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Letter FROM THE EDITORS

The present issue of the Academy Bulletin, like the International Academy of Financial Crime Litigators as a whole, covers much of the globe. In our last issue, we focused on a single topic, Corruption. In this issue we showcase the breadth and depth of the expertise among Academy fellows around the world, extending over a wide range of subjects.

We begin with an important discussion by the founders of our Academy – **Stéphane Bonifassi***, **Lincoln Caylor*** and **Elizabeth Ortega*** – concerning a major challenge we face in many of our cases: how to coordinate the work of legal, communications and investigative professionals. They offer practical suggestions for lawyers who seek to use these tools to achieve the best possible outcome for their clients.

Then, we move on to an interview with **Elizabeth "Betsy" Andersen**, the newly-appointed Executive Director of the Basel Institute on Governance, for a discussion on why corruption matters and how to confront it. In this conversation, we discussed with Elizabeth the challenges of sustaining anti-corruption momentum in a turbulent geopolitical climate in which the rule of law is questioned, and why, despite the setbacks, she remains deeply optimistic about the fight ahead.

Also coming from the Basel Institute on Governance is this issue's third piece. **Andrew Dornbierer** explores the 'comeback' of Unexplained Wealth Orders (UWOs) in the United Kingdom. Following a calamitous setback five years ago, the legal mechanism is now back to being used by UK authorities to tackle illicit financial flows after being amended in the Economic Crime (Transparency and Enforcement) Act. If applied responsibly, proportionately, and in harmony with established legal rights, UWOs promise to be a powerful tool in the UK's fight to recover criminal assets.

Next, we have an in-depth look at the Foreign Corrupt Practices Act (FCPA) enforcement landscape in the United States. **Adam Kaufman*** and **Eric Lewis*** analyze the statements and actions of the Trump administration and their impact on specific cases. They explain that change is afoot but also make clear that the nature and extent of that change remain uncertain.

Mahmoud Hisham Naguib* discusses the interplay between money laundering and unlawful foreign currency dealing in Egypt. Under current regulatory constraints, legitimate businesses often turn to the black market for foreign currency transactions. This exposes the businesses to government enforcement even when the underlying economic activity is lawful. The unintended effect has been maintenance of money laundering networks and capital flight.

Janusz Tomczak* addresses an issue that company counsel routinely face when they learn of possible wrongdoing affecting their clients: to report the matter to prosecutorial authorities, or not. This article considers the issue under the specific circumstances of Polish law and procedure, which give prosecutors broad authority and discretion, and which includes an important, if subtle, distinction between a company's "social" and "legal" obligations. The article concludes with the ongoing challenge of harmonizing domestic law with European Union directives and practice.

We hope you find this rich and diverse material of interest.

** Fellows of The Academy*

We hope you enjoy this issue of
The Academy Bulletin.

Jonathan S. Sack* | *Editor*

Maria Nizzero* | *Editor*

Strategizing Together Effectively:

Exploring how legal, communications and investigative teams align for better outcomes.

STÉPHANE BONIFASSI
LINCOLN CAYLOR
ELIZABETH ORTEGA

Introduction

When legal and communications professionals fail to coordinate and develop sound strategies based on the facts, firms collapse, cases crumble, and reputations disintegrate. Public relations firm Bell Pottinger's racially divisive campaigns destroyed the firm within months of exposure. Fabricated evidence in the Chernukhin-Derispaska dispute undermined entire legal strategies and professional reputations. The December 2023 congressional hearings on campus antisemitism saw Harvard, Penn, and MIT deploy elite legal counsel alongside crisis communications experts, yet their presidents' legalistic responses created "one of the most disastrous public relations moments in modern memory," resulting in resignations and hundreds of millions in lost donations.

In today's litigation landscape, clients increasingly demand integrated strategies that protect both their legal position and public standing. Clients with disputes work alongside legal, investigative, and communications teams, each of whom bring expertise, experience, and professional obligations, along with distinct strategies and processes for achieving success. When tensions between these teams go unrecognized, ignored, or unresolved, they can create catastrophic failures that destroy cases, careers, and client trust. This article explores these professional fault lines and provides practical advice to help guide litigation cross-functional teams.

UNDERSTANDING THE PROFESSIONAL DIVIDE

While all teams aim to protect the client, fundamental differences in objectives, timelines, and professional cultures can create friction that undermines outcomes.

Communications teams develop and direct clear, purposeful messaging to advance an entity's mission. Consistent alignment across channels drives perception, behavior, and results with target audiences including the public, stakeholders, employees, media and in many cases government authorities. Litigators prepare for an adversarial process. They focus on learning the facts, winning in pending or expected litigation, and addressing possible government inquiries and investigations.

These different perspectives create inherent tension. Communications professionals advocate for transparency to establish narrative control before opposing voices dominate public discourse. They operate on the principle that first impressions stick, and that delayed responses appear evasive. Lawyers prioritize fact finding, which can sometimes be difficult and time-consuming, depending on the individuals and institutions involved; protecting information learned in this fact-gathering process under applicable privileges; and avoiding prejudicial disclosures that could harm their client's legal position.

Communications crises develop within hours, with the first hour often determining the narrative trajectory. Legal processes unfold over months or years with deliberate analysis and strategic patience. What constitutes prudent legal caution can appear to be an undue or even suspicious delay to audiences demanding immediate explanations.

HIERARCHICAL CULTURE AND DISSONANCE

The most fundamental barrier to effective collaboration lies in the intersection of legal practice's traditional caution and hierarchical structure with communications' more message-oriented and collaborative approach. Legal training emphasizes factual and legal analysis, precedent, and risk mitigation — skills that create natural caution when integrating external perspectives into strategic decision-making. This methodical approach, while essential for legal success, can inadvertently treat communications advisors as service providers rather than strategic partners, despite communications professionals possessing specialized expertise in public perception, stakeholder management, and reputational risk assessment. As Professor Verwey notes, this hierarchical dynamic can reduce communications professionals to what she terms "hired guns," operating at a "technician level" that prioritizes client loyalty over broader strategic considerations, potentially limiting the collaborative dialogue necessary for effective crisis management. See Sonja Verwey and Clarissa Muir, "Bell Pottinger and the Dark Art of Public Relations: Ethics of Individuality Versus Ethics of Community."

To maximize client success, the challenge ought to be accepted, embraced, and managed because both professions bring valuable but different strategic perspectives. Legal teams excel at identifying long-term risks and protecting client interests through established procedural safeguards. Communications teams excel at understanding immediate public reaction and managing stakeholder relationships. When these perspectives are not properly balanced and integrated, teams lose critical insights into how legal strategies will be perceived publicly and how to maintain stakeholder confidence during protracted investigations and litigation.

The ethical frameworks governing each profession create additional complexity. Lawyers operate under strict professional conduct rules enforced through disciplinary mechanisms with significant consequences. These rules require protecting client confidentiality, avoiding conflicts of interest, and maintaining legal proceeding integrity — obligations that create necessarily conservative approaches to information sharing and public engagement.
Communications professionals face a different regulatory landscape. As Professor Verwey articulates, many communications professionals limit their role to brand stewardship, operating without equivalent formal ethical oversight. Whilst many communications professionals maintain high ethical standards, the lack of uniform regulatory structure means some may prioritize client satisfaction over accuracy, craft messages designed to obscure rather than illuminate, or pursue short-term reputational gains without considering long-term credibility implications.

These different ethical frameworks can create conflict over substance and coordination. Lawyers, bound by strict professional obligations, may appropriately withhold information necessary for comprehensive communications strategy, whilst communications professionals may propose tactics that lawyers recognize as ethically problematic or legally risky. Neither approach is inherently wrong, but without proper coordination, these different professional standards can undermine overall client protection.

PRIVILEGE: THIRD-PARTY COMMUNICATIONS MAY BE AT RISK

Collaboration between lawyers and communications teams raises complex privilege issues that can expose confidential information. Lawyer-client

privilege protects confidential communications between lawyers and clients for legal advice purposes. Extension of this privilege to third parties requires that their function be essential to the lawyer-client relationship — a standard rarely met in communications contexts.

The *Catalyst Capital Group Inc. v. West Face Capital Inc.* 2023 ONCA 381, case, in Canada, demonstrates these risks. The court refused to recognize litigation privilege over documents shared between Catalyst and its public relations consultant, finding that the dominant purpose was managing public images rather than advancing litigation objectives. When privilege protection fails, previously confidential strategic communications can become admissible evidence, potentially damaging both legal positions and public standing.

This narrow view of privilege, however, fails to reflect the realities of modern litigation and crisis management. In high-stakes matters, protecting a client's position in the court of public opinion is often as critical as defending them in a court of law. Communication professionals are frequently engaged not as peripheral actions, but as essential partners in shaping and executing legal strategy. Yet, the absence of privilege protection for these communications exposes clients to reputational harm and undermines the integrity of their broader defense. When strategic discussions become discoverable, the cost is not only legal: it is public, personal, and enduring.

