

PARAMETRIC INSIGHTS

ECONOMIC CRIME UPDATES



HELLO!

Welcome to the fourth edition of our newsletter! We hope that you will find our content useful, practical and engaging.

At Parametric Global Consulting, we focus on helping our clients navigate complex economic crime issues effectively through independent and impartial investigations and reviews, tailored training, and strategic advice.

We want you to be prepared to respond to legislative, policy and geopolitical changes, and our newsletter will keep you abreast of the swiftly evolving landscape.

Get in touch with us if you need our assistance with any investigation, consulting, or training needs in your organisation.

Do share the newsletter and sign up to our mailing list so that you are kept up to date!

I hope that the month ahead is fab and productive!

Best,

Lloydette
Founding Partner



**Parametric
Global Consulting**

WHAT'S IN STORE?

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CONTACT US

Tel No: +44 208 058 3120

Email: info@parametricglobal.co.uk

[Website](#)

[Linkedin](#)

[Twitter](#)

CASE UPDATES

GLENCORE IS CONVICTED IN UK ON MULTIPLE COUNTS OF BRIBERY

Glencore Energy (UK) Ltd, was convicted this month on five charges of bribery and two charges of failing to prevent bribery in prosecution brought against it by the SFO. The company pleaded guilty to multiple counts of paying bribes to secure access to oil and generate illicit profit. The SFO revealed that Glencore paid bribes of over \$28 million, through employees and agents. The company approved these actions across various operations in South Sudan, Ivory Coast, Equatorial Guinea, Nigeria, and Cameroon. Glencore will be sentenced in November 2022 and is expected to receive a substantial financial penalty. The SFO has worked in parallel with the US authorities and collaboratively with the Dutch and Swiss prosecutors. Glencore's plea agreement with the DOJ for FCPA violations has been made public. US and UK authorities respectively began investigations into alleged bribery and corruption at Glencore's oil operations in 2018 and 2019.

SEC & DOJ INVESTIGATE ERICSSON OVER IRAQ BRIBERY SCANDAL

The SEC has opened an investigation into Ericsson's handling of a corruption scandal, specifically around matters described in the company's 2019 internal Investigation report. The Swedish telecom equipment maker disclosed earlier this year, that it may have made payments to ISIS to gain access to transport routes, from at least 2011. The DOJ, which fined Ericsson \$1 billion in 2019 over another bribery case, is also investigating Ericsson's handling of the investigation. The DOJ said that the company failed to make adequate disclosures about its Iraq operations before entering a DPA in 2019. As part of the 2019 settlement, Ericsson agreed to engage an independent compliance monitor for three years. The company may face fines in the range of \$100-300 million once US investigations are completed.

SEC CHARGES TENARIS WITH VIOLATING FCPA; COMPANY TO PAY \$78 MILLION

Earlier this month, the SEC announced that Tenaris will pay more than \$78 million to resolve charges that it violated the FCPA, in connection with a bribery scheme involving its Brazilian subsidiary. The resolution with the global manufacturer and supplier of steel pipe products stems from an alleged bribe scheme involving Brazilian subsidiary agents and employees to get and retain business from Brazilian state-owned entity Petrobras. Between 2008-2013, bribes amounting to \$10.4 million were paid to a Brazilian government official in connection with the bidding process at Petrobras, which the company does not admit or deny. The resolution includes a civil monetary penalty of \$25 million, \$42.8 million in disgorgement, and over \$10 million in prejudgment interest. The company said it has terminated its commercial agents in Brazil and significantly reduced its use of commercial agents globally.

It also agreed to undertakings in respect of its ongoing remedial process over the next two years.

ACTIVISION BLIZZARD CLAIMS NO SIGNS OF WRONGDOING AFTER INTERNAL INVESTIGATION

An internal investigation into discrimination and harassment at Activision Blizzard by the Board of Directors, has absolved the company of wrongdoing. Despite public claims and personnel exits, the report concluded that there was no widespread harassment, pattern or practice of harassment, or systemic harassment at the company or its business units. The report continues that based on the volume of reports, instances of misconduct reflected are 'comparatively low' for a company of its size. The company also said that the Board and its external advisors determined that there was no evidence to indicate that senior executives intentionally ignored or tried to downplay gender harassment. The avalanche of harassment and discrimination allegations were sparked by a two-year investigation by the Californian Department of Fair Employment and Housing, with subsequent investigations and lawsuits casting a further negative light on the company. Activision settled a sexual harassment lawsuit by the Equal Employment Opportunity Commission in March 2022 and paid \$18 million.

