ISSUE 8

PARAMETRIC INSIGHTS

ECONOMIC CRIME UPDATES

HELLO!

Welcome to the **eighth** edition of our newsletter!

We hope that you will find our content useful, practical and engaging.

At Parametric Global Consulting, we focus on helping our clients navigate complex economic crime issues effectively through independent and impartial investigations and reviews, tailored training, and strategic advice.

We want you to be prepared to respond to legislative, policy and geopolitical changes, and our newsletter will keep you abreast of the swiftly evolving landscape.

Get in touch with us if you need our assistance with any ABC, AML, and other compliance issues in your organisation.

Do share the newsletter and sign up to our mailing list so that you are kept up to date!

This will be the last newsletter for 2022, and we will take some time out to reflect and plan for 2023.

I wish you and your family a great end to the year.

Merry Christmas!

Best,

Lloydette
Founding Partner

Parametric Global Consulting

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WHAT'S IN STORE?

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CASE UPDATES

LAFARGE PLEADS GUILTY TO MATERIAL SUPPORT FOR TERRORISM CHARGE

In October, global building materials manufacturer Lafarge S.A. and its Syrian subsidiary Lafarge Cement Syria (LCS) S.A. admitted revenue-sharing agreements with U.S.-designated foreign terrorist organizations. They pleaded guilty to a 'one-count criminal information' charging them with conspiring to provide material support and resources in Northern Syria, to ISIS and ANF. Lafarge obtained permission from ISIS to operate a cement plant in Syria from 2013-2014. They also leveraged their relationship with ISIS for economic advantage, including a portion of Lafarge's sales for disadvantaging their competitors. The defendants paid nearly $6m in illicit payments to the ISIS and $1.11m to third-party intermediaries. Through the scheme, LCS obtained $70.3m in total sales revenue from August 2013 to 2014. The defendants concealed their payments, falsified records, and backdated contracts. Lafarge was sentenced to terms of probation and to pay financial penalties totalling $777m. The DOJ remarked that this is an unprecedented charge and resolution, and 'extraordinary crimes' have been committed. Lafarge, LCS, and successor company Holcim Ltd, did not self-report or fully cooperate in the investigation. It is the DOJ's first corporate material support for terrorism prosecution.

SOUTH AFRICAN ANTI-GRAFT AGENCY SET UP IN RESPONSE TO STATE CAPTURE INQUIRY

South African President Cyril Ramaphosa announced in October that the country will ensure the independence of prosecutors and overhaul its anti-corruption strategy. This is in response to recommendations from a three-year state inquiry, concluded earlier this year, into allegations of corruption and high-level graft under Ramaphosa's predecessor. The inquiry's findings included that former President Jacob Zuma (2009-2018) allowed businessmen – three brothers from the Gupta business family - to engage in 'state capture'. Ramaphosa announced that the agency, established to prosecute high-level corruption cases emerging from the inquiry, will become permanent. The changes are to be a fresh chapter in the country's fight against corruption.

JUDGE RULES THAT DOJ VIOLATED RIGHTS OF BOEING MAX VICTIMS

In October, a U.S. federal judge ruled that the 346 people killed in two Boeing 737 MAX aircraft crashes – minutes after take-off – in Indonesia (2018) and Ethiopia (2019), are 'crime victims' under the Crime Victims' Rights Act. The judge also ruled that the DOJ violated the rights of passengers killed, when the federal government entered a 2021 DPA with the company, to resolve a criminal probe. As part of the controversial $2.5 billion agreement, Boeing admitted to conspiring to defraud federal regulators, but they would also be (conditionally) protected from prosecution. (contd)

In the ruling, the judge stated that 'adequate direct causal connection' between the criminal conspiracy and the crashes, was established. It was said to be evidentially clear that Boeing's conspiracy led to the deaths, and that the loss of life from the two crashes was a reasonably foreseeable consequence of the conspiracy. Boeing has agreed to strengthen its compliance program, to enhance its compliance program reporting requirements, and to continue cooperation with the Fraud Section in ongoing/future investigations and prosecutions. The total criminal monetary amount includes criminal monetary penalty of $243.6m, and compensation payments to Boeing's 737 MAX airline customers of $1.77 billion. It also included the establishment of a $500m crash-victim beneficiaries fund to compensate heirs, relatives, and legal beneficiaries of the deceased.

