

Luther.



White Collar Crime & Compliance

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Today, our clients are unceasingly confronted with stricter regulatory requirements and increased enforcement activity and surveillance by the investigating authorities, as well as the use of anti-White Collar Crime measures as an instrument of business regulation and economic policy. More than ever, acting as an entrepreneur requires careful consideration of the risks arising from criminal law and regulatory offences. This applies even more since negligence in this area may create a personal liability for the responsible decision-makers. Hence, we support our clients not only in crisis situations, internal fact-finding and the investigation of potential irregularities. We also provide preventive advice on implementing organizational processes to avoid, or at least minimize, legal risks.

With Luther, the specialist field of White Collar Crime & Compliance is led and supervised by our Munich office. Our lawyers are experts in this field, having long-standing experience in dealing with investigating authorities and criminal courts. This means that in an emergency situation, we can represent our clients appropriately.

Our view is that White Collar Crime & Compliance must be understood as an interdisciplinary matter, closely linked to other fields of law. Therefore, we have adopted an integrated approach which is alert to the demands of related legal fields (e.g., corporate, accounting, tax, and data protection law). Luther's full service approach means that we can call upon specialists in other fields of law as required, including experts in product security, employment and anti-trust law as well as M&A, and offer clients a single source solution. For cross-border proceedings, we collaborate with our firm's own international offices as well as with specialist colleagues in our wider network with whom we have collaborated for many years.

Luther offers the following range of activities and consulting services:

- White Collar Crime.
- Internal investigations.
- Compliance consulting.



I. White Collar Crime

The consistently growing influence of laws and the application of judicial regulation to business life have inflated the criminal and regulatory risks for companies and their decision makers.

Companies commonly face fines and are liable for other significant financial damages while their images and reputations suffer. Additionally, even during preliminary proceedings, they are subject to coercive measures such as dawn raids and seizures. The decision makers and employees involved are threatened by high claims for damages, sanctions under employment law and, in the worst cases, fines and / or imprisonment.

Our range of consulting services in the field of White Collar Crime provides not only company representation and defence but also the representation and defence of individuals.

We have significant expertise in the following fields where we have successfully advised and represented companies for many years:

- Corruption and bribery.
- Fraud.
- Employment criminal law.
- Pharmaceuticals criminal law.
- Violation of supervisory duties.
- Foreign trade law and arms control law.
- Accounting crimes.
- Data protection, IT and internet criminal law.
- Offences against company assets.
- Intellectual Property offences.
- Capital market and capital investment offences.
- Product criminal liability.
- Criminal tax law.
- Submission fraud.
- Environmental criminal law.
- Breach of trust and embezzlement.
- Criminal customs law.
- Money laundering.

1. Company representation and preventive advice

The fact that German criminal law still does not formally address itself to companies does not change the fact that companies can be formally involved in, and affected by, criminal proceedings.

Thus, companies and entrepreneurs are regularly subject to dawn raids and seizures by the criminal investigating authorities. Given the general political climate, the investigating authorities have “discovered” that companies can be objects of criminal investigation and are acting with increasing vigour. In the course of these proceedings, companies are at risk of penalties such as corporate fines, the deduction of excess profits, and adverse entries in the public register, with corresponding negative consequences for participation in public bidding and tenders. Moreover, the consequences of civil law actions (damage claims, termination of contracts) and the harm to the company’s reputation with its business partners, shareholders and the general public are matters of grave concern.

The professional advice of experts experienced in dealing with public investigations and investigators can decisively enhance your legal position in public proceedings.

a. Preventive advice on White Collar Crime

Our approach pursues the primary goal of preventing the risk of criminal law proceedings and penalties from being realized while preparing our clients fully for any emergency.

This comprises the following services:

- Identification of relevant sanction and liability risks; risk analysis.
- Training and organizational advice on preparing for coercive measures such as dawn raids (including mock dawn raids).
- Legal evaluation of the risks attached to specific matters under criminal and regulatory offences law.
- Review of business decisions and projects in order to advise on the avoidance of risks under criminal law.

