



AFRICA INSIGHTS: MANAGING BUSINESS CRIME RISKS IN SUB-SAHARAN AFRICA



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TOPICS FOR DISCUSSION

- Putting Sub-Saharan Africa on the Map
- Key Business Crime Risks
- Additional Risk Factors
- Why Managing Business Crime Risks Effectively is Important
- High-Profile Investigations and Disputes in the Region
- Managing Business Crime Risks Effectively
- What is the Future Likely to Hold?



PUTTING SUB-SAHARAN AFRICA ON THE MAP

- The World Bank reported GDP growth across sub-Saharan Africa of 2.3% in 2019.
- Nigeria and South Africa account for approximately 45% of the region's GDP.
- According to data released by the IMF in 2019, four of the ten fastest growing economies are located in the region – South Sudan, Rwanda, Ethiopia and Djibouti.
- It is a region that continues to offer businesses tremendous opportunities, but recent high profile investigations and disputes have highlighted that such opportunities do not come without risk.



PUTTING SUB-SAHARAN AFRICA ON THE MAP

- It is the lowest scoring region on Transparency International's Corruption Perception Index with countries averaging 32 out of 100 according to recent figures.
- Of course, you cannot lump all countries in the region together and there are examples of positive change with Botswana and Rwanda earning scores of 61 and 53 respectively.
- However, half of the 16 countries in the world scoring less than 20 are located in the region, including the two lowest scoring countries – South Sudan (12) and Somalia (9).



PUTTING SUB-SAHARAN AFRICA ON THE MAP

- In response to a growing public appetite for change, many politicians in the region are running on an ‘anti-graft’ ticket.
- Several countries in the region have introduced legislative, policy and institutional reforms, often as a result of increasing political and financial pressure, domestically and internationally.
- However, while there have been some notable, high-profile interventions, in many countries it is simply too early to tell whether they will bear fruit.
- In the coming months and years, many will be looking for further signs of change.



