

# Red Notice

A Monthly Update on Global Investigations and Prosecutions



APRIL 2014

## Introduction

**Welcome** to the April 2014 edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP.

This month in anticorruption news, one of the world's largest IT companies agrees to pay a nine-digit settlement to U.S. authorities related to bribes paid in Mexico and Eastern Europe; a Japanese commodities trader agrees to Foreign Corrupt Practices Act (FCPA) fines nearing USD \$90 million; one of the world's marquee engine manufacturers reveals that it faces bribery investigations on three continents; two pharma giants receive good news from authorities about their bribery investigations; a multinational European tech company faces bribery allegations in its home country related to its Greek business; an aerospace exec is sentenced for his role in a bribery scheme in Asia; an insurance company is fined for its lack of controls; and an ATM maker settles a bribery investigation by pledging to improve its compliance program.

In export control and sanctions enforcement news, four companies reach settlements with the U.S. government to resolve allegations that they violated U.S. sanctions, and a defense manufacturer enters a consent agreement, including a USD \$20 million fine, with the U.S. government regarding allegations that it violated the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR).

Finally, in developments in export control and sanctions law, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) publishes an interim final rule that removes certain defense articles from the U.S. Munitions Import List; the Directorate of Defense Trade Controls (DDTC) updates its lists of approved foreign persons and space programs for commercial satellite exports; the Office of Foreign Assets Control (OFAC) announces Iran General License G regarding academic exchanges and services; and the U.S. government increases sanctions pressure on certain Russian and Ukrainian persons and entities in Ukraine-related executive orders and designations.

Thank you as always for reading *Red Notice*.

## ANTICORRUPTION DEVELOPMENTS

### HP Agrees to Pay Over USD \$100 Million to Settle FCPA Probes

This month, U.S. IT giant Hewlett-Packard Company (HP) agreed to pay more than USD \$108 million in fines, disgorgement and interest to settle allegations that its subsidiaries in Russia, Poland, and Mexico paid over USD \$3.6 million combined in bribes to win contracts with government entities. The agreement settles investigations by both the U.S. Department of Justice (DOJ) and Securities and Exchange Commission (SEC) and includes a USD \$74.2 million penalty, USD \$29 million disgorgement of ill-gotten gains, and USD \$5 million in prejudgment interest. The SEC's order settling the matter discloses that an HP subsidiary in Mexico paid over USD \$1 million in bribes to obtain an IT contract with a state-owned petroleum company, HP's Poland subsidiary provided cash and gifts worth USD \$600,000 to a government official to win contracts with Poland's national police, and HP's Russia subsidiary paid over USD \$2 million to a domestic official for business with Russia's federal prosecutor's office. Further, the SEC commented that HP's internal controls were inadequate to stop a "pattern of illegal payments," noting that HP's books and records logged the bribes as "legitimate commissions and expenses." Evidence also showed that HP employees raised questions about the Russian

## TRANSLATIONS

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## WRITING AND SPEAKING ENGAGEMENTS

In April 2014, Akin Gump lawyers from the firm's Washington, DC, San Francisco, Beijing, and Singapore offices spoke on a panel titled "Managing Investigation and Compliance: Dealing with Misconduct and Violations in an Increasingly Aggressive Global Environment," at the China World Hotel in Beijing.

Coming up this month, Akin Gump partner [Jim Benjamin](#) will be a panelist speaking on "Key Issues in Representing Individuals" at PLI's Foreign Corrupt Practices Act and International Anti-Corruption Developments conference in New York on May 1.

On May 13th and 15th, Akin Gump partner [Aaron Murphy](#) will present "International Corruption and Enforcement Trends: The Brave New World of Multijurisdictional Enforcement." The seminar on May 13th will be held in Akin Gump's Washington, DC office, and the seminar on May 15th will be held in the firm's New York office. The seminar is a part of Akin Gump's ongoing CLE series for in-house counsel.