INSURANCE BROKER FINED BY FCA FOR FINANCIAL CRIME CONTROL FAILINGS

The FCA has issued a second compliance breach penalty to JLT Specialty Limited (JLTSL), a subsidiary of JLT Group plc. The insurance broker has been fined £7.8m for financial crime control failings, which allowed bribery of over \$3m to take place in one instance. Between 2013-2017, JLTSL paid \$12.3m in commission to JLT Colombia Wholesale Limited, the parent company of JLT Re Colombia, which then paid \$10.8m to a third-party introducer. This introducer then paid over \$3m to government officials at a state-owned insurer, to help retain and secure their business for JLTSL and JLT Re Colombia. The FCA found that JLTSL failed to manage their business and risks responsibly and effectively. Careless controls by JLT Specialty meant that money flowed to corrupt officials. JLTSL's self-report in June 2017 and assistance during the investigation were considered mitigating factors when determining the financial penalty. JLT, alongside a number of other insurance firms, is believed to be under investigation by the SFO for bribery and corruption. A recent DOJ declination letter confirmed the probe; it noted that it will credit 100% of the disgorgement amount paid by JLT against a future settlement with the SFO, under certain conditions.

THE DEEP DIVE

ENRC V DECHERT, GERRARD AND SFO

In May, the High Court passed judgment on one of the lengthiest and most expensive litigations. The case involved Dechert LLP and its former head of white-collar crime, Neil Gerrard, the Serious Fraud Office, and Dechert's former client Eurasian Natural Resources Corporation (ENRC). The complex judgment has many implications for law firms, SFO, and other law enforcement authorities.

The key findings from a very lengthy judgement by Justice Waksman are:

- Gerrard leaked privileged and confidential information to the press and the SFO to expand the scope of his investigation, generate more work and increase the fees to be paid by ENRC.
- The SFO encouraged Gerrard to commit a series of breaches of his contract with his client, ENRC and his fiduciary duties.
- The SFO induced Gerrard to breach his contract by encouraging leaks of confidential information, and SFO officers were motivated by 'bad faith opportunism' in receiving intelligence.
- The SFO was also considered to be in 'serious breach of its own duties' by accepting confidential information about ENRC from Gerrard; it had taken information which was 'plainly unauthorised and against his client's interests'.
- Gerrard was negligent in giving wrong advice to ENRC about its potential criminal liability. He also failed to protect ENRC's legal professional privilege and made 22 unauthorised contacts with SFO staff.
- Gerrard's actions have been described as 'almost unimaginable' and 'extraordinary'. He was also described as a 'highly unreliable and at times dishonest witness'.

A partial win for the SFO, and a scathing judgment for both Dechert and Gerrard

The judgment reveals damaging findings and very questionable conduct by the SFO and former senior staff. However, Justice Waksman rejected most of ENRC's claims over the agency's conduct during its ongoing investigation into alleged fraud, bribery and corruption by ENRC in its acquisition of substantial mining assets in Africa. The company's requests to stop the SFO from using materials Gerrard provided during the investigation, and to remove any SFO staff who had viewed the material, were also dismissed.

One of the graver allegations of misconduct against the SFO were that they committed misfeasance in public office, and this claim was dismissed too. Overall, the judgment has not undermined the SFO's criminal investigation into ENRC, which continues with no criminal charges filed against the company yet.

The judgment is somewhat of a victory for the SFO. The findings are likely to feel particularly significant given the intensive criticism it has received for a string of recent issues. These include the two quashed convictions and disclosure fiasco in the Unaoil case. Nevertheless, the SFO's partial complicity in this conduct highlights a worrying lack of integrity and fairness, naturally expected of a such a body.

