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CRIMINOLOGY & CRIMINAL JUSTICE | RESEARCH ARTICLE

Limits to private internal investigations of white-collar crime suspicions: The case of Scandinavian bank Nordea in tax havens

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Abstract: This article provides insight on private investigations in the corporate sector using the case study of Scandinavian bank Nordea in tax havens based on leakage of Panama papers in 2016. The article shows insight on how the private sector approaches such cases, which is rare in the broader literature. Organizations that may be subject to some form of fraud or other white-collar crime call in investigators to examine any concerns that they may have and make a report as to whether or not there is evidence to substantiate such concerns. Whilst the value of some internal investigations may be compromised by a failure to apportion blame, and a lack of integrity and objectivity, this is not always the case. Given potential limits to private investigations, it is important that decision-making is based on other sources as well when it comes to conclusions about past negative events in terms of misconduct and potential crime. As discussed in this article, the limitations around private investigations have affected their ability to investigate the allegations leveled by bank Nordea.

Subjects: White Collar Crime - Forms of Crime; White Collar Crime; Banking

Keywords: fraud examination; private investigation; blame game; resource-based theory; convenience theory



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PUBLIC INTEREST STATEMENT

Although fraud examiners and other investigators have been in business for many years, there are fundamental limits to their work. Organizations that may be subject to some form of fraud or other white-collar crime call in investigators to examine any concerns that they may have, and make a report as to whether or not there is evidence to substantiate such concerns. They are hired to reconstruct the past and to find reasons why negative events occurred. Client organizations have resources to involve fraud examiners. However, instances of blame game, lack of integrity and objectivity, and other issues can cause limits to the trust that should be placed in reports of investigation. In this article, the case of Scandinavian bank Nordea is presented, where Nordea executives were suspected of involvement in tax evasion, money laundering and other forms of financial crime in tax havens based on leaked papers from Panama.

1. Introduction

When suspicion of misconduct and white-collar crime occurs in a business enterprise, there is a tendency to hire fraud examiners from a law firm or an accounting firm to conduct an internal investigation. The purpose of a private investigation is similar to a police investigation in that it is about reconstructing the past (Osterburg & Ward, 2014). Past events and sequence of events are to be reconstructed as objectively and completely as possible. Investigators should avoid biases and abstain from sympathy and antipathy. An investigation should be independent and apply information sources and knowledge categories that are relevant to the case. Investigators may assess past events, but they should not pass judgments or verdicts on individuals. Privatization of law enforcement should not occur in democratic societies where the criminal justice system is in place to conduct a fair trial with defense.

There are many problematic issues related to private investigations (Brooks & Button, 2011; Button, Frimpong, Smith, & Johnston, 2007; Gottschalk, 2016a; Williams, 2005, 2014). First, a client pays the work and asks investigators to do what the client has defined in the mandate. Second, the investigation is limited in scope since the client is only willing to spend a limited amount of money on the task. Third, private investigations are characterized by secrecy so that neither the police nor the public gain insights into procedures and results. Finally, the client sometimes has a desired outcome from the investigation that may influence the work of fraud examiners. These are some of the limits to private internal investigations of white-collar crime suspicion.

Other limits are concerned with the role of fraud examiners which sometimes extends beyond investigation into prosecution and sentencing. For example, some private investigators conclude in their reports that there is misconduct, but no crime, thereby acquitting their client who is paying for the investigation. While this may be a desirable result for the client, it is an unacceptable outcome for the criminal justice system in democratic societies. Private fraud investigators are not to suggest private settlements when penal laws are violated, which would represent a privatization of law enforcement (Schneider, 2006).

In this article, we study the case of a private internal investigation at Nordea. Media coverage on the so-called Panama papers in April 2016 portrayed Nordea International Private Banking in Luxembourg as a provider of tax haven structures for its clients. As a response to what was reported in the media, Nordea issued a statement that the bank strongly denounces tax evasion, that other than in exceptional cases Nordea does not assist in setting up offshore companies, and that Nordea does not accept clients that are non-transparent towards relevant tax authorities. As a further response to the revelations in the Panama papers, Nordea initiated an internal investigation of adherence to relevant laws and regulations as well as policies and instructions in connection with offshore structures (Mannheimer Swartling, 2016; Nordea, 2016).

