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DOJ Brings First Terrorism Material Support Charge Against a Corporation, Underlining the Importance of Compliance When Operating in High-Risk Countries and of Robust M&A Due Diligence

On October 18, 2022, Deputy Attorney General (“DAG”) Lisa O. Monaco announced that Lafarge SA (“Lafarge”), a multi-national building materials manufacturer headquartered in Paris, France, and its Syrian subsidiary Lafarge Cement Syria (“LCS”) had pleaded guilty in the Eastern District of New York to conspiring to provide material support to foreign terrorist organizations, the Islamic State of Iraq and al-Sham (ISIS) and the al-Nusra Front (ANF), in violation of 18 U.S.C. § 2339B.¹ This case represents the first time in which the DOJ has brought such a material support charge against a corporation.²

According to the DOJ and as set forth in court filings, Lafarge and its subsidiary schemed to pay ISIS and ANF in exchange for permission to operate a cement plant in Syria from 2013 to 2014, which enabled LCS to obtain approximately \$70.3 million in revenue. In 2015, Lafarge was acquired by the Swiss multi-national Holcim Ltd. (“Holcim”), which, according to the DOJ, failed to conduct appropriate pre- or post-acquisition due diligence of Lafarge’s actions in Syria or to self-report the misconduct to the DOJ once it was discovered.³ U.S. District Judge William F. Kuntz II sentenced Lafarge and LCS to terms of probation and to pay financial penalties, including criminal fines and forfeiture, totaling \$777.78 million. Acknowledging the defendants’ efforts to

¹ Dep’t of Justice, “Lafarge Pleads Guilty to Conspiring to Provide Material Support to Foreign Terrorist Organizations,” (Oct. 18, 2022) (“Lafarge Pleads Guilty”), available [here](#); *United States v. Lafarge S.A. and Lafarge Cement Syria S.A.*, 22-CR-444 (E.D.N.Y. 2022) (“Lafarge”), Dkt. No. 10 (plea agreement) and Dkt. No. 10-1 (statement of facts).

² Although this is the first case in which the DOJ has charged a corporation with providing material support to a foreign terrorist organization pursuant to Section 2339B, the DOJ previously prosecuted Chiquita Brands International Inc. for “engaging in transactions with a specially-designated global terrorist” pursuant to a different statute. Dep’t of Justice, “Chiquita Brands International Pleads Guilty to Making Payments to a Designated Terrorist Organization And Agrees to Pay \$25 Million Fine,” (March 19, 2007), available [here](#).

³ *Lafarge*, Dkt. No. 10, ¶ 7 (plea agreement); “Lafarge Pleads Guilty,” available [here](#).

remediate compliance programs after the misconduct was discovered, as well as various commitments to ensure compliance in the future, the DOJ determined that the appointment of an independent compliance monitor was “unnecessary.”⁴

Practice Points

- As the DAG stated in announcing the guilty pleas, this case “sends the clear message to all companies, but especially those operating in high-risk environments, to invest in robust compliance programs, pay vigilant attention to national security compliance risks, and conduct careful due diligence in mergers and acquisitions.”⁵ Companies that do business in countries subject to, or where individuals or entities are subject to, various U.S. sanctions should redouble their efforts to make sure sanctions are at the forefront of their approach to compliance all along their supply chains. This is true not just for companies that traditionally focus on compliance with U.S. sanctions and anti-money laundering laws and regulations, such as financial institutions, but for companies in all industries that do business internationally.
- Although the facts of the Lafarge case are egregious, the case is “instructive of the Department’s corporate crime priorities,” as the DAG observed in announcing the resolution.⁶ Those priorities include aggressively prosecuting corporate crime and corruption, and taking a harder line about when to bring charges against corporations, as opposed to resolving potential criminal liability through Deferred Prosecution Agreements.⁷ Finally, the DAG explained that another top priority for the DOJ is “individual accountability,” and that, although the DOJ did not itself charge individuals involved in the Lafarge misconduct, “French authorities have arrested many of the senior executives implicated in the scheme.”⁸
- The resolution of the case, which did not include an independent compliance monitor, provides some evidence about the way in which the DOJ will determine whether to seek an independent compliance monitor as part of a corporate resolution in a case involving this type of misconduct. Here, although the misconduct went undetected for years and was not voluntarily reported to the DOJ, the plea agreement stated that the DOJ decided not to seek a monitor based on the defendants’ “remediation,” including “particularly the wholesale replacement of legacy Lafarge’s compliance program and internal controls with Holcim’s, and the enhancements to Holcim’s compliance program and internal controls following Holcim’s discovery of the misconduct,” as well as the DOJ’s “assessment of the current state of Lafarge’s compliance program and internal controls,” among other considerations.⁹ Thus, even after egregious misconduct, a company’s genuine and serious efforts to strengthen compliance policies and internal controls may help to avoid imposition of an independent compliance monitor.
- Sanctions and other national-security-related crimes really are, as the DAG described them, “the new FCPA.” Specifically, the DAG has explained that, just like the FCPA, sanctions-related charges are “relevant to an expanding number of industries,” have grown from a “unilateral effort by the United States to a worldwide movement to combat international

