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The cooperation landscape between UK and US regulators

Steven A Tyrrell and Adam G Safwat
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Last year's Department of Justice (DOJ) enforcement activity against corporations again highlights the increasingly cross-border nature of many corporate criminal investigations. In 2016, the DOJ resolved significant anti-corruption cases against major multinationals resulting in penalties, fines, and forfeitures exceeding US$1.3 billion to the US alone, and over US$7 billion when considering the amounts also collected by foreign authorities in cases involving cooperation with the DOJ.[1] But anti-corruption enforcement was not the only area in which the DOJ concluded major cross-border cases last year. The DOJ also brought enforcement actions against Volkswagen AG and other global auto manufacturers. At the same time, the DOJ continued its pursuit of executives and traders involved in the LIBOR and FOREX trading scandals: in June 2016, the DOJ brought wire and bank fraud charges against two former Deutsche Bank traders in connection with their alleged role in the manipulation of LIBOR.[2] In July 2016, the DOJ charged two HSBC employees with a wire fraud conspiracy for allegedly misusing client information in connection with a US$3.5 billion foreign exchange transaction.[3] And, in early 2017, the DOJ's Antitrust Division charged three London-based traders from three different financial institutions with conspiring to 'rig' prices in the FOREX markets.[4]

The UK's Serious Fraud Office (SFO) has been and remains involved in many matters as a key partner of the DOJ in cross-border enforcement activities. In last year's edition of this publication, we described the SFO's increasing role in corporate, multinational investigations and its new authority to enter into deferred prosecution agreements (DPAs) with corporations.[5] The SFO has wasted no time in using that authority, entering into three DPAs since 2014. A British court approved the most recent DPA in January 2017 resolving Rolls-Royce PLC's (Rolls-Royce) liability for an international bribery scheme spanning several years.[6] The DPA required Rolls-Royce to pay a financial penalty of £239,082,645, disgorge profits of £258,170,000, and reimburse the SFO's legal costs in full (approximately £13 million). Demonstrating the cooperation between the SFO and the DOJ, Rolls-Royce also settled related US charges, agreeing to pay another US$170 million in criminal penalties to US authorities pursuant to a DPA it concluded with the DOJ at the end of 2016.[7]

As we noted last year, the SFO's approach to legal privilege diverges from US practice, and recent actions confirm that the SFO and UK courts have a significantly narrower view than their US counterparts regarding the scope of relevant legal privileges protecting attorney-client communications and attorney work product. Moreover, other European jurisdictions have recently adopted a similarly narrow approach to the scope of the privilege, further raising the stakes for multinational corporations caught in the crosshairs of regulators on both sides of the Atlantic.[8] In this chapter, we will review developments in the UK regarding the attorney-client privilege as it applies to internal investigation materials and offer practice pointers for companies facing investigation by both the DOJ and the SFO.

The corporate investigations privilege in the US

To provide some context, it is worth noting the present state of play regarding the application of legal privileges to corporate investigations in the US. In *Kellogg, Brown & Root, Inc.*,[9] a recent leading decision in this area, the DC Circuit held that investigative materials, including investigator notes of interviews, were subject to the attorney-client privilege if the investigation was conducted under the supervision of counsel for the purpose of advising the company.[10] In spite of this, the DOJ continues to attempt to limit the corporate privilege by pressing companies to reveal witness sources for information when reporting on the results of a company's internal investigation.[11] The DOJ's insistence that companies reveal sources of witness statements if they wish to receive full cooperation credit, even if such information is covered by the attorney-client privilege, has in itself created concern among the corporate white-collar bar as to how to respond to DOJ requests for information without waiving the privilege. Companies cooperating with the DOJ, however, still have the ability to negotiate such requests in order to preserve the privilege. Moreover, the DOJ's current policies preclude asking for attorney memoranda of witness interviews unless there is a well-recognised exception for making such a request.[12]

