

PARAMETRIC MONTHLY

ECONOMIC CRIME INSIGHTS



HELLO!

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

At Parametric Global Consulting, our focus is to help 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 abreast of the swiftly evolving landscape.

Do share the newsletter and sign up to our mailing list so that it hits your inbox every month!

I hope that the month ahead is fab and productive!

Best,

Lloydette
Founding Partner



WHAT'S IN STORE?

- **CASE UPDATES** 3
 - THE SEC AND DOJ INVESTIGATE BILLIONAIRE BARRY DILLER AND OTHERS OVER POSSIBLE ACTIVISION INSIDER TRADING
 - FORMER CHIEF EXECUTIVE OF THE GERMAN PAYMENTS COMPANY, WIRECARD, FACES FRAUD CHARGES
 - SECOND CONVICTION OVERTURNED IN THE SFO'S UNAOIL CASE
- **LEGISLATION UPDATES** 4
 - ECONOMIC CRIME (TRANSPARENCY AND ENFORCEMENT) ACT 2022
- **THE DEEP DIVE** 6
 - 3 LESSONS FROM THE AMEC FOSTER WHEELER DPA
- **TECH SPOTLIGHT** 7
 - HOW CAN ARTIFICIAL INTELLIGENCE SUPPORT CORPORATE INVESTIGATIONS?
- **THE INVESTIGATORS' MINDSET** 9
 - WHEN IS THE RIGHT TIME TO CONDUCT INTERVIEWS?
- **DATES FOR YOUR DIARY** 9
- **USEFUL RESOURCES** 10

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CASE UPDATES

THE SEC AND DOJ INVESTIGATE BILLIONAIRE BARRY DILLER AND OTHERS OVER POSSIBLE ACTIVISION INSIDER TRADING

US regulators are investigating possible insider trading violations by IAC Chairman Diller, stepson Alexander von Furstenberg, and music mogul and DreamWorks Pictures co-founder David Geffen. According to the WSJ, they bought nearly 41.2 million shares of Activision-Blizzard for \$108 million days before Microsoft acquired it.

The DOJ and SEC are investigating whether the options trades violated insider-trading laws. The trades were arranged privately through JPMorgan. Diller firmly denies that they had access to any inside information about the Microsoft-Activision deal. He claims that they acted on the belief that Activision was undervalued and had the potential for going private or being acquired.

FORMER CHIEF EXECUTIVE OF THE GERMAN PAYMENTS COMPANY, WIRECARD, FACES FRAUD CHARGES

Wirecard's former chief executive Markus Braun has been formally charged by Munich public prosecutors with fraud, breach of trust, accounting rigging and manipulation. The charges include 25 cases of organised professional market manipulation and several breaches of trust in a lending context. This is after a 21-month criminal investigation into Wirecard's collapse in 2020. Braun denies wrongdoing. Two other former senior Wirecard managers have also been charged, with ongoing criminal investigation into other suspects. However, Braun is the sole member of the company's executive board to be charged. He was also Wirecard's largest shareholder.

Prosecutors allege that Braun and co-defendants knew since 2015 that the company was making a loss. They are accused of fraudulently raising €3.1bn in debt to cover the group's ongoing costs. Prosecutors assert that annual results for 2015-2018 were incorrect, and that Braun was aware that the figures relating to non-existent outsourced operations and annual report, were false. The trial is likely to start in autumn 2022; Braun is expected to argue that he was a victim of fraud himself. This case has highlighted the challenges of investigating complex fraud criminal cases. German judges must prove the personal role of an executive running a fraudulent firm, which is a difficult threshold to meet.

SECOND CONVICTION OVERTURNED IN THE SFO'S UNAOIL CASE

The Court of Appeal has overturned a second conviction in one of the SFO's biggest corruption investigations.

Former oil executive, Paul Bond was convicted last year after an investigation into bribery and corruption by Monaco-based consultancy Unaoil to win contracts in post-war Iraq for their clients. Bond was a sales manager for SBM Offshore NV, a Dutch oil-services company and had been convicted of two counts of conspiracy to make corrupt payments.