In addition, our services in the field of **compliance advisory** show links and internal connections with the specific problems of White Collar Crime.

b. Representation and defence of companies

As varied as are the risks of falling foul of criminal law in a company’s everyday life, the interests of a company during legal proceedings are equally complex and diverse.

Our approach is to represent you in the best possible way according to your individual positioning.

The **defence of a company** comprises advising and representing companies whose staff members are subject to public prosecution or who, for other particular reasons, may be regarded as parties to the proceedings. Here, it is necessary to identify the interests of the company and, as appropriate, harmonize these interests with those of the employees or differentiate between these interests.

By taking this approach, we focus at all times on protecting the company from damages of any kind. We are understanding in our manner but firm in the way in which we deal with the matter. We have a professional relationship with the authorities but never lose sight of our client's interests.

Here, we offer these specific areas of expertise:

- Making representations to investigating authorities, other public agencies and any other parties to the proceedings in each situation.
- Support during dawn raids and other coercive measures.
- Internal fact finding.
- Development of a defence strategy.
- Selecting and securing the services of professional experts, for instance, in cases related to product liability.
- Assembling and co-ordinating teams of individual defence counsels; development of a common strategy.
- Legal assistance to witnesses (company decision makers and members of staff).
- Public relations; crisis management.

The business of an entrepreneur, whether global, international or transnational, attracts parallel risks under criminal and regulatory law. It is therefore necessary to take preventive measures addressing criminal law issues in different jurisdictions as well as the threat – or actual start – of criminal proceedings in other countries. We use the advantage of Luther's independence to assemble a team of colleagues who are, from our knowledge of them, the most appropriate and experienced for each specific case. We rely on our network of White Collar and criminal proceedings specialists, free of any "internal office pressures", to provide our clients with the most appropriate and experienced team for the specific case.

2. Individual representation and defence

The current attention to White Collar Crime means that for everyone involved in doing business, there is a real risk of being subject to public investigation. These investigations into allegations of corruption can be triggered by apparently routine business activity such as the implementation of contracts

for work and services; fixing the remuneration of managing directors; and even hospitality and sponsorship. Whenever the investigating authorities believe they have identified a bogus contract or cannot understand specific transactions, allegations related to criminal tax law are regularly made.

To the layman, the provisions of the so-called commercial administrative law appear almost totally inexplicable. These provisions set the public law framework regulating economic activity (e.g. licensing requirements) but as a rule also set provisions for sanctions of which individuals affected become aware only when it is too late.

Moreover, preliminary proceedings about company-related offences are directed almost automatically against senior management because of the legal characteristics of management liability in criminal law and the law on regulatory offences (Sec. 14 Criminal Code – *StBG* and Sec 9 Act on Regulatory Offences – *OwiG*).

In cases where subordinate staff are charged with offences, senior management is often confronted with the allegation of having neglected its supervisory duties. If proven, this allegation can lead to a company being fined under Sec. 30 OWiG, exposing the individual manager to the risk of claims for damages under civil law.

Criminal proceedings cause extreme stress and other burdens for the defendants. These include both coercive measures popular with the public (such as searches and investigations "behind the scenes" or before the eyes of neighbours and the family) and the uncertainty of future career prospects.

We represent individuals in all questions of White Collar Crime, corporate criminal law and tax criminal law. We act in investigations by customs inspectors, tax inspectors and other prosecuting and investigating authorities. Likewise we represent the interests of our clients before courts at all levels up to and including appeals to the German Federal Court of Justice.

Besides providing the "classic" defence services in cases of White Collar Crime, we also operate as a **representative of the injured person** and **provide legal assistance to witnesses** in White Collar Crime matters.

This can include the following activities:

- Preventive advice with respect to specific business models and transactions.
- Drafting and bringing formal criminal charges.