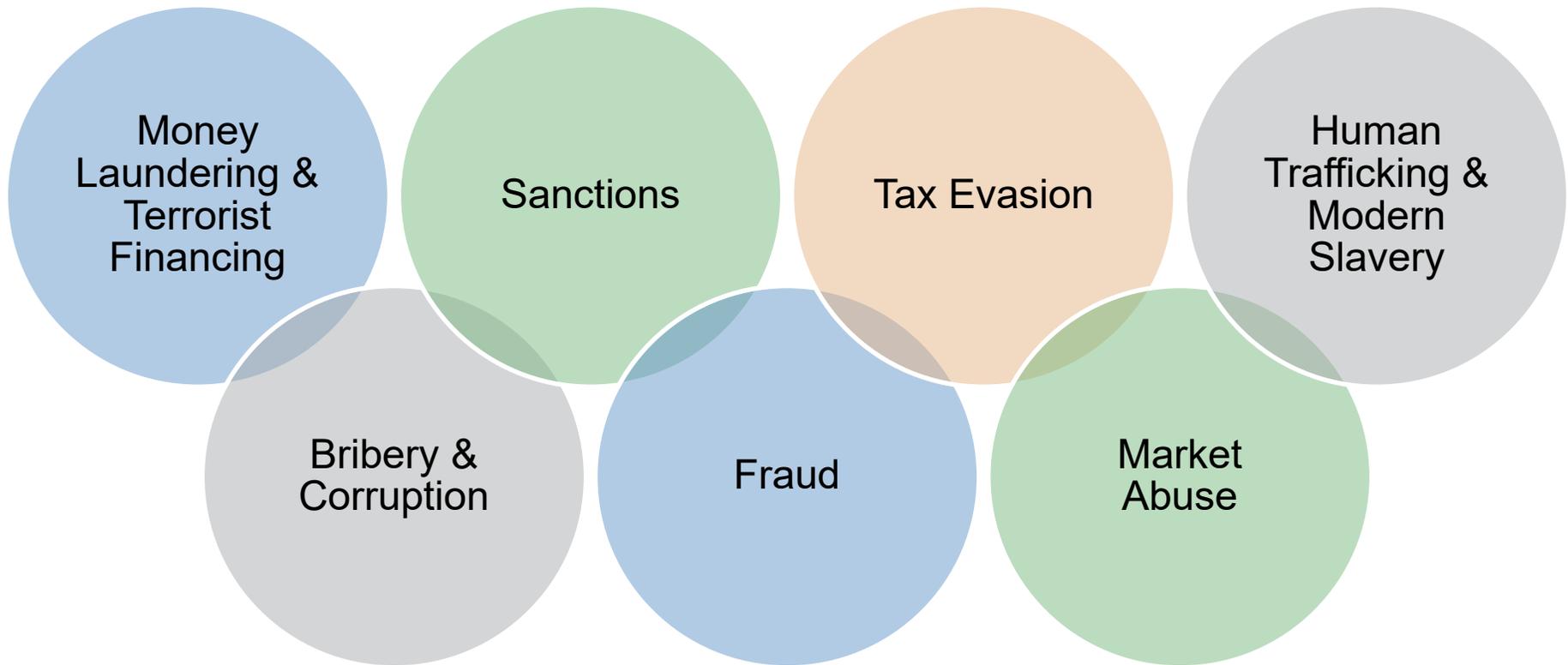
PUTTING SUB-SAHARAN AFRICA ON THE MAP

- The extra-territorial reach of statutes, such as the US Foreign Corrupt Practices Act 1977 and the UK's Proceeds of Crime Act 2002 and Bribery Act 2010, continue to provide a 'route in' for regulators, law enforcement agencies and prosecutors from jurisdictions outside sub-Saharan Africa.
- They continue to take a keen interest in the activities of businesses operating in the region, particularly those with ties to their respective jurisdictions.
- There is also evidence of increasing co-operation between regulators, law enforcement agencies and prosecutors, both within and outside the region.