The SFO presses to narrow legal privileges

During a speech in March of this year, then Joint Head of Bribery and Corruption at the SFO, Ben Morgan, noted that DPAs are 'the new normal' for companies that cooperate with the SFO and that the SFO can enter into a DPA with even the most serious offenders so long as they cooperate in an investigation.[13] This generally hinges on a company waiving privilege to some extent.[14] Morgan stated that, while companies who cooperate can receive up to a 50 per cent reduction in a penalty, 'those who do not cooperate receive the most punitive sanction available under the Sentencing Council's Guidelines if they are convicted after trial.'[15] Companies unwilling to waive privilege and share investigative information, or who do not cooperate with the SFO to allow independent review of sensitive material, should not expect to enter into a DPA or to receive a 50 per cent discount on penalties. Morgan's statements echo those of former SFO Director David Green, who stated that cooperating companies must provide the SFO with 'first witness accounts' which, in the SFO's view, do not fall within the scope of any legal professional privilege.[16]

In accepting the DPA with Rolls-Royce, the supervising UK court pointed to several factors that contributed to Rolls-Royce's 'extraordinary cooperation.'[17] Most notably, Rolls-Royce waived claims of legal professional privilege on a limited basis so that the SFO could commence 'the largest such investigation to date.'[18] As a result, the SFO was able to quickly and completely review the company's internal investigation.[19] Additionally, the supervising court found that Rolls-Royce had demonstrated extraordinary cooperation by: (i) providing unreviewed digital material to the SFO; (ii) agreeing to digital review methods to identify and promptly rectify privilege issues with the SFO; and (iii) deferring its internal

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interviews until the SFO completed its own interviews.[20] Because of this 'extraordinary' level of support, the SFO treated Rolls-Royce as though it had self-reported.[21]

In the UK, the legal-advice privilege (LAP), which is similar to the attorney-client privilege in the US, protects communications between lawyers and their clients in which legal advice is sought or received.[22] The UK also recognises the 'lawyers' working papers' privilege, a sub-set of the LAP, which is similar to the concept of attorney work product, and protects things like notes and memoranda, prepared by a lawyer to assist the lawyer in providing advice to a client.[23] In addition, there is a separate litigation privilege (LP) in the UK that protects attorney communications made in connection with existing or contemplated litigation, if 'the purpose for which the documentation has been obtained or assembled' is for litigation.[24] Until recently, companies facing regulatory and criminal liability in the UK have relied on these privileges, much as US companies rely on the attorney-client and work product privileges, to protect the confidentiality of communications with employees and former employees during internal investigations.

Recent UK court decisions, however, have accepted the SFO's position that attorney notes of employee interviews are not privileged and have articulated, at least from a US perspective, an extremely narrow view of legal privileges surrounding corporate internal investigations. In a decision issued by the English High Court in late 2016,[25] the court rejected the Royal Bank of Scotland's (RBS) privilege claims over attorney interview notes created as part of an internal investigation flowing from an SEC subpoena regarding RBS's exposure to the sub-prime mortgage market. RBS later sought to prevent a class of shareholders suing to recover sub-prime related investment losses from compelling disclosure of its attorneys' notes, arguing that the notes were subject to the LAP and were also lawyers' working papers. The court disagreed, holding that information gathered from current or former employees was not legally distinguishable for purposes of either privilege.[26] The court held that the LAP only extends to communications between attorneys and those in the corporate entity authorised to seek legal advice from the lawyer, and that fact-gathering from employees and former employees, even if it aids a client in obtaining legal advice, is not subject to the privilege.[27] The court also held that the interview notes were not lawyers' working papers because they neither demonstrated the nature of the legal advice to be offered nor demonstrated any legal analysis by the company's attorneys.[28] Moreover, the fact that the notes also reflected an attorney's 'train of inquiry' in pursuing evidence was, in the court's view, insufficient to sustain the privilege.[29]