- Representation of individuals implicated or formally charged in pending criminal proceedings.
- Assisting witnesses before investigating authorities and the courts.

3. Parliamentary investigating committees

Experts in White Collar Crime and corporate criminal law are in any case familiar with the procedural regimes of parliamentary investigating committees. Yet parliamentary investigating committees also follow their own rules, chiefly due to the political interests which influence them. We have extensive experience in advising and representing companies and individuals before various parliamentary investigating committees at the regional and federal levels and are familiar with the preparations needed and the support required in such situations.

II. Internal investigations

1. Why internal investigations?

Internal investigations are regularly initiated when there are indications that the professional duties of former or current management or employees have been violated.

They serve especially for:

- Fact-finding.
- The assessment of possible claims for damages and other measures under employment law.
- The identification of weak spots in the compliance system.
- The confirmation of the internal "Tone from the Top".

Additionally, the courts have explicitly established the obligation of management to conduct internal investigations. Therefore, carrying out such investigations also indirectly serves to mitigate the liability of management and of supervisory bodies.

During pending preliminary proceedings, internal investigations can help to prepare a defensive strategy but can also signal the co-operation and "self-purification" of the company. Therefore, these investigations have a definite significant influence on the way the case is handled by the investigating authorities.

2. Our experience

On the basis of our experience, the following typical activities can be highlighted:

- Fact-finding and enforcement of claims for damages against former management and against insurance companies where high-risk transactions have been entered into, in breach of professional duties.
- Suspicion of breach of trust where there have been unwarranted payments to subsidiary companies and / or overly favourable financial commitments have been made.
- Suspicion of active and passive corruption.
- Examination of the use of consultants and agents in order to hide inappropriate payments.
- Clarification where there is a suspicion that claims have been allowed to become statute-barred.
- Fact-finding in the case of an allegation of the sabotage (equipment, work clothes).
- Suspicion of labour law-related offences (mobbing, sexual harassment).

3. Our approach

For the past several years, our team has increasingly conducted internal investigations. Consequently, we now have extensive experience regarding the preparation, conduct and processing of these investigations.

Our services, and the added value for our clients, comprise:

- Planning the investigation: establishing an investigation team, a project plan and an evaluation of the legal framework (e.g. regarding employment law and data protection law).
- Interviews by experienced interrogators who, unlike support staff, know the legal and factual framework of the subject of the investigation and will ask "the right questions" in critical situations.
- Drafting authentic protocols that may be used in court proceedings.
- When necessary, assignment and guidance of an IT service provider.
- Preparing communications accompanying the investigation with our contacts within the company, the supervisory bodies and, where necessary, the investigating authorities.
- Drafting convincing and extensive interim and final reports.
- Evaluating the progress and results of the investigation regarding any legal questions which may arise as well as identifying possible weak spots in the compliance organization.

Similarly to our services in white collar preventive advice and business representation, we can rely on experienced colleagues within our firm as well as our wider network of experienced practitioners when issues regarding other legal fields or jurisdictions require clarification.

On the basis of our years of experience in representing companies, we offer special expertise in dealing with cases of White Collar crime. Our clients will benefit not only during the conduct of the investigation but also when dealing with the results of the investigation when completed.

We present the results of the investigations we have carried out to the investigating authorities and enforce claims for damages before civil and employment courts.

III. Compliance Advice

We support our clients extensively and thoroughly in implementing a compliance system and in dealing with specific compliance risks.

We have assisted clients in the following areas:

1. Structuring and investigation of compliance systems

Many companies do not have compliance systems at their disposal or, indeed, do not recognise the need for such a system.

Initially we carry out a risk analysis based on company-specific risks as well as an analysis of the existing compliance requirements and regulations. The risks so identified are prioritised in co-ordination with our clients to form the basis of an improved compliance framework.

2. Structuring of compliance regulations

We regularly draft general sets of compliance rules (code of conduct) and regulations for key risk areas such as anti-corruption measures; invitations and gifts; vetting of business partners; data and IT security; cartel law; conflicts of interest; money laundering; and insider dealing.

