Observatoire ARGA

ARGA Atlas

CORPORATE CONFLICTS → CRIMINAL CASES

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Purpose of the document:

This report examines one of the most dangerous shifts in transnational and corporate disputes: the transformation of a commercial, shareholder, managerial, or asset-related conflict into a criminal case. Its purpose is not to deny that the corporate environment can in fact generate genuine crimes, including corruption, fraud, money laundering, abuse of office, and concealment of assets. On the contrary, international UNODC and UNCAC materials clearly proceed from the need to criminalize and investigate serious forms of public and private corporate misconduct. But another point is equally obvious: criminal proceedings may be used as a tool of pressure, business displacement, bargaining capture, asset immobilization, forced settlement, weakening of an opponent in arbitration, or destruction of public and banking reputation. It is precisely at the boundary between legitimate criminal enforcement and the strategic criminalization of a corporate dispute that the central problem of this report arises.

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1. EXECUTIVE SUMMARY

The transformation of a corporate conflict into a criminal case almost never occurs as an abrupt and honest shift from “ordinary business” to “obvious crime.” Usually, what happens is a gradual procedural recoding of the conflict. Yesterday, it was a dispute over corporate control, fiduciary duties, access to records, asset valuation, SPA performance, diversion of funds, shareholder deadlock, or a struggle over management. Today, it becomes a narrative of fraud, breach of trust, money laundering, abuse of office, asset dissipation, obstruction, organized scheme, or even a transnational criminal network. Such requalification may be lawful and necessary. But it may also be strategically constructed, especially where criminal procedure is used to pressure negotiations, justify detention, freeze assets, restrict mobility, trigger international search, or seize the evidentiary initiative.

International and European sources allow both sides of the problem to be seen at once. On the one hand, UNODC emphasizes that criminalizing private sector corruption and ensuring that companies can in fact be held liable serves deterrence and accountability. On the other hand, the Council of Europe warns against politically motivated abuses of the criminal justice system, and in 2024 the Committee of Ministers expressly stated that abuse of legal process may also take the form of criminal

charges, not only civil claims. OHCHR materials on business and human rights also draw attention to the need to maintain a conceptual and procedural distinction between private-law remedies and public-law enforcement, so that one system does not destroy the other or deprive affected persons of access to justice.

The central conclusion is that in corporate cases the defense must keep two things in view simultaneously. First, there may indeed be a genuine criminal-law core that cannot be ignored or naively dismissed as "just a dispute." Second, there may be instrumentalization of criminal procedure for leverage, selective pressure, asset immobilization, procedural asymmetry, and international escalation. Strategic error arises in both directions: either the defense romanticizes the client and ignores real criminal exposure, or it accepts the criminal frame too easily without asking whether it serves merely as a more aggressive continuation of corporate warfare, and whether it is being used to achieve by coercion what civil or commercial proceedings would not have allowed so quickly.

2. WHY THIS ISSUE HAS LEGAL AND INTERNATIONAL SIGNIFICANCE

This issue matters because corporate conflicts no longer exist in isolation within company law or contract law. In modern transnational practice, a dispute over control of an asset, a corporate group, a commodity chain, intellectual property, payment infrastructure, or corporate governance can very quickly spill over into criminal complaints, suspicious transaction reports, freezing applications, insolvency maneuvers, confiscation attempts, mutual legal assistance requests, extradition risk, and even Interpol-adjacent consequences once a national arrest warrant appears. The Council of Europe has explicitly linked abuse of criminal justice systems with consequences for extradition and mutual trust between states, emphasizing that such abuses undermine normal international cooperation.

The international importance of the issue is reinforced by the fact that, in some sectors, corporate wrongdoing genuinely requires a criminal-law response. UNCAC calls upon states to criminalize, investigate, prosecute, and adjudicate corruption in both the public and private sectors, while UNODC separately emphasizes the importance of criminalizing private sector corruption and ensuring effective corporate liability. This means that the defense cannot proceed on the simplistic formula that "criminal law in business is always illegitimate." It often is legitimate. The problem begins where the language of corruption, fraud, or money laundering is used not as the legal qualification of proven conduct, but as a procedural escalator in a broader struggle for assets, influence, or settlement leverage.

The legal significance of the issue is especially high because criminalization radically shifts procedural balance. In a civil or corporate dispute, parties contest rights, obligations, evidence, valuation, governance, and remedies. In the criminal sphere, one suddenly faces search and seizure, coercive questioning, detention risk, asset freezing, disclosure asymmetries, prosecutorial powers, reputational collapse, and international cooperation channels. Even if the criminal case later weakens or collapses, the mere fact of its initiation may already transform the entire litigation environment. For that reason, defense must analyze such a shift not as an ordinary development of the case, but as a structural change in the legal battlefield.