⁴ *Lafarge*, Dkt. No. 10, ¶¶ 8-11 (plea agreement).

⁵ Dep’t of Justice, “Lafarge Pleads Guilty,” available [here](#).

⁶ Dep’t of Justice, “Deputy Attorney General Lisa O. Monaco Delivers Remarks Announcing a Guilty Plea by Lafarge on Terrorism Charges,” (Oct. 18, 2022) (“Remarks Announcing a Guilty Plea”), available [here](#).

⁷ See, e.g., Dep’t of Justice, “Deputy Attorney General Lisa O. Monaco Delivers Remarks on Corporate Criminal Enforcement,” (Sept. 15, 2022), available [here](#); Dep’t of Justice, DOJ Strategic Plan, Objective 4.2 (“Because transnational corruption can empower corrupt regimes and destabilize foreign governments – potentially resulting in significant threats to our national security – the Department will redouble its efforts to investigate and prosecute foreign corruption . . .”), available [here](#).

⁸ Dep’t of Justice, “Remarks Announcing a Guilty Plea,” available [here](#).

⁹ *Lafarge*, Dkt. No. 10, ¶ 11 (plea agreement).

corruption,” and “incentivize companies to come forward and voluntarily disclose discovered misconduct.”¹⁰ The DAG also emphasized that any multinational corporation or business with an international supply chain “needs to be pressure-testing its sanctions compliance program,” which should be at the “forefront” of its overall approach to compliance.¹¹ The novel use of the material support terrorism charge—which allows for broad extraterritorial jurisdiction and can lead to extensive asset forfeiture—against a multi-national building materials corporation to address its payments to a foreign entity, here designated foreign terrorist organizations, illustrates how the DOJ is using sanctions-related charges as a key tool to combat corporate corruption, along with the FCPA.

The Charges and the Guilty Pleas

Lafarge and LCS pleaded guilty to an information charging a violation of 18 U.S.C. § 2339B, which prohibits persons from knowingly providing material support or resources to a foreign terrorist organization, and from attempting or conspiring to do so. “Material support” includes any tangible or intangible property, including currency, financial services and other monetary instruments.¹² The violator must know that the organization receiving material support is a designated terrorist organization, such as ISIS or the ANF, but does not need to share the goals or beliefs of that organization. A violation of Section 2339B exposes the defendant to, among other penalties, extensive asset forfeiture, including forfeiture of “all assets, foreign or domestic,” of an entity “engaged in planning or perpetrating any Federal crime of terrorism” against the United States, citizens, or residents of the United States, or their property.¹³

As set forth in the statements of facts that accompanied the guilty pleas, from approximately May 2010 to September 2014, Lafarge, through LCS, operated a cement plant in Northern Syria.¹⁴ After the start of the Syrian Civil War in 2011, Lafarge and LCS negotiated to pay armed factions in the civil war to protect LCS employees, to ensure continued operation of the plant, and to help give Lafarge and LCS a competitive advantage in the Syrian cement market. Among other things, LCS executives paid fixed monthly “donations” to groups, including ISIS and ANF, so that employees, customers, and suppliers could travel through checkpoints near the LCS plant. The executives eventually agreed to make payments to ISIS based on the volume of cement that LCS sold to its customers, effectively creating a revenue-sharing agreement. Lafarge and LCS executives analogized these payments as paying “taxes.” Lafarge and LCS executives conditioned some payments on ISIS’s assistance in imposing higher costs on, or even stopping the sale of, other cement imported into northern Syria.¹⁵