Soon after the *RBS* decision, the SFO successfully obtained attorney interview notes in *Serious Fraud Office v Eurasian Natural Resources Corp. Ltd. (ENRC)*.[30] There, the SFO commenced an anti-bribery investigation into ENRC, a UK-headquartered natural resources company with overseas operations, in August 2011. The investigation related to ENRC's conduct in Kazakhstan and Africa.[31] In April 2013, the SFO confirmed it had commenced a criminal investigation into ENRC and issued formal notices to compel the production of documents.[32] Based on the LP, ENRC refused to produce attorney notes of interviews of ENRC's employees, former employees, and third parties, and materials created by forensic accountants engaged by the company to analyse and review ENRC's books and records as part of the internal investigation.[33] The SFO disagreed and successfully challenged ENRC's claims of privilege in court.

In ruling for the SFO, the English High Court held that neither the LP nor the LAP protected ENRC's attorney interview notes from production to the SFO[34] and that the accountants' reports were not protected from production by the LP.[35] The court applied a narrow test to determine whether the documents fell within the LP, requiring that the pending or potential litigation must be 'adversarial, not investigative or inquisitorial.'[36] It further held that a party asserting privilege must show that an adversarial proceeding is a 'real likelihood rather than a mere possibility.'[37] The court stated that an SFO investigation was only a 'preliminary step' prior to a decision to prosecute, and that ENRC had failed to establish that prosecution was 'a real likelihood rather than a mere possibility.'[38] It then opined that '[c]riminal proceedings cannot be reasonably contemplated unless the prospective defendant knows enough about what the investigation is likely to unearth, or has unearthed, to appreciate that it is realistic to expect a prosecutor to be satisfied that it has enough material to stand a good chance of securing a conviction.'[39] The court believed that the purpose of ENRC's internal investigation was primarily to determine whether there was any truth to corruption allegations that the company's management had received. Similarly, it found that the accountant's reports could not be deemed to have been made for the purpose of advising the company on pending criminal litigation because they were not made at the direction of counsel in anticipation of adversarial litigation.[40] The court deliberately established a much higher threshold for establishing a 'likelihood' of litigation in the criminal rather than civil context, and thus a higher threshold for application of the LP in criminal matters. In doing so, the court explained that the 'critical difference' between criminal and civil litigation is that the start of civil litigation is more arbitrary in nature and does not require the factual predicates that criminal charges require.[41]

The court also rejected the application of the LAP to attorney interview notes, following the rationale in *The RBS Rights Issue Litigation*, and held that ENRC attorney interview notes were not communications for the purpose of obtaining legal advice, because 'there was no evidence that any of the persons interviewed […] were authorized to seek and receive legal advice on behalf of ENRC.'[42] Even if outside counsel would ultimately use the information obtained from the interviews to prepare presentations to those in ENRC's management who were authorised to take legal advice, it would not bring the notes within the LAP.[43] The interview notes also could not be protected by the 'lawyer's working papers' privilege because the communications memorialised in the notes did not 'betray the trend of […] legal advice.'[44] The court further found that the fact that the notes were made by an attorney and might reflect the attorney's 'selection of what should be written down' was an insufficient basis to sustain the privilege.[45]

Implications for cross-border internal investigations

The court's ruling in *ENRC*, which is on appeal, creates significant uncertainty for companies attempting to conduct cross-border investigations. When facing parallel investigations in the US and the UK, or elsewhere, companies must be mindful that steps they would normally take to respond to potential liability under US federal law may in fact be counterproductive if they are facing exposure to criminal liability in the UK or another jurisdiction that takes a narrow view of the claims of privileges regarding internal investigation materials.

The ability to conduct internal investigations without fear of compelled disclosure of attorney notes and other materials is especially important for public issuers, which may have certain internal control and reporting obligations under the federal securities laws that require management to investigate allegations of wrongdoing.