3. NORMATIVE AND INSTITUTIONAL FRAMEWORK

At the baseline level, international law does indeed permit and require criminal-law responses to serious forms of corporate abuse. UNCAC devotes a separate chapter to criminalization and law enforcement and calls on states to criminalize, investigate, prosecute, and adjudicate corruption in both the public and private sectors. UNODC's materials on private-sector corruption likewise state that criminalizing private sector corruption and ensuring effective sanctions against companies serve retributive and deterrent purposes and encourage preventive compliance. This is the normative starting point: criminalization of corporate misconduct is not, in itself, an aberration.

At the same time, rule-of-law and human-rights sources emphasize the limits of that response. PACE, in its report on politically motivated abuses of the criminal justice system, stated expressly that shielding criminal justice systems from politically motivated interference is fundamental for the rule of law and individual liberty, and linked such abuse to problems of extradition and mutual legal trust. The report identifies indicators such as unusually harsh treatment, prolonged pre-trial detention, lack of respect for defense rights, pressure on defense lawyers, and lack of prosecutorial or judicial independence. These indicators are useful not only in "grand political" cases, but also in corporate matters, where selective criminalization often uses the same procedural symptoms.

An additional normative guide is provided by the Council of Europe through anti-SLAPP and abuse-of-process doctrine. Recommendation CM/Rec(2024)2 explicitly stresses that misuse or abuse of legal process may involve not only civil claims but also misdemeanours, administrative measures, or criminal charges. Although the recommendation is designed around public participation, its doctrinal value is wider: it officially recognizes that abuse of legal process can migrate into the criminal sphere, and that legal intimidation may involve cost escalation, procedural burden, and coercive pressure rather than a genuine search for justice. In the corporate context, that logic is especially familiar.

OHCHR's Accountability and Remedy Project adds another critical point: the need to maintain a conceptual and procedural separation between private-law claims and public-law enforcement, because making private claims entirely dependent on public-law processes, or restricting claimants because of ongoing public investigations, can create serious barriers to remedy. This matters in corporate conflicts, where a criminal case often begins to swallow the civil case, not because criminal law is superior, but because it is coercively stronger. Where that absorption occurs without necessity, the balance of justice breaks down.

4. KEY MECHANISMS BY WHICH A DISPUTE IS TURNED INTO A CASE

The first mechanism is narrative escalation. A corporate dispute is reframed from disagreement over rights into an allegation of deceit. Non-performance becomes fraud. Asset restructuring becomes concealment or dissipation. Internal governance struggle becomes abuse of office. Pressure on counterparties becomes extortion. Group-structure opacity becomes money-laundering suspicion. Such a transition may be justified, but it may also be tactical. Its force lies in the fact that criminal language instantly changes institutional response: banks, courts, prosecutors, media, and foreign authorities react differently to a "commercial dispute" than to a "criminal scheme."

The second mechanism is leverage through coercive procedure. Once the matter moves into a criminal frame, there appear tools that ordinary commercial litigation often lacks or cannot obtain so easily: searches, seizures, arrest applications, freezing orders, investigative secrecy, compelled-testimony pressure, and cross-border assistance. UNODC materials on asset recovery and non-conviction-based confiscation show how broadly modern legal systems may use freezing and confiscation tools in corruption-related contexts, including direct enforcement of another state's freezing or confiscation orders and non-conviction-based confiscation in some situations. In legitimate enforcement this may be necessary. In abusive conversion of a corporate conflict, it may become a blunt instrument of strategic immobilization.

The third mechanism is selective intensification. PACE's report identifies discrimination and unusually harsh treatment as indicators of improper interference. In corporate-conflict cases, this may appear where one side's conduct is treated as ordinary business risk while the other side's similar conduct is suddenly framed as criminality; one party gets time and negotiation space while the other faces dawn raids, detention threats, or international pursuit. Selective harshness is not conclusive proof by itself, but it is often one of the clearest warning signs that the criminal process may be serving more than evidentiary truth.

The fourth mechanism is externalization of pressure. Once the criminal narrative exists, it can spill into extradition, mutual legal assistance, asset tracing, compliance exits, and reputational exclusion. PACE explicitly warned that abuse of criminal justice systems affects extradition and wider legal-cooperation instruments. In practical terms, this means a corporate conflict does not remain domestic once criminalization begins. It may become transnational with great speed, and each additional jurisdiction adds fresh coercive angles even before the original merits are properly tested.

