



# **The Role of the Board and Legal Team Before and After a Cyber Breach**

British Chamber of Commerce Briefing

Andrew Beckett

20<sup>th</sup> April 2017

# About Kroll

# Kroll Background

Kroll is the leading global provider of risk solutions. For more than 40 years, Kroll has helped clients make confident risk management decisions about people, assets, operations, and security through a wide range of investigations, cyber security, due diligence and compliance, physical and operational security, and data and information management services.



# Global Coverage

Nearly 1,000 employees in more than 35 offices in 20 countries

## NORTH AMERICA

New York, NY (*Headquarters*)  
Boston, MA  
Chicago, IL  
Eden Prairie, MN  
Fountain Valley, CA  
Irvine, CA

Los Angeles, CA  
Miami, FL  
Nashville, TN  
Philadelphia, PA  
Reston, VA

San Francisco, CA  
Secaucus, NJ  
Toronto, Canada  
Washington, D.C.  
Westchester, IL

## EUROPE, MIDDLE EAST, & AFRICA

Paris, France  
Milan, Italy  
London, UK

Moscow, Russia  
Madrid, Spain

Schweiz, Switzerland  
Dubai, UAE

## LATIN & SOUTH AMERICA

Buenos Aires, Argentina  
Sao Paulo, Brazil  
Bogota, Columbia

Grenada, West Indies  
Mexico City, Mexico

## ASIA & SOUTH PACIFIC

Queensland, Australia  
Beijing, China  
Shanghai, China  
Hong Kong

Hyderabad, India  
Mumbai, India  
Tokyo, Japan  
Singapore

# The Economics of e-crime

- Globally Cyber Crime is believed to be costing in the region of \$3 trillion per year with online fraud accounting for up to half (Gartner)
- Advantages
  - Less people involved – less chance of leaks or infiltration
  - Offences can be committed from another country
  - Significantly less chance of being caught
  - Penalties lower than for drugs offences
  - Cost overheads much lower
  - Money stolen is electronic and easier to move than cash

# Global view

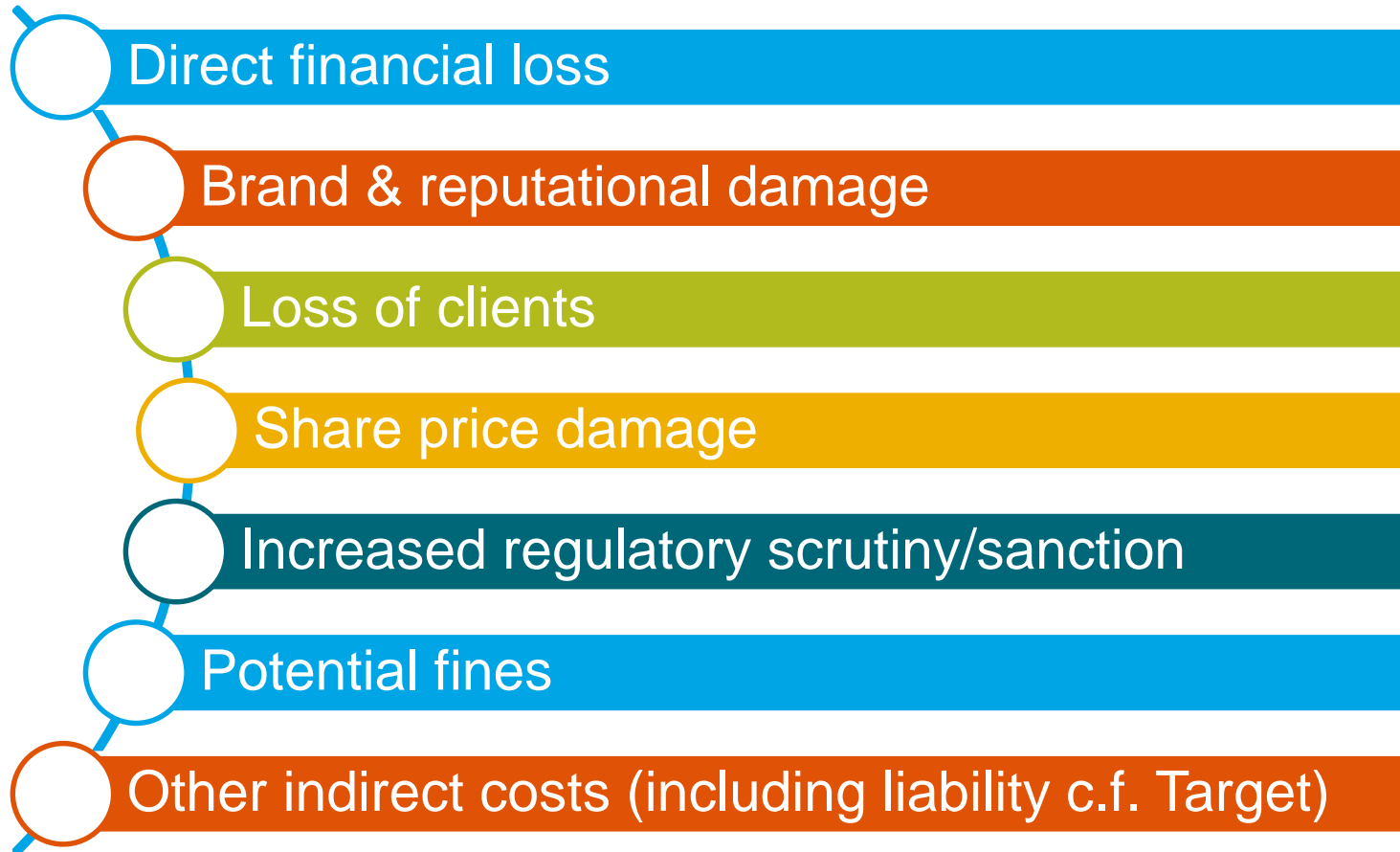
- In 2016, cybercrime jumped to the second most reported crime, 34% of organisations surveyed by Action Fraud stated that they think they will be affected by cybercrime in the next two years.
- A Ponemon report stated that in 2015 the average total cost of a data breach was US\$ 4 million or US \$158 per record stolen.
- In 2015, the M-Trends 2016 report identified three new trends;
  - An increase in the number of disruptive attacks
  - The bulk export of Personally Identifiable Information (“PII”) and;
  - The desire to exploit networking equipment during a targeted and persistent campaign.
- Increasingly Cyber attacks are posing a risk to national security and are listed as a Tier 1 Threat.
- 44% of respondents surveyed in the Kroll [2016/2017 Global Fraud and Risk Report](#) stated that insiders were perpetrators of a cyber incident whilst a UK government survey in 2016 found that staff were implicated in a breach 81% of the time.