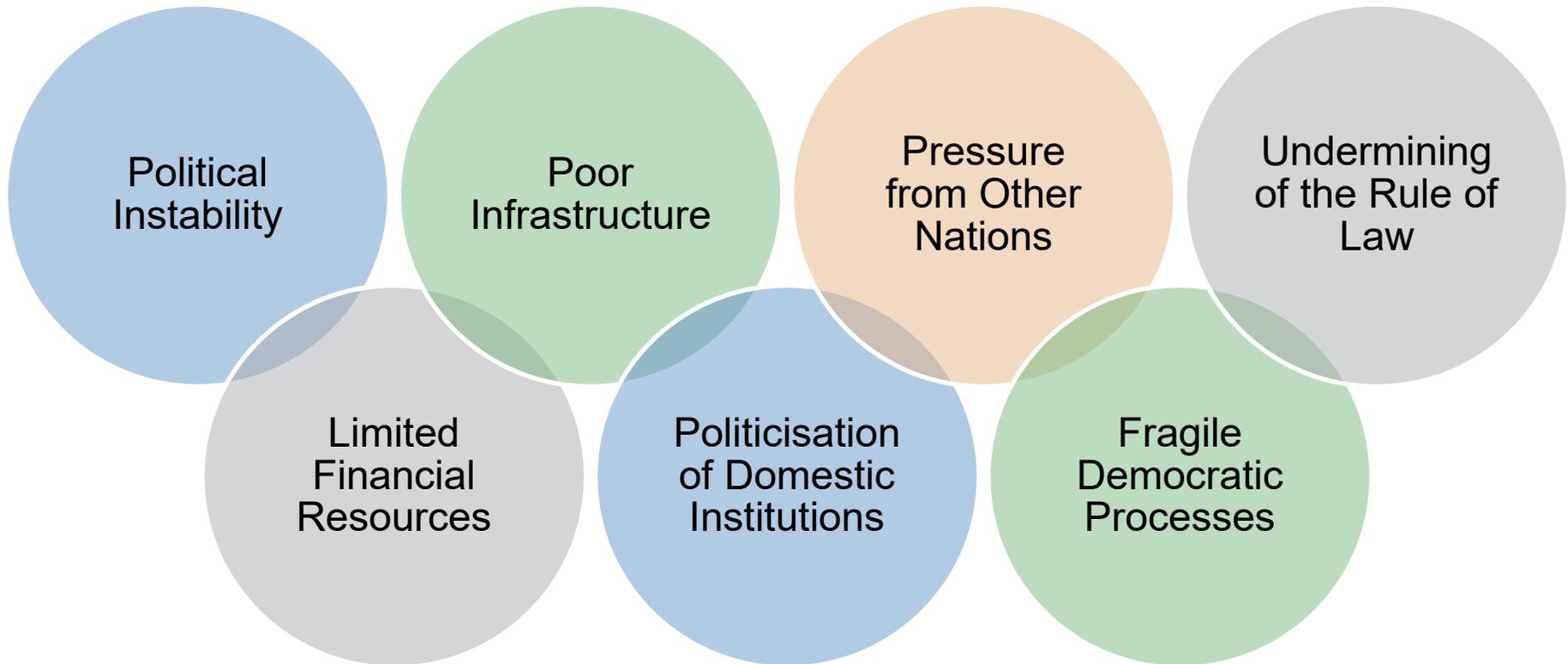
THE KEY BUSINESS CRIME RISKS

- The key risks in sub-Saharan Africa are similar to those faced by those doing business in many other parts of the world.



THE KEY BUSINESS CRIME RISKS

- However, the risks are often heightened due to additional factors.



WHY MANAGING BUSINESS CRIME RISKS EFFECTIVELY IS IMPORTANT

FINANCIAL	<ul style="list-style-type: none">• May result in the loss of an asset or contract.• May lead to damage to a company's share price, reduce access to capital markets, etc.• Financial data may be distorted or falsified – assets/contracts overvalued, liabilities under-reported, etc.• May lead to enforcement penalties, damages awards, compensation, increased legal/accounting costs, etc.• Remediation efforts can prove costly and be a significant drain on resources.
LEGAL	<ul style="list-style-type: none">• May give rise to regulatory or criminal enforcement action.• May also lead to civil claims.• Organisations are increasingly liable for the acts of employees and “associated persons.”• In some circumstances, a purchaser may inherit legal risks from acquired companies.
REPUTATIONAL	<ul style="list-style-type: none">• Negative publicity may lead others to view a company as a less favourable partner or investment vehicle.• May lead to ineligibility for publicly funded projects, government-backed investment schemes, etc.• Can have a lasting impact on the corporate ‘brand’ – both internally and externally.
ETHICAL	<ul style="list-style-type: none">• Engaging in, encouraging, or willingly turning a blind eye to criminal activities risks infecting a company's culture.• Likely to undermine a company's core ethical messages – both internally and externally.• May lead to corporate partners (e.g., charities, educational establishments, sports teams) severing ties.

THE SIMANDOU PROJECT

- The misadventures surrounding the Simandou Project in Guinea – the development of one of the largest iron ore deposits in the world – highlight the scale of the consequences that can befall companies who fail to effectively manage business crime risks.
- Over a seven year period, five different companies acquired, and in some cases lost, rights to all or part of the Project, leading to:
 - two arbitrations;
 - internal investigations;
 - criminal and regulatory investigations by authorities in at least six different jurisdictions;
 - at least five prosecutions; and
 - more than half a dozen civil lawsuits.