If you would like to invite Akin Gump Strauss Hauer & Feld LLP lawyers to speak at your company or to your group about anticorruption law, compliance, enforcement and policy or other international investigation and compliance topics, please contact Mandy Warfield at [mwarfield@akingump.com](mailto:mwarfield@akingump.com) or +1 202.887.4464.

subsidiary's use of an agent who paid bribes on the company's behalf, and the markup involved in the company's arrangement with the agent, but continued to do business with the agent despite red flags. On the same day that the settlement was announced by the SEC, Polish prosecutors charged a former Polish government official and a former executive at HP's Poland subsidiary with criminal bribery charges stemming from the scheme's activities in Poland. Read the SEC's [release](#) on the settlement, and the news [coverage](#) at *Reuters*.

### **Marubeni Agrees to Pay Nearly USD \$90 Million, Enter Plea to Settle FCPA Violations**

In March, Japanese commodities trading giant Marubeni Corporation agreed to plead guilty and pay USD \$88 million to settle eight FCPA charges related to a scheme to bribe Indonesian government officials in exchange for a lucrative USD \$118 million power contract. Marubeni pleaded guilty to one count of conspiracy to violate the FCPA and seven counts of violating the FCPA antibribery provisions. Marubeni, and its joint venture partner hired two consultants to make payments to high-ranking Indonesian government officials, including members of parliament and high-ranking officials of Indonesia's state-owned electric company. According to the DOJ, after securing the power contract, Marubeni and others deposited "hundreds of thousands of dollars into the first consultant's bank account in Maryland," which the consultant later transferred to an Indonesian bank account "for the benefit of" a member of the Indonesian parliament. As part of the settlement, Marubeni promised to implement stronger global anticorruption compliance mechanisms and has agreed to cooperate with the DOJ's investigation. This is Marubeni's second FCPA-related settlement. In 2012, Marubeni agreed to a deferred prosecution agreement (DPA) and paid USD \$54.6 million to settle charges stemming from a scheme to bribe Nigerian government officials in violation of the FCPA. Per the requirements of its two year DPA, Marubeni retained an anticorruption compliance consultant, reviewed its compliance program, and reported the results of the review to DOJ. The Indonesia scheme that is the subject of the company's recent settlement and guilty plea pre-dates the 2012 DPA. Read the DOJ's [release](#) on the most recent plea agreement, and the [coverage](#) at *Law 360*.

### **Rolls-Royce Faces US and UK Bribery Investigations Related to Asia Business**

Early last month, Rolls-Royce Holdings Plc. (Rolls-Royce) disclosed that the U.S. DOJ has joined the U.K.'s Serious Fraud Office (SFO) in investigating allegations that the company bribed foreign officials in Indonesia and China. According to reports, the SFO began investigating the aerospace and defense company in early 2012, pursuant to allegations that Rolls-Royce bribed officials in Indonesia and China to secure engine purchases for state-owned airlines. In addition to the SFO and DOJ investigations, Rolls-Royce also faces a separate investigation in India related to alleged bribes paid to high-ranking Indian government officials at Hindustan Aeronautics Ltd's (HAL), a state-run aeronautics company. The company is alleged to have paid officials to obtain a series of deals to provide trainer and fighter jet engines to HAL. Since disclosing the DOJ investigation, Rolls-Royce has publicly committed to reducing the number of "middle-men" used in foreign transactions, re-launched a 24-hour ethics hotline for employees, and established a new "head of risk training" position to demonstrate the company's commitment to compliance. Rolls-Royce also retained counsel to conduct a thorough investigation into the compliance system, and draft a subsequent report of its findings. Read additional coverage at [The Telegraph](#), [Reuters](#) and [Bloomberg](#).

### **US Authorities Drop FCPA Probes into Pharma Giants Merck and Baxter**

In late February, Merck & Co. Inc. (Merck) announced that the DOJ closed its investigation into potential FCPA violations committed by the company without pursuing any enforcement action. Earlier in the month, Baxter International Inc. (Baxter) issued a similar statement revealing that both the DOJ and SEC ended their inquiries into Baxter's foreign business dealings. Both pharmaceutical giants received FCPA inquiry letters from the DOJ and the SEC in 2010. Last month, the DOJ and SEC publicly declared the investigations closed and reported that they would take no further action on the matter. Read additional coverage on [Baxter](#) at *The FCPA Blog* and [Merck](#) at *Law360*.