This is carried out in close co-operation with specialist colleagues from the relevant disciplines within our firm.

3. Training

In order to give not only staff members but management an understanding of the compliance regulations and the legal framework, we regularly conduct personal training on compliance-related subjects for our clients.

4. Investigation of business partners

There is an increasing and obvious tendency for legislators, prosecutors and courts to hold companies responsible for the unfair practices of so-called third parties.

A company is, therefore, well-advised to examine prospective business partners (representatives, suppliers, customers, traders, agents) very carefully prior to establishing a business relationship and to monitor activity during the term of that relationship as well as investigating any reported unfair behaviour. In the case of an emergency, exonerating evidence is only accepted if the company proves that all appropriate measures have been taken.

We have developed several tools to enable our clients to investigate business partners, including questionnaires; checklists; personal interview procedures; and audit. Thanks to our many years of experience in dealing with prosecuting and tax authorities, we know which risk factors are priorities for them and accordingly can offer practical and risk-orientated examinations.

5. Compliance and M&A

The known cases of Ferrostaal (MAN ./ IPIC) and ENW ./EdF have made the necessity of an adequate compliance due diligence in transactions more than clear.

At the same time, the legislator (s. § 30 Abs. 2a OWiG n.v.) and the courts have extended the liability of legal successors for compliance violations by the target company at both national and European level.

Accordingly, the acquiring company is liable to be fined for “acquired compliance risks” while the seller faces a possible cancellation or reversal of supposedly completed transactions.

The individuals involved are criminally liable for inadequate preparation and implementation of the transaction as well as for neglected disclosure of compliance risks.

In order to avoid these risks, we offer our clients the following solutions:

- Compliance risk analysis of the target company.
- Examination of ongoing official proceedings.
- Conduct of compliance due diligence and creation of necessary documents for the examination.
- Clarification of identified suspicious facts for compliance violations.
- Attendance and representation during disclosures towards public authorities.

6. Functions as lawyer of confidence and implementation of systems for whistleblowers

As an additional service, we act for a large number of our clients as a so-called compliance lawyer of confidence (**legal confidant** / ombudsman) and support them in establishing channels for the anonymous reporting of compliance violations (informant / whistleblower hotlines).

For us, the role of a lawyer of confidence (legal confidant / ombudsman) as part of an effective compliance systems differs significantly from the role of the ombudsman at banks and insurance companies ("Mandate model").

The compliance lawyer of confidence (legal confidant) is and always remains a lawyer for the company. However, the informant has the opportunity to consult a person who on the one hand is close to the company, to validate the plausibility of allegations and to examine them, and who on the other hand is not obliged to reveal the identity of the informant due to contractual arrangements with that company.

Your team



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Dr. André Große Vorholt studied law in Freiburg i. Breisgau, Germany and was admitted to the German Bar in 1998. During his legal training and whilst working on his doctorate, he worked inter alia for the Max Planck Institute for Foreign and International Criminal Law, the Department for Criminal Law and Legal Theory in Freiburg i. Breisgau, Club Med and Credit Suisse. Dr. Große Vorholt worked as a lawyer in Heidelberg from 1998 to 2001 and as in-house lawyer for Deutsche Bahn AG in Frankfurt in 2002. He joined Luther in 2003 and headed Luther's Mannheim office until 2007. Dr. Große Vorholt has been the location head of Luther's Munich office since 2007 and also heads the department "Corporate Criminal and Criminal Tax Law". Dr. André Große Vorholt is the author of numerous publications concerning corporate criminal and criminal tax law and compliance (inter alia, the author of the compendium: "Corporate Criminal Law - Risks - Defence - Prevention", 2nd ed. 2007).