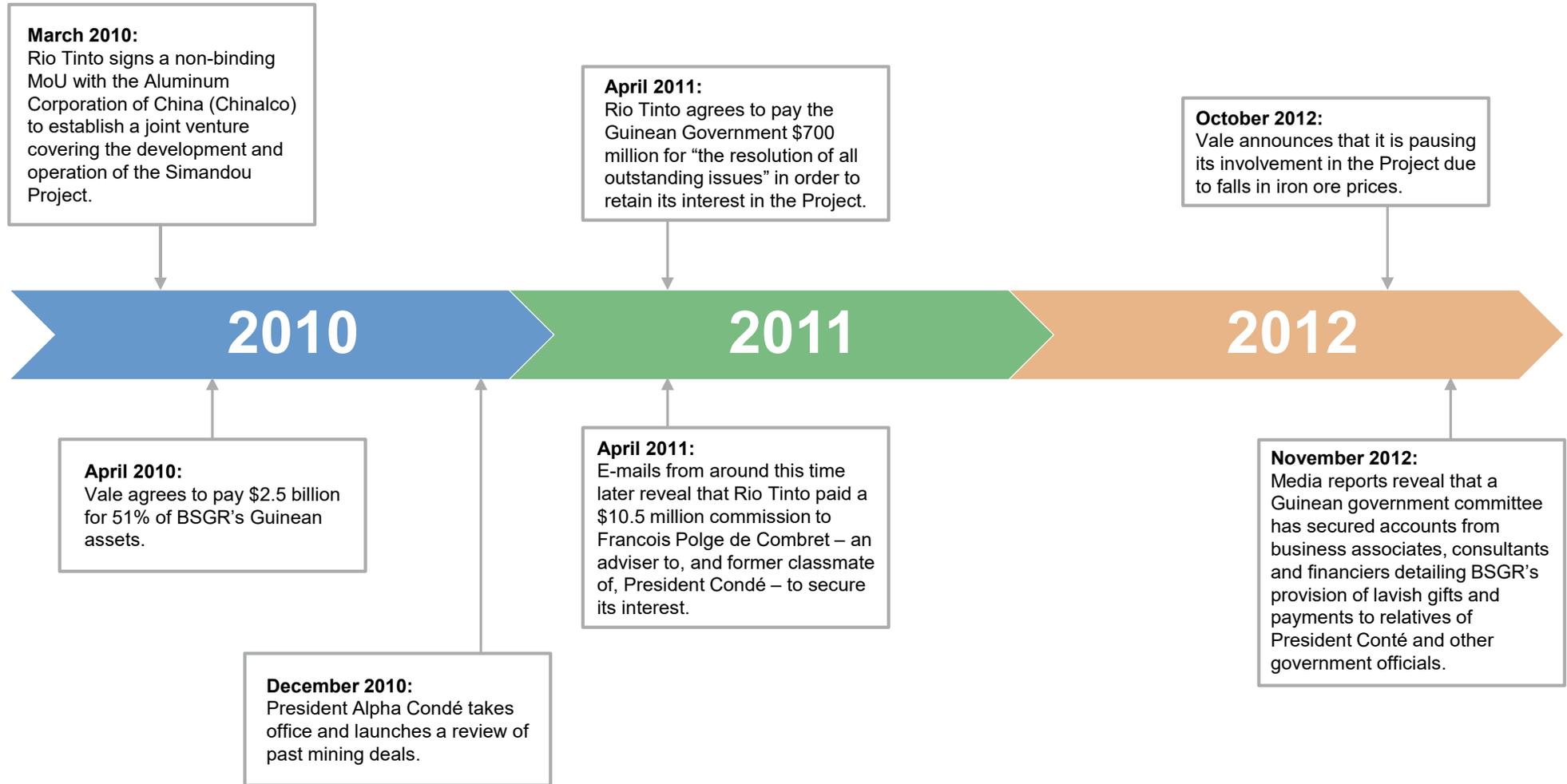


THE SIMANDOU PROJECT

- In 1997, Rio Tinto was granted the rights to explore the Simandou deposit, discovering high-grade iron ore in 2002.
- In March 2006, Rio Tinto was granted a 25-year mining concession by President Lasana Conté.
- In July 2008, Rio Tinto was stripped of half its rights for allegedly missing development deadlines.
- In December 2008, shortly before President Conté's death, the stripped rights were awarded to BSG Resources – a Guernsey-registered entity and the mining arm of Beny Steinmetz's conglomerate – for \$160 million.



