

# PARAMETRIC INSIGHTS

## ECONOMIC CRIME UPDATES



### HELLO!

Welcome to the third 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



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## CASE UPDATES

### **ENRC SECURES PARTIAL WIN IN JUDGMENT AGAINST LAW FIRM, EX-PARTNER AND SFO**

On the 16th of May 2022, in a judgment spanning almost 400 pages, the High Court mostly cleared the SFO of wrongdoing against Kazakh mining giant ENRC (Eurasian Natural Resources Corporation). ENRC sued the agency over its handling of a nine-year ongoing investigation into alleged corruption at ENRC. Most of the company's allegations against the SFO - for example, that misfeasance in public office had been committed during the course of an investigation - were dismissed. However, Mr Justice Waksman found that Neil Gerrard, a former head of white-collar crime at Dechert advising ENRC, was encouraged to leak confidential information.

The findings against the SFO included that they encouraged Gerrard to commit breaches of contract and fiduciary duties. Further, that the SFO were 'in serious breach' of 'their own duties' by taking confidential information from Gerrard that was 'unauthorised' and 'against his client's interests'. The High Court found that Gerrard instigated leaks to the press, and negligently gave incorrect advice to ENRC regarding potential criminal liability and the risk of a raid by the SFO. The judge further found that Gerrard unnecessarily expanded an internal investigation, failed to protect client privilege, and breached numerous duties. The SFO were also considered to be motivated by 'bad faith opportunism'. ENRC will seek costs orders against both the SFO and Dechert.

### **BIG FOUR ACCOUNTING FIRM KPMG FINED OVER SERIOUS FAILURES IN ROLLS ROYCE AUDIT**

KPMG will pay £3.4m to the UK's accounting regulator, the Financial Reporting Council (FRC), due to its failure to act after learning about the alleged bribery by Rolls-Royce, their audit clients. The accountancy firm was severely reprimanded by the regulator and must commission an independent review into the effectiveness of its policies. Anthony Sykes, the KPMG partner who led the audit, was also reprimanded and will pay a fine of £112,500. Both the firm and Sykes' fines have been reduced, due to cooperation with the investigation. FRC highlighted serious failings relating to two payments made to agents in India. These payments were part of the allegations in SFO's criminal investigation of Rolls-Royce, which led to a deferred prosecution agreement in 2017. Auditors became aware of the payments in 2010, but failed to reference them in the audit that followed. Sykes also ordered the removal of a paragraph containing a reference of the payments, from minutes of meetings.

### **UK GOVERNMENT ALLEGEDLY AUTHORISED PAYMENTS TO SAUDI ROYALS TO SECURE CONTRACTS**

In April 2021, former Airbus SE subsidiary GPT Special Project Management Ltd (GPT) pleaded guilty to corruption regarding contracts for work undertaken for the Saudi Arabian National Guard between 2008 and 2010. The SFO alleged that GPT paid millions in bribes to members of Saudi Arabia's royal family and military, to maintain lucrative contracts. Following GPT's guilty plea, the judge ordered a confiscation order, fine, and costs in the millions. A GPT senior executive and associate are currently standing trial over corruption concerning the defence contracts. A court was told that the individuals – Jeffrey Cook and John Mason - paid £9.7mn in bribes to Saudi Arabian military officials, to secure contracts for the UK government. However, Southwark Crown Court were told that the British government authorised all payments and even 'required' them to be made; it was part of a government-to-government agreement that had existed for decades.

### **CORRUPTION CHARGES FACED BY NIGERIA'S ACCOUNTANT GENERAL**

The Economic and Financial Crimes Commission (EFCC), Nigeria's economic crimes agency, arrested serving Accountant General of Nigeria Ahmed Idris earlier this month over charges of diverting funds, and money laundering 80 billion naira. A spokesperson for the agency stated that the funds, obtained illegally, were laundered through real estate investments, and that Idris was arrested after failing to honour invitations to respond to issues connected with the acts. He was suspended from work without pay, which is intended to facilitate a thorough investigation. It is believed that some assets considered to be proceeds of Idris' unlawful activities, have been traced. In his absence, Anamekwe Nwabuoku, who was appointed to oversee the Office of the Accountant General of the Federation (OAGF), has faced corruption allegations for overpayment and fraudulent property acquisition.