In this article, we apply convenience theory and resource-based theory to study the case of Nordea bank in tax havens. The article is based on the following research question: *What are limits to a private internal investigation in a convenience and resource-based perspective?*

2. Private internal investigations

The purpose of an internal investigation by fraud examiners is to reconstruct the past. The past may be an event or a series of events where for example someone did something to somebody. Events are typically negative and have caused some damage. The goal of an investigation is to uncover the facts in a particular situation. In doing so, the truth about the situation is the ultimate goal. A private investigation is mainly after the facts, with the goal of determining how a negative event occurred, or the goal of determining whether the suspected action occurred at all. The goal may also be to prevent a situation from ever occurring in the first place, or to prevent it from happening again. Of course, if there was no event, there is nothing to investigate. Fraud awareness as prevention and fraud investigations can be carried out separately and have different objectives.

The purpose of an internal investigation is to define the points to prove and then collect documentary, interview based and other evidence which either confirms these or finds that there is no case to answer. These conclusions and the evidence, on which they are based, are set out in a report which should then be considered by a person or people external to, and independent from, the investigation process.

Private fraud investigators are not in the business of law enforcement. They are not to find private settlements when penal laws are violated (Schneider, 2006). Their task is to reconstruct the past as objectively and completely as possible (Gottschalk, 2016a, 2016b). They are not in the blame game business (Gottschalk, 2016c).

Internal private investigations examine facts, sequence of events, and the causes of negative events as well as who are responsible for such events. Pending on what hiring parties ask for, private investigators can either look generally for possible corrupt or otherwise criminal activities within an agency or a company, or look more specifically for those committing potential white-collar crime. In other situations, it is the job of the private investigators to look into potential opportunities for financial crime to occur, so that the agency or company can fix those problems in order to avoid misconduct down the road.

Internal investigations include fact-finding, causality studies, change proposals, suspect identification, and assessment of financial irregularities. The form of inquiry aims to uncover unrestricted opportunities, failing internal controls, abuse of position, and any financial misconduct such as corruption, fraud, embezzlement, theft, manipulation, tax evasion and other forms of economic crime.

Characteristics of a private investigation situation include a serious and unusual event, an extraordinary examination to find out what happened or why it did not happen, develop explanations, and suggest actions towards individuals and changes in systems and practices. A private investigator is someone hired by individuals or organizations to undertake investigatory services. A private investigator also goes under the titles of a private eye, private detective, inquiry agent, fraud examiner, private examiner, financial crime specialist or private investigator (PI) for short. A private investigator does the detailed work to find the answers to misconduct and crime without playing the roles of a prosecutor or a judge. The PI stops the investigation before passing any judgment on criminal liability.

An internal investigation is a goal-oriented procedure for reconstructing past events. It is a procedure of creating an account of what has happened, how it happened, why it happened, and who did what to make it happen or let it happen. An internal investigation is a reconstruction of past events and sequence of events by collecting information, developing knowledge and presenting evidence (Osterburg & Ward, 2014).

Internal private investigations typically have the following characteristics:

- Extraordinary examination of suspicions of misconduct and crime
- Goal-oriented data collection
- Based on a mandate defined by and with the client
- Clarify facts, analyze events, identify reasons for incidents
- Evaluate systems failure and personal misconduct
- Independent, careful and transparent work
- Client is responsible for implementation of recommendations.

White-collar crime investigations are a specialized knowledge industry. Williams (2005) refers to it as the forensic accounting and criminal investigation industry. It is a unique industry, set apart from law enforcement, due to its ability to provide “direct and immediate responsiveness to client objectives, needs and interests, unlike police who are bound to one specific legal regime” (Williams, 2005, p. 194). The industry provides flexibility and a customized plan of attack according to client needs.

Investigations take many forms and have many purposes. Carson (2013) argues that the core feature of every investigation involves what we reliably know. The field of evidence is no other than the field of knowledge. There is an issue of whether we can have confidence in knowledge. Confidence in knowledge occurs when knowledge is documented in terms of evidence. A private investigator accumulates knowledge about what happened.

3. Police vs. internal investigations

An investigation is an investigation, regardless of whether the investigator belongs to a police agency or a private firm. The goal is to uncover the facts in a particular situation. In doing so, the truth of the situation is the ultimate objective. However, an investigation by the police is going to start with a crime, or a suspected crime, and the end goal is going to arrest and successfully prosecute the guilty person(s), or alternatively, dismiss the case because of innocence or lack of evidence. A private investigation is mainly after the facts, with the goal of determining how a negative event occurred, or with the goal of determining whether the suspected action occurred at all. The goal might also be to prevent a situation from ever occurring in the first place, or to prevent it happening again.

Police investigations differ from private investigations because they aim to convict a person of a crime or dismiss a person from the case, while internal investigations are used more to evaluate potential for economic crime to occur and to get rid of the issue internally rather than through the involvement of the police.