THE SIMANDOU PROJECT: TIMELINE



RIO TINTO E-MAILS

The 2011 emails between Rio Tinto's CEO and other senior executives detailing the \$10.5 million payments to Francois Polge de Combret, the adviser to, and former classmate of, President Condé :

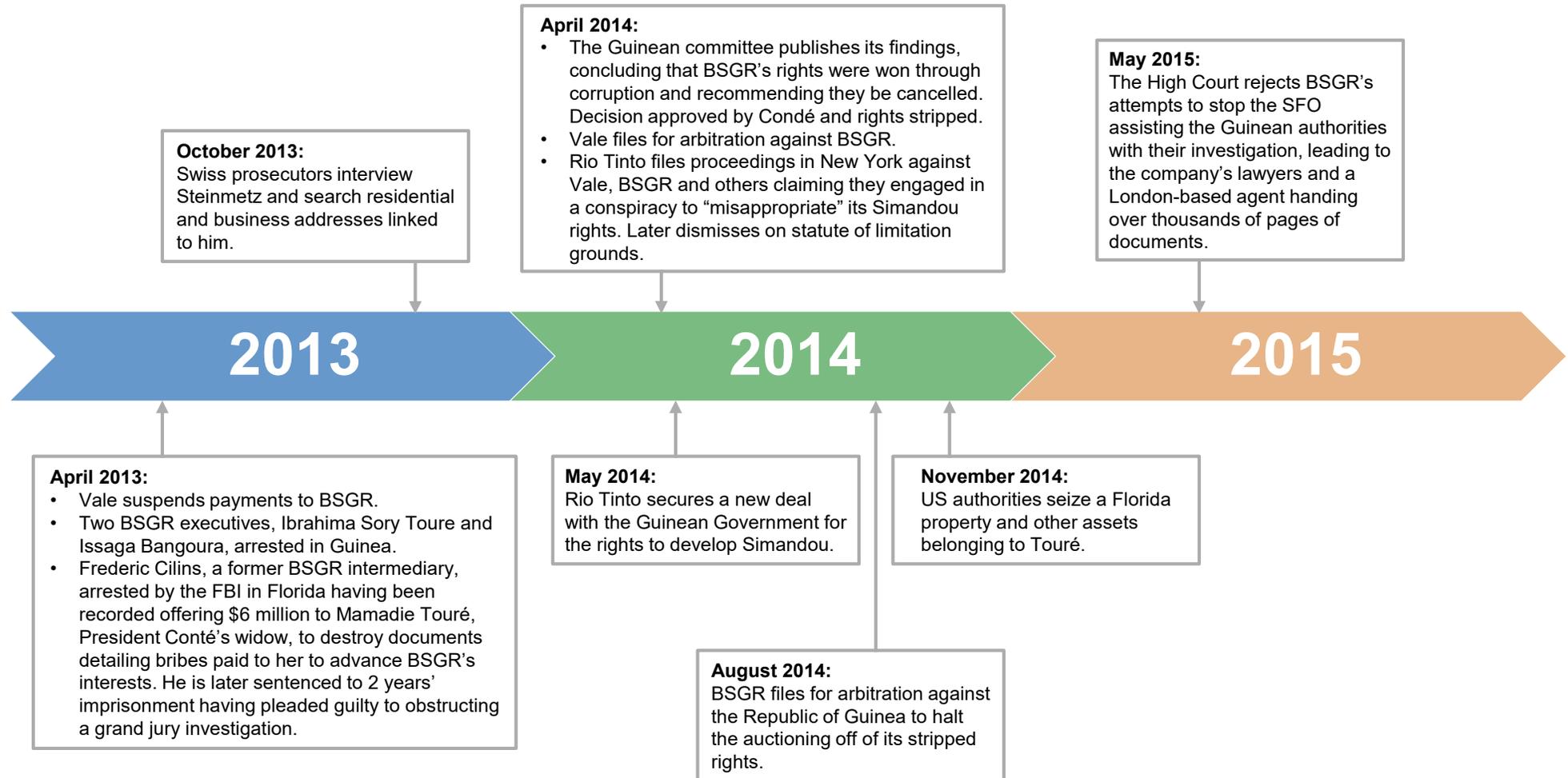
"I accept that this is a lot of money, but I also put forward the result we achieved was significantly improved by Francois' contribution and his very unique and irreplaceable services and closeness to the president... Francois behaved with the upmost integrity."