The fifth mechanism is public-law eclipse of private-law remedy. OHCHR warns that making private-law claims contingent on public-law proceedings, or restricting private claimants because of ongoing public investigations, can create serious barriers to remedy. In business conflicts, this often happens when the criminal case starts dominating document access, timing, negotiations, and judicial posture, while the underlying corporate or contractual issues remain unresolved. Criminal law then stops being one channel among others and becomes the instrument through which one side forces the entire legal field to rotate around itself.

5. TYPICAL SCENARIOS AND MODELS OF USE

The first typical scenario is a shareholder or ownership struggle rebranded as fraud and asset stripping. A dispute over control, dividend policy, intra-group transfers, governance access, or removal of management is reframed through allegations that one side deceived investors, misappropriated corporate property, dissipated assets, or falsified records. Sometimes this reflects real crime. But sometimes the criminal complaint is filed precisely when civil leverage is weak and coercive leverage is needed. One important indicator is temporal sequence: not proof, but a clue. If criminal escalation tracks negotiation failure too neatly, defense should examine the motive structure with care.

The second scenario is a corruption or abuse-of-office overlay in a commercial struggle involving state links, procurement, regulated sectors, or quasi-public assets. UNCAC and UNODC clearly support criminal enforcement against corruption, abuse of functions, and private-sector misconduct. Yet the same fields are especially vulnerable to weaponized accusations because they sit close to public authority, licensing, tenders, and political influence. In such cases, the key defense question is not whether corruption law can apply, but whether the case is being driven by evidence or by the procedural and reputational advantages created by corruption allegations.

The third scenario is corporate pressure on civic opposition or affected communities through criminal process. OHCHR's introductory business and human rights materials give the concrete example of an extractives company pressuring the government to initiate criminal proceedings against peaceful protesters. Although this is not a classic shareholder dispute, it reveals a broader pattern directly relevant here: business actors may use criminal-law machinery not merely to address crime, but to neutralize resistance, criticism, or bargaining power around business interests. That pattern is structurally similar to corporate-conflict criminalization, even if the target group differs.

The fourth scenario is asset pursuit through criminal confiscation logic. UNODC materials on UNCAC asset recovery and non-conviction-based confiscation show that states may use freezing and confiscation mechanisms broadly in corruption-related contexts, including direct enforcement of foreign orders and non-conviction-based approaches in certain cases. In a legitimate anti-corruption setting, these are powerful tools. In a distorted corporate conflict, they can become methods of seizing bargaining control before liability is fairly resolved. The stronger the asset pressure, the more carefully the defense must distinguish a genuine proceeds-of-crime theory from strategic immobilization of contested property.

6. MAIN RISKS, CONFLICT ZONES, AND PROBLEM POINTS

The first risk is false binary thinking. Defense teams often make one of two bad moves: either they insist that "this is only a corporate dispute" and ignore genuine criminal exposure, or they accept the prosecutorial frame too quickly because a formal investigation now exists. International sources support a harder but necessary position: corporate misconduct can warrant criminal law, but criminal law can also be misused. The fact that one proposition is true does not make the other false.

The second risk is procedural asymmetry disguised as legality. Criminal proceedings give one side access to state coercion, secrecy, seizure, detention pressure, and international cooperation in ways ordinary corporate litigation usually does not. That asymmetry does not prove abuse, but it creates a powerful incentive to criminalize borderline or mixed disputes. If the state's coercive toolkit begins to solve what the commercial forum had left contested, the defense must ask whether criminal law is being used to test evidence or to predetermine bargaining power.

The third risk is erosion of defense rights. PACE identifies pressure on defense lawyers, pre-trial detention, and lack of respect for defense rights as warning signs in abusive criminal-justice settings. In corporate cases, the equivalent may appear as rushed timing, denial of meaningful access to files, strategic leaks, overbroad seizures, pressure on counsel, or intimidation of witnesses under the cover of urgency. Once that erosion begins, the distinction between "hard enforcement" and "instrumentalized enforcement" becomes increasingly important.

The fourth risk is collapse of procedural separation. OHCHR warns against making private-law remedies contingent on public-law findings or allowing ongoing public-law investigations to restrict the ability of private claimants to pursue their claims. In business wars, once criminal proceedings dominate the scene, civil or corporate claims may become practically frozen, strategically subordinated, or evidentially starved. This is not merely inconvenient. It can destroy the architecture of remedy on which commercial justice depends.