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However, the threshold for shielding such notes from compelled disclosure in a UK court is extremely high under the *ENRC* ruling. The court's statement that materials cannot be created in anticipation of criminal litigation in the absence of an actual or imminent threat of prosecution is simply unworkable, as that point in time arrives too late for any company to undertake a meaningful voluntary investigation for the purposes of dissuading the authorities from prosecution. The court's decision explicitly recognises this but dismisses it as further evidence of the lack of contemplated criminal prosecution.[46] The court's decision thus puts companies in the difficult position of deciding whether to investigate allegations and self-report in the hope of realising cooperation credit from the SFO or simply wait and risk prosecution. For US issuers, this choice may not even be an option, and companies may need to proceed with an internal investigation knowing that they ultimately may be compelled to disclose internal investigation materials.

The *ENRC* court's ruling also demonstrates a profound insensitivity to the complexities of managing internal investigations that could spawn related civil litigation. Compelled production of attorney interview notes to the SFO could result in the loss of privilege protection in civil proceedings (potentially in the US as well as in the UK), and such information could be used to the company's material detriment by opportunistic civil claimants. Because criminal investigations often involve related civil actions in securities fraud, consumer protection, environmental, antitrust, and now even anti-corruption cases, the risk is real and substantial. The ability to negotiate a fair resolution of corporate criminal liability without forgoing defences to civil liability has always been an important aspect of resolving such complex cases. These developments complicate the development and execution of an overall investigation strategy and highlight the importance of a thoughtful and coordinated approach to cross-border matters.

Recommended practices

At the outset of any potential regulatory or criminal inquiry that may expose the company to the DOJ or SFO's jurisdiction, it is important to try to determine which agency will take the lead in conducting the investigation into the criminal allegations. We previously set out a list of criteria that are relevant to regulators in determining jurisdictional primacy.[47] We encourage a review of those items as soon as possible at the outset of any issue implicating more than one jurisdiction. In the event a company decides to cooperate primarily with the DOJ, it should seek the DOJ's cooperation in coordinating the SFO's requests of the company, including discouraging requests for privileged information. Ironically, DOJ prosecutors can be allies in a company's efforts to maintain the confidentiality of attorney interview notes, as they often have an incentive to prevent disclosure of information that could unnecessarily complicate their investigation.

In cases involving potentially significant civil liability and primary jurisdiction by the SFO, a company should consider the advisability of generating copious witness interview notes as the notes eventually may be disclosed to the SFO or civil litigants, a risk that may outweigh the benefits of having such information readily available. It may be better to take a more limited approach to witness interviews, focusing on the most critical witnesses and subject areas, and avoiding open-ended questions of witnesses.

We caution, moreover, that sprinkling witness interview notes with attorney impressions and legal advice is unlikely to sway a UK court following the ruling in *ENRC*, as a court could simply order such material redacted. Similarly, generating memoranda that are summaries of multiple witness statements likely would not satisfy the standard set by the courts in both the *RBS* and *ENRC* decisions, as those memoranda would still not reflect legal advice. Indeed, the fact that the memoranda reflected an attorney's selection of significant witness statements was expressly rejected as a rationale for applying the lawyers' working papers privilege in *ENRC*.

If the SFO is the primary agency investigating a company, counsel should also remember the SFO's preference to control the timing of the investigation. The SFO has repeatedly expressed a concern about companies that 'trample over the crime scene' and has indicated it would favour not allowing companies to conduct witness interviews in the course of an internal investigation.[48] This approach, while previously not ideal insofar as it prevents companies from understanding the scope of their potential liability, may now be deemed a preferable option. Should a company pursue this strategy, it would probably be prudent to open a separate line of communication with the DOJ to assure it of the company's commitment to fulsome cooperation (eg, by providing all relevant documents) but refrain from conducting a full-blown internal investigation involving numerous witness interviews.

In sum, until further clarity is provided by the UK appellate courts on the scope of the LP and LAP in criminal investigations, counsel must be mindful that what had previously been considered privileged corporate internal investigation materials in the UK, and continues to be so in the US, may no longer be protected in the UK. Thus, notes of interviews conducted during an internal investigation, as well as other investigation materials, may be subject to compelled production to the SFO, with significant collateral consequences in other forums or jurisdictions.