"No question... delivered sizeable value."

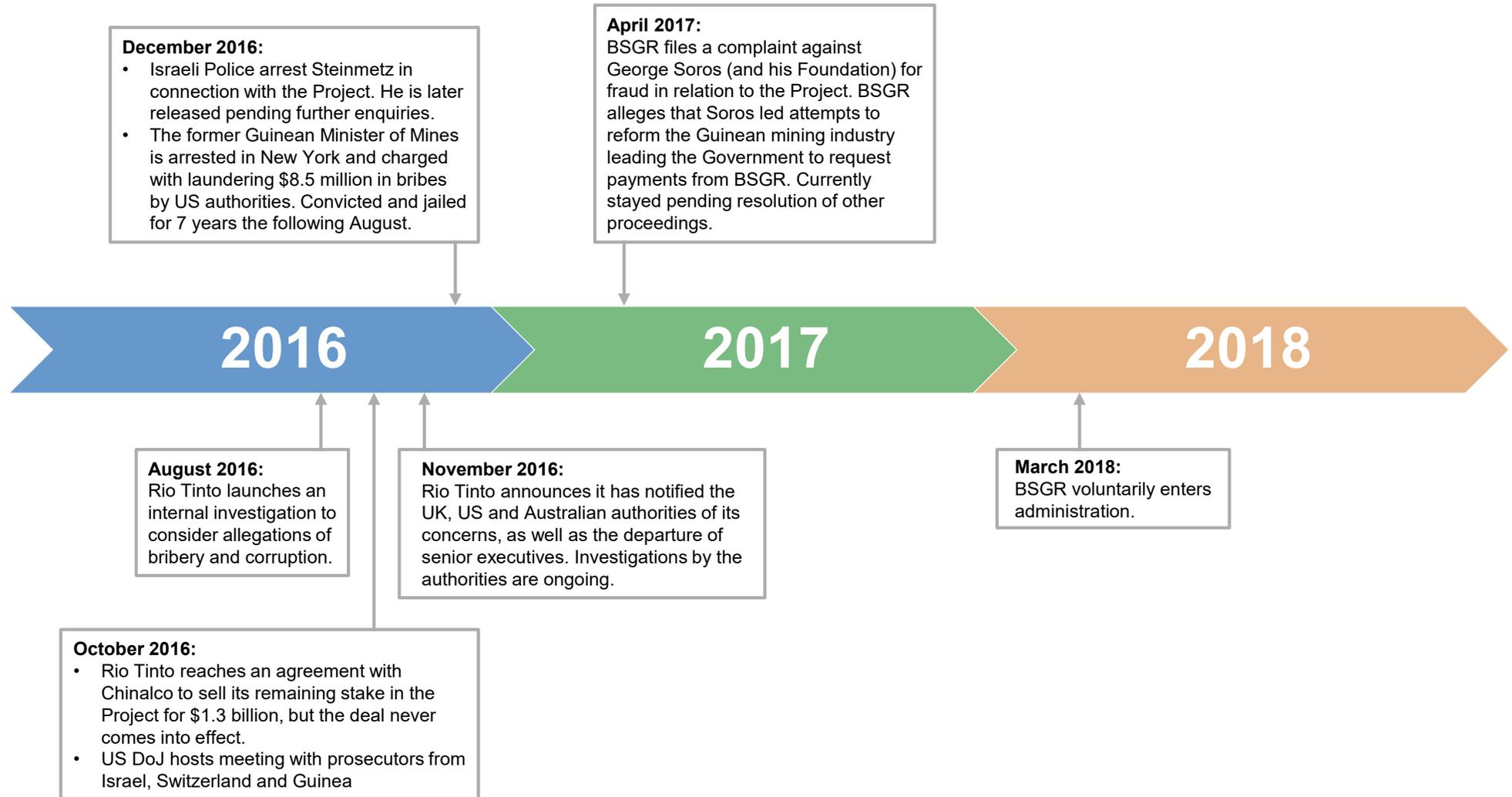
"He vouched for our integrity when it was needed and helped bring us together when things were looking extremely difficult."