In Canada, France and the United States, lawyers routinely engage communications professionals, like other experts, pursuant to written agreements that treat their communications as privileged. The privilege has been upheld in some but not all cases, and the law is not well developed. This provides a modicum of comfort for frank sharing of information between lawyers and communications professionals, but does not eliminate the legal risk, and it does not bridge cultural gaps that may exist amongst these different professionals.

INVESTIGATIVE COMPLICATIONS

Private investigators add additional complexity to multi-disciplinary legal teams. In Ontario, private investigators must comply with the *Private Security*

and Investigative Services Act and its associated Codes of Conduct requiring integrity, honesty, and legal compliance. However, regulatory gaps exist for investigators operating from other jurisdictions.

The investigative aspects of *Catalyst Capital Group Inc. v. West Face Capital Inc.* illustrate these risks. Investigators conducted covert operations to record a retired judge making potentially compromising statements. The court condemned this conduct as an affront to justice, and the law firm representing Catalyst ultimately ceased representation. The case demonstrates how investigative overreach can expose both clients and their legal counsel to professional and reputational damage.

PRACTICE POINTS FOR LAWYERS: DEALING WITH COMMUNICATIONS TEAMS

As discussed above, collaboration between lawyers and communications teams is crucial to success in the litigation context, but the professional divide as well as potential loss of privilege put these parties in a difficult situation when dealing with one another. Below are some useful practice tips that can help lawyers navigate these issues:

- **Support strategic collaboration between legal and communications**: use detailed agreements to define roles and ensure alignment, enabling both disciplines to operate effectively and within their distinct professional objectives, mindful of privilege boundaries.
- **Safeguard privilege through careful collaboration**: be wary when sharing confidential information with anyone outside the lawyer-client relationship, limit communication to when and what is strictly necessary, educate communications teams on privilege risks and confidentiality protocols.
- **Coordinate crisis response across disciplines**: develop joint protocols for rapid decision-making that balance legal caution with reputational urgency. The absence of protection can burden clients publicly.
- **Prioritize the court of public opinion**: recognize that public perception can shape litigation outcomes, regulatory scrutiny, and long-term brand health—subject to taking necessary precaution to base communications

on a sufficiently thorough understanding of the facts, expressly caveated as appropriate.

PRACTICE POINTS FOR LAWYERS: DEALING WITH INVESTIGATORS

The presence of third parties when advising clients poses specific challenges. Lawyers at all times should be sensitive to their professional obligations and issues that the presence of third parties may raise with respect to those professional obligations. The Catalyst case above is an example of a situation where investigators conducted their operations in a manner that shocked the court and counsel considering their ethical obligations and withdrawing. Lawyers should consider the following practice points when dealing with investigators:

1. **The validity of the evidence and the methods used by investigators**: lawyers should remain constantly vigilant over the methods that investigators use to obtain evidence to ensure that it has been obtained in a legal and authorized method.
2. **Consider drafting a separate undertaking for the investigators**: lawyers may consider drafting a special undertaking to be signed by investigators that contains language assuring the lawyer and client that they will abide by the *Act* that regulates them and holding them strictly to their Code of Conduct.
3. **Understand the scope and limitations of the retainer and legal expertise**: lawyers should remain aware of the scope of the retainer they have signed with their clients and their own limitations with providing legal advice as it pertains to investigators if it falls outside of their scope of legal competency.
4. **Know when to consider disengagement**: lawyers should remain apprised of what investigators are doing and how they are doing it and should know when it may become necessary to end their representation of a client if their conduct places the lawyer in a position that may cause them to be in breach of the Rules of Professional Conduct.

CONCLUSION

The integration of legal, communications, and investigative professionals in high-stakes litigation creates opportunities for comprehensive client protection but generates significant risks when professional differences are not properly managed. The culture of legal practice and differing ethical standards between professions creates the most substantial coordination challenges.

Positive outcomes require recognizing that effective communications strategy is not subordinate to legal judgment but operates within constraints established by legal requirements. When legal strategy, public messaging, and evidence gathering are properly coordinated, clients receive protection across multiple fronts. When these functions operate in isolation or conflict, the results include failed cases, professional discipline, and reputational destruction.

The rise of AI-generated content and synthetic media further intensifies the reputational stakes, making coordinated legal and communications strategy not just advisable, but essential.

The solution involves structuring coordination processes that respect professional boundaries whilst achieving integrated strategic objectives. In contemporary litigation, legal and reputational risks are interconnected, requiring legal leadership that can effectively manage multi-disciplinary teams whilst maintaining professional standards and client protection.

This shift is reflected in the emergence of integrated legal-communications firms, which signal a broader recognition that legal and reputational risks are no longer separable in sophisticated litigation.

AUTHORS

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Stéphane Bonifassi specializes in complex international litigation linked to economic and financial crime and in the recovery of misappropriated assets. With 30 years of experience, he represents individuals, companies and States victims of economic crimes and he also often, without necessarily appearing, supervises high-stakes litigation.

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Holding The Line:

A discussion with Elizabeth “Betsy” Andersen on corruption and hope in uncertain times.

JONATHAN S. SACK

MARIA NIZZERO

Introduction

Corruption corrodes trust, weakens institutions, and undermines societies. Few people understand this better than **Elizabeth Andersen**, the new Executive Director of the Basel Institute on Governance. With more than two decades of experience advancing the rule of law around the world, Andersen brings a wealth of insight into why corruption matters and how to confront it.

In this conversation, she discusses what drew her to the Basel Institute, the challenges of sustaining anti-corruption momentum in a turbulent geopolitical climate, and why, despite the setbacks, she remains deeply optimistic about the fight ahead.

Q: CAN YOU TELL US A LITTLE BIT MORE ABOUT YOURSELF AND WHAT DREW YOU TO THE BASEL INSTITUTE ON GOVERNANCE?

Elizabeth Andersen: I've spent more than 20 years working to strengthen the rule of law globally, and one of the most pressing challenges we face is corruption. It undermines institutions, harms societies, and erodes trust in government. The Basel Institute's reputation for impact made it a compelling place to continue this work.

What especially attracted me is its model: combining hands-on technical assistance with research and policy engagement. I was particularly drawn to the way in which the Basel Institute transforms lessons learnt from their very impactful technical assistance and case-based assistance on the ground into policy recommendations. These recommendations contribute to global conversations and policymaking that can in turn deliver systemic change. This virtuous cycle of on-the-groundwork, learning, and policy engagement was really very attractive to me as a terrific model.

Q: YOU PREVIOUSLY LED THE WORLD JUSTICE PROJECT. WHAT LESSONS ARE YOU BRINGING TO BASEL?

Elizabeth Andersen: Both organisations share a commitment to data-driven, evidence-based solutions. At the World Justice Project, I saw how indices can be powerful diagnostic tools and motivators for change, as countries or jurisdictions work to strengthen their scores. They open the door for really important conversations on the path forward for change. I intend to carry this work forward to the Basel Institute, as I believe the Basel AML Index – our flagship tool for assessing risks of money laundering and related financial crimes at the country level – has the potential to achieve even more than what it is already doing.

Another key point these organisations have in common is the value they place on multi-stakeholder approaches. The rule of law isn't just for lawyers and judges: it requires governments, businesses, and civil society to work together. At Basel, one of the ways in which we're advancing that vision is through Collective Action initiatives. These bring together the private sector and other stakeholders – typically government and civil society – in sustained, collaborative efforts to overcome shared corruption challenges and raise standards of business integrity and fair competition. I look forward to building on the Basel Institute's track record in convening such multi-stakeholder initiatives, so critical to combating corruption effectively.

Q: FROM GEOPOLITICAL SHIFTS, TO THE THREAT OF WAR, TO TARIFFS, TO CLIMATE CHANGE, WITH SO MANY URGENT GLOBAL ISSUES, HOW DO YOU KEEP ANTI-CORRUPTION ON THE AGENDA?

Elizabeth Andersen: This is something I have been thinking about a lot– in particular about the ways in which we need to frame, or reframe, the work that we do in terms of the policy priorities that prevail today. We have to link corruption to today's top policy concerns, whether that's defence spending, organised crime, or the energy transition. There is an important corruption dimension to all of these contemporary priorities. By highlighting that connection through research, we can make the case that anti-corruption work isn't a distraction or unnecessary expense; it's foundational and an investment in long-term success.

Illicit financial flows are another critical issue. These are not victimless crimes, but ones that rob communities of resources. Especially at a time when development assistance is shrinking, asset recovery and international cooperation to return stolen funds are more urgent than ever. That has always been at the core of the Institute's work, but it feels all more urgent now.

Q: SOME ARGUE MOMENTUM ON ASSET RECOVERY IS WANING. DO YOU AGREE?

Elizabeth Andersen: In fact, demand for our support in partner countries is growing. We have more demand than we can currently meet from governments asking us to help them develop capacity to investigate, prosecute, and recover assets.

We're also seeing governments adopt stronger legal tools, such as non-conviction based forfeiture and improved anti-money laundering frameworks. And international cooperation mechanisms are maturing, which gives me confidence that progress is possible.