Private investigators tend to be offence focused, while police investigators tend to be suspect focused. However, despite these differences there is sufficient commonality between the two types of investigation so as to make cooperation and joint working between the two possible. For example, they each gather intelligence on accepted cases, interview suspects in accordance with defined procedures, and preserve evidential continuity. In addition, both separate intelligence from investigation, employ trained and qualified staff, use credit reference and other publically available data, record their investigations in a computerized case management system, and utilize interview rooms and evidence storage.

The roles of police officers and private investigators are different in the fact that they do not have the same powers. Police officers have strict rules that they have to follow within their department. They are responsible for following the rules and guidelines set before them by their law enforcement unit. Private investigators have more freedom to explore and conduct inquiries into suspected crime and criminals. However, the police officers’ advantage is their ability to seize documents and subpoena the guilty party. The police have formal power in terms of law enforcement on behalf of society. While private police have less power in their work, they enjoy more freedom in how they do their work. Private investigators do not have the same powers as the police, and do neither have to work according to strict guidelines such as the police.

The government allows the police to conduct special investigation activities such intrusive inquiry, covert human operations, infiltration, surveillance and covert recording of communications. The police may set up undercover enterprises, institutions, organizations and units. During undercover questioning, law enforcement officers can mask their identity or purpose of the questioning.

The criticism that comes with white-collar crime is the cost of policing fraud. When dealing with small internal frauds, “police would be called but often they did not offer help” (Brooks & Button, 2011,

p. 307). The lack or number of limited resources has constrained the police force in dealing with fraud. The private sector have criticized the police for their lack of willingness to tackle the issue of investigating fraud, but it is sometimes out of their control when resources are not available to confront the issue. It is sometimes also a question of whether the police view fraud as a serious crime or if they have the capabilities in education and training to tackle economic crime (Button et al., 2007).

Organizations may feel that the police lack commitment to their cases and not report it. Their next step might be to report it to the private investigation sector. This can result in problems in which fraud may be seen as a private matter and “can downgrade the seriousness of the offence as it does not require a public ‘state’ sanction, censure and condemnation and is hidden, and dealt with in-house in a secretive manner” (Brooks & Button, 2011, p. 310). People go to private investigators when they feel that the police will not take their issues seriously. However, the police still hold power when preparing an arrest and identifying whether or not a place is relevant for search of evidence. The police must be present when an unwanted search occurs on business premises or homes.

Private investigators have the criticism of whether or not they have a bias towards the client that hires them to investigate the organization. They are the ones usually paid to do the investigation by the client to find something out of the ordinary. This can cause a bias when conducting their research. The private investigator might report in the client’s favor because they are the ones paying for the investigation. The investigator might not want to go against the client that is paying for their service. This will result in a negative effect towards the other parties involved. Clients “may themselves attempt to influence investigations in order to limit lines of responsibility and produce narrow interpretations of incidents” (Williams, 2005, p. 199). There will then be “a constant tension between commercial imperatives and professional standards” in white-collar crime investigations (Williams, 2005, p. 199).

A private investigator can potentially challenge the rule of law by taking on all three roles of police investigator, public prosecutor, and court judge. This kind of privatization of law enforcement can represent a threat to the criminal justice system in democratic societies (Gottschalk, 2016c).

Private investigators may work alongside police detectives in order to collect evidence. Direct evidence is physical proof of an illegal act such as forensic samples such as hair, clothing fibers or computer documents. Indirect evidence is collected through interviewing witnesses or potential accomplices, or through someone identifying the offender, for example in a photograph (Carson, 2013).

4. Reasons for private investigations

Criminal investigation is initiated when there is a need to study negative incidents and events that happened in the past. Contrary to the police, regulators and other investigative agencies, forensic accounting and corporate investigation firms are able to conduct their investigations under a cloak of secrecy providing resolutions that are largely private in nature and which help to safeguard the client from embarrassment and unwanted publicity. Many companies want to deal with misconduct internally by resolving the matter by themselves. They want no publicity. They want to avoid courts, for example because they do not want their shareholders, customers or suppliers to see that misconduct and crime has occurred. Cases are resolved through informal means such as negotiated settlements and termination of an offending employee (Williams, 2014).

Corporations and other organizations value the possibility of secrecy, discretion, and control that private specialists bring to investigations. Openness could lead to problems such as reputational loss, which can have economic repercussions. While private investigations can consider secrecy, openness is a key characteristic of a public criminal justice procedure. Meerts (2014) argues that the reluctance of victim companies to report crime to the police because of fear of reputational damage is a well-researched subject. Reputational damage provides a motivation for a company to avoid publicity (Dupont, 2014, p. 272):

The reputation of a company represents a valuable asset that can quickly become a liability when the erosion of customers' and suppliers' trust provokes a loss of competitiveness. Shareholders are also very receptive to such signals and several security managers explained how their performance was indirectly tied to their company's public valuation. The ambiguity that characterizes this risk category explains why contract security firms providing investigative and consulting services of all sorts are routinely called in before the police—when the police are involved at all—in order to minimize external scrutiny and to maximize procedural control.