The authors would like to thank John M Haigh for his invaluable research assistance.

Notes

1 See, eg, Press Release, U.S. Dep't Justice, Odebrecht and Braskem Plead Guilty and Agree to Pay at Least $3.5 Billion in Global Penalties to Resolve Largest Foreign Bribery Case in History (21 December 2016), www.justice.gov/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve; Press Release, U.S. Dep't Justice, Och-Ziff Capital Management Admits to Role in Africa Bribery Conspiracies and Agrees to Pay $213 Million Criminal Fine (29 September 2016), www.justice.gov/opa/pr/och-ziff-capital-management-admits-role-africa-bribery-conspiracies-and-agrees-pay-213; Press Release, U.S. Dep't Justice, Embraer Agrees to Pay More than $107 Million to Resolve Foreign Corrupt Practices Act Charges (24 October 2016), www.justice.gov/opa/pr/embraer-agrees-pay-more-107-million-resolve-foreign-corrupt-practices-act-charges; Press Release, U.S. Dep't Justice, VimpelCom Limited and Unitel LLC Enter into Global Foreign Bribery Resolution of More Than $795 Million; United States Seeks $850 Million Forfeiture in Corrupt Proceeds of Bribery Scheme (18 February 2016), www.justice.gov/opa/pr/vimpelcom-limited-and-unitel-llc-enter-global-foreign-bribery-resolution-more-795-million. Much of the $7 billion can be attributed to the $4.5 billion settlement involving coordinated action by the authorities in the U.S., Brazil, and Switzerland against Odebrecht S.A., a Brazilian construction company with operations across the globe, and Braskem, S.A., a Brazilian petrochemical company partially owned by Odebrecht, both of which were ensnared in the sprawling corruption investigation surrounding the national oil

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company Petrobras known as Operation Lava Jato (Car Wash). Press Release, U.S. Dep't Justice, Odebrecht and Braskem Plead Guilty and Agree to Pay at Least $3.5 Billion in Global Penalties to Resolve Largest Foreign Bribery Case in History (21 December 2016), www.justice.gov/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve.

2 Press Release, U.S. Dep't Justice, Two Former Deutsche Bank Employees Indicted on Fraud Charges in Connection with Long-Running Manipulation of Libor (2 June 2016), www.justice.gov/opa/pr/two-former-deutsche-bank-employees-indicted-fraud-chargers-connection-long-running.

3 Press Release, U.S. Dep't Justice, Global Head of HSBC's Foreign Exchange Cash-Trading Desks Arrested for Orchestrating Multimillion-Dollar Front Running Scheme (20 July 2016), www.justice.gov/opa/pr/global-head-hsbc-s-foreign-exchange-cash-trading-desks-arrested-orchestrating-multimillion.

4 Press Release, U.S. Dep't Justice, Three Former Traders for Major Banks Indicted in Foreign Currency Exchange Antitrust Conspiracy (10 January 2017), www.justice.gov/opa/pr/three-former-traders-major-banks-indicted-foreign-currency-exchange-antitrust-conspiracy.

5 Steven Tyrrell, et al., Managing differences in DOJ and SFO approaches to corporate cooperation in cross-border investigations, *Global Investigations Review* (8 August 2016), http://globalinvestigationsreview.com/insight/the-investigations-review-of-the-americas-2017/1067468/managing-differences-in-doj-and-sfo-approaches-to-corporate-cooperation-in-cross-border-investigations.

6 Press Release, Serious Fraud Office, SFO completes £497.25m Deferred Prosecution Agreement with Rolls-Royce PLC (17 January 2017), www.sfo.gov.uk/2017/01/17/sfo-completes-497-25m-deferred-prosecution-agreement-rolls-royce-plc/.