There may be some fatigue, but there is also a growing awareness that asset recovery is not only a strategy for recovering stolen assets and obtaining much needed resources; it also acts as a deterrent and signals that organised crime will not pay.

We also find a lot of promise in the work of the International Anti-Corruption Coordination Centre (IACCC), the ongoing Global Forum on Asset Recovery (GFAR) series, and the GlobE Network – the Global Operational Network of Anti-Corruption Law Enforcement Authorities. This kind of international cooperation on anti-corruption and asset recovery is essential, and there are a lot of opportunities to enhance it through such initiatives.

In this context, Deputy Prime Minister David Lammy's commitment to tackling illicit finance and the announcement of a summit next year on this topic are really important. The summit represents a great opportunity for financial centres in particular to re-energise and re-focus the fight against illicit finance.

Q: HOW DOES BASEL BRIDGE THE GAP BETWEEN INTERNATIONAL STANDARDS AND LOCAL REALITIES?

Elizabeth Andersen: This is a really important question, and its answer is a legacy of Gretta Fenner, the Basel Institute's Managing Director for many years who tragically passed away in 2024. I am proud to say that we never parachute in with a one-size-fits-all presentation. For example, e ach Basel Institute training on financial investigations and asset recovery is tailored to the local context — to reference the local laws, the local procedures, even the local evidence and context in which crime happens. And this training is typically followed up with mentoring by expert advisors who are often embedded directly with partner agencies in the country.

This high-touch approach is time intensive, but it's the only way to ensure international standards translate into meaningful local practice, and this is something the Institute really excels in.

Q: FUNDING CHALLENGES, ESPECIALLY RISING FROM THE NEW US ADMINISTRATION'S DECISIONS TO CUT USAID, HAVE SHAKEN CIVIL SOCIETY. HOW IS BASEL RESPONDING?

Elizabeth Andersen: We're incredibly fortunate to have a loyal group of donors who have sustained or even increased their support. We don't take it for granted, however, so we're also working to diversify funding, including by engaging the private sector. Many companies now recognise that good governance is essential to their bottom line.

We've also received generous support for education from individuals, such as scholarships for our new graduate-level anti-corruption and asset recovery courses with the University of Basel. Investing in the next generation of leaders is something I'm particularly excited about. I really want to give a shout out to the International Academy of Financial Crime Litigators, which has through the Academy itself, and a couple of generous members committed to fund two scholarships for talented professionals who would otherwise not be able to attend the course.

Q: TALKING ABOUT THE PRIVATE SECTOR, WHAT ROLE DOES THE PRIVATE SECTOR PLAY IN FIGHTING CORRUPTION?

Elizabeth Andersen: It's a critical role. We've promoted Collective Action for decades, helping to establish initiatives like the Wolfsberg Group and the Metals Technology Initiative. On our B20 Collective Action Hub – a leading free resource centre on this approach – we've documented over 300 such initiatives. This growing dataset allows us to identify what works when engaging the private sector in fighting corruption. It allows usto push beyond rhetoric or box-ticking towards initiatives that have meaningful impact.

Q: DESPITE SETBACKS, WHAT KEEPS YOU HOPEFUL?

Elizabeth Andersen: Above all, the people. My colleagues at Basel, many recruited by my predecessor Gretta Fenner, are extraordinarily talented and committed. Our partners around the world often take up this cause at personal risk, which is deeply inspiring.

And then there are the broader networks drawn from government, businesses, civil society, the media and ordinary citizens, standing up against corruption. When you see that collective energy, it's impossible not to feel optimistic.

Q: FINALLY, WHAT RESEARCH IS BASEL PRIORITISING NEXT?

Elizabeth Andersen: We're looking closely at how to strengthen legal tools while safeguarding human rights, for example, with a comparative study of non-conviction-based forfeiture laws. We're also exploring mechanisms to help ensure fines from foreign bribery cases can be used to support anti-corruption initiatives, including in communities that have been harmed by corruption.

Both areas aim to make anti-corruption and asset recovery frameworks not only more effective, but also more just.

PROFILE

Elizabeth 'Betsy' Andersen

Elizabeth "Betsy" Andersen is the Executive Director of the Basel Institute on Governance, where she leads the Institute's strategic direction and oversees its global efforts to counter corruption, strengthen governance and promote integrity in the public and private sectors. She assumed the role in March 2025, following a distinguished career at the intersection of law, justice, governance and international development. Before joining the Institute, Betsy served as Executive Director of the World Justice Project, a non-profit organisation working internationally to advance the rule of law.

Back In Action:

How the UK Is reviving unexplained wealth orders.

ANDREW DORNBIERER

Introduction

In September 2025, the UK's Serious Fraud Office ("SFO") secured GBP 1.1 million from the sale of a property belonging to the ex-wife of a convicted fraudster, Timothy Schools. From the SFO's perspective, the case represented a milestone: it was the agency's first use of the UK's unexplained wealth order ("UWO") mechanism. From a broader perspective it also added weight to the argument that after a tumultuous start, UWOs are finally establishing themselves as a critical weapon in the UK's arsenal to target the proceeds of crime.

The UWO mechanism was introduced in 2017 as a tool to combat the abuse of UK's markets to launder criminal proceeds. Their unveiling was accompanied by stern warnings to criminals: they would soon feel the "full force of government". In 2020, however, after only a handful of attempts to use it, the UWO mechanism received a stern blow in the form a High Court decision, *National Crime Agency v Baker & Ors*, which effectively left it sprawled on the canvas. The ruling not only shut down the National Crime Agency's efforts to target GBP 80 million in property allegedly linked to a former Kazakh minister, but also ultimately left the agency with a GBP 1.5 million cost order.

At that point, UWOs had barely been tested in the UK. Four of the five agencies that had been empowered to employ them had been hesitant to do so, and it was looking unlikely that they ever would. Criticism intensified and arguably the most damning assessment came from Parliament itself, with a House of Commons Foreign Affairs Committee Report labelling the UWO regime as "spectacularly unsuccessful."

The UK UWO appeared to be down for the count. In the last year or so, however, the mechanism has slowly started to prove itself. As demonstrated most recently in the Schools case, not only has the mechanism picked itself up off the canvas, but it has started to throw a few punches of its own.

This article looks at the short history of UWOs in the UK. It examines how, after a turbulent start, these measures are quietly demonstrating how they can play a dynamic and significant role in the continuing battle against illicit financial flows.

EXPECTATIONS AT THE WEIGH-IN

UWOs were introduced into the UK Proceeds of Crime Act (POCA) in 2017. They granted law enforcement agencies the power to seek an order from the court to compel specific individuals to explain the source of assets where certain conditions were met.

Namely, if the court was satisfied that there were reasonable grounds to suspect that a politically exposed person from outside the European Economic Area – or a person suspected of being involved in serious crime – had insufficient sources of income to justify how they obtained certain assets of a value above GBP 50,000, then they could issue a UWO requiring the person to provide information explaining the origin of those assets. If the person did not comply with this order, then this would give rise to a rebuttable presumption that the assets were not lawfully obtained in any subsequent claim by the enforcement agency under the POCA's civil recovery mechanism.

In other words, UWOs were essentially introduced to act as an investigatory tool to assist agencies to recover the proceeds of crime through civil means.

The introduction of the UK UWO was accompanied by a significant amount of fanfare. Those advocating for them argued that they would be useful in cases where someone had acquired significant assets without any obvious justification but there was insufficient evidence to successfully prosecute that person for a crime. Touted as "McMafia Orders" by the media, UWOs were expected to lead to the identification, and ultimately the recovery, of "[h]undreds of British properties suspected of belonging to corrupt politicians, tax evaders, and criminals" and the "[h]uge amounts of corrupt wealth" laundered through London's banks.

A legislative impact assessment by the Home Office on the introduction of the mechanism predicted that there would be an average of 20 UWOs each year and that the state would only incur between GBP 5,000 to 10,000 in costs for each.

POINTS IN THE EARLY ROUNDS

At first, it appeared UWOs would quickly prove worthy of the hype. Just one year after their introduction, in 2018, the National Crime Agency (NCA) obtained a high-profile UWO against Zamira Hajiyeva, the wife of an ex-state banker in Azerbaijan convicted in 2016 for fraud and embezzlement (*National Crime Agency v Hajiyeva*). The order (upheld on appeal in 2020) required Ms Hajiyeva to explain the source of a multimillion-pound property suspected of having been bought using her husband's proceeds of crime.

In July 2019, the NCA obtained another widely publicized UWO against Mansoor Mahmood Hussain – a suspected money launderer connected to organized criminal gangs who had inexplicably managed to build a substantial property portfolio (*National Crime Agency v Hussain & Ors*). Criminal proceedings in this case would have been challenging on the grounds that the alleged "seed funding" for Hussain's property dated back two decades, making them very difficult to trace. Consequently, the NCA had opted for, and obtained, an UWO compelling Hussain to demonstrate how he had acquired the properties.