Furthermore, the pressure for the SFO to conclude its long-running investigation into ENRC, is now greater than ever.

On the other hand, the judgment is exceptionally devastating in its assessment of the conduct of both Dechert and Gerrard. In addition to reputational damage, the firm faces potential liabilities that may go extensively beyond the tens of millions it has already spent in defending this matter.

TECH SPOTLIGHT

AI-POWERED INVESTIGATION TOOLS

In our first Tech Spotlight article (*Issue 1, March 2022*), we discussed the AI document analysis tool RAVN, used in the SFO's Rolls-Royce case to analyse an estimated 30 million documents. This article will look at some examples of AI-powered systems, tools and platforms currently on the market, designed to improve the investigation process.

Brainspace:

Described as 'the most comprehensive and advanced data analytics platform for investigations', Brainspace focuses on transforming structured and unstructured data into 'insight'. It accelerates the investigative process by combining patented machine learning technology with interactive data visualisations. It helps manage the onslaught of increasingly expanding and complex organisational data requiring processing, allowing investigators to uncover helpful information at a faster pace. It accelerates the identification of relevant data, and applies supervised learning to improve results continually. Brainspace's 'point-and-click' interface is intended to be simple and intuitive, so non-data scientists can also use it. It allows one individual to do the job of several investigators, and locate the correct answers in hours versus weeks.

Quantexa Syneo:

This integrated AI platform helps investigators conduct 'complex financial thematic investigations more efficiently and effectively'. It promotes an intelligence-led approach to investigations, and is aimed at helping investigators view the full picture of risk, and respond quickly to alerts and information requests. It simplifies deep-dive investigations with powerful capabilities for experienced investigators in particular.

Quantexa Syneo automates manual work (carving out time to focus on real risk). It creates a 'true single view' of each customer or counterparty and a real-time network of relevant connections and behaviours. It also goes further and broader into the data to spot financial crime and fraud risks and typologies more quickly. Investigators can also assess the wider context, and identify mitigating or escalating risk factors, leading to 'faster, trusted decisions'. Enriched data compiled by investigators post-alert optimises future alert generation from detection engines, locating new risks and removing false positives.

NICE Actimize – ActOne:

This one-for-all AI-enabled investigation management system serves as an alert and case management platform for financial services organisations. The system introduces analytics and automation at each step of the financial crime detection, investigations and operations process. It improves decision-making for analysts, and boasts a reduction in investigation time for a single alert by up to 70%.

The system transforms investigations by introducing two things for speed and accuracy. Firstly, intelligent automation saves time by enabling an 'intelligent virtual workforce' – robots - to collaborate with human investigators. Secondly, visual storytelling 'uncovers more risks by showing relationships between entities, alerts and cases in a visual manner'. Benefits include expediting investigative decisions with a dynamic risk value for every entity and driving collaboration through real-time analyst and robot actions notifications.

Please note that we do not have any affiliations with any of the products and companies above.

THE INVESTIGATORS' MINDSET

REMOTE INTERVIEWING

Although it became a necessity during the height of the pandemic, remote interviewing is here to stay. It continues to be a reality that all investigators must adapt to. Here are some insights from the Q & A session following our Founding Partner, Lloydette's, presentation on 'The Essentials of Remote Interviewing Skills' at 2022 ACFE Fraud Conference Europe.

Is there a difference in virtual vs face-to-face interviews during legal litigation?

There is not much of a difference between virtual and in-person interviews when it comes to litigation. It is important to ensure that due process is followed and all of the appropriate safeguards are in place throughout the virtual interview. The interviewer should ensure that the interviewee understands the purpose of the interview and any appropriate notices, such as the Upjohn warning, are given clearly.

Should you have a list of questions or just some topics that you want cover during the interview?

Topics and key themes tend to work better than just a long list of questions but in some parts of the interview (e.g. introducing documents to the interviewee), questions can work very well. Don't be doggedly focused on your questions as this can hamper one's ability to listen and respond to what the interviewee is saying.

I recommend having your three top questions you want to ask and letting other questions flow from the identified themes and the responses of the interviewee.