# Reported Breaches 2016 by Industry Sector

## Source M-Trends 2017

Industry	America	APAC	EMEA	Total
Financial	15%	31%	36%	19%
Retail and Hospitality	15%	7%	10%	13%
High Tech	12%	7%	2%	10%
Healthcare	12%	2%	0%	9%
Business and Professional Services	10%	5%	3%	9%
Government	8%	5%	16%	9%
Manufacturing	5%	7%	5%	5%
Media and Entertainment	5%	7%	2%	5%
Energy	3%	10%	3%	4%
Construction and Engineering	3%	2%	7%	3%
Education	3%	0%	2%	3%
Telecommunications	2%	9%	5%	3%
Transportation and Logistics	2%	5%	7%	3%
Not for profit	2%	0%	0%	2%
Biotechnology and Pharmaceuticals	2%	3%	2%	2%
Other	1%	0%	0%	0%

# Impacts of a Breach





# Role of the Board/Legal Department Pre-Breach

- The Board and Legal team have an important (central) role to play both pre and post incident. Put in place measures to ensure that the GC is the first port of call in the event of a potential issue and establish clear guidance on what kinds of incidents need to be reported to legal and when.
- Contractual terms with customers and vendors often allocate liability. Define expectations – explicitly or implicitly – as to how it will be handled and the potential financial consequences.
- These days, a company's crown jewels are its data – whether it's customer data or latest R&D. Regulators, the Board and Shareholders are interested in how they are protected and how risks have been addressed. Need to think how you will deal with legal proceedings that often follow a breach.



# Role of the Board/Legal Department Pre-Breach

- Not all breaches are caused by external threats. How are you set to handle the malicious insider, the server that is changed out without being wiped, the mislaid documents or laptop?
- Review the provisions of your cyber insurance and understand the cover. Lots of policies have exclusions which mean you may not have the cover you thought. What direct costs are covered in terms of restoring network security, investigating the attack and obtaining legal advice on notification and data protection issues? Be proactive in ensuring that the right cover is in place and understand the exclusions and excess.
- Address the language barrier. Make sure you understand the language your IT team will use when discussing an actual or potential breach.



# Role of the Board/Legal Department Post-Breach

- The GC will often take a project management role following an incident – appointed experts work through counsel (privilege).
- Must be able to advise on the complex multi-jurisdictional notification, investigation, litigation and remedial issues that arise following a breach.
- Oversee Crisis Communications – ensure accuracy and legal impact of statements made.
- Know your rights as a cyber-crime victim: Computer Fraud and Abuse Act provides that an individual who suffers damage or loss “may maintain a civil action against the violator to obtain compensatory damages and injunctive relief or other equitable relief”



# Questions?