By the end of 2019 – two years after their introduction – the NCA had acquired a total of nine UWOs relating to four cases. Momentum seemed to be building. Then came the *Baker* decision in 2020.

THE KNOCK DOWN

Interestingly, the *Baker* case started positively for the NCA. The agency was initially successful in obtaining a UWO targeting a number of properties suspected to have been purchased using laundered proceeds of crime belonging to Rakhat Aliyev, a deceased Kazakh politically exposed person. In response to the order, Baker (the effective controller of properties), as well as Aliyev's ex-wife and Aliyev's son (the purported beneficial owners of these properties) provided information which they claimed demonstrated that the properties had been bought using legitimate funds and requested that the order be discharged. The NCA, unsatisfied with the response, refused to withdraw the UWO, arguing that the terms of the UWO had not been fully complied with.

The UK High Court examined the case and not only disagreed with the NCA's arguments and discharged the order, but also ruled that the requirements for granting the initial UWO had not been met. Moreover, the court also scolded the NCA for having made "unreliable" assumptions regarding the source of relevant funds and for having conducted an "inadequate investigation into some obvious lines of inquiry." An application for appeal was subsequently refused and the NCA was left with the previously mentioned costs order of GBP 1.5 million.

The decision was undoubtedly a massive setback for UK UWOs, with the *Times* newspaper describing the result as "embarrassing for the Home Office." The GBP 10,000 cost per case prediction they had initially put forth now appeared to have been woefully underestimated. The *Baker* legal bill alone absorbed over one third of the NCA's International Cooperation Unit's annual budget of GBP 4.3 million. Questions were raised about the efficacy of UWOs in the face of complex ownership structures and there was feeling of "frustration" in some agencies that UWOs had "been hyped by ministers and the media when they are a limited tool rather than a silver bullet."

A KNEE ON THE CANVAS

Despite this setback, the NCA remained resolute in their commitment to using UWOs and still publicly backed the mechanism as an important tool in tackling illicit finance.

Their faith to UWOs was rewarded several months later when Hussain (the target of the previously mentioned 2019 order) opted to settle the proceedings against him out-of-court, handing the NCA its first substantial recovery as a result of an UWO: 45 properties in London, Cheshire and Leeds, four parcels of land, GBP 600,000 in cash and other assets with a total value of GBP 9.8m**.** In the echo of *Baker*'s blow, the Hussain settlement provided a first clear demonstration that UWOs could actually deliver tangible recoveries.

Like the NCA, Parliament opted to put their faith behind UWOs and worked to fortify them. In early 2022, lawmakers introduced amendments to the mechanism they claimed would "strengthen and reinforce the UWO regime" to ensure the powers could be used more effectively in situations where property was held through complex ownership structures (as had

been the case in *Baker*). The reforms also sought to "mitigate the significant operational risks to an enforcement authority" and prevent a second million-pound-plus legal bill by putting a limit on cost orders.

REVIVAL

Were the amendments effective? While the bout is still certainly ongoing, several successes in the last 18 months suggest that UWOs might be making a comeback in the UK.

As a starting point, in May 2024, the NCA tangibly backed up their post-*Baker* commitment to continue using UWOs by obtaining their first Northern Irish order against an individual suspected of having built a GBP 275,000 property using the proceeds of cigarette smuggling.

Moreover, as mentioned above, the Serious Fraud Office recently obtained an UWO targeting a GBP 1.1 million property held by the ex-wife of Timothy Schools, a convicted orchestrator of a multi-million-pound fraud (*Director of the Serious Fraud Office v Schools*). This was a critical milestone in that it marked the first time an agency outside the NCA had used the tool, potentially paving the way for the three other agencies empowered by the POCA to finally use it as well.

Most importantly, the amount of assets recovered has ticked up substantially. In August 2024, the NCA reached a settlement with the recipient of the inaugural UWO in 2018 – Zamira Hajiyeva – under which she agreed to forfeit 70 percent of two properties that have been subsequently put on the market for a combined value of GBP 19.5 million, representing a potential GBP 13.6 million windfall for the NCA. In addition to this, the SFO just recovered a further GBP 1.1 million from the sale of the property owned by Claire Schools. Taking these into account, and adding the previous amount involved in the Hussain settlement, the total recoveries in proceedings involving UWOs will soon be close to GBP 25 million.

While the 2017 Impact Assessment for UWOs underestimated the costs incurred by agencies in seeking these orders (a key post-*Baker* criticism) it is also now clear that the assessment also underestimated the value of assets that UWOs would help recover. The document projected that in their first 10

years, UWOs would contribute to the recovery of GBP 6.1 million. This target has already been quadrupled.

Of course, recoveries alone should not be the only yardstick to determine the success of UWOs. Nonetheless this figure certainly strengthens the argument that UWOs can significantly assist efforts to target the proceeds of crime.

This is further reinforced by the fact that with each case, UWOs are demonstrating an element of dynamism that hadn't initially been envisaged at their introduction. For instance, while UWOs were initially foreseen as a supportive measure to subsequent civil recovery actions, the Hussain and Hajiyeva cases have demonstrated that they can also be used to achieve out-of-court settlements where the respondents clearly struggle to explain targeted assets.

Additionally, the Schools case demonstrated that UWOs can be used not only in cases where someone is suspected of criminality, but also in cases where a conviction has been achieved but the proceeds of the offence are especially difficult to identify.

CONCLUSION

As more cases are finalized and UWOs are increasingly applied to new circumstances, it is very likely that further use cases will also come to light.

Of course, UWOs are still in their adolescence and are largely untested. Assuming their momentum continues, and they are increasingly utilized, their provisions will continuously be placed under the judicial microscope to ensure that they are applied responsibly, proportionately, and in harmony with established legal rights (as they should be).

In this context, it is impossible to guarantee that a future adverse decision will not once again stop this momentum in its tracks. Nonetheless, given their successes over the last 12 months, UWOs may finally be establishing themselves as a powerful tool in the UK's fight to recover criminal assets and disrupt illicit financial flows.

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Changing Currents In FCPA Enforcement:

Insights from the Trump Era.

ADAM KAUFMANN

ERIC LEWIS

Introduction

The Foreign Corrupt Practices Act ("FCPA") has been one of the most significant drivers of global compliance efforts over the past 20 years. Companies with limited or no connection to the United States frequently were advised to include recitations in contracts where they agreed to obey all relevant anti-bribery and corruption laws "including the Foreign Corrupt Practices Act." Many companies included such clauses even when, under U.S. law, the FCPA could not apply to their conduct (it applies solely to statutorily defined U.S. persons) and the companies had little idea what that reference really meant. For many, the term "FCPA" became a sort of global shorthand for the maxim: "Thou shalt not bribe." Not anyone, not anywhere.

Proponents argued that broad enforcement of the FCPA elevated global compliance standards and led a global fight against corruption. According to this school of thought, all boats would rise with broad punishment of corrupt activities to the betterment of governments everywhere. Other nations and international organizations would enact similar legislation so that this important norm would move in the direction of universal application and enforcement. And indeed, after the passage of the U.S. Foreign Corrupt Practices Act (FCPA) in 1977, the OECD enacted the Anti-Bribery Convention adopted in 46 countries; Latin American countries adopted the Inter-American Convention Against Corruption; the UK enacted the Bribery Act of 2010; and similar legislation was enacted in Spain, Switzerland, France, Australia, Singapore and India.

Few would defend the morality of payments to corrupt rulers and their associates, but critics argued that the law put American companies at a competitive disadvantage, particularly vis-à-vis China and Russia, which have anti-corruption statutes on the books but are widely perceived as enforcing them very selectively. The counter to this view is that transparency and anti-corruption standards are universal norms that promote efficiency and governmental integrity. The solution to differing legal regimes is not, in this view, to level the playing field by giving American companies freedom to bribe.

On the other hand, critics can point to enforcement decisions that made FCPA implementation appear petty and not directed to eliminating significant corruption. Most practitioners can tell stories of sitting in federal prosecutors' offices arguing over whether dinner, golf, and tickets to sporting events—all commonly-accepted business entertainment practices in most parts of the world—constituted corrupt payments. Turning corporate entertainment into felonies was perceived as overkill. Because most companies settled rather than risk the time, expense, and exposure of trial, the U.S. Department of Justice ("DOJ") steadily expanded its unilateral definition of "corrupt practices" unchallenged. To many, FCPA enforcement became a puritanical prohibition of the conferral of any benefit to any person linked to a public figure or state-owned company. The real problem of foreign dictators becoming plutocrats with huge offshore holdings while their people lose the value of development was drowning in a sea of trivia.

