

# Red Notice

A Monthly Update on Global Investigations and Prosecutions



FEBRUARY 2013

## INTRODUCTION

Welcome to February's edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP. In this month's edition, an aerospace and defense company faces proceedings on two continents related to allegations that it bribed officials to win helicopter contracts; a federal judge says that the SEC has enforcement jurisdiction over foreign telecom execs on the basis of their statements to foreign auditors; several officials at a subsidiary of a U.S. medical giant face charges in Europe stemming from interactions with doctors at state-owned hospitals; an extractive industry company pays eight figures to settle bribery allegations in Asia and Africa; and a former DOD contractor receives 30-months for illegally transporting kickback proceeds. In export and sanctions enforcement news a high-ranking Chinese executive is sentenced for attempted export of restricted materials; an Iranian corporation and officers are accused of massive illegal export of goods to Iran; Congress is presented with proposed export reforms; and The Department of the Treasury announces further sanctions against Iran.

Thank you as always for reading *Red Notice*.

## ANTI-CORRUPTION DEVELOPMENTS

### European Aerospace and Defense Firm in Upheaval, Execs Arrested in Bribery Probe

Italy's largest Aerospace and Defense firm had a turbulent month marked by the arrest of two of its executives on bribery charges, and proceedings that may result in the cancellation of a lucrative contract it secured from the Indian government in 2010. Finmeccanica SpA and its helicopter division, AgustaWestland stand accused of paying bribes to officials in India to secure a helicopter contract worth EUR €560 million (approximately USD \$750 million). Finmeccanica's CEO, Giuseppe Orsi, was arrested by Italian authorities on February 12 on charges that he was personally involved in paying EUR €51 million (approximately USD \$68 million) in bribes when he was head of the company's helicopter division in 2010. Orsi resigned his post with the company on February 15 and remains in jail. The head of AgustaWestland, Bruno Spagnolini, was also arrested on bribery charges and lost his position with the company. Meanwhile, India's Ministry of Defense and its Central Bureau of Investigation (CBI) launched investigations into the bribery allegations and travelled to Italy to collect evidence. The Defense Ministry also issued a show-cause to the company, warning that the helicopter deal could be cancelled if Finmeccanica cannot provide assurances that bribes were not paid. Finmeccanica responded last week denying all "wrongdoing," claiming that its conduct meets "legal requirements in India" and that it has been "fully compliant with the rules which regulate the contract signed with India." [Read more](#) on this developing story at *Reuters* and [coverage](#) of the Indian proceedings at the *Times of India*.

### SEC's Enforcement Jurisdiction Over Foreign Execs Upheld in European Telecom Case

The SEC may pursue civil enforcement actions against three European telecom executives accused of bribing public officials in Macedonia and Montenegro after a New York federal judge denied the executives' attempt to dismiss the case on jurisdictional grounds earlier this month. The three executives, formerly of Deutsche Telekom AG's Hungarian subsidiary Magyar Telekom, Plc., contested whether U.S. courts have jurisdiction sufficient to support SEC's enforcement proceedings against them (*SEC v. Straub, et al.*, No. 11-9645 (S.D.N.Y.)) on the grounds that the executives had little connection to the U.S. and the only alleged conduct took place abroad. In denying dismissal, Judge Richard Sullivan ruled that the executives' alleged conduct was "designed to violate [U.S.] securities regulations and was thus necessarily directed toward the [U.S.], even if not principally directed there." Further, both Deutsche Telekom and Magyar Telekom securities were publicly traded on U.S. exchanges at the time of the executives' alleged conduct and both companies

securities were publicly traded on U.S. exchanges at the time of the executives' alleged conduct, and both companies made regular filings. Accordingly, the defendants' "knew or had reason to know" that their false statements to Magyar's auditors made in an attempt to cover up their bribes would be passed along to American investors. Read the SEC's [complaint](#), Judge Sullivan's [decision](#), and the [coverage](#) at *FCPA Professor*.

### **Payments to Doctors Lead to Charges in Greece For Execs at Johnson & Johnson**

Earlier this month, prosecutors in Greece filed charges against five executives from DePuy, a subsidiary of Johnson & Johnson (J&J), alleging that they paid EUR €16 million (approximately USD \$21.5 million) to doctors at Greece's state-owned hospitals. Eight doctors also stand accused in the probe, which alleges that DePuy officials paid the doctors, who are mostly orthopedic specialists, to encourage their hospitals to purchase the company's orthopedic products. In 2011, J&J paid USD \$70 million to resolve bribery cases brought by the US Justice Department and SEC stemming from allegations that J&J subsidiaries bribed state doctors in several European countries (including Greece) and paid kickbacks in Iraq. Read [more](#) about the newly-filed charges at Greece's Capital.

### **U.S. Drilling Firm Pays Over USD \$15 Million to Settle Bribery Charges**

Earlier this month, a Texas-based drilling company announced that it reached agreement with both the SEC and Justice Department to end a three-year investigation into potential improper payments made by the company and its agent in Asia and Africa. Houston's Parker Drilling Co. faced allegations that it illegally paid a government official in Kazakhstan, and used an agent for improper payments to resolve a customs issue in Nigeria. Read Parker Drilling's [disclosure](#) and [coverage](#) of the settlement at *Reuters*.