He launched an appeal after the Court of Appeal overturned the conviction of co-defendant Ziad Akle, ex-manager of Unaoil's operations in Iraq. The basis of Bond's appeal was almost identical to Akle's. It was the failure of the SFO to disclose 'inappropriate' meetings between SFO prosecutors – including the SFO's Director Lisa Osofsky - and a US private investigator David Tinsley, who was a 'fixer' for the Ahsani family who owned Unaoil.

The SFO's handling of the case has prompted an independent review of the agency by former High-Court judge Sir David Calvert-Smith. The findings are due to be reported by the end of May 2022.

LEGISLATION UPDATES

ECONOMIC CRIME (TRANSPARENCY AND ENFORCEMENT) ACT 2022

The Economic Crime (Transparency and Enforcement) Bill became law on 15th March 2022. It was expedited due to recent UK sanctions announced against Russia. The Act is intended to bolster the UK's response to economic crime threats and is set out in three main parts.

Key features of the Act are:

Part 1: Register of Overseas Entities and their Beneficial Owners

- It requires overseas entities that own property in the UK to disclose details of their beneficial owners.
- Companies House will manage the Register.
- There is a duty to update the Register every 12 months; failure to do so will attract a daily default fine.
- The overseas entity must take "reasonable steps" to identify registrable beneficial owners and share this information with Companies House.
- 'Registrable beneficial owners' are those that hold 25% or more of the shares in the entity or of the voting rights in the entity, have the right to appoint or remove the majority of the entity's board of directors, and have the right to exercise or actually exercise significant influence or control over the entity, or over a trust or other entity that meets these conditions.

- The Act requires the overseas entity to serve an information notice on any possible registrable beneficial owners. A criminal penalty is attached to a failure to comply with the notice, or the provision of false information.
- The deadline for registration is six months from Parts 1 and 2 of the Act coming into force. It applies retrospectively to property acquired (since 1 January 1999 in England and Wales, and 8 December 2014 in Scotland).
- Non-compliance will result in criminal liability, with managing officers facing criminal sanctions. Penalties for breaches include fines for the entity and imprisonment for individuals.
- Overseas entities that have not registered will face restrictions when trying to sell, lease, or deal with their property. This is to deter those who attempt to sell their property to avoid registration.

Part 2: Expanding the remit of the Unexplained Wealth Orders (UWO) regime

- An enforcement authority will get extra time to review material received in response to a UWO, before discharging interim freezing orders over relevant assets.
- UWOs are extended to assets 'obtained through unlawful conduct' and can be imposed on company directors, even if they do not personally own the assets.
- The Act creates a new category of persons who can receive a UWO, including 'responsible officers' of the entity that owns the property.
- The 'responsible officer' of an entity (that is the subject of a UWO) must provide information to authorities regarding the UWO. They can be directors, board members, general managers, company secretaries, and partners.
- The Act caps the costs awarded against an enforcement authority if a UWO is challenged successfully.

Part 3: Strengthening the UK sanctions regime

- The Act will make it easier for the government to impose sanctions on companies and individuals.
- The UK government can now make designations of sanctioned persons much more quickly, especially for those already sanctioned by other countries.
- The Office of Financial Sanctions Implementation (OFSI) has new powers to publicly identify organisations and individuals that breach financial sanctions, even if they are not the subject of a penalty. They can also 'name and shame' companies or individuals that they consider likely to have breached compliance of obligations or financial sanction prohibitions. This enhances the risk of damage to reputation.
- The Act makes it easier for OFSI to impose penalties for sanctions breaches on a strict liability basis, rather than having to demonstrate that an organisation had knowledge or reasonable grounds to suspect sanctions were being breached.
- Lack of compliance with sanctions legislation already constitutes a criminal offence subject to fines and imprisonment.

What next?

Governance and controls should be examined thoroughly to ensure that they align with the Act. In particular, the risk of incurring a financial penalty for a sanctions breach is now much higher. The Act is far from perfect, but it is a step in the right direction. There are clear gaps present, and it is questionable whether enforcement authorities will be given the resources to utilise new powers effectively. The 6-month period for registration also leaves room for disposing or transferring illegitimate assets. We should expect another Economic Crime Bill to follow soon to deal with the lacunas in this Act.

THE DEEP DIVE

3 LESSONS FROM THE AMEC FOSTER WHEELER DPA

The SFO recently released the Statement of Facts following its Deferred Prosecution Agreement (DPA) with Amec Foster Wheeler Energy Ltd (Amec) in July 2021.