Focus of advice

Dr. André Große Vorholt specialises in corporate criminal and criminal tax law, liability law and compliance. He represents companies and individuals preliminary in investigations concerning criminal and administrative offences. Furthermore, he advises companies on recovery issues (enforcement of claims for damages) and within the scope of M&A transactions in identifying risks under corporate criminal law. Dr. Große Vorholt also advises companies within the scope of prevention on the introduction and implementation of efficient compliance structures. Dr. Große Vorholt also acts as legal confidant and ombudsman for some of his clients.

Honors & Distinctions

- Legal500 Germany (2018): At Luther Rechtsanwaltsgesellschaft mbH, the client base relies on the preventive and reactive advisory services provided by André Große Vorholt, who "really sets standards in Munich" and who also works as an ombudsman, assisting associations, medium-sized companies, large groups of companies and public-sector corporations with internal examinations, preliminary cross-border investigations and defence mandates in matters pertaining to business and tax law.
- WirtschaftsWoche (May 2017): Dr André Große Vorholt is listed as one of Germany's best lawyers in the category "Compliance".
- Legal500 Germany (2017): Under the guidance of the "very strong lawyer" André Große Vorholt, Luther Rechtsanwaltsgesellschaft mbH is expanding its presence in the legal market for white-collar crime ever more and regularly provides preventive and reactive advice to associations, mid-sized companies, large groups, and the public sector. In addition to a general increase in the appointments by companies and individuals, there has recently been an increase above all in advisory services provided in connection with cross-border investigations. Recent highlights included the appointment by the Federal Ministry of Health to clarify controversial real-property transactions in connection with illegal construction financing transactions concluded with the Federal Association of Statutory Health Insurance Physicians (Kassenärztliche Bundesvereinigung, KBV). Furthermore, the "very cooperative" head of this practice group often works as an ombudsman, most recently on behalf of Merz Pharma and the Stuttgart Airport.
- Legal500 Germany (2016): Luther acts in an "excellent way both in terms of specialist skills and strategy" when representing companies in criminal proceedings and demonstrates its preventive as well as forensic expertise in this field. In addition, the Luther team has many years of experience in defending individuals. In particular the 'excellent team player' André Große Vorholt, who is considered to be an 'outstanding and impeccable attorney', is active on behalf of renowned medium-sized enterprises as well as global players.
- Legal500 Germany (2015): Luther Rechtsanwaltsgesellschaft mbH's expertise mainly rests upon the shoulders of André Große Vorholt, who is highly esteemed in the market and who is praised by his competitors for his 'astuteness' and his 'legal instinct'.
- Legal500 Germany (2014): Luther's corporate criminal law practice area is headed by André Große-Vorholt who is described by competitors as "a highly qualified, exceptionally gifted criminal defence lawyer".

Your team



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Frank Bisson was born in 1975. After completing his first bar examination in Bayreuth, Germany, in 2000, he received his doctorate at the Freie Universität, Berlin under the supervision of Dr. Klaus Rogall in the Faculty for Criminal Law and Criminal Proceedings. He was admitted to the bar in 2004 and joined Luther's predecessor firm in the same year. He has remained with the firm ever since.

Focus of advice

In addition to defending individual clients in criminal courts, Frank Bisson represents the interests of corporations during criminal proceedings. He also enforces entitlements to damages resulting from criminal proceedings. In addition, he also provides preventative assistance.

Katja Reyher was born in 1977. She studied law at Friedrich-Schiller-University in Jena, Germany. She undertook her postgraduate judicial service traineeship ("Referendariat") in Erfurt, Germany, and a five-month seat abroad in Minsk, Belarus.

In April 2006 Katja Reyher started her career as a lawyer with Luther in the area of criminal law and corporate compliance and in 2010 moved to a Mannheim based law firm where she worked in the area of corporate law and M&A transactions. In 2013 she joined Luther's Munich office.

Focus of advice

Katja Reyher specialises in commercial criminal law as well as in corporate compliance.



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Verena Dimarch was born in 1988. She studied law at the University of Passau (Germany) and carried out her legal training in Hamburg (Germany). In 2017, she joined Luther's white-collar crime and compliance practice as a lawyer.