7 Press Release, U.S. Dep't Justice, Rolls-Royce plc Agrees to Pay $170 Million Criminal Penalty to Resolve Foreign Corrupt Practices Act Case (17 January 2017), www.justice.gov/opa/pr/rolls-royce-plc-agrees-pay-170-million-criminal-penalty-resolve-foreign-corrupt-practices-act.

8 The Swiss Federal Tribunal recently ruled that outside counsel's work product related to an internal investigation into money laundering was not privileged. The court held that banks have certain 'compliance-related obligations' under the Swiss Anti-Money Laundering Act, and, because the legal privilege does not extend to in-house counsel, banks should not be able to delegate their compliance obligations to an outside party to cloak it in privilege. See Christophe Emonet and David Bochatay, Switzerland, *Global Investigations Review* at 7 (6 February 2017), http://globalinvestigationsreview.com/jurisdiction/1002558/switzerland; CMS von Erlach Poncet AG, Federal Tribunal on professional privilege in context of internal investigations, Lexology (5 December 2016), www.lexology.com/library/detail.aspx?g=4f894d8c-7bd5-4355-9f3e-2356f24598b4#1. However, the court did note that legal advice provided by outside counsel in connection with the investigation would remain privileged. See id. In Germany, prosecutors obtained a warrant to search the offices of a major international law firm representing Volkswagen. Jack Ewing and Bill Vlasic, German Authorities Raid U.S. Law Firm Leading Volkswagen's Emissions Inquiry, ***N.Y. Times*** (16 March 2017), www.nytimes.com/2017/03/16/business/volkswagen-diesel-emissions-investigation-germany.html. German prosecutors argued that the firm was 'not functioning as the company's legal representative' in conducting the internal investigation into Volkswagen's emissions practices and therefore attorney-client privilege claims were inapplicable. Robert J Anello and Richard F Albert, Erosion of the Corporate Attorney-Client Protection in Europe, 257 N.Y.L.J. 107 (6 June 2017) available at www.lexology.com/library/detail.aspx?g=53f6c54e-0ea6-4a19-98ec-7d46f824b4b5. The matter is on appeal to the German Federal Constitutional Court.

9 756 F.3d 754 (D.C. Cir. 2014).

10 Steven Tyrrell, et al., Corporate Internal Investigations Alert: D.C. Circuit Reaffirms Application of Upjohn Rule to Internal Investigations, Weil Alert (8 July 2014), www.weil.com/~/media/files/pdfs/White_Collar_Defense_July_08_14.pdf.

11 See Tyrrell, supra note 5 ('[T]he DOJ also expects that a company will proactively assist the DOJ in identifying evidence [...] including facilitating the third-party production of documents and witnesses from foreign jurisdictions') (citations omitted).

12 See United States Attorneys' Manual Section 9-28.710 ('The [DOJ] understands that the attorney-client privilege and attorney work product protection are essential and long-recognized components of the American legal system... prosecutors should not ask for [privilege] waivers and are directed not to do so.'); See also Tyrrell, supra note 5 ('[In] 2008, the DOJ [...] stat[ed] that prosecutors should never request material that could be privileged, absent the existence of traditional grounds for piercing a claim of privilege, such as the crime-fraud exception.').

13 Ben Morgan, The Future of Deferred Prosecution Agreements after Rolls-Royce, SFO (8 March 2017) www.sfo.gov.uk/2017/03/08/the-future-of-deferred-prosecution-agreements-after-rolls-royce/.

14 See id. (mentioning Rolls-Royce's disclosure of privileged material as 'cooperat[ing] fully' with the SFO investigation).

15 Id.

16 See, eg, David Green [SFO Director], Speech at Cambridge Symposium 2016, SFO (5 September 2016), www.sfo.gov.uk/2016/09/05/cambridge-symposium-2016/ (noting that cooperation means 'providing [the SFO] with access to any first witness accounts that may have been taken [...] [which] are of crucial importance [...] in testing the accuracy and integrity of [the SFO's] evidence.')