Between August 2013 and October 2014, Lafarge and LCS used intermediaries to pay ISIS and ANF the equivalent of approximately \$5.92 million. As a result of the scheme, LCS obtained approximately \$70.30 million in total sales revenue from August 2013 through October 2014, and the total gains to all participants in the conspiracy, including LCS and ISIS, totaled approximately \$80.54 million.¹⁶

Lafarge and LCS executives took steps to conceal their activities, including by using personal email accounts and by requiring intermediaries to use false descriptions of services rendered to submit for payment to LCS. In addition, as Lafarge was being acquired by Holcim, Lafarge executives did not disclose the payments to ISIS and ANF during pre-acquisition diligence meetings. According to the DOJ, Holcim “conducted neither pre- nor post-acquisition due diligence of LCS’s operations in Syria,” which had

¹⁰ Dep’t of Justice, “Deputy Attorney General Lisa O. Monaco Delivers Keynote Remarks at 2022 GIR Live: Women in Investigations,” (June 16, 2022) (“Keynote Remarks at 2022 GIR Live”) (“Over the last couple of months, I’ve given notice of that sea change by describing sanctions as ‘the new FCPA.’”), available [here](#).

¹¹ *Id.*

¹² 18 U.S.C. § 2339A(b)(1).

¹³ 18 U.S.C. § 981(a)(1)(G)(i); *see Lafarge*, Dkt. No. 10, ¶ 22 (listing bases for forfeiture under Section 981(a)(1)(G)).

¹⁴ Dep’t of Justice, “Lafarge Pleads Guilty,” available [here](#); *Lafarge*, Dkt. No. 10-1 (statement of facts).

¹⁵ Dep’t of Justice, “Lafarge Pleads Guilty,” available [here](#).

¹⁶ *Id.*

ceased by the time the transaction closed.¹⁷ Lafarge, LCS, and Holcim also did not self-report the conduct, and the DOJ determined that it did not receive timely and full cooperation with its investigation, although Holcim did conduct an internal investigation following media reports in 2016 and publicly disclosed its principal investigative findings in 2017.¹⁸

Although the aforementioned conduct occurred principally outside the United States, the papers reflect that the DOJ established jurisdiction under the material support statute's broad provision for "extraterritorial jurisdiction" in several ways.¹⁹ These included that the offense occurred in part within the United States, that the offense affected interstate commerce, and that the defendants conspired with a U.S. national. Although the DOJ did not specify the exact facts it relied upon to establish jurisdiction under each of these bases, the statement of facts noted, among other things, that Lafarge employees used U.S. email accounts, that Lafarge sent a wire transfer in furtherance of the scheme through a financial institution in New York, and that one Lafarge executive involved in the conduct was a U.S. citizen.²⁰ The DOJ also alleged, as an additional basis for extraterritorial jurisdiction, that the defendants were "brought into" and "found in" the United States after the offense conduct had occurred.²¹

In announcing the guilty plea, the DAG emphasized again that "companies who identify misconduct should voluntarily self-report and cooperate with the Department in a timely and proactive fashion."²² According to the DAG, Lafarge "did neither." Additionally, Lafarge failed to retain and produce communications sent over third-party messaging systems or have policies to enable such retention. The DAG also criticized Holcim for "not perform[ing] due diligence of Lafarge's operations in Syria, despite the clear compliance risks posed by operations in the region" and not doing anything to "investigate or address Lafarge's illegal activities until they were publicly exposed."²³

The plea agreement stated that the DOJ decided that the appointment of an independent compliance monitor as part of the resolution was "unnecessary" based on the defendants'

remediation, including particularly the wholesale replacement of legacy Lafarge's compliance program and internal controls with Holcim's, and the enhancements to Holcim's compliance program and internal controls following Holcim's discovery of the misconduct, and based on the [DOJ's] assessment of the current state of Lafarge's compliance program and internal controls, including ensuring that its compliance programs will satisfy the minimum elements set forth in [an addendum to the plea agreement], and the Defendants' risk profile, including Lafarge's agreement to report to the [DOJ]

about its remediation and compliance efforts on a periodic basis.²⁴ That addendum to the plea agreement described a range of compliance and ethics policies related to anti-terrorism and sanctions laws, including "policies and procedures for mergers and acquisitions requiring that Lafarge conduct appropriate risk-based due diligence on potential new business entities, including appropriate anti-terrorism and sanctions due diligence by legal, accounting and compliance personnel."²⁵