"These services were of the most unique nature and we will never fully be able to judge the potential outcome if he was not assisting us."

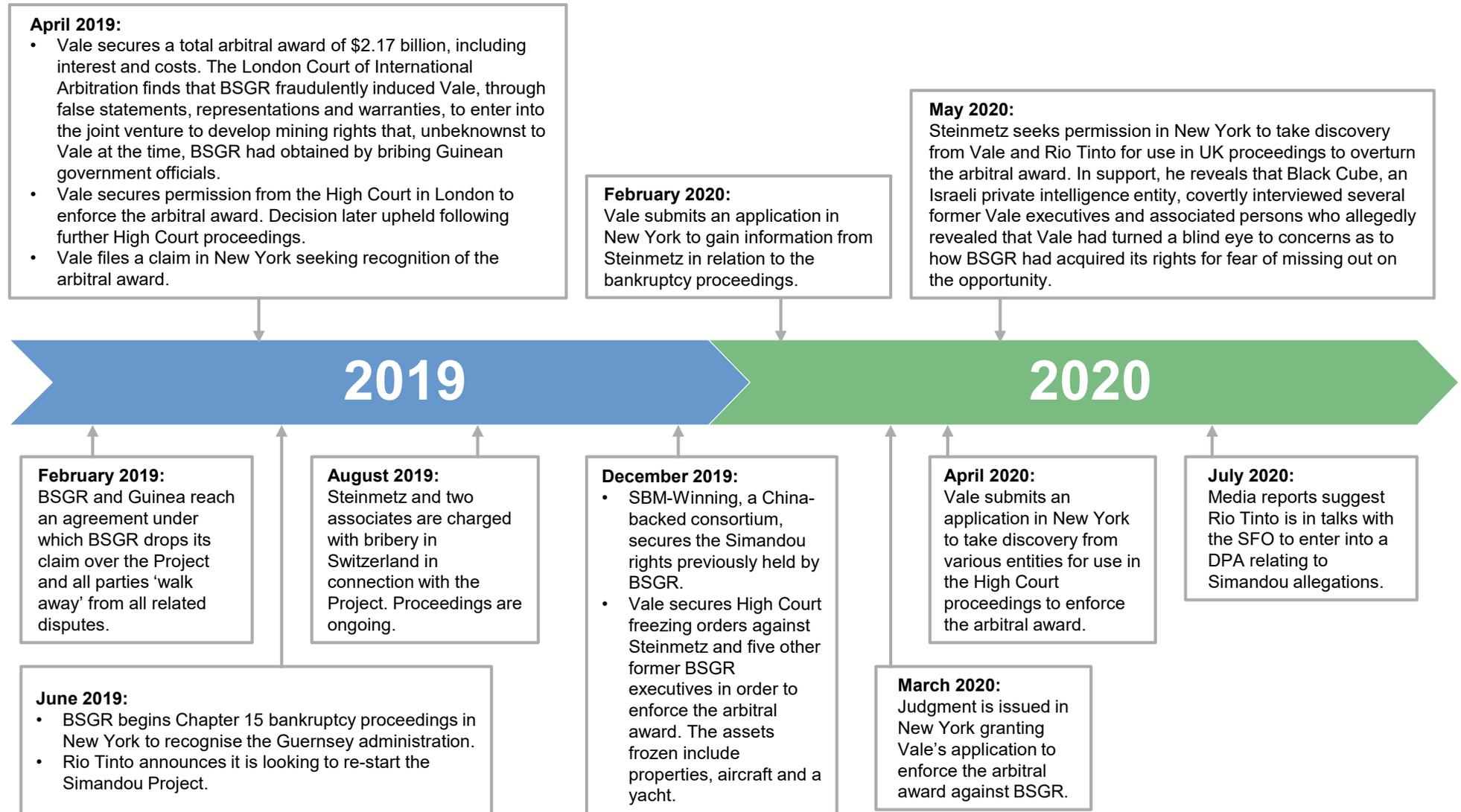
THE SIMANDOU PROJECT: TIMELINE



THE SIMANDOU PROJECT: TIMELINE



THE SIMANDOU PROJECT: TIMELINE



OTHER HIGH PROFILE EXAMPLES

South Africa

- State capture has been a major issue in recent years and led to Zondo Commission.
- Gupta brothers' relationships with government and state-owned entities allowed them to secure lucrative contracts.
- Most sectors have been impacted – broadcasting, transport, energy, etc. – and several international professional services and advisory firms have been implicated.
- President Zuma's power to appoint and dismiss officials was key. Many have reported being ordered to take decisions to advance business interests.
- The former president faces prosecution.