An important advantage of private investigations is legal flexibility. After an internal investigation, the client can choose from an array of legal alternatives and can decide which is best for the current case. Law enforcement however, is more limited, generally working toward a criminal prosecution or taking no further action by dismissing the case. Minimizing and repairing damage is often the focus of private investigations, and thus other legal possibilities than those provided by criminal law are attractive. Employers often have nothing to gain by triggering a criminal justice procedure (Meerts, 2014).

Another advantage of private investigations is private examiners' role in the deterrence of fraud. The principle of deterrence is important in the perspective of convenience theory as described below. However, poor investigations do not deter people from committing fraud.

Private sector investigative consultants conduct inquiries for their clients in cases of suspected corporate crime. Recent developments internationally when it comes to corporate criminal liability has led many business and government organizations to recruit consultants to develop internal compliance systems because the function of such systems is increasingly taken into account by prosecution authorities.

While public police are bound to the legal definitions of criminal conduct, corporate security is more flexible and can adapt to the definitions provided by their clients. Private investigators can focus exclusively on the occurrences pointed out as problematic by their clients. This means that private investigators can examine behavior harmful to their clients that is not criminal; and, conversely, that they can ignore behavior that is criminal but not damaging to their client (Meerts, 2014).

Internal investigations in private and public organizations serve important functions in society. They allow entities to discover misbehavior within management, make corrections, and define future conduct to assure compliance with laws, regulations, policies and guidelines. Private investigations offer organizational solutions to organizational problems, while providing an incentive to corporations and public authorities to unmask misconduct. Internal investigations also allow corporations as well as other organizations to quietly examine allegations that may later prove to be wrong, without fear that disclosure will hurt the organization's or an individual's reputation (Green & Podgor, 2013).

Another reason for private internal investigations is that white-collar crime often is a difficult crime for police to handle. Police forces and their resources are frequently stretched thin, and mainly focused on potential terrorism, physical violence, and threats to the health of citizens. Successful prosecutions of white-collar crime are frequently knowledge and labor intensive, and a decision has to be made as to where people and man-hours are going to be allocated (Brooks & Button, 2011).

5. Convenience theory

As suggested by Gottschalk (2016a, 2016b), white-collar crime can be a convenient option to avoid threats and exploit opportunities. Convenience is a concept that was theoretically mainly associated with efficiency in time savings. Today, convenience is associated with a number of other characteristics, such as reduced effort and reduced pain. Convenience is associated with terms such as fast, easy, and safe. Convenience says something about attractiveness and accessibility. A convenient individual is not necessarily neither bad nor lazy. On the contrary, the person can be seen as smart and rational (Sundström & Radon, 2015).

Convenience orientation is conceptualized as the value that individuals and organizations place on actions with inherent characteristics of saving time and effort. Convenience orientation can be considered a value-like construct that influences behavior and decision-making. Mai and Olsen (2016) measured convenience orientation in terms of a desire to spend as little time as possible on the task, in terms of an attitude that the less effort needed the better, as well as in terms of a consideration that it is a waste of time to spend a long time on the task. Convenience orientation toward illegal actions increases as negative attitudes towards legal actions increase. The basic elements in convenience orientation are the executive attitudes toward the saving of time, effort and discomfort in the planning, action and achievement of goals. Generally, convenience orientation is the degree to which an executive is inclined to save time and effort to reach goals. Convenience orientation refers to person's general preference for convenient maneuvers. A convenience-oriented person is one who seeks to accomplish a task in the shortest time with the least expenditure of human energy (Berry, Seiders, & Grewal, 2002).

It is not the actual convenience that is important in convenience theory. Rather it is the perceived, expected and assumed convenience that influences choice of action. Berry et al. (2002) make this distinction explicit by conceptualizing convenience as individuals time and effort perceptions related to an action. White-collar criminals probably vary in their perceived convenience of their actions. Low expected convenience can be one of the reasons why not more members of the elite commit white-collar offenses.

Convenience in white-collar crime relates to savings in time and effort by privileged and trusted individuals to reach a goal. Convenience is here an attribute of an illegal action. Convenience comes at a potential cost to the offender in terms of the likelihood of detection and future punishment. In other words, reducing time and effort now entails a greater potential for future cost. 'Paying for convenience' is a way of phrasing this proposition (Farquhar & Rowley, 2009).

