

Anti-Bribery Risk Assessment

A Systematic Overview of 151 countries

von

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1. Auflage

[Anti-Bribery Risk Assessment – Grützner / Hommel / Moosmayer](#)

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Thematische Gliederung:

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Verlag C.H. Beck München 2011

Verlag C.H. Beck im Internet:

www.beck.de

ISBN 978 3 406 61006 6

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punished by imposition of a fine. However, the 1988 Act does not per se provide for vicarious liability of other officials of a business.

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Exhibit 1: Section 7, Public servant taking gratification other than legal remuneration in respect of an official Act

Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause © of section 2, or with any public servant, whether named or otherwise, shall be punished with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Explanation:

1. "Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will when serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.
2. "Gratification." The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.
3. "Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.
4. "A motive or reward for doing." A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.
5. Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification. as a reward for this service, the public servant has committed an offence under this section.

Exhibit 2: Prevention of Corruption Act, 1988

Section 20, Presumption where public servants accepts gratification other than legal remuneration

1. Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) or sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.
2. Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that

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gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

3. Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn.

Exhibit 3: Section 12, Punishment for abetment of offences defined in section 7 or 11

Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Exhibit 4: Section 11, Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant

Whoever, being a public servant, accept or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Exhibit 5: Prevention of Corruption Act, 1988

Section 2, Definitions

In this Act, unless the context otherwise, requires,—

1. “election” means any election, by whatever means held under any law for the purpose of select in members of Parliament or of any Legislature, local authority or other public authority;

2. “public duty” means a duty in the discharge of which the State, the public or the community at large has an interest;

[Explanation: In this clause “State” includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).]

3. “public servant” means—

a) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

b) any person in the service or pay of a local authority;

c) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

d) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

e) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commission appointed by such court;

f) any arbitrator or other person to whom any cause or matter has been referred for decision or report by court of justice or by a competent public authority;

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g) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

h) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

i) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

j) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

k) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any their teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

l) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

[Explanation 1: Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.]

[Explanation 2: Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.]

Exhibit 6: Application of Act to Government Companies

Definition of “Government Company”

6.17. For the purposes of [this Act], Government company means any company in which not less than fifty-one per cent of the [paid-up share capital] is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments [and includes a company which is a subsidiary of a Government company as thus defined.]

Exhibit 7 (COLLY): [34. Acts done by several persons in furtherance of common intention:

When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.]

Section 120B, Punishment of criminal conspiracy [120B. Punishment of criminal conspiracy

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

Section 405, Criminal breach of trust

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in

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which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

[Explanation 1: A person, being an employer³ [of an establishment whether exempted under section 17 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee’s contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

[Explanation 2: A person, being an employer, who deducts the employees’ contribution from the wages payable to the employee for credit to the Employees’ State Insurance Fund held and administered by the Employees’ State Insurance Corporation established under the Employees’ State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

Section 409, Criminal breach of trust by public servant, or by banker, merchant or agent

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with¹ [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 416, Cheating by personation

A person is said to “cheat by personation” if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

[Explanation: The offence is committed whether the individual personated is a real or imaginary person.]

Section 418, Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect

Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 420, Cheating and dishonestly inducing delivery of property

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Indian Penal Code (45 of 1860)

Section 425, Mischief

Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any

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property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.

[Explanation 1: It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.]

[Explanation 2: Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.]

Exhibit 8: Indian Penal Code (45 of 1860)

Section 95, Act causing slight harm

Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Exhibit 9: Section 109, Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Exhibit 10: Section 116, Abetment of offence punishable with imprisonment—if offence be not committed

Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both;

If abettor or person abetted be a public servant whose duty it is to prevent offence
– and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Exhibit 11: Section 1, Short title and extent

1. This Act may be called the prevention of Corruption Act, 1988.
2. It extends to the whole of India except the State of Jammu and Kashmir and it applies also to all citizens of India outside India.

Exhibit 12 (COLLY): Section 188, Offence committed outside India

When an offence is committed outside India

- a) by a citizen of India, whether on the high seas or elsewhere; or
- b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found: Provided that, notwithstanding anything in any of the preceding

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sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

Section 22: The Code of Criminal Procedure, 1973 to apply subject certain modifications

The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall in their application to any proceeding in relation to an offence punishable under this Act have effect as if,

1. in sub-section (1) of section 243, for the words “The accused shall then be called upon”, the words “The accused shall then be required to give in writing at once or within such time as the Court may allow, a list of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and he shall then be called upon” had been substituted;
2. in sub-section (2) of section 309, after the third proviso, the following proviso had been inserted, namely: “Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under section 397 has been made by a party to the proceeding.”;
3. after sub-section (2) of section 317, the following sub-section had been inserted, namely: “(3) Notwithstanding anything contained in sub-section (1) or section (2), the Judge may, if he thinks fit and for reasons to be recorded by him, proceed with enquiry or trial in the absence of the accused or his pleader and record the evidence of any witness subject to the right of the accused to recall the witness for cross-examination.”;
4. in sub-section (1) of section 397, before the *Explanation*, the following proviso had been inserted, namely: “Provided that where the powers under this section are exercised by a Court on an application made by a party to such proceedings, the Court shall not ordinarily call for the record of the proceedings:
 - a) without giving the other party an opportunity of showing cause why the record should not be called for; or
 - b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies.”.

Exhibit 13: Section 34, Extra-territorial jurisdiction

1[34. Extra-territorial jurisdiction.

An extradition offence committed by any person in a foreign State shall be deemed to have been committed in India and such person shall be liable to be prosecuted in India for such offence.

Exhibit 14: Extradition Act, 1962

Section 2, Definitions

In this Act, unless the context otherwise requires,

1. [“composite offence” means an act or conduct of a person occurred, wholly or in part, in a foreign State or in India but its effects or Intended effects, taken as a whole, would constitute an extradition offence In India or in a foreign State, as the case may be;]
2. “conviction” and “convicted” do not include or refer to a conviction which under foreign law is a conviction for contumacy, but the term “person accused” includes a person so convicted for contumacy;
3. [“extradition offence” means–
 - a) in relation to a foreign State, being a treaty State, an offence provided for in the extradition treaty with that State;
 - b) in relation to a foreign State other than a treaty State an offence punishable with imprisonment for a term which shall not be less than one year under the laws of India or of a foreign State and includes a composite offence;]

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4. “extradition treaty” means a treaty [agreement or arrangement) made by India with a foreign State Relating to the extradition of fugitive criminals, and includes any treaty [agreement or arrangement] relating to the extradition of fugitive criminals made before the 15th day of August, 1947, which extends to, and is binding on, India;
5. “foreign State” means any State outside India, and includes every constituent part, colony or dependency of such State;
6. [“fugitive criminal” means a person who is accused or convicted of an extradition offence within the jurisdiction of a foreign State and includes a person who, while in India, conspires, attempts to commit or incites or participates as an accomplice in the commission of an extradition offence in a foreign State;]
7. “Magistrate” means a Magistrate of the first class or a Presidency Magistrate;
8. “notified order” means an order notified in the official Gazette;
9. “prescribed” means prescribed by rules made under this Act; and
10. “treaty State” means a foreign State with which an extradition treaty is in operation.

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