The interviewee does not want to put the camera on, how do I deal with this?

Your pre-interview preparation is essential. Ask the interviewee to confirm that they have a suitable space in which the interview can take place. Establish that the space will be well-lit, with a stable internet connection, and private so that they can speak freely. If the interviewee does not have a suitable space for the interview, the investigation team should make arrangements for an alternative location.

Body language is an important part of the interview process - how do I compensate for the lack of a complete view of the interviewee's body?

Prior to the start of the interview, the interviewer should ask the interviewee to position the camera so that the top half of the interviewee is clearly visible. This may not be possible, depending on the circumstances. There is often a reliance on body language alone; interviewers should utilize a full range of social cues such as tone of voice, gestures, actions, facial expressions and eye contact.

LEGISLATION UPDATES

CORPORATE CRIMINAL LIABILITY OPTIONS PAPER

The long-awaited Corporate Criminal Liability Options Paper was published by the Law Commission on 10th June 2022. This followed a request by the British Government in November 2022, to consider “the challenges faced by the criminal justice system under the current law relating to corporate criminal liability”. There was an extensive consultation that included the legal profession, academics, civil society organisations, and professional bodies.

The Options Paper is comprehensive in detail and sets out a range of options - not recommendations - for the Government to consider in their reform agenda.

The identification doctrine is the primary mechanism for attributing criminal liability to corporates. It means that a corporate will only be held liable for the conduct of a person(s), if that person(s) represented the “directing mind and will” of the corporate at the time of the conduct. The question that has plagued those who prosecute corporates, is who is capable of representing the directing mind and will of the company?

This doctrine has been a thorn in the side of Serious Fraud Office. It was made worse by the ruling in *R v Barclays [2018]*, in which the High Court held that the CEO and the Chief Finance Officer did not represent the directing mind and will of Barclays. The SFO’s attempt to prosecute Barclays failed on the basis that the board held the authority and had not delegated it to these officers of the company. This was a narrow application of the doctrine.

There was much hope that this review by the Law Commission would signal the death of the identification doctrine. Alas, it lives on. The Options Paper acknowledges the valid criticisms of the doctrine: its disproportionate impact on small companies; the unfair advantage provided to large companies with complex structures; the lack of certainty; and the difficulties in prosecuting companies for criminal conduct undertaken for their benefit.

The Options Paper provides a workaround to the identification doctrine with the option to attribute conduct and liability to the corporate if a member of its senior management “engaged in, consented to or connived in the offence”. It goes further by providing a definition of who would be considered as part of an organisation’s senior management, with the CEO and Chief Financial Officer always being considered as part of the senior management team.

With the retention of the identification doctrine as an option for reform, the Law Commission “went to town” on options for new Failure to Prevent Offences. This type of offence for corporate criminal liability was first deployed in the Bribery Act 2010 and later the Criminal Finances Act 2017 in relation to the facilitation of domestic and international tax evasion. The only defences available to corporates facing these Failure to Prevent offences, is that there were “adequate” procedures in place (Bribery Act) and “reasonable” prevention procedures in place (Criminal Finances Act). The burden of proof lies with the defence.

The Law Commission rejected the option of a broad Failure to Prevent Economic Crime in favour of separate and distinct offences. The options are:

- Failure to Prevent Fraud by an associated person
- Failure to Prevent Human Rights Abuses

- Failure to Prevent Neglect and Ill-treatment
- Failure to Prevent Computer Misuse.

The Options Paper also considered possible additional sanctions that could be levied against a company apart from the financial penalty. Publicity orders were identified as a viable option when a company has been criminally convicted. The court can order the company to publicise its conviction including the particulars of the offence, the financial penalty, and any remedial orders.

The Law Commission provided the option of an administrative monetary penalty regime which could be deployed in instances where a fraud was committed by an employee or agent of the corporate, and the corporate was a beneficiary of that fraud. The company would be held liable and pay a financial penalty unless it could show that it had taken reasonable steps to prevent fraud from occurring. Such a regime would be overseen by either the SFO or the Crown Prosecution Service.