17 *SFO v Rolls-Royce, et al.* [2017] Crown Court at Southwark, Case No. U20170036 [paragraph 19].

18 Id.

19 Id.

20 Id. at paragraph 121.

21 Id. at paragraph 22.

22 *SFO v Eurasian Natural Resources Corp.*, [2017] High Court of Justice, Queen's Bench Division, Case No. HQ16X00363 [paragraph 62].

23 Id. at paragraphs 95-97.

24 Id. at paragraphs 52-54; *The RBS Rights Issue Litigation*, [2016] High Court of Justice, Chancery Division, Case No. HC-2013-000484 [consolidated cases] at paragraph 38.

25 *The RBS Rights Issue Litigation*, [2016] High Court of Justice, Chancery Division, Case No. HC-2013-000484 [consolidated cases].

26 Id. at paragraphs 45, 196.

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27 Id. at paragraph 93.
28 Id. at paragraphs 105, 126-27.
29 Id. at paragraphs 125, 126.
30 *SFO v Eurasian Natural Resources Corp.*, [2017] High Court of Justice, Queen's Bench Division, Case No. HQ16X00363.
31 Id. at paragraphs 2, 4.
32 Id. at paragraphs 2, 5. The Criminal Justice Act of 1987, as amended in 2008, permits the SFO to issue what are commonly referred to as 'Section 2 Notices', which allow the SFO to search private property and compel production of documents. SFO historical background and powers, SFO, www.sfo.gov.uk/publications/corporate-information/sfo-historical-background-powers/. However, as the court noted in its *ENRC* decision, Section 2 Notices do not apply to documents subject to the LAP or LP. *ENRC* at paragraph 5. Thus, ENRC brought suit to protect its documents from disclosure under the SFO's Section 2 powers based on the claim that the documents were protected by the LAP and LP exception. Id.
33 *ENRC* at paragraphs 5-6.
34 Id. at paragraphs 97, 172, 177.
35 Id. at paragraph 173.
36 Id. at paragraph 51(3).
37 Id. at paragraphs 56, 122.
38 Id. at paragraph 122.
39 Id. at paragraph 160.
40 See id. at paragraph 173 (noting that the accountant's reports were generated 'to meet compliance requirements or to obtain accountancy advice on remedial steps as part and parcel of the comprehensive books and records review); id. at paragraphs 174, 176 (noting an 'absence of internal documentation supporting the proposition that the review was designed to generate documents for the purpose of obtaining advice about defence of anticipated criminal proceedings).
41 Id. at paragraph 160.
42 Id. at paragraph 177.
43 Id.
44 Id. at paragraph 178.
45 Id. at paragraph 179.
46 Id. at paragraphs 162-67.
47 See Tyrrell, supra note 5 ('Factors to consider in making this assessment would include assessing which jurisdiction has a more significant regulatory interest in addressing the conduct, where the greatest injury from the alleged misconduct lies, where most witnesses or documents are available, where the company's shares are listed, the location of the company's headquarters or offices involved in the misconduct, the existence of previous settlement agreements and/or recent oversight by either agency, and whether either agency is taking the lead in a broader investigation in which the company appears to be implicated.').
48 See, eg, Ben Morgan, Compliance and cooperation, SFO (20 May 2015), www.sfo.gov.uk/2015/05/20/compliance-and-cooperation/.

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Weil's white-collar defence and investigations practice represents major corporations, financial institutions, partnerships, boards of directors, and senior executives in complex criminal and regulatory matters, internal investigations, and related litigation proceedings across a wide range of substantive issues and specialisations – including the FCPA and other anti-corruption statutes, accounting fraud, securities fraud, antitrust violations, government procurement and programme fraud, healthcare fraud, economic sanctions, and the US False Claims Act (FCA). Importantly, given the firm's commercial litigation experience, Weil is perfectly positioned to manage and resolve follow-on litigation resulting from government and internal investigations so as to reduce overall risk.

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