witnesses.
5. conduct audits on compliance with FCPA/ Bribery Act, Companies Act, 2013 and other anti-corruption laws.
6. draft and review standard documents such as purchase orders, independent contractor agreements, vendor and supplier agreements, distributorship agreements, and agency agreements to decrease exposure under the anti-corruption laws.
7. advise on treatment of permissible payments / receipts such as gifts, hospitality, sponsored travel, use of third-party agents, charitable contributions, and facilitation payments.
8. advising on establishment and implementation of global anti-corruption policies compliant with both local and extra territorial laws, procedures and other controls.

Our white-collar crimes litigation team routinely represent clients from across industries and sectors in different fora including all courts, tribunals and judicial bodies in India, along with arbitrations and other forms of dispute resolution.

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<p>Ranked Among Top 5 Law Firms in India for ESG Practice</p>	<p>Outstanding Energy and Infrastructure</p>	<p>Recognised in World's 100 best competition practices of 2024</p>
		
<p>19 Practices and 19 Ranked Lawyers</p>	<p>12 Practices and 42 Ranked Partners</p>	<p>Among Top 7 Best Overall Law Firms in India and 11 Ranked Practices</p>
	<p>IFLR1000 APAC Rankings 2023</p> <p>-----</p> <p>Banking & Finance Team of the Year</p> <p>-----</p> <p>Fintech Team of the Year</p> <p>-----</p>	<p>-----</p> <p>11 winning Deals in IBLJ Deals of the Year</p> <p>-----</p> <p>12 A List Lawyers in IBLJ Top 100 Lawyer List</p>
<p>18 Practices and 25 Ranked Lawyers</p>	<p>Restructuring & Insolvency Team of the Year</p>	 <p>14 Practices and 38 Ranked Lawyers</p>
		
<p>Employer of Choice 2024</p> <p>-----</p> <p>Energy and Resources Law Firm of the Year 2024</p> <p>-----</p> <p>Litigation Law Firm of the Year 2024</p> <p>-----</p> <p>Innovative Technologies Law Firm of the Year 2023</p> <p>-----</p> <p>Banking & Financial Services Law Firm of the Year 2022</p>	<p>7 Ranked Practices, 16 Ranked Lawyers</p> <p>-----</p> <p>Elite – Band 1 - Corporate/ M&A Practice</p> <p>-----</p> <p>3 Band 1 Practices</p> <p>-----</p> <p>4 Band 1 Lawyers, 1 Eminent Practitioner</p>	<p>Ranked #1 The Vahura Best Law Firms to Work Report, 2022</p> <p>-----</p> <p>Top 10 Best Law Firms for Women in 2022</p>  <p>7 Practices and 3 Ranked Lawyers</p>

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