CREDIT SUISSE PAYS MILLIONS TO REACH SETTLEMENT IN FRENCH TAX FRAUD CASE

Credit Suisse will pay €238m ($234 million) to settle an investigation by French prosecutors. The agreement resolves an investigation into alleged tax fraud and money laundering, and whether the Swiss bank helped clients avoid paying tax on their wealth. The scheme is said to have taken place in different countries between 2005-2012. French authorities said the bank encouraged wealthy French clients to set up Swiss bank accounts, which were then out of reach of tax authorities. The bank is estimated to have made €65m in profit from those clients, and the prosecution office said the scheme caused fiscal damage to the French state, of more than €100m. Credit Suisse said the settlement was not a recognition of criminal liability.

LEGISLATION UPDATES

FINCEN'S FINAL RULE: BENEFICIAL OWNERSHIP REPORTING REQUIREMENT

- **In September 2022,** the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN) issued a final rule establishing a beneficial ownership information reporting requirement, pursuant to the Corporate Transparency Act (CTA).
- It will require most corporations, limited liability companies, and other entities created in/registered to do business in the U.S, to report to FinCEN about their beneficial owners. This is anyone who, directly/indirectly, 'exercises substantial control over' or owns/controls 'at least 25 percent of the ownership interests' of a reporting company.
- The rule exempts five types of individuals from the definition of 'beneficial owner' and twenty-three types of entities from the definition of 'reporting company.'

A step forward?

- The rule is particularly timely given recent geopolitical events highlighting abuse of corporate entities.

- It is designed to protect U.S. national security, help law enforcement agencies curb illicit activities (such as money laundering, terrorist financing, and tax fraud), counter illicit finance, and fortify the integrity and transparency of the U.S. financial system.
- It is hoped that the reporting requirement will help stop corrupt actors such as oligarchs, kleptocrats, and traffickers, from exploiting U.S. corporate structures to conceal and move illicit proceeds.
- The final rule advances long-term efforts to strengthen the U.S.' corporate transparency framework. For example, it tackles U.S. AML regime deficiencies, as identified by the Financial Action Task Force.

To note:

- Reporting companies created or registered before January 1, 2024, will have until January 1, 2025, to file their initial reports, while reporting companies created or registered after January 1, 2024, will have 30 days after receiving notice of creation/registration, to file initial reports.
- Once the initial report has been filed, existing and new reporting companies must file updates within 30 days of a change in beneficial ownership information.
- FinCEN will develop compliance and guidance documents to help reporting companies comply.
- They will issue a Small Entity Compliance Guide to inform small entities about their responsibilities.
- Other materials will be aimed at a wide range of stakeholders that are likely to receive questions about the rule. FinCEN also intend to conduct outreach to all stakeholders to ensure effective rule implementation.
- For reporting companies with simple organizational structures, it should be a more straightforward process to identify and report beneficial owners.

****** KEY TAKEAWAYS: Reporting companies created before 1st January 2024 will have 1 year (1st January 2025) to file their initial report of beneficial owners to FinCEN. There are a number of exemptions for individuals and entities who do not fall within the reporting requirement. ******

ECONOMIC CRIME BILL 2: EXTENDING THE SFO'S PRE-INVESTIGATION POWERS

The UK's Economic Crime and Corporate Transparency Bill builds on the recently enacted Economic Crime (Transparency and Enforcement) Act.

One proposal under the Bill will allow the Serious Fraud Office (SFO) to compel suspected criminals and institutions, to disclose information linked to crimes at a case's **pre-investigation stage.**

Section 2 of the Criminal Justice Act 1987 (CJA) gives the SFO its investigative powers. They can issue a section 2 Notice to compel the provision of information. These powers can only be deployed once a formal investigation has started.

In 2008, the SFO was given section 2A powers, which meant that they could gather information at the pre-investigation stage for international bribery and corruption cases only.