### **Ericsson Faces Bribery Allegations in Greece Business**

Earlier this month, a former employee of Swedish technology company Telefonaktiebolaget L.M. Ericsson (more commonly known

as Ericsson) said that the company paid bribes to Greek officials via an agent in order to secure a lucrative technology contract. Liss-Olof Nenzell, an employee responsible for retaining overseas brokers for the company, said Ericsson paid SEK 116 million (USD \$18 million) to an agent who subsequently bribed Greek politicians and military officials in 1999. Nenzell alleges that the payment was meant to secure a contract to provide an airborne surveillance system to the Greek government worth an estimated USD \$759 million. Ericsson has admitted to paying the agent, but said it was not sure what happened to the money afterwards, noting that the company "really hope[s] that the money wasn't used for bribes, but [the company doesn't] know for sure." Former deputy armaments chief for the Greek Defense Ministry, Antonis Kantas, admitted to accepting USD \$16 million in bribes related to arms deals from 1997 to 2002. Read [more](#) at *Reuters* and find additional coverage [here](#).

#### **Italian Consultant to Aerospace Firm Sentenced in Scheme to Bribe Indian Officials**

Earlier this month, Guido Ralph Haschke, a consultant hired by an Italian state-owned aerospace company, Finmeccanica SpA (Finmeccanica), accepted a plea bargain with Italian officials for "international corruption" related to his role in a scheme to bribe officials in India. According to Italian prosecutors, Finmeccanica's helicopter unit, AgustaWestland, paid bribes to Indian government officials to secure a contract worth EUR €560 million (USD \$773 million) by creating shell companies in Delaware, bank accounts in Switzerland and using money from inflated consultancy deals between AgustaWestland and Haschke's various consulting companies. Haschke's sentence is the first to be imposed for the scheme. Haschke will serve one year and ten months under home detention or performing community service. Former Finmeccanica Chairman and CEO, Giuseppe Orsi, and former AgustaWestland head, Bruno Spagnolini, both face charges for international corruption and falsifying invoices in connection with the scheme. Two additional Finmeccanica executives, Lorenzo Brogogni and Stegano Carlini, were placed under house arrest in March. Read [more](#) at *Reuters*.

#### **Insurance Company Fined for UK Regulators Antibribery Controls System**

In March, the UK's Financial Conduct Authority (FCA) issued a final notice to insurance broker Besso Limited (Besso) and fined the firm GBP £315,000 (USD \$532,000) for failing to maintain adequate antibribery controls. According to the FCA, Besso's weak controls led to intolerable risk regarding the insurance broker's payments to third parties. From 2005 to 2009, Besso committed several breaches including failing to implement adequate, written bribery and corruption policies and procedures, failing to adequately assess third-party risk before entering business relationships or during an ongoing business relationship, failing to adequately monitor employees and failing to monitor antibribery and corruption control measures on third-party account files. Even after receiving several warnings and witnessing the FCA levy a GBP £5.25 million (USD \$8.86 million) fine in 2009 on another insurance broker for similar failings, Besso did not tighten its controls system until August 2011.

The FCA imposed fines on Besso despite recognizing that the firm "is a medium-sized broker ... whose business does not, overall, pose a high bribery and corruption risk." The FCA also acknowledged that there was no evidence indicating that Besso acted recklessly, that the payments made by Besso to third parties occurred in countries that did not pose a high risk of bribery, and that Besso made "significant efforts" to improve its controls system. Regulators could have levied up to GBP £450,000 (USD \$759,000) in fines on Besso, but reduced the fines by 30% due to the company's cooperation with the FCA. Read the FCA's [press release](#) and [more](#) about the settlement at *Compliance Week*.