It was the SFO's 10th DPA since the DPA regime was introduced in February 2014. The Statement of Facts was released following confirmation by the SFO that it would not be proceeding with prosecutions against any individuals connected to the investigation.

The conduct set out in the Statement of Facts is egregious and endemic. The judge, in approving the DPA, was scathing in his assessment of the conduct of senior leaders at Amec. He noted that, but for the fact that the company had been acquired by an innocent party, the John Wood Group, he would not have granted the DPA. The Statement of Facts offers some valuable insights and lessons for corporates who may find themselves entangled in a law enforcement investigation of a similar nature.

1. Have a clear strategy for dealing with material that is covered by legal professional privilege (LPP). Whilst the material may properly be cloaked by LPP and does not require disclosure for cooperation credit, it is important to consider whether a limited waiver of LPP is appropriate in the circumstances of the investigation and the alleged offending. If the company has decided that it will cooperate with the investigation, then it may require a degree of pragmatism over privileged material in its possession that will enable the investigation to proceed at pace and assist the authorities to reach a conclusion. In Amec, there was a limited waiver of LPP over legal advice that had been received by the company in relation to its dealings with agents and public officials. This waiver was regarded by the SFO as part of the extensive cooperation of the company. However, the parameters of a limited waiver of LPP should be clearly documented and sufficiently detailed to avoid any misunderstandings as to the extent of the waiver.

2. Policies and procedures don't effect change, people do. Who is responsible for the effective implementation? Do they have the required visibility into frontline operations? The lack of visibility and access to information can be a major impediment to ensuring that the policies and procedures have the desired effect of managing behaviour and mitigating risk. In Amec, an Employee Handbook was issued in 2001 which contained a Code of Ethics and set out procedures on the use of agents. In 2004, the company issued a Code of Business Ethics & Conduct and subsequent policies and procedures followed over the years. All were circumvented and disregarded by employees who were determined to continue corrupt practices, without the knowledge of the compliance department. They appeared to have been blind to the "culture of disregard" or powerless to stop it. Those responsible for implementation of policies and procedures must have the visibility into highest risk operations and the authority to effect change.

3. Avoid "paper" internal investigations and reviews. The simplified essence of an internal investigation is to identify the issue, resolve it and mitigate the risk of re-occurrence. The collection of factual information that alludes to corporate misconduct and potential criminal offending should be a call to action and not to carry on regardless. Senior leaders should be committed to taking the steps needed to resolve the identified issues and implement measures to stop such conduct from reoccurring. Amec instructed the same law firm to conduct four separate internal investigations, between 2007 and 2010, into suspicions of bribery in India, Malaysia, Saudi Arabia and Nigeria. Each investigation uncovered evidence of corruption and yet senior employees at Amec did the bare minimum to tackle these issues. Those who are instructed as an external resource should ensure that they have requisite independence and impartiality, otherwise the investigation is undermined and is an expensive exercise in futility.

TECH SPOTLIGHT

HOW CAN ARTIFICIAL INTELLIGENCE SUPPORT CORPORATE INVESTIGATIONS?

Its purpose as a preventive tool is well-documented, but how can AI actively support investigation efforts?

Corporate investigations can be a complex and lengthy process. The expanding volume of material that may need to be reviewed during an investigation has created a need to use innovative technology to tackle these issues.

Artificial Intelligence (AI) is about simulating intelligent human behaviour in computers, such as visual perception, speech recognition, decision-making, and language translation. AI encompasses various technologies, such as natural language processing, deep learning and machine learning.

Managing large amounts of data is a crucial challenge during investigations, and the use of AI can power enhanced data analysis and document review systems. This is what makes AI a particularly transformative tool in the investigations process; it can improve, replace, and accelerate certain investigation efforts, and free up time for more complex tasks.

AI-powered document review systems can perform large-scale reviews, recognise patterns, group by subject and themes, remove unrelated documents, organise timelines, remove duplicates, and sift for relevancy. Casework can be accelerated as evidence is pieced together more quickly.

Managing legal professional privilege disclosure can present a significant challenge in corporate investigations, where law enforcement and regulators are involved. In the SFO's Rolls-Royce case, an AI document analysis tool, RAVN, was used to analyse an estimated 30 million documents provided by the company. RAVN scanned content that contained potentially privileged material 2000 times faster than a human and removed legally privileged material from admissible files - an incredible time-saving feat.