Focus of advice

Verena Dimarch provides legal advice in the areas of white-collar crime and compliance. Her services include defending individuals in criminal-law matters and safeguarding corporate interests in criminal proceedings. Where necessary, she also provides advice in connection with civil-law claims of companies. Verena Dimarch additionally assists clients in the area of prevention.

Isabel Metzner was born in 1990. She studied law, also completing an additional programme of study in business administration, at the University of Bayreuth (Germany), with an emphasis on white-collar, tax and medical criminal law. Isabel Metzner obtained an LL.M. degree from the University of Birmingham (UK). She carried out her legal training at the Higher Regional Court of Bamberg (Germany), which included working for Siemens AG in Munich (Germany) in the area of compliance. As a lawyer, Isabel Metzner is a member of Luther's white-collar crime & compliance team.

Focus of advice

Isabel Metzner advises clients on matters relating to white-collar crime & compliance.

About Luther

Luther Rechtsanwaltsgesellschaft mbH is one of the top addresses among German commercial law firms. From our ten German offices and six international offices, our lawyers and tax advisors advise their clients both in legal disputes and in organisational issues. We focus on providing efficient and far-sighted advice which leads to the desired commercial results. This, together with the sensible allocation of time and personnel resources, provides the basis for our innovative advice.

Areas of practice

- Antitrust law
- Banking and capital markets
- Commercial and distribution law
- Complex disputes
- Corporate law
- Employment law
- Energy law
- Environment and planning law, regulatory
- Family businesses - entrepreneurial families
- IP and copyright law
- Insurance law
- International arbitration
- International trade law
- Litigation and mediation
- Mergers & Acquisitions
- Property transactions
- Public procurement law
- Public subsidies/state-aid law
- Public-private partnership
- Real estate law
- Restructuring and insolvency
- Tax law
- Technology, media and telecommunications
- White-collar crime & compliance

Our approach is interdisciplinary. Legal and tax issues are in our opinion often closely linked, and long-term commercial and financial implications should not be overlooked either. We benefit from the close working relationship between our lawyers and our tax advisors as well as from years of experience working with business consultants, accountants and bankers. We are, of course, also able to provide advice to our clients in international matters. We have our own foreign offices, which are located at six important finance and investment centres

Luther provides legal and tax advice in all areas relevant to companies, investors and the public sector. Knowledge of the market in which our clients are active is a prerequisite for providing successful advice. That's why our lawyers and tax advisors, in addition to their specialised legal knowledge, also focus on advising clients from particular industries.

Sector focus

- Automotive and mobility
- Chemicals
- Energy and utilities, renewable energy
- Financial services
- Food, retail and consumer products
- Health care and medical
- Infrastructure, water and waste management
- Insurance
- Logistics
- Mechanical and plant engineering and construction
- Pharmaceuticals and biotechnology
- Public sector
- Real estate
- Shipping and maritime law
- Textile and clothing industry

in Europe and Asia. In addition, we have long-standing, close relationships with business law firms in all relevant jurisdictions around the world. In Continental Europe, Luther is part of a group of independent law firms each of which is one of the leading law firms in its own country. These law firms have a strong track record in cross-border projects and are engaged in an ongoing exchange of information about new market trends and legal developments.

Our locations

Our international offices
in important European
and Asian markets



Luther Rechtsanwaltsgesellschaft mbH advises in all areas of business law. Our clients include medium-sized companies and large corporations, as well as the public sector.

Berlin, Brussels, Cologne, Dusseldorf, Essen, Frankfurt a. M., Hamburg, Hanover, Leipzig,
London, Luxembourg, Munich, Shanghai, Singapore, Stuttgart, Yangon

Luther Corporate Services: Delhi-Gurugram, Kuala Lumpur, Shanghai, Singapore, Yangon

Your local contacts can be found on our website www.luther-lawfirm.com.

Hits the mark. Luther.