#### **ATM Maker Agrees to Internal Controls Fixes in FCPA Settlement**

In mid-March, NCR Corp. (NCR), a U.S.-based manufacturer of electronic payment equipment and ATMs, settled allegations that it violated the FCPA and U.S. sanctions without admitting fault in the matter, but agreeing to strengthen its internal controls. An NCR shareholder turned whistleblower alleged in 2012 that the company violated the FCPA through its activities in China and the Middle East and that the company also violated U.S. sanctions against Syria. In an SEC filing in February 2013, the company revealed that it completed an internal investigation and made a presentation to the SEC and DOJ "advising the government that many of [the] allegations were unsubstantiated." NCR agreed to a no-fault settlement, part of which requires the company to strengthen its internal compliance system by implementing employee training programs, a customer

due diligence screening process, and a companywide system to monitor gifts and entertainment expenses. NCR also agreed to develop a specific supplemental program to monitor gifts and expenses in China. Read [more](#) at *WeComply* and find earlier [coverage](#) at *The Wall Street Journal*.

## EXPORT CONTROL AND SANCTIONS ENFORCEMENT

### **CWT B.V. Settles Potential Civil Liability for Apparent Violations of the Cuban Assets Control Regulations for USD \$5.99 million**

CWT B.V., of the Netherlands, agreed to a settlement of USD \$5.99 million with OFAC on April 18, 2014 regarding allegations that it violated the Cuban Assets Control Regulations (CACR) by providing travel-related services for over 44,000 individuals going to and from Cuba. In 2006, CWI became majority owned by U.S. persons and, therefore, subject to the CACR. The base penalty for the apparent violations was USD \$11 million. Read the OFAC enforcement action [here](#).

### **Subsidiary of Aerospace Communications Provider Settles ITSR Violation Allegations for USD \$85,113**

Sea Tel Inc., a U.S. subsidiary of U.K. aerospace communications provider Cobham PLC, agreed to a settlement of USD \$85,113 with OFAC in early April 2014 regarding allegations that it violated the Iranian Transactions and Sanctions Regulations (ITSR) by supplying 16 marine antenna systems to its distributor in South Korea with reason to know the systems were intended for reexport to Iran. The base penalty for the alleged violations was USD \$189,141. Read the OFAC enforcement [action](#) and more [coverage](#) at *Law360*.

### **Shipping Company Settles ITSR Violation Allegations for USD \$157,500**

GAC Bunker Fuels (USA), LLC, a subsidiary of GAC Shipping (USA), Inc., agreed to a settlement of USD \$157,500 with OFAC in late March 2014 regarding allegations that it violated the ITSR by supplying bunker fuel to an Iranian vessel in Brazil. The base penalty amount was USD \$250,000. Read the OFAC enforcement [action](#) and *Law360* coverage [here](#).

### **Electronic Equipment Manufacturer Settles with OFAC for Alleged Violations of ITSR**

Ubiquiti Networks, Inc. (Ubiquiti), of San Jose, CA, agreed to a settlement of USD \$504,225 with OFAC in early March 2014 regarding allegations that it violated the ITSR by allowing the sale of its broadband wireless connectivity hardware in Iran. OFAC alleged that the electronic equipment manufacturer granted a United Arab Emirates (UAE) distributor exclusive distribution rights of Ubiquiti's goods in Iran, then sold goods to the UAE distributor that were reexported to Iran. In addition, the settlement involved OFAC allegations that Ubiquiti supplied broadband wireless connectivity hardware to a Greek distributor with reason to know the hardware was destined for Iran. The base penalty amount was USD \$560,250. The modest reduction to the settlement amount apparently reflects OFAC's consideration, inter alia, of the fact that Ubiquiti did not file a voluntary disclosure of the violations and that the company's management allegedly knew or had reason to know that the shipments were destined to Iran. Read the OFAC enforcement [action](#) and *Wall Street Journal* coverage [here](#).