## **THE DEEP DIVE**

### **GLENCORE'S FCPA PLEA AGREEMENT WITH THE DOJ**

On 24th May 2022, there were coordinated announcements by the SFO and the DOJ in relation to their respective investigations into Glencore and its subsidiaries. The SFO announced that Glencore Energy (UK) Ltd had indicated in court that it will plead guilty to five counts of bribery contrary to s.1 of the Bribery Act 2010, and two counts of failing to prevent bribery contrary to s.7 of the Act. There are parallel proceedings in Brazil and Switzerland.

The DOJ announced that Glencore International A.G. pleaded guilty to one count of conspiracy to violate the FCPA and entered into a plea agreement. Additionally, Glencore Ltd reportedly pleaded guilty to one count of conspiracy to engage in commodity price manipulation. This plea agreement has yet to be approved by a court.

The details of the FCPA plea agreement in brief:

- Criminal fine of \$428m with a 15% discount for partial cooperation.
- Criminal forfeiture and disgorgement of \$272m.
- Independent compliance monitors for three years for Glencore International A.G. and Glencore UK Ltd respectively.
- \$256m credit for payments Glencore may make to resolve parallel proceedings in the UK and Switzerland.

Between 2007 and 2018, Glencore and its subsidiaries engaged in making over \$100m of corrupt payments to foreign officials in Nigeria, Ivory Coast, Equatorial Guinea, Brazil, Venezuela, and the DRC. This was done through third party intermediaries and disguised by the use of sham consulting agreements, “commission” payments, and payment of inflated invoices. Bribes were described as “newspapers”, “journals”, “pages” or “filings”; paying bribes were part of the way in which Glencore did business in these jurisdictions.

Glencore paid bribes to:

- win lucrative oil contracts;
- avoid government audits and fines; and
- get judges and lawyers to manipulate legal proceedings in their favour.

All of this was done “with the approval, and even encouragement, of its top executives.”

Glencore was given partial cooperation credit. This is because it failed to voluntarily disclose the illegal conduct, and delayed in producing relevant evidence and disciplining employees involved in the conduct in a timely and appropriate manner. The DOJ remarked that Glencore did not at all times “demonstrate a commitment to full cooperation”.

Glencore has begun to take remedial measures, which include:

- Recruiting a Head of Compliance.
- Establishing a centralised compliance function.
- Increased hiring of staff for compliance functions.
- Reducing the number of third-party business partners used, and implementing due diligence procedures and payment controls. In addition, using data analytics to support monitoring with compliances policies and procedures.
- Global anti-corruption compliance and business ethics training across the entire company.
- Additional training for high-risk employees, directors and third parties.

Of note is that the DOJ imposed two independent monitors on Glencore International A.G. and Glencore UK Ltd. The DOJ states that this was necessary to reduce the risk of misconduct and because elements of Glencore's compliance program are new or untested, with no evidence to show that they will prevent and detect similar misconduct in the future.

Executive 1, 2 and 3 are described as senior and high-ranking employees. Alongside Traders Y and Z, their complicity in the misconduct is set out in the DOJ's Statement of Facts. All of these individuals are British citizens, and so the question is whether we can expect to see the SFO prosecute these individuals in due course.

## TECH SPOTLIGHT

### WHAT ARE THE LIMITS TO USING AI IN INVESTIGATIONS?

Artificial Intelligence (AI) has clear potential and an ability to support corporate investigations. However, there are associated risks to be aware of, as with any innovation. For example, AI may not always make decisions interpretable for humans, and it can reinforce biases and act contrary to its programmers' intentions. AI is fast evolving with improvements to its accuracy and scope. Nevertheless, being mindful of limitations is an important first step to using any tool effectively, and human expertise remains essential.