A further option set out was the use of civil action in the High Court. This would be based on Serious Crime Prevention Orders with the ability to levy financial penalties in addition to other sanctions and remedial measure. The final element of the Options Paper considered, is a reporting requirement which would compel large companies to report on their anti-fraud procedures on an annual basis.

There is a lot for corporates to consider when reviewing their current risk profiles and undertaking a horizon scan of what new legislative developments may be forthcoming. It is clear from the Law Commission's Option Paper that the trajectory is toward increased corporate criminal liability and civil accountability for corporate misconduct. Whether the current British Administration, beset by a myriad of problems both of its own making and globally, has the appetite for reform, remains to be seen.

DATES FOR YOUR DIARY

UNEXPLAINED WEALTH ORDERS AND ACCOUNT FREEZING ORDERS - FIGHTING CORRUPTION

MBL Seminars | 06-07-22 | [Register](#)

A number of significant and far-reaching extensions to UK's criminal investigative and enforcement agencies' powers, were enacted in the Criminal Finances Act 2017. The various tools provided in the Act have been utilised by the investigative bodies, and challenged in the Courts. The Act represents a significant leap forward in criminal investigation and enforcement. At the same time, serious concerns have been aired by legal practitioners about the impact of the powers on basic rights and due process. This webinar will provide an update on the implications of the two most significant - and controversial - new powers contained in the 2017 Act; Unexplained Wealth Orders and Account Freezing Orders.

BRING YOUR OWN DEVICE (BYOD) INVESTIGATIONS

ACi | 06-07-22 | [Register](#)

Investigations often need the recovery and analysis of electronic devices for evidence of activity and communications. Those communications have long since moved from email to various encrypted messaging apps and beyond, with data that can be held in multiple locations (both physical and cloud-based). This is further complicated when an organisation allows employees to carry confidential, proprietary, client or sensitive information. Different tactics are needed to battle these complexities, to give investigators the greatest chance of obtaining the best evidence without inadvertently falling foul of data governance legislation. The expert panel includes Kaz Poultney (Director of Investigations for EMEA & AsiaPac at Amgen); Laura Ford (White Collar Crime Partner at DLA); and Jonathan Brown (Senior Managing Director – Forensics at Ankura).

FEMALE FRAUD FORUM SUMMER PARTY

Female Fraud Forum | 05-07-22 | [Register](#)

The Female Fraud Forum 'is a multi-disciplinary organisation aimed at solicitors, barristers, investigators, and forensic accountants, who predominantly work in the civil and criminal fraud sectors'. Their purpose is to promote and encourage the advancement of women of all levels of expertise; they run legal and personal development-focused educational events, and networking and social events. This party is for members and supporters, and will take place from 6.30pm onward, at the Oyster Shed, with tickets strictly limited. The event is sponsored by Essex Court Chambers, and a portion of sales proceeds from each ticket will be donated to UK-based social enterprise 'Girls Out Loud'.

DEVELOPING AN INTEGRATED ANTI-FRAUD, COMPLIANCE, AND ETHICS PROGRAM

ACFE | 6-07-22 – 08-07-22 | [Register](#)

A formal ethics program provides a clear framework for an organization's expectations, policies and potential consequences. The threat of fraud makes it critical to also integrate fraud-focused initiatives into the program, in addition to compliance and ethics. These include anti-fraud and whistle-blower policies. This virtual seminar will explore best practices for creating an effective compliance and ethics program that incorporates anti-fraud measures. It will cover the steps an organization needs to take in developing a program that will foster ethical behaviour, promote compliance, and deter fraudulent employee activity.

USEFUL RESOURCES

PODCAST: BRIBE, SWINDLE OR STEAL

Access: [Apple Podcasts](#) | [Spotify](#) | [Stitcher](#)

TRACE is a globally-recognised non-profit business association dedicated to anti-bribery, compliance and governance. Their podcast explores the world of financial crime (corruption, fraud, money laundering and sanctions) and topics such as what motivates people to break the law, and how wrongdoers cover their tracks.

President of TRACE, Alexandra Wrage, interviews experts in the field of financial crime. Each week, Alexandra and her guests discuss who commits “white collar crime”, how it works, and what is being done to stop it.