Through advanced data analytic tools, AI can more effectively organise, categorise, and analyse large, divergent data sources at incredible speed. It can locate and escalate relevant data for review, look for keywords and patterns, evaluate information, and collate a set of results. This reduces the amount of data requiring review, helping investigators focus on the most critical material.

AI can also integrate and query large datasets to connect seemingly disconnected data points, identify key patterns and report irregularities. AI can also proactively detect and flag potentially suspicious activity across platforms and systems.

There has been an evolution in the ways and platforms people use to communicate. This means that patterns may be more important than solitary pieces of evidence during complex investigations. AI can assess communications, transactions and interactions for suspicious trends, and help investigators recognise behavioural patterns across different datasets. These capabilities can lead to more effective evidence compilation and case-building.

Using AI-powered tools and systems in the investigations process can reduce the costs of undertaking corporate investigations in the long-term. It can expedite investigations and enable investigation teams to focus their efforts on more important aspects of investigative work.

We'll have more to come in this 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

WHEN IS THE RIGHT TIME TO CONDUCT INTERVIEWS?

When it comes to deciding on the right time to conduct interviews and get that all-important first account from witnesses and subjects of an investigation, approaches will differ.

Some investigators like to focus on reviewing all the relevant material before conducting interviews. Others prefer engaging with witnesses and subjects at the start of the investigation and getting that first account after an initial review of key documents.

Some other factors to consider:

- Are you investigating historical or recent allegations?
- What is the scale of the potential issues?
- Do the allegations span multiple jurisdictions?
- Is there a likelihood of law enforcement or regulatory involvement?
- Are the persons to be interviewed still employed by the organisation?

It simply depends on your investigation strategy and most importantly, the availability of witnesses involved.

DATES FOR YOUR DIARY

THE 2022 ACFE FRAUD CONFERENCE EUROPE

ACFE | 06/04/2022 - 08/04/2022 | [Register](#)

The ACFE Fraud Conference Europe 2022 is dedicated to anti-fraud issues. It brings together professionals from around the world who are involved in preventing, identifying, and detecting fraud and white-collar crime within organizations. The conference aims to help fraud professionals develop anti-fraud knowledge, learn the latest techniques from internationally recognized speakers and experts, take part in unparalleled networking opportunities and leave the conference a more effective fraud fighter.

TOOLS AND TAKEAWAYS TO UPSKILL YOUR INVESTIGATIONS PRACTICE

ACi (Association of Corporate Investigators) | 06/04/2022 | [Register](#)

It is challenging to handle the changing nature and increasing complexity and volume of corporate communications. Experts will cover the cutting-edge techniques and tools applied to sift through rising data volumes from different communication platforms. They will demonstrate how in-house teams use AI to hone in on and review the most relevant data. Corporate investigation experts from Capital One and Lam Research will discuss rising challenges and how their investigations practices are adapted accordingly.

GIR LIVE: LONDON 2022

Global Investigations Review | 27/04/2022 | [Register](#)

Join GIR in London for the seventh edition of GIR Live. Chairs Susannah Cogman (Herbert Smith Freehills) and Jonathan Pickworth (Paul Hastings) will be joined by senior general counsel, private practitioners, and government representatives. They will discuss what is next for the SFO and FCA, the future landscape for corporate investigations, and answer questions.

FIGHTING FINANCIAL CRIME WITH AI

RE-WORK | 14/04/2022 - 15/04/2022 | [Register](#)

This event will explore cutting-edge developments in AI tools and techniques and current and future applications of AI for tackling financial crime. Experts will cover use cases, including anti-fraud measures, risk modelling, anti-money laundering, and KYC initiatives, amongst other broader considerations for whole industry sectors.

USEFUL RESOURCES

PODCASTS

GREAT WOMEN IN FRAUD

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



This podcast is hosted by Kelly Paxton - Certified Fraud Examiner, Private Investigator, and Pink Collar Crime Expert. Kelly is a former special agent turned investigator specialising in embezzlement and workplace dishonesty cases. The podcast includes interviews with outstanding fraud professionals and thought leaders from the fraud industry. It also covers fraud-related origin stories, tips, and resources. An episode is released each Tuesday.