Convenience is the perceived savings in time and effort required to find and to facilitate the use of a solution to a problem or to exploit favorable circumstances. Convenience directly relates to the amount of time and effort that is required to accomplish a task. Convenience addresses the time and effort exerted before, during, and after an activity. Convenience represents a time and effort component related to the complete illegal transaction process or processes (Collier & Kimes, 2012).

People differ in their temporal orientation, including perceived time scarcity, the degree to which they value time, and their sensitivity to time-related issues. Facing strain, greed or other situations, an illegal activity can represent a convenient solution to a problem that the individual or the organization otherwise find difficult or even impossible to solve. The desire for convenience varies among people. Convenience orientation is a term that refers to a person's general preference for convenient solutions to problems. A convenience-oriented individual is one who seeks to accomplish a task in the shortest time with the least expenditure of human energy (Farquhar & Rowley, 2009).

Three main dimensions to explain white-collar crime have emerged. All of them link to convenience (Gottschalk, 2016a, 2016b). The first dimension is concerned with economic aspects, where convenience implies that the illegal financial gain is a convenient option for the decision-maker to cover needs. The second dimension is concerned with organizational aspects, where convenience implies that the offender has convenient access to premises and convenient ability to hide illegal transactions among legal transactions. The third dimension is concerned with behavioral aspects, where convenience implies that the offender finds convenient justification.

6. Resource-based theory

White-collar offenders have access to resources to commit financial crime in convenient ways. Furthermore, they have access to resources to conceal crime as well as to prevent prosecution if they are detected. Resource-based theory postulates that differences in individuals' opportunities can be explained by the extent of resource access and the ability to combine and exploit resources. A resource is an enabler that is used to satisfy human needs. A resource has utility and limited availability.

Resource-based theory applied to white-collar crime implies that executives and other members of the elite are potential white-collar offenders that are able to commit financial crime to the extent that they have access to resources that can be applied to criminal actions. Strategic resources are characterized by being valuable, unique, not imitable, not transferrable, combinable, exploitable and not substitutable.

Access to resources in the organizational dimension makes it more relevant and attractive to explore possibilities and avoid threats using financial crime. The willingness to exploit a resource possession for white-collar crime increases when it is perceived as convenient. The legal management of key personnel and other resources are important so that the white-collar offender has the ability to commit economic crime by virtue of position in a comfortable way. The resource-based theory implies that the difference between success and failure for white-collar offenders can be explained by the efficient or inefficient ability to leverage strategic resources.

Not only do white-collar offenders have access to resources to carry out financial crime, they also have access to resources to cover criminal acts. Criminal acts are easily hidden in a multitude of legal transactions in different contexts in different locations performed by different people. The organizational affiliation makes crime look like ordinary business. Economic crime is easily concealed among apparently legal activity. Offenders leverage resources that make it convenient to conceal crime among regular business transactions. Especially businesses that practice secrecy enable convenient concealment of financial crime. For example, many multinational companies do not disclose what they pay in taxes in various countries. This kind of secrecy makes it easy to conceal economic crime such as corruption, since regular financial statements are not accessible. Secrecy combined with sloppy and opportunistic accounting can make financial crime even more attractive. Accounting is no mathematical discipline. Rather, the value of accounts receivable, business contracts and warehouse stocks are subject to personal judgments. Auditors are often criticized in the aftermath when financial crime is disclosed.

Chasing profits leaves people more creative in finding ways to make more legal as well as illegal profits for themselves as well as the organization, and people become more creative in concealing crime in various ways (Füss & Hecker, 2008). Crime is carried out so that the risk of detection is minimal and even microscopic (Pratt & Cullen, 2005).

In the rare case of detection of potential crime, the possible offender has access to strategic resources like few others. Available resources include better defense, private investigations, and presentation in the media. The suspected offender can hire the best attorneys paid by the organization or personally. The best attorneys do not limit their efforts to substance defense, where legal issues are at stake. The best defense lawyers also conduct information control and symbolic defense. Information control is concerned with the flow of damaging information about the client. A defense attorney may attempt to prevent police from exploring and exploiting various sources of information collection. Information control implies taking control over information sources that are most likely to be contacted by the police. The police have many information sources when they investigate a case, and these sources can, to a varying extent, be influenced by a defense attorney.

Information is the raw material in all police work. The relative importance of and benefits from pieces of information are dependent on the relevance to a specific crime case, the quality of information, and the timeliness of information. Information value in police work is determined by information adaptability to police tasks in an investigation. A smart defense lawyer can reduce information value by lowering its fitness for policing purposes. Information quality can be reduced in terms of accuracy, relevance, completeness, conciseness, and lack of scope.