### **Defense Manufacturer Fined USD \$20 Million for Violations of the AECA and ITAR**

Esterline Technologies Corporation (Esterline), of Bellevue, WA, agreed in early March 2014 to a consent agreement with the U.S. Department of State (State Department) that includes payment of a USD \$20 million civil penalty regarding allegations that it violated the AECA and ITAR on hundreds of occasions over several years. The DDTC conducted an extensive compliance review and concluded that Esterline failed to establish an adequate compliance program for its defense trade business. Over the course of many years, Esterline and its operating divisions, subsidiaries and business units disclosed hundreds of apparent violations of the AECA and ITAR, including of unauthorized exports and temporary imports of controlled defense articles, violating license terms and conditions, exceeding the quantity and value authorized for the export of defense articles, using exemptions improperly, and either failing to file with the Automated Export System or filing incorrect documentation. The State Department determined that many of the alleged violations occurred

because Esterline did not properly establish jurisdiction over its defense articles and technical data, did not properly administer licenses and agreements, and had incomplete or poor recordkeeping. Under the terms of the consent agreement, the State Department will suspend USD \$10 million of the USD \$20 million civil penalty on the condition that the funds be used to cover the costs of remedial compliance measures. The consent agreement also requires Esterline to conduct two audits, implement additional compliance measures (including improved export control policies and procedures), provide additional export compliance training to employees and utilize a Special Compliance Official to supervise the consent agreement. Read the [Proposed Charging Letter](#), the [Consent Agreement](#) and [Order](#), the State Department [press release](#) and [Law360 coverage](#).

## EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

### Removal of Certain Defense Articles on the USMIL

The ATF published an interim final rule with request for comments, effective April 28, 2014, that removes certain defense articles from the U.S. Munitions Import List (USMIL) deemed to no longer warrant import control under the AECA. The new rule impacts USMIL Categories I, III, IV, VI, VII, XIV and XVI. DOJ is seeking comments on the interim final rule through June 25, 2014. Read the interim final rule [here](#).

### New Approved Foreign Persons and Space Programs for Export of Commercial Satellites

DDTC of the State Department updated its lists of approved foreign persons and of approved space programs for commercial satellite ("COMSAT") exports in late March 2014. The lists correspond to Section 123.27 of the ITAR, which establishes a special licensing regime for COMSAT parts, components and associated equipment and technical data. Read the [Draft COMSAT Guidelines for Exports to U.S. Allies](#), the [Approved Foreign Persons List](#) and the [Approved COMSAT Programs List](#).

### Publication of Iran General License G

OFAC published Iran General License G under the ITSR in late March 2014, permitting accredited academic institutions in the United States to form undergraduate and graduate academic exchange agreements with universities in Iran, including the provision of scholarships to participating Iranian students. In addition, the license allows U.S. academic institutions and U.S. persons to export to Iran educational services in certain academic disciplines and to administer examinations to Iranian students. Read the U.S. Department of the Treasury's [summary](#) and the [text](#) of the general license.

### Ukraine-Related Executive Orders and Designations

In response to Russia's annexation of Crimea, President Obama issued three Ukraine-related Executive Orders in March 2014 blocking the property of and allowing for sanctions against persons and entities participating in efforts to threaten the security, peace and stability of Ukraine. Pursuant to this authority, OFAC updated the Specially Designated Nationals (SDN) List, most recently on April 28, 2014, to designate a number of Russian and Ukrainian persons and entities, including several Russian officials, banks and companies with links to President Vladimir Putin's inner circle. In late March, the DDTC at the State Department and the Bureau of Industry and Security (BIS) at the U.S. Department of Commerce placed holds on the issuance of licenses for exports of defense and dual-use items to Russia. DDTC and BIS went further on April 28, 2014 with announcements that they would deny pending applications and licenses and revoke existing licenses for the export/reexport to Russia or occupied Crimea of items subject to the ITAR and EAR that could contribute to Russian military capabilities. Read the [Washington Post story](#), [The New York Times coverage](#) and Akin Gump [article](#).

For more information, read the executive order summaries from [3/6](#) and [3/20](#), executive orders from [3/10](#), [3/19](#) and [3/24](#), the most recent [SDN list](#), [DDTC](#) and BIS announcements from [4/11](#) and [4/28](#).

## CONTACT INFORMATION

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

The "Anticorruption Developments" section of *Red Notice* is edited by [Jacob Weixler](#). The "Export Control and Sanctions Developments and Enforcement" sections are edited by [Annie Schlappizzi](#).

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