The Bill will extend those section 2A powers so that the SFO can compel disclosure of information at the pre-investigation stage in all cases, including fraud.

The government has released a factsheet on the SFO's proposed new powers. It is anticipated that the benefits of the expansion for the department, will include the following:

- Much quicker progress made through the early stage of an investigation, and minimised risk of evidence disposal.
- Ability to swiftly determine whether a crime has occurred, as the SFO will have early access to information and potential evidence held by companies and individuals.
- Faster identification of proceeds of crime and the capacity to move more quickly to prevent dissipation of assets.
- Limit the amount of fraud investigations closed (even after a case has been formally accepted) and more effective 'sifting out' during the intelligence gathering stage.
- Allow earlier evidence collection in domestic cases.

There is a high likelihood that this extension of the SFO's powers will become law shortly. Organisations that find themselves in the crosshairs of an SFO investigation will need to be prepared to engage with the SFO at a much earlier stage going forward.

****** KEY TAKEAWAYS: The SFO will have the power to request information from corporates at the pre-investigation stage, as a wider variety of case types will be covered by its pre-investigation powers. Early case filtering may also mean that investigations progress and reach a conclusion more quickly. ******

TECH SPOTLIGHT

THE FUTURE OF WHISTLEBLOWING: AI AS THE WHISTLE-BLOWER

Utilised properly, technology can enhance whistleblowing programmes and meet the demands of a workforce that increasingly favours digital communication and ethical workplace cultures.

Therefore, it is crucial for organisations to keep investigating the trends in this space. One to watch is the use of Artificial Intelligence (AI) in a whistleblowing context.

What are the possibilities?

- AI has the potential to transform corporate whistleblowing.
- For example, AI-powered whistleblowing chatbots have the capacity to help submit reports, protect reporter identities, follow up on matters, and advise and respond to whistle-blowers using natural language processing. One offering on the market includes Visor.ai and RSA's 'WhistleBot', aimed at providing *'an internal chat channel to receive and follow up on complaints and irregularities'.*
- AI has the capability to monitor organisational practices by processing vast amounts of data and spotting patterns. The data gathered will enable it to identify those who carry out unethical practices, create reports based on collected data, and analyse organisational operations to assess whether they are ethical.
- What makes leveraging AI especially attractive is its potential to protect human whistle-blowers, who may suffer severe consequences when exposing wrongdoing. These can include ostracization, job insecurity, emotional stress, potential legal issues, physical violence, and loss of life.
- AI whistle-blowers will not face such consequences and may be more effective, leading to increased disclosure.
- Human motives for blowing the whistle are complex and multi-faceted, which can impact how human reports are perceived. On the other hand, concerns raised by technology are unlikely to be viewed as malicious and vexatious.
- At present, AI is used as a whistle-blowing support tool and it is likely that more efficient, complex, hybrid AI and human whistleblowing systems will develop.
- However, it is possible that the need for any kind of human disclosure will be removed if autonomous, sophisticated AI whistle-blowers are created. This is not a far-flung impossibility, given the rapid advancements in this field.

Embracing change

- Some sectors have been more transformed by technology than others. In these spaces, AI whistle-blowers may be embraced far more quickly.
- In sectors with greater reliance on technology and less human visibility in some areas, the integration of AI whistle-blowers might also fit more seamlessly into operations.
- For example, in the automotive industry, machines are used to examine aspects of vehicle safety. AI whistle-blowers could eventually be used to identify and report when safety thresholds are bypassed.

What next?

- The question of who will end up blowing the whistle – AI or humans – is an interesting one.
- With effective implementation, AI whistle-blowers may have the capacity to shelter potential human whistle-blowers from the burdens associated with reporting wrongdoing.
- In this vision of the future, it might become an ethical obligation for organisations to utilise this technology to safeguard employees.

Please note that we do not have affiliations with any products and companies mentioned.

****** KEY TAKEAWAYS: Does your organisation stay up to date with whistleblowing tech developments? Inadequate tracking of trends can result in overlooking tools that radically support whistleblowers, such as AI-powered systems. ******

THE DEEP DIVE

GLENCORE'S UK SENTENCING

You will have read the headlines about huge sums of cash being flown on private jets into countries to pay bribes. Let's dig a little deeper into the judgment, shall we?