¹⁷ *Id.*

¹⁸ *Lafarge*, Dkt. No. 10, ¶ 7 (describing lack of reporting and DOJ's view about cooperation); Dep't of Justice, "Lafarge Pleads Guilty" (same), available [here](#); Holcim, "Holcim Affirms Support for Lafarge SA Resolution with the U.S. Department of Justice Regarding Legacy Lafarge Operations in Syria," (Oct. 18, 2022), available [here](#).

¹⁹ 18 U.S.C. § 2339B(d); *Lafarge*, Dkt. No. 4, ¶ 1 (listing bases for jurisdiction).

²⁰ *Lafarge*, Dkt. No. 10-1, ¶¶ 8, 18, 103 (statement of facts).

²¹ *Lafarge*, Dkt. No. 10, ¶ 3 (plea agreement); see 18 U.S.C. § 2339B(d)(1)(C).

²² Dep't of Justice, "Remarks Announcing a Guilty Plea," available [here](#).

²³ *Id.*

²⁴ *Lafarge*, Dkt. No. 10, ¶ 11 (plea agreement).

²⁵ *Lafarge*, Dkt. No. 10-3 (compliance commitments).

The conduct underlying these charges and guilty pleas had been investigated not just in the United States but in France, and Lafarge is already facing charges in France for aiding and abetting crimes against humanity.²⁶ In announcing the charges, the DOJ thanked French authorities for their significant assistance in the U.S. case.²⁷

Key Implications of the Lafarge Guilty Pleas:

- **Compliance and disclosure are critical:** DOJ's growing focus on corporate crime related to U.S. sanctions, as well as DOJ's new efforts to incentivize a corporation's speedy and complete disclosure of misconduct,²⁸ combine to make it more important than ever for companies to have policies, programs, and training in place to identify potential misconduct and, where appropriate, to bring that misconduct to DOJ's attention. The DAG has previously emphasized that, just as with the FCPA, corporations evaluating sanctions and other national-security-related misconduct should consider prompt, voluntary disclosure, including through the National Security Division's Voluntary Disclosure Program, to receive cooperation credit from the DOJ. Here, although the misconduct was not voluntarily disclosed, the DOJ did credit Holcim's efforts to address the misconduct and enhance its own compliance program in deciding not to seeking the imposition of a compliance monitor.
- **Corporate crime as national security crime:** DOJ's efforts to use national security tools outside of the most traditional sanctions charges, such as the terrorism charge to which Lafarge pleaded guilty, against corporations show that corporations face growing legal risk from activities inside and outside the United States that relate to activities perceived as national security threats. That trend has been most evident in relation to the People's Republic of China, but this case shows the scope is far broader. The DAG made exactly this point in announcing the Lafarge guilty pleas: "In today's world, corporate crime regularly intersects with national security in areas like terrorist financing, sanctions evasion, and cybercrime."²⁹
- **U.S. sanctions enforcement gets increasingly global:** DOJ's efforts to enforce U.S. sanctions will likely involve a growing number of international partners, such as the French authorities involved in the Lafarge matter. As DAG Monaco previewed in June 2022, "the months and years ahead will see the department's sanctions teams work hand-in-glove with civil and law enforcement agencies across the world. The multilateralization of our sanctions work follows the same trajectory as our FCPA history, which grew from a largely unilateral effort by the United States to a worldwide movement to combat international corruption."³⁰

We will continue to monitor developments in this space and provide further updates as appropriate.

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²⁶ New York Times, "French Company to Face Charges of Complicity in Human Rights Violations," (May 18, 2022), available [here](#).

²⁷ Dep't of Justice, "Lafarge Pleads Guilty," available [here](#).

²⁸ Dep't of Justice, "Deputy Attorney General Lisa O. Monaco Delivers Remarks on Corporate Criminal Enforcement," (Sept. 15, 2022), available [here](#).

²⁹ Dep't of Justice, "Remarks Announcing a Guilty Plea," available [here](#).

³⁰ Dep't of Justice, "Keynote Remarks at 2022 GIR Live," available [here](#).

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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