In addition to substance defense and information control, a white-collar defense lawyer is typically involved in symbolic defense as well. A symbol is an object or phrase that represents an idea, belief, or action. Symbols take the form of words, sounds, gestures, or visual images. Symbolic

defense is concerned with activities that represent defense, but in themselves is no defense. It is an alternative and supplement to substance defense. Substance and symbolic defense are different arenas where the white-collar attorney can work actively to try to make the police close the case, to make the court dismiss the case, and to enable reopening of a case make the client plead not guilty. The purpose of symbolic defense is to communicate information and legal opinions by means of symbols. Examples of attorney opinions are concerns about unacceptable delays in police investigations, low-quality police work, or other issues related to police and prosecution work. Complaining about delays in police investigations is not substance defense, as the complaint is not expressing a meaning about the crime and possible punishment. Complaining is symbolic defense, where the objective is to mobilize sympathy for the white-collar client.

In the rare case of detection of possible crime, the potential offender has access not only to better defense as a strategic resources, but also often access to an alternative avenue of private investigation. When suspicion of misconduct and crime emerges, then the organization may hire a fraud examiner to conduct a private investigation into the matter. The enterprise takes control of suspicions by implementing an internal investigation. An external law firm or auditing firm is engaged to reconstruct past events and sequence of events. Typically, the resulting investigation report points to misconduct, while at the same time concluding that there have been no criminal offenses. The police will monitor the internal investigation and await its conclusion. When the conclusion states that there may be misconduct, but no crime, then the police and prosecution tend to settle down with it.

In addition to better defense and private investigation as available resources in case of detection of possible crime, the potential offender can also hire public relations consultants. These consultants help tell a story to the media where the potential offender is presented as a victim of unfortunate circumstances.

Furthermore, a white-collar defendant may behave in court so that he or she often gets more sympathy and milder sentence than other defendants, partly because the person belongs to the same segment in society as the judge, prosecutor and attorney. Finally, a convicted offender has the expertise and network to hide criminal profits and protect himself against confiscation, so that the government will be unsuccessful in its attempts at asset recovery.

7. Scandinavian bank Nordea

The Scandinavian bank Nordea is headquartered in Stockholm and is present in 19 countries around the world, operating through full service branches, subsidiaries and representative offices. Nordea international private banking has its headquarters in Luxembourg with branches in Switzerland and Singapore. Nordea is the largest bank in Scandinavia. Nordea has despite warnings from the Swedish Financial Supervisory Authority been active in offshore structures in tax havens as leaked in the Panama papers. The Nordea section in Luxembourg has in the years 2004–2014 founded nearly 400 offshore companies in Panama, the British Virgin Islands and the Seychelles for its customers. The Swedish authority has pointed out that there are serious deficiencies in how Nordea monitors money laundering as well as tax evasion. In 2015, Nordea had to pay the largest possible fine of over 5 million euro in Sweden.

The Panama papers are 11.5 million leaked documents that detail financial and attorney-client information for more than two hundred thousand offshore entities. The leaked documents were created by Panamanian law firm and corporate service provider Mossack Fonseca. The leaked documents illustrate how wealthy individuals and public officials are able to keep personal financial information private. While offshore business entities are often not illegal, media reporters found that some of the shell corporations were used for illegal purposes, including fraud, tax evasion, and money laundering. “John Doe”, the whistleblower who leaked the documents to German newspaper “Süddeutsche Zeitung”, remains anonymous.

In 2012, Nordea asked Mossack Fonseca to change documents retrospectively and to change dates on signed documents. The chief executive officer at Nordea Luxembourg at that time was from Denmark, while a bank executive from Norway was chairman of the board at the Nordea Luxembourg. The Swedish minister of finance characterized the conduct of Nordea as a crime and totally unacceptable. Politicians in Norway condemned the Norwegian bank executive's support of secrecy for wealthy bank clients and suggested that she should resign from another chair position Norway (Ekeberg, 2016d).

8. Internal investigations at Nordea

Two parallel investigations were initiated at Nordea in April 2016. Both investigation reports are publicly available. One investigation was internally conducted by the group compliance and group operational risk functions in the bank. The other was conducted by law firm Mannheimer Swartling. Both wrote reports of investigation of 12 pages and 20 pages respectively. Both reports describe misconduct, but no crime. Both reports suggest that the misconduct has stopped.

The internal Nordea (2016, p. 11) report concludes as follows:

The investigation has found deficiencies in the procedures regarding renewal of Powers of Attorney (POA). In at least seven cases investigation has shown that backdated documents have been requested or provided during the last six years, which is illegal when it aims at altering the truth. The previous backdating of a POA took place in 2012, and the backdating of a proxy took place in 2014. However, to be convicted of the criminal offence of forgery or use of forgery, certain conditions need to be met cumulatively. These conditions do not all seem to be met for the cases at hand. At least one of the conditions seems not to be met, which is the clear benefit or illicit advantage of the employee asking for backdating, the bank or another third party or causing prejudice or potential prejudice to a third party. However, the procedures are in violation of the Nordea Code of Conduct.