The fifth risk is transnational escalation without sufficient scrutiny. Once an arrest warrant, confiscation request, or cross-border cooperation narrative exists, the case can move into extradition, foreign asset restraint, and mutual assistance with surprising speed. PACE explicitly tied abusive criminal justice to the reliability of extradition and cooperation systems. That means the cost of misclassification is not local. A commercially motivated criminal case can acquire international legs very quickly.

7. INTERNATIONAL AND EUROPEAN STANDARDS AND LIMITS

At least five stable reference points emerge from the official materials. First, states are expected to criminalize and prosecute serious corruption-related conduct, including in the private sector, and companies may be held liable under criminal or civil law for such misconduct. Second, the independence of judges and prosecutors, and the absence of politically motivated or otherwise improper interference, are treated by the Council of Europe as foundational safeguards against abuse of criminal justice. Third, misuse of legal process can extend into the criminal sphere and is not confined to civil litigation, as recognized in CM/Rec(2024)2. Fourth, access to remedy in business-related harm requires conceptual and procedural separation between private-law claims and public-law enforcement. Fifth, modern anti-corruption and asset-recovery frameworks may authorize powerful freezing and confiscation measures, including in transnational settings, which makes abuse prevention more important, not less.

But those same sources also reveal the limit. Neither international anti-corruption law nor business-integrity policy supports the idea that every business conflict belongs in criminal court. And neither rule-of-law doctrine supports the idea that once a prosecutor appears, the corporate dispute has ceased to exist as a corporate dispute. The correct standard is not ideological preference for civil or criminal law. It is disciplined differentiation: what genuinely belongs to criminal enforcement, what remains

a corporate or commercial controversy, and what signals that one is being used to overpower the other.

8. PRACTICAL CONCLUSIONS AND A LEGAL-RESPONSE MODEL

The first practical task is to build a dual-track map from the first day. Counsel must identify what the civil, corporate, insolvency, arbitral, and contractual issues are, and separately what the plausible criminal-law predicates are, if any. These maps must then be compared. Where the criminal theory genuinely tracks evidence of corruption, fraud, laundering, or obstruction, the defense must confront that directly. Where the criminal theory merely restates the commercial dispute in more inflammatory language, the mismatch itself becomes a defense point.

The second task is chronology analysis. In many strategic-criminalization cases, the timeline says more than the rhetoric: failed negotiations, governance deadlock, asset-transfer dispute, arbitration pressure, then sudden criminal complaint, then freezing application, then transnational escalation. Chronology does not prove abuse by itself, but it often reveals whether the criminal case arose from evidence or from leverage needs. PACE's focus on concrete examples and objective criteria points in the same direction: abuse analysis must be evidence-based, not merely intuitive.

The third task is to protect procedural separation. If the criminal case starts swallowing the civil or corporate case, the defense should explicitly argue for maintaining conceptual and procedural distinction between private-law remedies and public-law enforcement, consistent with OHCHR guidance. This includes resisting the use of criminal proceedings to extinguish, delay, or structurally disable legitimate private-law claims unless a genuine legal basis exists.

The fourth task is to document selective harshness and coercive asymmetry. If one side faces disproportionate detention pressure, extraordinary freezing, defense obstruction, aggressive publicity, or uneven prosecutorial treatment, those facts should be documented as possible indicators of instrumentalization. The Council of Europe's abuse indicators are not limited to grand political show trials. Their logic can illuminate sophisticated corporate-criminalization patterns as well.

The fifth task is to prepare for international spillover early. If the criminal route may lead to extradition requests, mutual legal assistance, asset recovery, Interpol-adjacent exposure, or banking exits, the defense cannot wait until the case has fully migrated. Once cross-border machinery begins moving, the cost of earlier passivity multiplies. In these matters, preserving the ability to characterize the dispute accurately at the outset is often half the defense.

9. CONCLUSION

Corporate conflicts do sometimes contain real criminal conduct. International anti-corruption and business-integrity frameworks make that perfectly clear, and no serious legal analysis should pretend otherwise. But it is equally clear that criminal process can be misused, politicized, instrumentalized, or strategically inserted into a dispute in order to produce pressure that commercial law alone could not generate so quickly. The modern danger lies not in choosing one of these truths over the other, but in failing to hold both at once.

The main conclusion is brutally practical. In cases where a corporate conflict begins turning into a criminal case, the defense must immediately test four things: whether there is a real criminal-law core; whether that core actually matches the factual history of the dispute; whether criminal procedure is being used for selective pressure and arrest-based leverage; and whether it is beginning to destroy the private-law architecture of the dispute, which it should only accompany, not replace. If that inquiry is not made in time, the criminal case will very quickly begin to look like the natural language

of the conflict. Though in reality it may be only the most expensive and most coercive way of continuing a corporate war by other means.