THE PAUSE IN ENFORCEMENT

President Donald Trump entered this fray in the first weeks of his second term in office by signing an executive order on February 10, 2025, which paused all FCPA investigations and enforcement actions for a period of 180 days while the DOJ re-aligned its FCPA policies to comport with Mr. Trump's new policy focus. The executive order and comments from the White House stated specifically that the FCPA makes American companies less competitive and that U.S. companies are harmed by FCPA "overenforcement because they are prohibited from engaging in practices common among international competitors, creating an uneven playing field." But the argument was not that the FCPA was being misapplied by focusing on normal corporate entertainment; the Administration was suggesting that bribery of foreign officials was endemic and that US companies were losing out on valuable contracts because they could not make the payoffs that everyone else was making. Consistent with a habitual lack of nuance, Mr. Trump called the FCPA a "horrible law" and said "the world is laughing at us" for enforcing it.
The new directive instructed prosecutors to prioritize foreign bribery investigations that focus on bribery relating to cartels and transnational terrorist organizations, such as bribery of foreign officials to facilitate human smuggling and the trafficking of narcotics and firearms. While there is certainly bribery attendant to these cartels, the connection to U.S. citizens is doubtful, and there are other, effective criminal tools for dealing with these

important priorities. What the Executive Order was signaling was that the FCPA would be an adjunct to cartel enforcement, as opposed to commercial misconduct, vastly reducing the use of FCPA as a prosecutorial tool for deterring bribery of foreign politicians.

POST-PAUSE GUIDANCE

More recently, on June 9, 2025, Deputy Attorney General Todd Blanche issued new guidance for FCPA enforcement in the form of "Guidelines for Investigations and Enforcement of the Foreign Corrupt Practice Act (FCPA)" (the "Guidelines"). In commenting on the Guidelines, the head of the DOJ's criminal division, Matthew Galeotti, stated that "[t]hese Guidelines provide evaluation criteria and a non-exhaustive list of factors to balance when deciding whether to pursue an FCPA case." He maintained that "the Criminal Division will enforce the FCPA — firmly but fairly — by bringing enforcement actions against conduct that directly undermines U.S. national interests without losing sight of the burdens on American companies that operate globally." The new guidance is solidly in line with the priorities established in Mr. Trump's Executive Order. What U.S. national interests may be is not specified, but given the interest of the Trump Administration in promoting American business and specifically referencing burdens to American companies that operate abroad, the signal to U.S. companies is that commercial bribery of foreign officials or entities will not be a priority for enforcement; and, to the contrary , the argument that an American company had to "pay to play" would perhaps get significant traction in avoiding FCPA enforcement.

In addition to limiting undue burdens and focusing on conduct that undermine U.S. national interests, the Guidelines provide that FCPA investigations and enforcement action may not be initiated without the authorization of the head of the DOJ's Criminal Division or a more senior DOJ official. This is a departure from other recent directives freeing local U.S. Attorney's Offices from Main Justice oversight and will likely enable DOJ's senior leadership to provide a high-level political review of proposed FCPA targets *before* any investigation is launched. Companies that are politically connected or deemed crucial to U.S. national security or economic interests may well have opportunity to cut off investigations before they are formally contacted by prosecutors (which often triggers reporting obligations for many companies).

The Guidelines provide four non-exhaustive factors that are consistent with the redirection of the FCPA toward cartels and away from ordinary commercial activity:

1. Total Elimination of Cartels and Transnational Criminal Organizations;
2. Safeguarding Fair Opportunities for U.S. Companies;
3. Advancing U.S. National Security; and
4. Prioritizing Investigations of Serious Misconduct.

Tellingly, the focus of prosecutions for corrupt activities will apparently be on misconduct that deprives "specific and identifiable U.S. entities of fair access to compete and/or result[s] in economic injury to specific and identifiable American companies or individuals." The memo also makes note of the recently-enacted (December 2023) Foreign Extortion Prevention Act, 18 U.S.C. § 1352, by directing U.S. prosecutors to consider whether specific and identifiable U.S. entities or individuals have been harmed by foreign officials' demands for bribes.

The emphasis on harm to US companies from foreign bribery schemes would essentially turn FCPA enforcement on its head. It suggests the U.S. will prosecute *foreign officials* for demanding bribes but will also allow U.S. companies to pay bribes if it is in the U.S. national interest to do so.

COMPANIES AND INDIVIDUALS

Another major change lies in how the Guidance treats individuals and companies: "Effective today, prosecutors shall focus on cases in which individuals have engaged in criminal misconduct and not attribute nonspecific malfeasance to corporate structures; proceed as expeditiously as possible in their investigations; and consider collateral consequences, such as the potential disruption to lawful business and the impact on a company's employees, throughout an investigation, not only at the resolution phase."

In the past, DOJ policy was to investigate and prosecute both companies and individuals, and to consider collateral consequences only at the resolution phase. Successive generations of DOJ policy memoranda emphasized the importance of self-reporting and cooperation, allowing the DOJ to

leverage a company's own resources to engage outside counsel (usually former federal prosecutors) and private due diligence firms (usually former federal agents) to conduct internal investigations and turn the results over to the government. If companies cooperated fully, then at the end of the investigation, they might be granted a deferred prosecution agreement in lieu of a guilty plea. The investigations could run into tens of millions of dollars with subsequent fines eclipsing those amounts.

Now, under the Guidelines, the focus is on individuals, not companies, and collateral consequence considerations will be brought into play at a much earlier phase. In addition, the statement that DOJ will not attribute "nonspecific malfeasance" against companies is also telling. While every iteration of policy memoranda by successive Deputy Attorneys General for at least the past ten years has emphasized the importance of prosecutions of responsible individuals, this is the first memorandum to question the underlying concept of collective responsibility of the corporate entity itself. Taken with other policy directives, the Guidelines suggests a new paradigm in which the misconduct of relatively low-level employees—for example, the "bagmen" who make the pay-offs—will be prosecuted, but that misconduct will not be attributed to a corporation in the absence of some "[]specific malfeasance" that can be attributed to a corporation itself.

The question of when "nonspecific" becomes "specific" "malfeasance," attributable to a company, is one of the more important unknowns as enforcement in this Trump Administration takes shape. For example, to what extent will actionable malfeasance include generalized policy and compliance shortcomings? The Guidelines do not provide real guidance on such important issues.

IMPACT OF THE GUIDELINES

The "proof of the pudding," as they say, is in the eating. We have already seen some of the impact of the change in policy. In his first weeks in office, Mr. Trump disbanded the kleptocracy task force, a Biden-era task force focused on capturing assets of Russian oligarchs to then be used to fund Ukraine in its fight against Russian aggression. FCPA matters were previously handled by a specialized unit within the DOJ Frauds Section. According to Reuters, that unit has been cut from 32 prosecutors in January 2025 to just 15 today.

According to a report from the American Bar Association's Criminal Justice Section, at the time of the "pause," the DOJ had four cases pending trial that were then reviewed during the pause period. Following the review, the DOJ announced its intention to move forward with three of the cases and dismissed the fourth.

In *United States v. Bautista, et al*., (S.D. Fla. No. 24-cr-20343), three executives of the voting machine company Smartmatic were indicted on allegations that they paid over $1 million in bribes to the former chairman of the Philippines election commission to obtain and retain contracts relating to Philippines election machines and election services. Smartmatic was the company accused of using its software to shift votes to affect the outcome of the 2020 election. The accusations were not substantiated. In light of President Trump's interest in and hostility toward this company, it was not a surprise when the case was cleared to proceed to trial, which is scheduled for April 2026..

Also moving forward is *United States v. Hobson*, (W.D. Pa. No. 22-cr-86), in which Hobson, an executive at a Pennsylvania coal company, was alleged to have paid bribes to officials at an Egyptian state-controlled company to obtain roughly $143 million in coal contracts from the Egyptian company. The indictment also alleges that Hobson conspired to secretly receive a portion of the commissions on these contracts as kickbacks. This suggests that certain pure commercial bribery cases will be pursued. Trial is scheduled for February 2026.

In the third case to clear the "pause and review" process, *United States v. Zaglin, et al*., (S.D. Fla. No. 23-cr-20454), the owner of a Georgia-based manufacturer of law enforcement uniforms was alleged to have paid Honduran government officials $166,000 in bribes to secure contracts worth over $10 million to supply police uniforms to the Honduran federal police. In its opposition to a motion to dismiss, the government argued inter alia that Zaglin was not competing with foreign companies with respect to the contracts but rather was competing with American companies. **.** Two of the codefendants in this case pled guilty; defendant Zaglin is scheduled to go to trial in September 2025.

The fourth case, which was dismissed, was *United States v. Coburn et al.* (D.N.J. No. 19-cr-00120). The DOJ dismissed this case without comment, so the grounds for dismissal and the justification under the new Guidelines are difficult to discern. The 2019 indictment alleged that the two defendants, executives at a company called Cognizant, paid a $2 million bribe to an Indian official to expedite a construction permit for a building in India.

The basis for the varying treatment of these cases is not clear. The dismissed case, *Coburn*, was a very old indictment that some reports say had been mired in difficulties. Certainly, the fact that the case had been pending without trial for 6 years suggests there were difficulties with the case. None of the others invoke particular U.S. interests, and all are fairly straightforward corruption cases (with the exception of *Bautista*, which involves the Smartmatic election machine company and thus has a political aspect).

