



**Baker  
McKenzie.**

Annual Compliance  
Conference 2022

# **Anti-Bribery & Corruption and Economic Crime**

Key Takeaways from the Annual Compliance  
Conference 2022

## In Brief

The landscape for Anti-Bribery, Corruption and Economic Crime investigations has significantly changed in recent times. As countries emerge out of lockdowns, there is a shift away from wholly remote investigations and back to more in-person or hybrid investigations. Amidst the geopolitical turbulence and developments in enforcement authorities' behavior, companies should be aware of a number of challenges when approaching investigations.

This week's sessions focused on developments across the Anti-Bribery, Corruption and Economic Crime area, including:

- The latest anti-bribery and corruption trends and developments in the UK and US
- The intersection between Anti-Bribery Compliance and the ESG agenda
- Bribery and Corruption in a turbulent world
- Hot topics in Bribery and Corruption investigations

## Session 4: Bribery and Corruption: Hot Topics in Investigations

8 September 2022

- **Navigating increased stakeholder scrutiny:** Gone are the days when the only stakeholders that companies needed to be worried about were the government or regulators. These days, auditors, shareholders, investors, employees, the general public, activist groups (and others) are increasingly placing greater scrutiny on how compliance issues are being investigated and responded to internally. This new environment impacts the manner and speed in which companies investigate an issue, and it is increasingly necessary to pay very close attention to who to include in the decision-making process
- **Dealings with employees:** While the European Union Whistleblower Directive provides a minimum level of protection, obligations and procedures for whistleblowers in the region, EU member states may extend its application through domestic legislation under which they implement the Directive within their own laws. Companies should therefore start assessing their policies in areas where they have EU operations, reviewing how the Directive is implemented in their jurisdiction, and examining the manner in which investigations may be impacted - from receipt of an initial report, to investigation, and then to remediation. Now more than ever, employees subject to investigations are more aware of their employment and data protection rights, and are leveraging them to slow down or complicate the investigation process.
- **Data protection and employees:** Companies must carry out a delicate balancing exercise between conducting a thorough investigation and protecting the rights of the data subjects. All data protection requirements point to the need for both internal and external investigators to document the scope and objectives of the investigation. It is also important for companies conducting investigations to process data in a manner that is compliant with privacy and data protection laws and satisfies the requirements for data transfers. When seeking to obtain information from employees' personal devices, the legal issues go far beyond data protection-related issues, to telecommunications secrecy and employment laws as well as others, and the general rule is it can be difficult to justify reviewing information on employees' personal devices. Companies should ensure that all decisions and steps are fully thought through and documented (for instance through a data protection impact assessment), and that the compliance steps identified in the assessment are undertaken at all stages of the investigation.
- **Evolving and emerging areas of investigations:** As investigations evolve, it may not be feasible to compartmentalize them into just one compliance area. In fact, we are seeing an increasing prevalence of investigations in emerging compliance areas, such as cybercrime, ESG and data protection, and an increasing number of investigations where one area may bleed into another. For example, anti-bribery and corruption investigations may also trigger investigations relating to sanctions, cyber, data breaches, sanctions or ESG issues. Because of this, it is essential to have a well thought-through investigation plan and to have key people in place advising from the outset. While traditionally investigations were in the domain of legal, compliance, and/or HR often acting independently of each other, these days those disciplines on their own are rarely sufficient for complex investigations. Now organizations need to think about HR/employment experts, data protection experts, litigators, PR experts, investor relationship team, etc., which are often required across multiple jurisdictions. Without having those experts in the room at the outset and throughout the investigation, there is a risk of missing something crucial that later undermines the investigation process and the outcome. In today's climate, publicity can quickly get ahead of the investigation, and the reputational hit can be significant and immediate.

- **The pros and cons of taking a privilege-heavy approach to investigations:** Conventional wisdom dictates that the risk of disclosure can be minimized by claiming privilege over materials produced from the investigation. However, organizations can quickly run into difficulties with privilege in the context of an investigation. First, it may not always be possible to create privileged documents. Second, even if an organization can do so, that document may need to be disclosed to a third party. Additionally, there might also be a need to rely on privileged documents in a subsequent proceeding.

## Annual Compliance Conference 2022

Our popular Annual Compliance Conference, which attracts over 6,000 in-house senior legal and compliance professionals from across the world, took place across five weeks from 6 September - 6 October 2022. These sessions virtually delivered our cutting-edge insights and guidance on key global compliance, investigations and ethics issues.

The sessions provided practical insights and analysis on significant developments across:

- Anti-bribery, corruption and economic crime
- Customs and FTAs
- Export controls, sanctions and foreign investment
- Antitrust and competition
- ESG, supply chain and product compliance

 Watch these webinars and the remaining sessions at our Annual Compliance Conference hub.

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