Internal investigators from group compliance and group operational risk functions draw a conclusion of misconduct, but no crime. Similarly, Mannheimer Swartling (2016, p. 6) draws the conclusion that neither lack of tax evasion control nor money laundering is considered crime in Luxembourg:

There are several laws and regulations in place in Luxembourg in relation to the fight against money laundering and terrorist financing. Luxembourg has transposed the relevant EU directives on anti-money laundering (AML) to date. It may be noted that Nordea has the same duties on AML and know-your-customers controls regardless of whether the client uses an offshore structure or not. It may also be noted that, also for the time being, Luxembourg banks do not have any legal obligation to make sure that their clients are tax compliant. The fourth EU directive on AML has not yet been transposed into Luxembourg law and tax evasion is therefore not yet treated as predicate money laundering crime under Luxembourg law. There are also bank secrecy rules in place that prevent banks from reporting on tax evasion to the public prosecutor or their holding company. Tax information sharing is only allowed for in certain limited circumstances and exclusively to the Luxembourg tax authorities or to the prosecutor, as part of investigation conducted by such authority.

The internal investigation at Nordea (2016) studied only documents, while the investigation by law firm Mannheimer Swartling (2016) also interviewed key personnel. They interviewed wealth partners in Luxembourg, current and former board members at Nordea, and management and employees at Nordea.

Mannheimer Swartling (2016, p. 4) applied interviews to confirm information from other sources:

Unless otherwise expressly stated, a mention in this report to that we have been "informed" of a certain circumstance or that a fact has been "confirmed" or "explained" or the like is a reference to information provided to us during these interviews. The information in the documents together with the information received during said interviews is referred to as the material. The review is based solely on our understanding of the material.

Mannheimer Swartling (2016, p. 18) concluded as follows on misconduct:

While operations associated with offshore structures as such are not illegal in Luxembourg, such structures could be used by clients as instruments for money laundering or tax evasion. In view of this, as well as the result of the investigation, it is therefore a fair conclusion that both the Nordea board and executive management should have identified a need for a particular risk awareness related to the operations associated with offshore structures, and that such risk awareness should have been incorporated in risk assessment processes and the risk appetite framework. If this had been the case, it would have facilitated for the risk and capital and/or the compliance functions to integrate related risks into their respective risk assessment and control processes, and internal audit would possibly have performed audits with this in focus.

Nordea (2016) suggests as the next steps following the completion of the internal investigation relating to the private banking to advice on how to mitigate the deficiencies.

9. Discussion

This discussion section is structured as follows. First, the convenience perspective is discussed, followed by the resource-based perspective. Next, the blame game hypothesis is discussed, and finally followed by other limits to private internal investigations.

In the convenience perspective, helping bank customers setting up offshore companies for the purpose of wealth secrecy is not a crime. Wealthy customers are important in private banking, and Nordea competes with other banks globally to attract wealthy clients. Nordea and other banks may suggest to their clients to avoid tax evasion by being open to their own national authorities about their money placements. Nordea and other banks may also suggest to their clients to avoid money laundering by avoiding sums that can stem from criminal activities such as corruption, embezzlement, fraud and drug trade, as well as suggest that money should not be transferred from tax havens for the purpose of terrorist financing.

Nordea may find it convenient to manage the wealth of important clients without really knowing where the money is coming from or where it is going. Clients may commit financial crime, but bank executives did not really know about it (Ekeberg, 2016a, 2016b, 2016c).

In the resource-based perspective, bank executives have access to financial crime specialists who can investigate when they are accused of white-collar crime. For bank executives, leakage of the Panama papers was an unfortunate event. It became public knowledge that banks such as Nordea helped set up secret offshore structures. Politicians and the media criticized Nordea for unethical business practices. To respond to the criticism and to avoid police investigation, Nordea initiated two internal investigations by Nordea (2016) and Mannheimer Swartling (2016). Nordea had access to resources by hiring examiners and by defining the mandates for both investigations.

The blame game hypothesis suggests that the client can indicate where investigators should place the blame for misconduct such as offshore structures and for potential contributions to financial crime such as money laundering and tax evasion. The blame game hypothesis implies that suspected individuals do not necessarily become subject to a fair investigation by private examiners and financial crime specialists (Gottschalk, 2016c).