More recent cases also provide insight into DOJ perspective on FCPA. On August 7, 2025, DOJ issued a declination of prosecution involving insurance company Liberty Mutual. In avoiding prosecution, the global insurance company agreed to accept responsibility and disgorge profits (U.S. $4.7 million) realized from a bribery scheme perpetrated by certain employees of its Indian subsidiary. DOJ cited a number of reasons for the declination, including voluntary self-disclosure, a full internal investigation, cooperation with the government, enhancement of compliance controls by the company, and termination of the employees who paid the bribes. Although it is difficult to assess, these are the types of factors that under prior administrations would likely have led to a Deferred Prosecution Agreement, but not a declination. This case sends a clear message, particularly to U.S. companies, on the value of self-reporting.

In another case, on August 11, 2025, the U.S. Attorney for the Southern District of Texas announced charges against two Mexican nationals lawfully residing in the United States, which charges the payment of bribes to officials at Petróleos Mexicanos (PEMEX) the state-owned oil company of Mexico, and one if its subsidiaries. The indictment alleges that the two defendants, Ramon Alexandro Rovirosa Martinez and Mario Alberto Avila Lizarraga, paid bribes to PEMEX officials in exchange for valuable oil-related contracts.
The indictment describes an old-fashioned bribery case. The defendants are accused of providing approximately $150,000 in bribes in the form of luxury

goods, cash payments, and other valuable items to at least three employees of state-owned enterprises in exchange for access to contracts and business. It is the type of case that would have been brought by any DOJ leadership in the past 30 years. The facts of this case do not implicate many of the factors mentioned in the new DOJ guidance, but the case shows DOJ's willingness to bring FCPA cases to address garden-variety foreign corruption.

CONCLUSION

It is difficult to know whether the DOJ will be indicting new cases, at least in the non-cartel context. One open question is how the DOJ will define the term "serious misconduct" in the fourth general criterion set forth in the Guidelines. A distinction can be drawn between cash payments to a corrupt official on the one hand, and business entertainment in the form of dinners and sporting event tickets on the other. If the past criticism was that the DOJ had criminalized routine business conduct to the detriment of U.S. business interests, time will tell whether, under the new guidelines, American companies will have a green light to pay bribes with impunity. Another important question, noted above, concerns when "malfeasance" is so substantial and generalized that a company and not just an individual will be held accountable.

It is abundantly clear that defense counsel should press the argument in FCPA investigations that any acts on the part of defendant companies were undertaken to promote American business interests and to achieve a level playing field with foreign competitors. That argument, formerly "dead on arrival," will likely carry substantial weight under the new guidelines.

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When Regulation Backfires:

Foreign currency controls, business risk, and money laundering in Egypt.

MAHMOUD HISHAM NAGUIB

Introduction

Money laundering, the process by which illicit funds are concealed and eventually made to appear legitimate, thrives in financial systems where oversight is weak. In Egypt, the black market for foreign currency has created such a space—one where informal financial transactions, conducted far from regulatory scrutiny, continue to expand in response to persistent foreign currency shortages. These conditions have allowed a parallel economy to flourish, in which large volumes of money move outside official regulation, often serving as an entry point for laundering criminal proceeds.

The relationship between money laundering and unlawful foreign currency dealing is profoundly interdependent. Proceeds derived from a wide range of predicate crimes—ranging from cross-border drug and weapons smuggling to public corruption and elaborate financial fraud —are routinely converted into foreign currency through these informal networks, specifically to sever their ties to illegal origins. These laundered foreign currencies are then skillfully reintegrated into the legitimate Egyptian economy, often by being used to acquire high-value assets or investing in ostensibly legitimate businesses, thereby effectively sanitizing the “dirty” money, according to Daneshyar, DIFC .

On the other hand, legitimate businesses that struggle to access foreign currency through official channels—due to regulatory constraints—often end up turning to the black market. Though unintentional, this reliance helps sustain the very networks that facilitate money laundering by keeping them well-funded. At the same time, the ongoing existence of a parallel foreign exchange market creates a convenient path for capital flight. This, in turn, worsens the shortage of foreign currency in the formal system and contributes to a self-reinforcing cycle of economic imbalance, according to the IMF.

EGYPT’S LEGAL BATTLEFRONT: LAWS, REGULATIONS, AND THE PURSUIT OF FINANCIAL INTEGRITY

Egypt has endeavored to construct a robust legal and regulatory architecture designed to combat money laundering and terrorist financing (AML/

CFT). The cornerstone of these efforts is **Law No. 80 of 2002 (Anti-Money Laundering Law)**, a pivotal piece of legislation that not only criminalizes money laundering but also imposes strict penalties for related offenses based on instructions issued by the General Authority for Investment and Free Zones ("GAFI").

The **Central Bank of Egypt ("CBE")**, as the nation's principal financial regulator, has a paramount role in overseeing and rigorously enforcing AML compliance, with a particular focus on the banking and foreign exchange sectors. Complementing this, the **Money Laundering and Terrorist Financing Combating Unit ("EMLCU")**, an autonomous entity operating under the CBE, functions as Egypt's Financial Intelligence Unit (FIU), entrusted with the critical tasks of collecting, analyzing, and publicizing suspicious transaction data, while also coordinating with various law enforcement agencies.

Regarding foreign currency dealings, **Law No. 194 for the year 2020** serves as the overarching legal framework. While this legislation does not explicitly enshrine statutory foreign currency controls, the CBE has historically deployed a diverse array of measures to meticulously manage foreign currency supply and demand. These have encompassed, at various times, ceilings on foreign currency transfers by individuals and rigorous deposit limits for both individuals and corporate entities.

Crucially, all foreign currency transactions are legally mandated to be executed through licensed banks or authorized foreign exchange bureaus, each of which is compelled to diligently report its transactions to the CBE. The CBE has also issued new regulations to detect and prevent money laundering and terrorist financing through various channels, including electronic payment tools and suspicious account transaction patterns based on news from Egyptian newspapers.

ACCUSATIONS AND THE QUESTION OF COMMITMENT

Despite official efforts, serious doubts remain about the effectiveness of Egypt's anti-money laundering (AML) regime. One major concern is the lack

of transparency in investigations. Details of high-profile cases are rarely made public, raising questions about accountability and whether the performance of law enforcement bodies in tackling fraud and money laundering is merely superficial or reactive.

Experts also highlight the vast informal economy—estimated at around 40% of GDP—as a key enabler of money laundering. With limited regulatory oversight, untraceable financial flow continues to thrive. This, coupled with ongoing foreign currency shortages in Egypt's formal banking system, has pushed many private companies to the black market just to meet basic import and operational needs.

In response, law enforcement has intensified efforts to suppress the circulation of foreign currency, at times on the basis of sweeping and problematic assumptions. A growing legal trend treats mere *possession* of foreign currency as evidence of illegal dealing, regardless of actual commercial activity. Many recent cases involved business professionals accused simply because foreign cash was found in their company's safe—neither in a bank nor circulating in the black market. Although ultimately acquitted, the accused endured a full criminal trial, reputational harm, and the implicit presumption of guilt based solely on possession. This reflects a disturbing pattern in Egyptian legal practice, where owning currency is increasingly conflated with illicit dealing, despite no legal presumption to that effect.

In a separate case, a private individual was charged not only with unlawful currency exchange, but also with money laundering—even though the foreign currency was seized directly from his person and had not been concealed. There was no predicate crime from which the funds were generated, nor any laundering activity aimed at disguising their source. Yet, prosecutors stretched the legal definition, using the foreign currency charges to justify a parallel money laundering accusation. This fusion of offenses—currency dealing and laundering—creates legal and economic uncertainty, especially when the penalties for the latter are much more severe. Observers warn that such strategies risk turning the AML framework into a tool for inflated conviction statistics, particularly under the jurisdiction of the General Department for Combating Public Funds Crimes which is often under pressure to demonstrate "results."

While Egypt's AML strategy includes international commitments and periodic updates in line with Financial Action Task Force (FATF) guidance, these systemic flaws—unwarranted prosecutions, overbroad definitions, and reputational damage for innocent actors—undermine the strategy's credibility and practical effectiveness.

THE HIDDEN TOLL: MONEY LAUNDERING STATISTICS AND THEIR SOBERING REALITY

While securing precise and updated public statistics directly from the General Department for Combating Money and Public Funds Crimes concerning money laundering cases in Egypt can prove notably challenging, fragmented reports from various sources do offer glimpses into the scale of the problem. For instance, a report from May 2025 indicated that the cumulative sums implicated in money laundering cases over a single year amounted to a staggering EGP 7,748,472,866 (approximately $154,969,457). This figure suggests a monumental volume of illicit funds continuously circulating within the nation's economy.

In another instance, Egyptian authorities seized a record LE 3.4 billion (US$178 million) from money laundering crimes in just one year between June 2018 and May 2019, with a significant portion laundered through illegal drug trafficking channels according to the Organized Crime and Corruption Report.