### **Former DOD Contractor Receives 30 Months for Illegally Transporting Kickback Proceeds**

A former Department of Defense contractor, Donald Gene Garst, was sentenced earlier this month to 30 months in prison and fined over \$50,000 for his attempt to smuggle into the U.S. monies received when he assisted an Afghan company in obtaining U.S. government subcontracts. The \$150,000 in kickback proceeds at issue in this matter are only a portion of the money derived from a series of contracts Mr. Garst brokered with Somo Logistics, an Afghan construction company, through his position as a U.S. government contractor. Mr. Garst accepted the \$150,000 in May 2011 for his involvement in a lease of heavy construction equipment from Somo Logistics to the U.S. government; he had previously accepted \$60,000 from Somo Logistics for his role brokering a similar subcontract. The government uncovered the scheme before Mr. Garst could receive an additional \$400,000 for a third planned subcontract. Read the DOJ's [release](#) and [coverage](#) of the sentencing.

## **EXPORT CONTROL AND SANCTIONS ENFORCEMENT**

### **High-Ranking Chinese Executive Sentenced for Attempted Export of Restricted Materials**

A senior executive at the Shanghai subsidiary of U.S.-based PPG Industries, a global supplier of coatings, paints and similar products, was sentenced December 20, 2012 to a year in prison and a USD \$2 million fine for conspiracy to illegally export to a Pakistan nuclear reactor high-performance nuclear coatings. Xun Wang was the most senior corporate executive at PPG Paints Trading (Shanghai) Co., Ltd. involved in the illegal export scheme. She pled guilty to conspiracy to violate the International Emergency Economic Powers Act (IEEPA) in November 2011 and agreed to cooperate with the government in its investigation. Her plea led to the guilty plea of China Nuclear Industry Huaxing Construction Co., Ltd., which was the first time a Chinese corporation entered a guilty plea in a U.S. criminal export matter. Read the DOJ's [press release](#) and [coverage](#) by the *Wall Street Journal*.

### **Iranian Corporation and Officers Accused of Massive Illegal Export of Goods to Iran**

Business Machinery World Wide (BMWV), an Iranian technology corporation, together with three subsidiaries located in Dubai, UAE and nine officers and individuals were charged with allegedly

exporting more than USD \$30 million worth of digital media equipment from a U.S. company to Iran, in contravention of the U.S. trade embargo of Iran. BMWV is alleged to have taken painstaking steps to subvert the embargo, instructing its U.S. supplier to ship the goods to its subsidiaries in the UAE, which were created for the sole purpose of acting as intermediaries between the U.S. and Iran. The indictment charges that the company and its officers acted willfully, with intent to avoid the U.S. embargo of Iran. Read the DOJ's [release](#) and a *Times of Israel* [coverage](#) on the indictment.

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## EXPORT REFORM DEVELOPMENTS

### Congress Presented with Proposed Export Reforms

The Department of State submitted to Congress this month changes to two categories of the U.S. Munitions List (USML) as part of ongoing export reform. The first change redefines Category VIII of the USML, and the second change introduces a new category, Category XIX. The changes to Category VIII, originally proposed in the Federal Register in November 2011, aim to make the distinction between military and commercial aircraft more clear. The new category, Category XIX, covering gas turbines, was published as a proposed rule in the Federal Register in December 2011. Congress will have 180 days to review the reforms before they go into effect. Congress can halt the process and prevent the changes from becoming permanent, but it is not expected to do so. Read the [coverage](#) regarding the proposal to Congress, the Federal Register [notice](#) regarding the USML category VIII proposed change, and the Federal Register [notice](#) regarding the USML category XIX proposed addition.

### Department of the Treasury Announces Further Sanctions Against Iran

Earlier this month, the Treasury announced a tightening of sanctions against Iran, including further restrictions on the country's access to its oil revenues and further exposure of the country's continued human rights abuses. The sanctions implement key provisions of the Iran Threat Reduction and Syria Human Rights Act of 2012. In response to Iran's persistent pursuit to obtain nuclear capabilities, the new sanctions place additional constraints on Iran's access to oil revenue held in foreign banks and other financial institutions. The measures also include the designation of an individual and a handful of entities due to their complicity with the Iranian government's censorship activities. The Department of the Treasury's Office of Foreign Assets Control (OFAC) indicated, however, that items used in humanitarian aid, such as food, medicine, agricultural commodities, etc. are not subject to these increased restrictions and remain legal to export to Iran. Read the Treasury's [release](#), the OFAC [guidance](#), and the [New York Times coverage](#) on the new sanctions.

## CONTACT INFORMATION

For more information about the stories highlighted in *Red Notice*, please contact:

Edward L. Rubinoff at 202.887.4026 or [erubinoff@akingump.com](mailto:erubinoff@akingump.com) or Nicole H. Sprinzen at 202.887.4301 or [nsprinzen@akingump.com](mailto:nsprinzen@akingump.com).

Contact information for attorneys in related practices can be found [here](#).

*Red Notice*, a monthly publication of Akin Gump Strauss Hauer & Feld LLP, is edited by [Jacob Weixler](#).

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