Some key considerations:

- By successfully enhancing processes, AI often executes the activity of human investigators more effectively. It can help organise and connect data once it knows what to search for or pay attention to. On the other hand, it is difficult to say that AI can currently identify new forms of financial crime without expert human input.
- Human input of the right kind is still crucial. The performance of AI very much depends on the data used, and the quality of human decision making when the system indicates issues. Close scrutiny is necessary in both aspects.
- Many financial crime alerts generated by AI are found to be 'false positives' once investigated. AI is great at generating the alerts that we want to see, but not so much when it comes to focusing on subsets representing genuine suspicious activity.

- Another limitation is 'feedback loops'. This describes the process where AI systems are given data to adjust their parameters, learn from their mistakes and retrain, and improve their performance. This helps the systems know what they did correctly/incorrectly and adapt to evolving data and new patterns. In financial crime, these feedback loops happen between the time when a suspicious activity is reported, and when its legitimacy is confirmed. Indeed, feedback loops are one of the reasons why AI is so successful in the financial crime space. In areas where exact and well-timed feedback is available (such as fraud), AI can be deployed effectively. However, in other areas where final verdicts on reports aren't always shared (such law enforcement with banks in the anti-money laundering space), the ability to train AI models appropriately is impaired.
- AI-powered data analytic tools are powerful, but caution is important. Anomalies found using analytics and presented as evidence, may not necessarily show credibility to the extent needed to award relief. Therefore, although irregularities spotted using AI are helpful when building cases and identifying targets for investigation, they are not always a mark of transgression. Instead, AI should be used as part of a varied toolkit, to identify, investigate and mitigate issues.

*This is the third instalment in our mini-series on the role of AI in investigations, and the ways in which it supports, and has the potential to support, corporate investigations.*

## THE INVESTIGATORS' MINDSET

### SCRUTINY AND INTERNAL INVESTIGATIONS

Internal investigations will always be subject to scrutiny and evaluation.

Many investigators tend to primarily focus on the attention that may come from internal stakeholders - such as senior leaders, human resources and legal departments.

Whilst it might not be an issue at the start of an investigation, or even once it has been concluded, it is very possible for circumstances and events to arise that lead to external scrutiny. Those circumstances may include a dissatisfaction with the investigation process or outcome, or the discovery of new and related facts. This external scrutiny can even arise from law enforcement or regulators.

There are three crucial questions investigators should ask themselves at every step:

1. Will the process and outcomes of your investigation be able to withstand a rigorous inquiry?
2. Will you be able to clearly articulate your reasonings and decision making?

3. Will you be able to demonstrate a clear plan of action and consistency in your approach to the investigation?

An effective investigation should be able to withstand both external and internal scrutiny. It is important to stay prepared and treat it as a matter of 'when', not 'if'!

## LEGISLATION UPDATES

### ECONOMIC CRIME AND CORPORATE TRANSPARENCY BILL

- The Economic Crime (Transparency & Enforcement) Act came into force in March 2022. It focused on three key areas: the creation of a register of overseas entities, overhaul of the Unexplained Wealth Order (UWO) regime, and strengthening of sanctions. However, it was rushed and contained some significant lacunas.
- In the Queen's Speech earlier this month, the Government indicated that a second Economic Crime Bill was part of its planned legislative agenda for 2022-2023. The Economic Crime and Corporate Transparency Bill (Economic Crime Bill) would be introduced to: strengthen powers to 'crack down' on illicit finance and those who 'abuse our open economy'; reduce economic crime; and 'strengthen the UK's reputation' as a place where businesses can grow.
- In our March 2022 Issue, we detailed the key elements of the new Act and highlighted the gaps and areas for improvement. It was expected that the Government would seek to improve on this Act and deal with some of these issues.