In 2020, Egypt's Ministry of Interior reported the seizure of 1.3 billion pounds ($26,000,000) in connection with eight cases involving money laundering and bribery and detected over 1,600 cases of tax evasion and public funds theft. One of the largest laundering cases in February 2020 involved the arrest of 17 people, including postal authority employees, for creating fake accounts used to transfer around 1.69 billion pounds ($33,800,000).

Experts emphasize the profound impact of money laundering crimes on the national economy, with massive financial losses estimated in the billions of pounds between 2020 and the present, reaching around 3% of GDP in some years. These activities negatively affect foreign and local investment and undermine trust in the financial system. Real estate remains one of the most commonly used fronts for money laundering in Egypt.

ERODING THE FOUNDATIONS: THE IMPACT ON PRIVATE EGYPTIAN COMPANIES

The deep entanglement between widespread money laundering and Egypt's rigid—often unpredictably applied—foreign currency controls is taking a serious toll on the basic rights and operational capacity of private Egyptian companies.

Chief among the challenges is a persistent shortage of foreign currency in official banking channels, a crisis intensified by the black market's continuous draining of hard currency from the formal economy. This forces legitimate businesses into an ongoing struggle to obtain the foreign exchange needed to import essential inputs such as raw materials and key machinery. The result is frequent production delays, surging operational costs, and, in more severe cases, an inability to honor contractual commitments. These disruptions not only undermine the global competitiveness of Egyptian companies but also stifle their ability to grow and expand organically. Consequently, faced with these systemic hurdles, companies may feel, reluctantly, compelled to resort to the black market, which exposes them to significant legal risks, extremely inflated exchange rates, and a pervasive lack of transparency.

Secondly, the stringent documentation requirements and bureaucratic obstacles imposed by banks for foreign currency transfers—measures allegedly designed to combat money laundering and stem capital flight—impose colossal administrative burdens on private companies. Even for legitimate commercial purposes, the sheer volume of paperwork and the need for multiple, protracted approvals routinely lead to exasperating delays and missed market opportunities. This regulatory maze creates an uneven playing field, where companies with pre-existing connections or those willing to engage in informal transactions may accrue an unfair advantage, while genuinely law-abiding businesses find their progress unfairly hindered. Thirdly, the unpredictability of foreign exchange rates, often made far worse by the speculative practices of the black market, causes immense financial instability for private companies. Devaluations of the Egyptian Pound render imports prohibitively expensive, relentlessly erode profit margins for companies heavily reliant on imported components, and significantly inflate the cost of servicing foreign currency-denominated debts. This volatile

environment renders long-term strategic planning and prudent investment decisions exceptionally uncertain, thereby stifling private sector expansion and actively discouraging foreign direct investment.

Finally, the high incidence of money laundering and associated criminal activities can act as a powerful deterrent, dissuading potential foreign investors from engaging with Egyptian private companies. Lingering concerns about regulatory compliance and corporate transparency can render Egypt a considerably less attractive destination for legitimate international business.

THE SILENT THEFT: HOW ILLICIT ACTIVITIES HARM PRIVATE MONEY

When a substantial black market flourishes, the official exchange rate inevitably becomes a distorted reflection of the currency's true market value. This divergence can precipitate unofficial, yet tangible, devaluations, whereby the purchasing power of Egyptian pounds held by both individuals and businesses progressively diminishes, especially when trying to acquire foreign goods or services. This process undeniably and effectively impairs the intrinsic value of private savings according to the Journal of Environmental Sciences.

Furthermore, the inherent instability and heightened risks associated with illegal financial flows often compel financial institutions to adopt a more cautious and conservative system when extending credit to private businesses, especially smaller enterprises, owing to a legitimate fear of unknowingly facilitating money laundering.

Unauthorized actors, who are willing to circumvent formal regulations, can access foreign currency at advantageous rates unavailable to law-abiding firms. This glaring disparity not only puts compliant companies at a structural disadvantage but also nurtures an uneven marketplace where success is increasingly determined by one's willingness to skirt legal boundaries rather than by expertise or innovation.

The ripple effects of these illegal practices permeate broader economic spheres. The influx of laundered money—often funneled into real estate, luxury goods, or other high-value assets—artificially inflates prices, contributing to

upward pressure on inflation and erasing the affordability of essential goods and services for ordinary citizens.

Equally concerning is the corrosive effect on public trust. As the black market expands, and efforts to combat money laundering appear insufficient, confidence in official financial institutions goes down. Individuals and businesses, wary of regulatory inadequacies, may increasingly choose to hoard wealth outside the banking sector. This retreat from formal financial pathways not only limits financial inclusion but also constrains the flow of capital necessary for sustainable economic growth.

Furthermore, businesses that directly participate in money laundering or illegally use the black market often gain an unfair competitive edge, effectively sidestepping regulations and accessing foreign currency at more favorable (though illegal) rates. This fundamentally weakens legitimate businesses that operate within the legal system, making it very hard for them to compete effectively.

Finally, the evident existence of a large black market and the perceived incompetence in fighting money laundering can significantly damage public trust in the official financial system. This loss of confidence might lead people to keep their savings outside formal banking channels, a trend that further hampers financial inclusion and slows overall economic growth.

THE WAY FORWARD

Money laundering, intertwined with the intricate dynamics of foreign currency dealings, represents a multifaceted and deeply entrenched challenge for Egypt.

While the government has commendably established a comprehensive legal framework and continues to undertake sustained efforts to combat these illegal activities, the enduring prevalence of a thriving black market and persistent criticisms concerning enforcement efficacy and systemic transparency indicate that substantial work remains to be done.

The most significant and often overlooked casualties of this complex economic dysfunction are frequently the private Egyptian companies and, by extension,

the private capital circulating within the economy. Their fundamental rights and economic opportunities are being systematically impaired by restricted access to vital foreign currency, a proliferation of operational impediments and the creation of a less attractive investment climate.

Effectively addressing these profound issues necessitates not only robust legal and regulatory frameworks, but also a radical commitment to enhanced transparency in the economy, a more rigorous and impartial enforcement of existing laws, and a multifaceted effort to dismantle the underlying structural conditions that allow illegitimate foreign currency dealings and pervasive money laundering to not only persist but to prosper, thereby fostering a more stable and equitable economic environment for all.

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Harmonizing Corporate Duties:

Corporate reporting and prosecutorial discretion in Poland.

JANUSZ TOMCZAK

Introduction

The question in the title is one of the most frequently asked by clients who face the possibility of an ongoing criminal activity involving their company. Often, this question includes concerns about the consequences of criminal proceedings - not only regarding the liability of individuals and the company but also concerning the company's reputation, business interests, loss of control over the matter, and the predictability and costs - including financial ones, associated with the entire process.

In Poland, these concerns are particularly justified, especially today, and any decision to report to law enforcement requires careful thought and strategic planning. Below, I will explain what factors should be taken into account in this regard.

LEGAL CONSIDERATIONS

There are several issues that significantly differentiate Polish criminal procedure from those of Western European countries and Anglo-Saxon states. One of these is the leading role of the prosecutor in initiating criminal proceedings, often with limited regard for the victim's wishes or interests. Most criminal offenses are prosecuted 'ex officio', meaning that credible information about suspected commission of a crime - regardless of its source – may serve as a basis for opening an investigation. The victim's position does not matter; in fact, they may not even be aware that proceedings are ongoing in which they are a victim. The same applies to decisions regarding the conclusion of proceedings; how the case is finalized depends on the prosecutor or court. Furthermore, the possibilities of plea bargaining have been significantly restricted in recent years.

Most economic and financial crimes involving property of any kind are prosecuted "ex officio."

Polish criminal law draws a distinction between a 'social' obligation to report a crime and a 'legal' obligation. The first relates to an ethical, socially responsible attitude that involves informing law enforcement about any justified suspicion of a crime, for the public, common good. The second

applies strictly to certain categories of serious criminal and political offenses (such as murder, aircraft hijacking, attacks on state institutions, pedophilia, etc.) and is subject to sanctions. Having credible information about the second category of offenses and failing to report them can result in conviction and imprisonment. Economic and financial crimes are not subject to a legal obligation to report, and there is no penalty for failing to notify criminal enforcement authorities.

Public institutions are required to report to law enforcement authorities (prosecutors or police) whenever they learn of a crime that is prosecuted ex officio. In complex economic cases involving various legal regimes and regulatory authorities overseeing the market, it can be assumed that such institutions, upon discovering the crime incidentally, will automatically report it to law enforcement authorities.

False reporting of a crime is a crime in itself and is punishable.

An investigation is initiated when the authorities have reasonable suspicion of a crime. Suspicion alone is not enough; the report must be supported by rational arguments or evidence that can be verified. There is no requirement that the report be made by a professional lawyer.

Finally, an important issue for many - namely, corporate criminal liability.

