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PERSPECTIVES

AI in Fraud Investigations, Trends in International Financial Crimes & Fraud in ESG Matters: Perspectives From Spain

Our perspectives feature the viewpoints of our subject matter experts on current topics and emerging trends.

INTRODUCTION

Forensic services in Spain are robust, but still have room for growth compared to other markets, especially with respect to the market in the United Kingdom. Growth in the legal marketplace will come through the proliferation of arbitration and mediation as well as through the pursuit of financial crimes. In this regard, all advice relating to sanctions and anti-money laundering is still far from its full potential.

In this article, we explore how artificial intelligence (AI) is being applied to fraud investigations, trends in financial crimes, and how fraud is manifesting in environmental, social, and governance (ESG) related matters.

APPLYING ARTIFICIAL INTELLIGENCE TO FRAUD INVESTIGATIONS

Fraud schemes are becoming more sophisticated. Fraudsters are increasingly familiar with investigation tools and use new methods based on technology, both to defraud and to erase evidence and prevent traces. The development of artificial intelligence is a challenge for the researcher, but it is also important to keep in mind that AI itself can be used to develop prevention techniques and tracking of fraud indicators for the researcher.

Currently, technology is the basis of the future of the fight against financial crime, but we must not forget that, for the moment, fraud is committed by human actors. Understanding the motivation for the fraud and the personal circumstances of the criminal facilitates the development of the investigation. Therefore, the incorporation of professionals into the sector with training in psychology and criminology will be a fact in the coming years in Spain.

Furthermore, AI plays an increasingly important role in the daily detection, prevention, and mitigation of fraud. For example, at the detection level, AI algorithms can be used that can analyze large volumes of data to identify patterns and anomalies. These algorithms can be applied to accounting data, banking information, sales data, expense pairs, etc.

AI also allows the creation of predictive models capable of identifying indicators and areas with a higher risk of fraud, taking into account historical information, market trends, customer and supplier behavior, and so forth.

The massive processing of AI data is applied to the analysis of texts, whether in internal company documentation (contracts, financial information, etc.), emails or information posted on social networks, allowing the company or the researcher to detect possible "red flags" of fraud.

TRENDS IN INTERNATIONAL FINANCIAL CRIMES

International financial crime trends mainly involve the exponential growth of digital fraud and cybercrimes such as phishing, malware, or credit card fraud. Complex fraud structures with transnational ramifications are also being identified. A notable trend is also environmental fraud and money laundering.

At the same time, greater cooperation is occurring between public organizations and international institutions to investigate and prosecute criminals. Shared information networks and collaboration agreements are being created that favor the prosecution of crimes. Emphasis is also being placed on proactive fraud prevention and data analysis, using artificial intelligence to identify suspicious patterns and predict possible fraud, in true "Minority Report"[1] style.

Likewise, there is a commitment to strengthening professional ethics and business culture. Criminals are still humans since machines do not yet consciously commit crimes. Therefore, the implementation of policies and training programs that promote integrity and transparency at all levels of the company is more critical than ever.

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[1] Minority Report is a 2002 film based on a science-fiction short story in which crimes are predicted by a trio of people with pre-cognitive abilities. The potential perpetrators are apprehended, and the predicted crimes are stopped before they actually occur.

FRAUD IN ESG MATTERS AND IN INTERNATIONAL ARBITRATION

Increasingly, the regulatory community and interested non-governmental organizations (NGOs) are paying attention to sustainability and ESG efforts. The regulators primarily focus on programmatic compliance efforts while NGOs and activist investors are watchful of greenwashing and other "anti" sustainability practices. Because of the costs and requirements associated with controls, potential sanctions by governmental bodies and NGO litigation risk, unscrupulous companies may avoid these issues in unethical and even illegal ways.

Since ESG reporting and sustainability practices are increasingly relevant to investors, the existence of fraud in the sustainability arena can pose a reputational and financial risk for companies. In these cases, the best tool is always prevention which, demonstrated by a policy of transparency and corporate ethics, discourages fraudulent behavior.

Litigation risk from activities such as misreporting carbon emissions, non-compliance with child labor laws, or failure to comply with corporate governance policy is rising. The combination of regulators, investors, and NGOs serves as a risk multiplier when sustainability isn't managed appropriately, or in the case of an unethical party, fraudulently.

Another area that isn't commonly discussed is the application of sustainability obligations in contracts which then gives rise to potential arbitration claims. As companies become more sophisticated and identify methods which can be used to reach sustainability goals through the imposition of sustainability metrics on downstream supply chain partners, the contracts between the parties include those metrics and may also include arbitration-specific provisions. Those provisions include the selection of arbitrators with knowledge and experience in sustainability or the application of specific sustainability standards, among terms.

CONCLUSION

The global economy is increasingly reliant on technology. And as fraud evolves with the emergence of new technologies – especially the recent development of AI – businesses, governments, and other organizations around the world find themselves confronting formidable, new risks. At the same time, those companies that have global supply chains or engage in cross-border transactions find themselves more susceptible to these developing high-tech threats. As a result, forensic accountants, lawyers, and cyber experts increasingly are on the front lines combatting these risks.

The future of forensic services in Spain is based on greater international integration, technology, and sustainability, without losing sight that the training and specialization of professionals is becoming increasingly critical in handling matters.

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