APPENDIX A. TERMINOLOGY

Corporate conflict criminalization. An analytical term used in this report to describe a situation in which a corporate, commercial, or shareholder dispute is wholly or partly recoded into a criminal-law frame. This is not the official term of a single document, but a description of a phenomenon that emerges from the combination of sources on legitimate criminal enforcement, abuse of criminal justice, and the separation of private and public remedies.

Selective harshness. An indicator of possible abuse reflecting substantially harsher treatment of one participant compared with others in a similar situation, including pre-trial detention, pressure on the defense, and lack of procedural parity. This approach is described in the PACE report as one of the markers of politically motivated abuse.

Procedural eclipse. An analytical term for a situation in which public-law enforcement begins to dominate and disable private-law remedy pathways. Its logic is directly linked to OHCHR's warning about the need for conceptual and procedural separation between private-law claims and public-law enforcement.

Asset immobilization leverage. The use of freezing, confiscation, or asset-recovery tools to alter negotiation and procedural balance sharply and early. The basis for this description follows from UNODC materials on freezing, confiscation, and non-conviction-based approaches.

Criminal-law abuse of process. Use of criminal or quasi-criminal process for intimidation, pressure, or procedural domination beyond the legitimate search for accountability. In 2024, the Council of Europe expressly recognized that misuse or abuse of legal process may include criminal charges.

APPENDIX B. MATRIX OF RISKS / POWERS / LEGAL CONSEQUENCES

Commercial dispute reframed as fraud.
Legal risk: a civil-corporate dispute is recast as a deception narrative.
Legal limit: real criminal liability may exist, but evidentiary mismatch matters.
Consequence: coercive procedure, asset pressure, reputational collapse.
Practical note: compare the civil theory and the criminal theory line by line.

Selective prosecutorial escalation.
Legal risk: one participant in the dispute is subjected to disproportionate criminal pressure.
Legal limit: Council of Europe abuse indicators stress discrimination, harsh treatment, and erosion of defense rights.
Consequence: distorted bargaining field and possible abuse argument.
Practical note: document comparative treatment and chronology.

Freezing and confiscation leverage.
Legal risk: asset-recovery tools are used to immobilize disputed property early.
Legal limit: UNODC frameworks permit strong tools, but do not immunize strategic misuse.
Consequence: practical loss of control before merits are resolved.
Practical note: distinguish genuine proceeds-of-crime theory from leverage seizure.

Public-law eclipse of private-law claims.
Legal risk: criminal process disables or delays civil or corporate remedies.
Legal limit: OHCHR stresses the importance of maintaining conceptual and procedural separation.

Consequence: denial of effective remedy and distorted forum balance.
Practical note: resist making private-law rights entirely contingent on public-law findings.

Transnational spillover.
Legal risk: domestic criminalization triggers extradition, MLA, foreign restraint, or wider cooperation.
Legal limit: mutual legal trust depends on basic fairness and the absence of abuse.
Consequence: rapid internationalization of a potentially distorted case.
Practical note: prepare cross-border defense before the case migrates.

OFFICIAL SOURCES

- UNCAC Chapter III: Criminalization and Law Enforcement. The baseline universal source confirming that states must criminalize, investigate, prosecute, and adjudicate corruption-related conduct, including private-sector corruption.

- UNODC private-sector corruption module and related business-integrity materials. The key source showing that criminalizing private sector corruption and ensuring effective company liability serves deterrence and accountability goals.

- PACE Report "Allegations of politically-motivated abuses of the criminal justice system in Council of Europe member states" (Doc. 11993). The main European source on indicators of abuse of criminal justice, the role of judicial and prosecutorial independence, and the consequences for extradition and mutual trust.

- Recommendation CM/Rec(2024)2 on countering SLAPPs. Important as an official source expressly recognizing that misuse or abuse of legal process may include criminal charges, not only civil claims.

- OHCHR Accountability and Remedy Project, Access to Remedy in Cases of Business-related Human Rights Abuse. A key source on the need to maintain conceptual and procedural separation between private-law claims and public-law enforcement, and on barriers to remedy in business-related cases.

- OHCHR introductory materials on the UN Guiding Principles on Business and Human Rights. Practically important as an official example of a situation in which a company pressures the government to initiate criminal proceedings against peaceful protesters, illustrating how business interests may instrumentalize criminal-law machinery.

- UNODC materials on asset recovery and non-conviction-based confiscation. Important for understanding the force of freezing and confiscation tools and the strategic risks their misuse can create in business-related conflicts.