Glencore Energy UK Ltd ("Glencore") pleaded guilty to five counts of bribery and two counts of failure to prevent bribery in June 2022. The company was sentenced on 3rd November 2022 over its conduct in Nigeria, Cameroon, Ivory Coast, Equatorial Guinea, and South Sudan, and for bribes paid in excess of $28 million.

In advance of the sentencing hearing, the Nigerian Government sought to be considered as a party that could make representations for a compensation order in its favour, as part of the financial penalty to be imposed on Glencore. The Serious Fraud Office ("SFO") and Glencore objected to this application, and the Crown Court ruled that Nigeria did not have standing to make such a representation. The judgment can be found here.

The financial penalty imposed on Glencore is as follows:

- Confiscation order of £93,479,338.
- Fines of £274,403,087 for the seven counts.

This was reduced by one-third, due to Glencore pleading guilty at the earliest opportunity.

- The total amount payable = £182,935,392.
- The SFO's costs of £4,550,362 are also payable.

The sentencing judge determined that Glencore's conduct should be categorised as being of high culpability, and identified the following factors for that categorisation:

1. Glencore played a “leading role in organised and unlawful activity.”
2. The company “corrupted local officials who worked for state-owned oil corporations.”
3. Glencore abused its dominant market position.
4. The conduct was over a “sustained period of time” and described as “sophisticated offending.”
5. There was a “culture of wilful disregard” by Glencore employees.
6. The company did not make any “significant effort” to put “effective systems” in place to stop the offending.
7. The system in place was “patently open to abuse and could not be described as remotely effective in preventing corruption.”
8. Whilst Glencore had anti-bribery and corruption policies in place and a compliance officer in post, “these efforts were somewhat ineffectual and feeble.”
9. The judge noted that one policy dated back to 2006 and remarked that there is “no evidence its terms were enforced or their importance emphasised”.

The judge identified aggravating factors which are applicable to all seven counts:

1. “Substantial harm” was caused to the economic operations of other entities that operated in the same sector as Glencore.
2. There was widespread fraudulent activity occurring within Glencore’s West Africa operation, with the false invoicing and false descriptions designed to conceal the misconduct.
3. The integrity and confidence of the markets was damaged by Glencore’s conduct, and significant harm caused to the integrity of government oil operations.
4. The cross-border nature and scale of the offending.
5. The involvement of senior personnel at Glencore in the criminal conduct.
6. “A culture had developed in which bribery was accepted as part of the West Africa desk’s way of doing business.”
7. “Anti-corruption statements and policies were largely ignored.”

The mitigating factors that the judge considered were:

1. Those involved in the offending are no longer employed by Glencore.
2. Glencore's extensive cooperation, including a partial waiver of legal professional privilege over some internal interviews.
3. Glencore’s engagement in a process of “corporate reform”.
4. Recruitment of a higher number of compliance officers within the company.

On 25th November, the SFO confirmed that Glencore paid its fine and confiscation order in full, and that this money was paid into the U.K Treasury.

This is not the end of potential litigation for Glencore in relation to its egregious conduct; a number of shareholders have initiated a civil suit against the company.

****** KEY TAKEAWAYS: When was the last time you reviewed and updated your ABC policies? Do you have effective systems in place to prevent corruption? Is there a "culture of wilful disregard" in relation to compliance within your organisation? ******

THE INVESTIGATORS' MINDSET

THE TRIAGE PROCESS: STEP THREE – REMEDIATE!

Over the past few editions, we discussed the benefit of using a triage process for managing allegations or concerns raised internally. We have covered Step 1 and 2 of the 'three Rs' system used at Parametric Global Consulting to support organisations:

Step 1 – React;
Step 2 – Respond;
Step 3 – Remediate.

Think of the triage process as a three-legged stool. If one pillar collapses, the entire structure crumbles. Each stage is just as important as the other, and remediation is no exception.

Step 3 – Remediate:
A concern has been raised. Your organisation has effectively reacted and responded, and there is a clear problem to resolve. What next?