The term blame game is often used to describe a phenomenon which happens in groups of people when something goes wrong. Essentially, all members of the group attempt to pass the blame on, absolving themselves of responsibility for the issue. Lack of causal accounts increase disapproval ratings of the harm done by placing the blame for harmful acts on others. For example, by attributing corruption to an executive in the organization as a rotten apple, the suspect will feel betrayed by other executives who, in his opinion, belong to the rotten apple basket.

External attributions place the cause of a negative event on external factors, absolving the account giver and investigation client from personal responsibility. However, unstable attributions suggest that the cause of the negative event is unlikely to persist over time, and as such mitigate the severity of the predicament. Uncontrollable attributions suggest that the cause of the event is not within the control of the attributor, further removing any blame or responsibility for the unjust act from the account giver (Lee & Robinson, 2000).

The reasons for private investigations include lack of facts and lack of accountability. Nobody will blame oneself for the negative event. The account giver, the private investigator, absolves others from the blame and responsibility for the negative event. Even in cases of self-blame, investigations are required to ensure that the self-blame is justified. Self-blame is attributing a negative event to one's behavior or disposition (Lee & Robinson, 2000).

Sonnier, Lassar, and Lassar (2015) conceptualize blame in terms of personal control. The assessment of an actor's control over a harmful event is influenced by the desire to blame someone whose behavior, reputation, or social category has aroused negative reactions. Blaming implies to form affective reactions to aspects of negative events and people involved. Private investigators judge how much control the actor exerted by analyzing the structural linkages of volition, causation, and foresight while also spontaneously, relatively, and unconsciously, forming affective reactions. The central question in assessing control and blame attribution is whether the actor desired, caused, or foresaw the harmful outcome. Attribution is affected by the investigators beliefs about what other actors would do in the same situation. When investigators feel that the actor should have foreseen or anticipated the negative consequences of own acts, then they are more likely to lay blame on the actor. The need to lay blame arises out of the need to feel that similar occurrences can be avoided in the future.

Nordea (2016) blames local employees at Nordea Luxembourg for offshore arrangements:

The communication has mainly been handled by a limited number of employees in wealth planning and client relationship units.

Mannheimer Swartling (2016) blames local employees at Nordea Luxembourg for illegal backdating of documents. The firm blames the local board headed by a Norwegian bank executive for not having implemented a code of conduct.

The chief executive officer at Nordea is not blamed in the reports. That comes as no surprise, since he initiated both investigations. Similarly, Valukas (2014) never blamed CEO Mary Barra for the ignition switch failure cover up at General Motors, maybe because she initiated the investigation.

A number of other potential limits to the investigations are relevant. First independence, since the internal Nordea (2016) report is produced by people whose promotion is dependent on chief executives in the bank. This indicates lack of independence. Next integrity, where Nordea (2016) investigators have avoided criticism of themselves at Group Compliance and Group Operational Risk who normally are responsible for preventing misconduct and crime. This indicates lack of integrity. Furthermore, objectivity that biases should not inappropriately affect understanding and assessment. Finally, the attempted privatization of court work by Mannheimer Swartling (2016), who concluded that Nordea would not be convicted of forgery.

10. Conclusion

This article has provided insight on private investigations in the corporate sector using the case study of Nordea. It has shown some interesting insights on how the private sector approaches such cases, which is rare in the broader literature.

There are a number of limits to private internal investigation of white-collar crime suspicions as illustrated by the case of Scandinavian bank Nordea in tax havens. While an investigation should reconstruct past events by finding out what happened, how it happened, when it happened, and why it happened, reports of investigations such as Nordea (2016) and Mannheimer Swartling (2016) have a tendency to suffer from:

1. *Mandate bias*: The mandate for the investigation points in a certain direction and excludes other directions for scrutiny.
2. *Report bias*: The investigation report has selected a partial perspective and not presented the complete picture for the investigation.
3. *Lack of contradiction*: The investigators did not provide suspects and witnesses with an opportunity to contradict statements in the report. For example, the board chairperson from Norway at Nordea Luxembourg disagrees with the criticism, but there is no evidence of contradiction in the reports.
4. *Privatization of law enforcement*: Investigators try to acquit suspected executives for illegal backdating of documents.
5. *Blame game*: The investigation concluded to blame others than those paying for the investigation.
6. *Roles*: Investigators took on the roles of police, prosecution as well as judge.
7. *Lack of independence*: Internal compliance officers are not independent of their superiors.
8. *Lack of integrity*: Internal compliance officers might have blamed themselves for not preventing negative events.

Given such fundamental limits to private investigations, it is important that decision-making is based on other sources as well when it comes to conclusions about past negative events. Alternatively, fraud examiners learn how to avoid these problems so that reports of investigation can play a trustworthy role in the future.

In conclusion, the limitations around private investigations have affected their ability to investigate the allegations leveled by bank Nordea.

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