OTHER HIGH PROFILE EXAMPLES

Nigeria, Angola and Ghana

The New York Times

Shell and Eni to Be Tried Over \$1.3 Billion Nigerian Oil Deal

Dec. 20, 2017

Buhari Deals Fatal Blow to P&ID, Court Says Case of Fraud Proven

THIS DAY September 5, 2020

BBC

Isabel dos Santos: Africa's richest woman accused of fraud

23 January 2020

 **REUTERS**

FEBRUARY 3, 2020

Ghana to probe bribery accusations in Airbus deal

MANAGING BUSINESS CRIME RISKS EFFECTIVELY



Tackle business crime risks head on. Ignoring red flags and warning signs is only likely to lead to greater pain at a later date.



You will be expected to take all “reasonable” steps to manage risks. What is “reasonable” will vary depending on the circumstances. Adopt a proportionate, risk-based approach.



Invest in robust and secure IT infrastructure and systems that will allow you to monitor risk, retain and retrieve data, and maintain business continuity in challenging circumstances.



Hire and retain people with the right skillsets and experience. While technology has an important role to play, many decisions rely on the exercising of judgement.



Build strategic relationships with external partners, such as lawyers, accountants and forensic technology companies, who you can turn to at short notice for assistance.



Develop and update well thought through policies and controls that can be clearly articulated to employees, agents, etc.

MANAGING BUSINESS CRIME RISKS EFFECTIVELY



Establish the 'tone from the top'. Ensure that senior leadership are invested in, espouse and practice the policies you adopt.



Have in place effective procedures to meet your legal and regulatory obligations that are capable of being revised and adapted to cater for a broad range of circumstances.



Deliver topical, accessible and relevant training on the policies and procedures you implement. Ensure that staff are aware of local laws and customs.



Conduct regular audits to ensure that policies and procedures are being followed. If they are not, take appropriate action promptly.



When entering into or reviewing business relationships, carry out effective due diligence. Again, you should adopt a proportionate, risk-based approach.



Look for historical compliance issues within a business and its competitors. Such issues are likely to provide you with a useful steer during any due diligence exercise.

MANAGING BUSINESS CRIME RISKS EFFECTIVELY

Also look for other indicators of poor culture and conduct (e.g., bullying, sexual harassment, discrimination, etc.). These are often indicative of wider problems.

Do not accept things at face value. Look for evidence to support assertions. Depending on the circumstances, you may wish to seek verification from third parties.

When issues arise, carry out investigations and/or 'deep dives' as necessary. When doing so, be alive to local data privacy and employment laws.

When entering into transactions or contracts, consider structural and/or contractual protections to reduce risk (e.g. carving out assets, indemnities, warranties, etc.).

When operating in multiple jurisdictions, it may prove wise for a business to adopt the most stringent legal and regulatory obligations that may apply.

When you identify an issue, you may wish to self-report in one or more jurisdictions and, in some instances, may be under a positive obligation to do so. Take advice before doing so.

WHAT IS THE FUTURE LIKELY TO HOLD?

- Increased domestic efforts to tackle business crime.
- A continued focus on businesses operating in the region by non-African regulators, law enforcement agencies and prosecutors.
- Ever-increasing international co-operation.
- Discovery of pre-existing criminal activity exposed by the pandemic.
- Increased business crime risks as a result of financial pressures caused by the pandemic (e.g. reduced supply lines, need to develop new markets, etc.), increased M&A activity, etc.
- Prolonged periods of remote monitoring, audits, due diligence, investigations, etc.



QUESTIONS

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