Remediation is the third pillar of the triage structure, and it is key. It is one of the main reasons for reporting concerns because ultimately, people want something done about it. A failure to remediate effectively after a legitimate issue(s) has been uncovered, will undo the work undertaken during the first two steps of the triage process.

However, this does not mean treating remediation as a mere "tick-box" exercise. Poor remediation can damage trust and the organisational culture. It can create feelings of disengagement, reduce business integrity, and diminish confidence in the organisation's approach to handling misconduct.

Remediation determines whether an organisation can "walk the talk." Inadequate remediation can heavily suppress a culture of speaking up. A lack of follow-through can be demoralising and may increase the likelihood of issues being concealed and made worse or reported externally.

It may not always be clear to the organisation at large that remediation has occurred due to the sensitivity or nature of an investigation. If it is inappropriate to disclose the outcome, care must be taken to manage the expectations of those involved as witnesses.

Any crisis can be made infinitely worse by a head-in-the-sand mentality. It is important for organisations to execute a remediation plan of action and do what is necessary. They should take the steps needed to ensure that organizational values and principles remain intact.

****** KEY TAKEAWAYS: Your triage process is a three-legged stool; if one leg collapses, the whole structure crumbles. Manage expectations about disclosure of outcomes and remediation. ******

DATES FOR YOUR DIARY

ESG AND COMPLIANCE CONFERENCE

Society of Corporate Compliance and Ethics (SCCE) | 01-12-22 | Register

ESG is front and centre for organizations of all types and sizes. It needs the involvement of the compliance team for it to be properly addressed. ESG goals and metrics require a collaborative effort across multiple units within an organization. This virtual conference, led by ESG and compliance professionals, addresses the current state of ESG and the importance of collaboration among ESG, compliance, and other functions within an organization.

TACKLING ILLICIT FINANCE - THE NEW ECONOMIC CRIME ACT 2022

MBL Seminars | 01-12-22 | Register

Parliament made another move to tackle ‘corrupt elites and dirty money’, in the form of the Economic Crime (Transparency and Enforcement) Act 2022. After an expedited passage through Parliament after Russia’s invasion of Ukraine, the Act received Royal Asset in March 2022. This webinar will address how the Act works; what it means for individuals, companies, and their advisers; the Register of Overseas Entities; reform of Unexplained Wealth Orders; and changes to UK sanctions.

GIR LIVE: LONDON WINTER 2022

GIR (Global Investigations Review) | 01-12-22 | Register

This interactive conference will bring together practitioners from across the UK (including investigators, private practice lawyers, funders, expert witnesses, senior general counsel and more) to debate and analyse the latest major developments in investigations.

INVESTIGATING EU SANCTIONS BREACHES

ACi (Association of Corporate Investigators) | 07-12-22 | Register

With the war in Ukraine bringing unprecedented EU sanctions (restricted measures) against Russia, an expert panel will discuss what this means for corporate investigators charged with investigating potential sanctions breaches for companies operating within EU member states.

IS FRAUD ADDICTIVE?

ACFE | 08-12-22 | Register

Many fraudsters describe their crimes as an addiction. After an addiction to prescription opioids, and after serving almost 14 months in Federal prison for a white-collar crime, Jeff Grant started a ministry to help white-collar criminals re-enter society and avoid making the same mistakes that landed them in prison. In this webinar, ACFE Chief Training Officer, John Gill, will talk to Grant about the circumstances of his own crimes and how this helps him understand the mindset of the fraudsters he counsels.

USEFUL RESOURCES

TEDx TALK: WHY DO ETHICS MATTER? | SHEFALI ROY | TEDxOXBRIDGE

Access: YouTube

This 2017 TEDx Talk by Shefali Roy on "Why do ethics matter?" is fascinating. She has held roles at Goldman Sachs, Apple, Stripe, and is an Associate Fellow at Saïd Business School, University of Oxford. She talks about being asked to bury issues, being called a 'business blocker', and putting that exact phrase on her CV.

She asks the following question:

"How do you reconcile your personal values and ethics with an organisation that doesn't want to?"