In Poland, the criminal liability regime primarily concerns individuals. In practice, people bear the main risks, such as the pretrial detention as a preventive measure. The law on corporate criminal liability exists but is rarely applied in practice, and the penalties imposed are often very low. This has various reasons, including the requirement of a final conviction of a company's representative to initiate proceedings against the company (except in environmental crimes), the lack of specialized units/prosecutors dealing with such cases, and the absence of political will to establish real criminal responsibility regime for companies.

Therefore, when asked about the impact that initiating criminal proceedings might have on a company's criminal liability, the answer is that, in theory, it could, but in practice it is limited.

REALITIES OF CRIMINAL PROCEEDINGS IN ECONOMIC CASES

Recently, during an informal conversation with a young but experienced prosecutor, we found that it is difficult to contact the 'guardian' of your case, you don't know when it will be resolved, and whether the same 'guardian' will handle it in a month or if a new one will be assigned who will have to learn the case from scratch. The volume of unnecessary documents, formalism, and hierarchical structures that limit the independence and autonomy of prosecutors are completely out of step with modern private sector organizations. If the prosecutor's office were a business, it would not last long.

The justice system in Poland has been in crisis for years, which has been widely reported in the international press and within European courts' rulings (ECHR, ECJ). Political changes since 2015 aimed at subordinating the prosecutor's office to the executive branch (previously, the positions of the Prosecutor General and Minister of Justice were separate), and influencing the selection and promotion of judges, have led to a collapse, - felt by anyone who interacts with the justice system today. Legal reforms over the past decade can clearly be characterized as populist aimed at automating procedures and reducing judicial discretion, tightening penalties, and limiting solutions that facilitate settlements between parties. These changes have made criminal law less adapted to economic realities.

Investigations and court proceedings last years. Despite the existence of dedicated departments for economic and tax crimes, staffing shortages are significant, and the quality of procedural decisions often raises justified doubts. The interests of victims are not a primary focus in these proceedings.

Despite these shortcomings, there are still strong arguments supporting the decision that a company should pursue its interests in criminal cases by utilizing the instruments of criminal law and notifying law enforcement authorities.

WHAT SHOULD COMPANIES AND COUNSEL CONSIDER WHEN MAKING A DECISION TO REPORT?

To accurately assess the risks and legal implications for a company arising from a suspicious event, it is necessary to establish the facts. In large organizations, the process used for this purpose is conducting an internal investigation. Such investigations, except for specific guarantees related to whistleblower protections, are not regulated in Poland. There are no universally applicable rules guiding how internal investigations should be conducted. It is more of a practical approach, supported by, among others, international practice, the ISO 37008 standard on Internal Investigations of Organizations, which overlaps to some extent with other legal regimes (such as labor law, trade secrets, data protection).

When considering the source of information about irregularities, the whistleblower protection regime comes into play. Poland implemented the provisions of the EU directive, commonly called the 'Whistleblower Directive', only in the second half of 2024. These rules prohibit retaliatory actions against whistleblowers and introduce the concept of 'follow-up actions'; the employer's actions in response to a report of irregularities made by a whistleblower. Follow-up actions include registering and analyzing the report, activities aimed at investigating the information contained in it, communication with the whistleblower, and ultimately, closing the case and informing the whistleblower about the outcome. Follow-up actions are essentially internal investigations initiated by the whistleblower's report.

In this context, it is important to remember that information about irregularities may not always come from the whistleblower, and internal investigations may not always occur in the employer-employee relationship. Another key point is that the whistleblower protection provisions provide additional safeguards; they enable external reporting. This includes informing central authorities (in Poland, the Office of the Commissioner for Human Rights) and other appropriate institutions about discovered irregularities. Practically, this prevents cases from being simply 'swept under the carpet. The law both authorizes and contain external reporting and offers protection to the Whistleblower.

Once the facts are established, the next step is to consider whether the behavior in question could be deemed a crime and whether the company has been harmed.

Harm is recognized when any legally protected interest has been violated. Within an organization, many situations may occur that are irrelevant from the company legal interest perspective. From my recent professional experience, examples include finding child pornography materials on devices possessed by an employee, theft in the office, etc.

In such cases, when considering reporting to law enforcement, the company must remember that it will act as the reporting party, not as the injured party. This status significantly limits procedural rights, such as the right to access information from the investigation.

On the other hand, if injury to the company has occurred as a result of a crime, the management is obliged to react. According to the Commercial Companies Code, the management's duty is to take care of the company's assets and to increase their value. At the same time, this requires taking actions to repair the damage caused to the company. Failure to act in this regard will be seen as neglect of management duties.

To make appropriate decisions about how to remedy the damage, the management must assess the extent of the loss, the costs of corrective actions, the time required to achieve results, and the likelihood of success. And therefore, criminal proceedings can be significantly helpful.

One of the fundamental principles of criminal proceedings is redressing the harm caused by a crime. The victim in a criminal case may submit a claim for compensation, and the court determining the defendant's guilt must also decide on the issue of damages. Making such a claim involves no court fees. The extent (value) of the damage is one of the elements used to define different types of economic crimes, which means that law enforcement authorities will carry out evidence collection, often with the help of court-appointed experts.

Criminal proceedings also offer the broadest opportunities for evidence collection. Law enforcement agencies can use coercive measures such as searches, and witnesses may refuse to answer questions in exceptional situations.

Finally, when charges are brought against a suspect, the prosecutor can impose temporary measures, e.g. freeze the assets of the person charged (sometimes not only), by accessing public registers, bank accounts, etc. This provides a tangible source for satisfying compensation claims of the harmed company.

I have also encountered cases where the estimated value of damages was lower than the costs of pursuing recovery, which led management to make a conscious decision to refrain from reporting the incident to authorities or to abandon active pursuit of claims, leaving enforcement solely to law enforcement agencies.

ADDITIONAL CONSIDERATIONS FOR MANAGEMENT

When management considers reporting other circumstances also play a critical role.

Primarily, the ethical and reputational implications for the company and its management are key. It can be said that each case has a particular weight and media potential. Acting in accordance with the organization's values and principles often equates to fulfilling the aforementioned social obligation to report a crime. In terms of reputation, practical questions arise: what will be the perception if we report the matter to authorities, versus if we do not? Will we need to justify why we chose not to hand the case over to law enforcement? How?

It is also important to note the growing role of an internal stakeholder. For example, an employee who values organizational integrity and alignment with declared values may express their dissatisfaction on social media within seconds.

Another issue concerns the costs associated with handling the proceedings, which can be burdensome for the company, for persons performing managerial functions and other employees. Participation in criminal investigations, generating necessary information for law enforcement, is a time-consuming and often intimidating process.

A separate, and highly important, issue requiring legal coordination and consistency involves the reporting duties arising from other legal regimes. Some examples include the following:

1. In the case of a personal data breach, the data controller (company) is obliged to notify the Data Protection Office (UODO) about the incident. If a crime is suspected, the UODO may notify law enforcement agencies.
2. For public companies, there is an obligation to disclose price sensitive information. In certain situations, this may require reporting to law enforcement, especially if shareholders expect explanations regarding potential criminal acts harmful to the company.
3. Entities required to report suspicious transactions - money laundering (obliged institutions) to the General Inspector of Financial Information (GIIF) must be aware that a credible suspicion and subsequent report to GIIF can lead to the initiation of criminal proceedings.

CHANGES, DEVELOPMENTS

In the face of political obstruction, the crisis of the domestic justice system, and declining legislative quality, positive changes in the legal system are being driven by the need to implement or harmonize regulations with those in other EU countries. This was the case, for example, with the previously mentioned whistleblower protection directive; only the penalties imposed by the European Court of Justice (ECJ) for lack of implementation forced the Polish government to introduce the relevant law.

Regarding the subject of this article, hope is associated with the draft EU directive on the fight against corruption (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52023PC0234). According to press reports, EU authorities have recently intensified discussions on harmonizing rules aimed

at preventing and combating corruption (https://baselgovernance.org/blog/eus-anti-corruption-directive-enters-critical-juncture).

Although, corporate criminal liability is not really operative at the present time in Poland as noted earlier, it remains a fundamental risk in the decision-making process, regarding whether or not companies should report suspected criminal activity to law enforcement authorities.

The draft EU directive assumes, at the member state level, the harmonization of corruption offenses and the unification of rules governing corporate liability for corruption. This includes making procedural mechanisms more realistic, as well as introducing effective and transparent processes for non-trial resolutions that can be used to settle corruption cases involving legal entities. The flexibility of proposed solutions aims to encourage companies to report to authorities and to engage in settlement solutions that, under court supervision, will resolve cases. The directive is also intended to strengthen the rights of entities harmed by corruption, which will undoubtedly influence the risk assessment and the decision-making process regarding whether to report a crime to law enforcement authorities.

Once the directive is adopted, it is difficult to predict when EU member states will implement it and when the corresponding national laws will actually be enacted.

AUTHOR

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Janusz Tomczak is an expert and partner at Raczkowski law firm, specializing in business crime, compliance, and investigations, explains the factors that a company operating in Poland should consider when deciding whether to report a suspected crime to law enforcement authorities.

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