### What can we expect to see in the second Economic Crime Bill?

- The Registrar of Companies' powers will be broadened. Companies House will be able to check, remove or decline information submitted to the Company Register, and have more effective investigation and enforcement powers.
- Strengthened accuracy and reliability of the Companies Register, which informs many business and lending decisions. Graham Barrow of the Dark Money Files has been tireless in his work in this area.
- Companies House will also introduce improved data cross-checking with other public and private sector bodies.
- There will be heightened identity verification requirements for those who manage, own and control companies and other UK-registered entities, to improve accuracy of Companies House data (which will in turn support business decisions and law enforcement investigations).
- Tackling the abuse of limited partnerships by strengthening transparency requirements and facilitating better winding-up procedures.

- The authorities given the power to seize and recover digital assets. This will strengthen their ability to detect and investigate fraud and money laundering and seize proceeds of crime. It will also make it easier to recover funds stolen in ransomware attacks.
- Enhanced information sharing; enabling businesses in the financial sector to share information more effectively, to prevent and detect economic crime.

## **DATES FOR YOUR DIARY**

### **33RD ANNUAL ACFE GLOBAL FRAUD CONFERENCE**

ACFE | 19-06-22 - 24-06-22 | [Register](#)

Join fellow anti-fraud professionals in Nashville or online for the 33rd ACFE Global Fraud Conference. During the largest gathering of anti-fraud professionals in the world, attendees can learn best practices to fight fraud, hear emerging trends, listen to various inspiring speakers, network, and more.

### **GIR LIVE: WOMEN IN INVESTIGATIONS 2022**

GIR | 16-06-22 | [Register](#)

This internationally renowned event focuses on supporting female triumphs and creating acknowledgement across the investigations space. The event brings together in-house counsel, private practitioners, and regulators to discuss changes to the investigations landscape and the development of skills integral to the industry. Chairs include Lucinda Low, Partner at Steptoe & Johnson, and Mini vandePol, Head of Baker McKenzie's Asia Pacific Investigations, Compliance & Ethics Group.

### **11TH ANNUAL COUNTER FRAUD AND FORENSIC ACCOUNTING CONFERENCE**

University of Portsmouth | 14-06-22 | [Register](#)

This Conference will be held both in-person and virtually. It will feature more than 20 speakers, commenting on the latest ideas and research in economic criminology.

### **KROLL GLOBAL FRAUD AND RISK REPORT - VOLUME 2: THE RISING COST OF INTERNAL INVESTIGATIONS: TIME FOR CHANGE**

Kroll | 26-06-22 | [Register](#)



This panel discussion, led by Kroll experts Andy Gandhi (managing director and global head - Data Insights and Forensics) and Richard Plansky (regional managing director - North America, Forensic Investigations and Intelligence), will discuss key findings from Kroll's latest Global Fraud and Risk report.

### **CORRUPTION: WHAT'S GENDER GOT TO DO WITH IT?**

University of Sunderland - Sunderland Gender Network (SunGen) | 22-06-22 | [Register](#)

In the first in a series of 'Gendered World seminars', Dr Kelly will explore the notion of petty corruption. For women, this is most visible when they try to access basic goods or services in various places, and when they apply for jobs. This presentation draws on ethnographic cases linking gender, corruption and development across Asia, Africa and the US, and 'reveals corruption as a gendered institution, shaped by transnational connections, and (re)produced in interaction with global development regimes'.

## **USEFUL RESOURCES**

### **PODCASTS**

#### **EVERYTHING COMPLIANCE**

ACCESS: [APPLE PODCASTS](#) | [SPOTIFY](#) | [STITCHER](#)

Hosted by Tom Fox, with a panel that includes Karen Woody, Matt Kelly, Jonathan Armstrong, Jay Rosen and Jonathan Marks, this is the only Roundtable podcast in compliance. The panel take deep dives into current events in the compliance scene.

Listen in for the Rants and Shout Outs at the end of each episode!

