

# White-Collar Crime Investigations – Milestones in 2019 and a Look Ahead

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## 1 The Year that Was

The year 2019 started with India being ranked 78th in the corruption perception index of Transparency International (a leading not for profit organisation). The year also saw several forensic investigations in the banking sector, where frauds rose to USD 10 billion in 2019, a 74% increase from 2018. Consequently, there was significant increase in the activity of enforcement and investigative agencies along with increased scrutiny by the regulators.

Interestingly, companies also took note of the increased enforcement activity in the white-collar crime space and there was an uptick in the internal investigations conducted by companies as a matter of abundant caution. However, on the legislative front, there was lesser movement, with the only major development being the appointment of the first Lokpal under the Lokpal and Lokayuktas Act, 2013 (Lokpal Act).

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The year 2019 witnessed increased activity from enforcement and investigative agencies along with strict scrutiny by regulators. An uptick was also observed in internal and forensic investigations. This update summarises some of these developments along with our expectations for the year 2020.

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## 2 Major Developments in 2019

### 2.1 Major Investigations in India

Indian enforcement and investigative agencies have been very active throughout the year. The Central Bureau of Investigation (CBI) booked companies and their officials under newly enacted provisions relating to

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corporate criminal liability in the Prevention of Corruption Act, 1988 (POCA). A few notable instances include the booking of an Indian subsidiary of an aircraft engine manufacturer for allegedly paying bribes as commission to an agent to win contracts from three public sector undertakings. In another case, the CBI booked the directors and chief pharmacist of a private-sector drug company for allegedly offering bribes to a drug inspector for approving cardiac medication that had already failed tests. Further, the CBI also registered 42 fresh cases of bank fraud, amounting to USD 1.02 billion, which were detected at 15 different banks. Overall, the CBI registered 580 cases in 2019 under various offenses. Towards the end of the year, the CBI also filed a fresh charge-sheet against the fugitive diamond merchant, Nirav Modi and 5 others in the USD 2 billion Punjab National Bank scam.

Running at a decent pace, the Enforcement Directorate (ED) investigated as many as 963 cases under the Prevention of Money Laundering Act, 2002, in the first half of the fiscal year 2019-2020. Money laundering cases were filed against some high-profile people such as former politicians, bank CEOs, and real estate tycoons. The ED also succeeded in getting fugitives alleged to be involved in the Augusta Westland VVIP chopper case and Air India money laundering case, back to India.

There was also significant activity at the Serious Fraud Investigation Office (SFIO) as it commenced its probe into allegations against a power generation company and its fifteen group companies for potential financial irregularities; a deposit-taking housing finance company for potential siphoning of funds; a former CFO of a defunct steel manufacturer for alleged fraudulent practices and manipulation of accounts and financial statements; and a private airline for alleged fund diversion.

However, repeated instances of multiple investigative agencies (such as CBI, ED, Economic Offences Wing of state governments and SFIO) investigating a single matter have been recorded during the year. A prominent example of such involvement is the engagement of 6 different investigative agencies while probing auditors in the IL&FS matter.

## 2.2 Regulatory Scrutiny in India and abroad

The year saw market regulators taking a tough stance against perpetrators of fraud. For instance, India's capital markets regulator, Securities and Exchange Board of India (SEBI), found the National Stock Exchange guilty of not exercising due diligence in the co-location scam and imposed a penalty of around USD 140 million besides barring it from accessing capital markets for six months. Further, it also banned Karvy Stock Broking Ltd from taking on new clients and executing trades for existing customers on account of its USD 280 million stockbroking scandal. Both matters were appealed and are pending before the Securities Appellate Tribunal. SEBI also found credit rating agencies lapsing and lacking in conduct for the rating of the non-convertible debentures of IL&FS. In a rare instance, the regulator levied a penalty of USD 35,000 each on three rating agencies for not exercising due-diligence and lapsing in their duties to investors by not taking timely rating actions.

This year, several companies have also settled charges with foreign regulators for payment of bribes to public servants in India. A multi-national medical devices company agreed to pay USD 7.8 million to settle charges with the US Securities and Exchange Commissions (SEC) for violation of the provisions of the Foreign Corrupt Practices Act, 1977 (FCPA). In this case, the company had not maintained sufficient internal accounting controls to detect the risk of improper payments for the sale of the company's products in India. Another multi-national retail corporation made a settlement of USD 282 million with the SEC and US Department of Justice for violations of the FCPA. This company had failed to operate a sufficient anti-corruption compliance

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program and adequately investigate or mitigate certain anti-corruption risks in connection with its India subsidiary.

### 2.3 Rising Corporate Governance Concerns

We saw a sharp rise in corporate governance issues during the year and the number of internal investigations conducted by company boards also increased exponentially. Several internal investigations were conducted by prominent companies across sectors such as information technology, power manufacturing, banking and e-commerce.

Most of the investigations were triggered by whistle-blower complaints and were conducted for issues of financial irregularities. However, such internal investigations were more common in public listed companies than in private companies.

### 2.4 Implementation of the Fugitive Economic Offenders Act, 2018

The implementation of the Fugitive Economic Offenders Act, 2018 (FEO Act) began in early 2019 with the former chairman of United Spirits being declared as India's first Fugitive Economic Offender. The law enacted in 2018, aims to reduce the incidences of financial defaulters absconding from India. While certain accused individuals have fled India, the Indian government has, in parallel, increased its efforts to extradite such individuals and has charged them under provisions of the POCA and the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015.

### 2.5 Other Legislative Developments

In order to bolster and cure India's perceived weakness in its anti-corruption machinery, the government appointed the first Lokpal under the Lokpal Act. Nearly six years after the passage of the Act which established the position, former Supreme Court Justice PC Ghose was appointed as the first anti-corruption ombudsperson or Lokpal, heading an eight-member anti-corruption watchdog charged with overseeing investigations against public servants.

Additionally, the Companies (Amendment) Act, 2019 decriminalised 16 corporate offences of a less serious nature. The rationale behind such a policy was to reduce the pendency of cases in the judicial system along with improving efficacy as the focus will then shift to more serious offences which deal with the element of fraud.

## 3 Looking Ahead

With the implementation of the FEO Act and the Lokpal Act gaining momentum, we expect a natural rise in the number of cases registered under these Acts in 2020. Further, taking cues from the IL&FS matter, increased coordination among investigative agencies should also be seen in the coming year to avoid multiplicity and jurisdictional overlaps in ongoing investigations.

With companies demonstrating seriousness towards ethics and compliance-related matters, we are also likely to see a further increase in internal investigations conducted by the companies.

*For a round-up of some of the key legal developments across sectors in 2019 and a brief insight on what to expect in 2020, please read our sector-wise updates, which can be accessed at: <https://trilegal.com/knowledge-repository/page/2/?title=milestone>*

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