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Akin Gump
STRAUSS HAUER & FELD LLP

Red Notice

A Monthly Update on Global Investigations and Prosecutions

JANUARY 2015

Introduction

Welcome to the January 2015 edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP.

This month on the anticorruption front, the U.S. Department of Justice (DOJ) announces its first Foreign Corrupt Practices Act (FCPA) enforcement of 2015, a Florida company settles with the U.S. Securities and Exchange Commission (SEC) for alleged improper dealings in Qatar, and a Texas man is indicted for allegedly accepting bribes while working abroad for a non-profit agency.

In export control and sanctions enforcement news, a digital imaging retailer settles with the U.S. Department of Commerce, Bureau of Industry and Security (BIS) for unlicensed exports to numerous countries worldwide, and a New England company is fined for various export law violations.

Finally, in developments in export control and sanctions law, the amended regulations easing some restrictions on dealings with Cuba go into effect, President Obama and the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) respond to North Korea cybersecurity threats with expanded sanctions, four names are added to the Magnitsky Sanctions List, OFAC publishes General License Number 5 related to business activities in Crimea, and a new format for OFAC's Specially Designated Nationals and Blocked Persons (SDN) List is released.

Thank you, as always, for reading *Red Notice*.

ANTICORRUPTION DEVELOPMENTS

Financial Consulting Executive Indicted for Allegedly Paying $3.5 Million in Bribes

The former owner and president of Chestnut Consulting Group Inc., Dmitrij Harder, was indicted earlier this month for allegedly bribing a European banking official to direct hundreds of millions of dollars in business to clients.

Harder is a Russian national, a naturalized German citizen and a permanent resident of the United States currently residing in Huntington Valley, Pennsylvania. The recent indictment alleges that Harder and others paid bribes for the benefit of an official at the European Bank of Reconstruction and Development (EBRD) in exchange for favorable treatment of financial applications submitted by the Chestnut Group's clients. Harder is alleged to have made five payments to the EBRD official totaling more than $3.5 million between 2007 and 2009. Harder allegedly attempted to conceal the payments by offering them to the EBRD official's sister as payments

TRANSLATIONS

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RELATED NEWS

Akin Gump lawyers issued a client alert regarding Ukraine's new anticorruption law, which took effect on January 25. Learn more about the legislation here.

Akin Gump lawyers covered a recent ruling regarding the limitations of attorney-client privilege. To learn more about this development, please see our post on the AG Deal Diary.

On January 27 and 28, Shiva Aminian spoke on, "Controlling Access to EAR and ITAR-Controlled Data on Servers, Laptops, Emails, Mobile Devices and Cloud Networks: How to Reduce New, Emerging Technology Transfer Risks," at the U.S. Export and Re-Export Compliance for Canadian Operations conference in Toronto, ON.

On February 6, Jonathan Poling will speak at the 2015 International Law Symposium on a panel regarding export controls in Santa Clara, CA. Click here for more information.

On February 19, Akin Gump will host a CLE in our Century City Los Angeles office, "The Cybersecurity Pandemic: A comprehensive look at navigating enterprise risk management, data breach response and multi-regulatory compliance," featuring lawyers across our offices and practices. For more information, please e-mail for purported consulting services. As a result of the bribes, Harder allegedly secured approval for two of the Chestnut Group's clients' loan applications, earning the Chestnut Group an estimated $8 million in "success fees." According to the indictment, one application resulted in the EBRD providing an $85 million investment and a €90 million loan; the second application resulted in a $40 million investment and a $60 million convertible loan.

Harder was charged with one count of conspiracy to violate the FCPA and the Travel Act, 10 substantive counts of violating the FCPA and the Travel Act, one count of conspiracy to commit international money laundering and two substantive counts of money laundering. Zane David Memeger, the U.S. Attorney for the Eastern District of Pennsylvania, celebrated the indictment, saying that Harder's conduct "undermined the legitimacy of a process designed to support businesses for the citizens of developing nations."

Based on the charges, Harder could receive a statutory sentence of up to 190 years in prison and may be facing more than $1.75 million in financial penalties.

Read the DOJ's release on the indictment and the coverage at *Bloomberg*.

Tampa Engineering Firm Agrees to Pay $3.4 Million Under Deferred Prosecution Agreement to Settle FCPA Charges with the SEC

Earlier this month, the PBSJ Corporation, a Tampa-based engineering and construction firm, agreed to a $3.4 million settlement under a Deferred Prosecution Agreement (DPA) with the SEC to settle charges of FCPA violations.

The SEC found that, in 2009, Walid Hatoum, former head of PBSJ's international marketing unit, offered bribes to Qatari government officials in exchange for access to confidential sealed-bid pricing information regarding a lucrative light-rail project in Qatar and a resort development project in Morocco. As a result of the confidential bid details Hatoum obtained, PBSJ subsequently tendered winning bids for contracts with the Qatari government related to both projects.

According to one SEC official, "Hatoum offered and authorized nearly $1.4 million in bribes disguised as 'agency fees' intended for a foreign official who used an alias to communicate confidential information that assisted PBSJ." After the bribery scheme began to fall apart and PBSJ lost the hotel resort contract, Hatoum attempted to salvage the scheme by offering to hire another Qatari official.

Although PBSJ ultimately uncovered and disrupted the scheme before any bribery payments were exchanged, the company earned an estimated $2.9 million in profits through continued work on the light-rail project until a replacement contractor was selected.

In an announcement issued by the SEC regarding the DPA, the agency credited PBSJ's efforts to resolve the scheme, acknowledging that the company put a stop to the conduct. Self-reporting the scheme, PBSJ "voluntarily made witnesses available for interviews and provided factual chronologies, timelines, internal summaries, and full forensic images" to assist with the SEC's investigation. Despite PBSJ's cooperation, Kara Brockmeyer, Chief of the SEC Enforcement Division's FCPA Unit, commented that "PBSJ ignored multiple red flags that should have enabled other officers and employees to uncover the bribery scheme at an earlier stage."

Under the DPA, PBSJ agreed to pay $3,032,875 in disgorgement and interest and a penalty of $375,000. In a separate proceeding, without admitting or denying the facts, Hatoum agreed to pay a $50,000 financial penalty to settle charges of violations of the antibribery, internal accounting controls, books and records, and false records

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If you would like to invite Akin Gump 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 or +1 202.887.4464.

provisions of the Securities Exchange Act of 1934.

According to the SEC's announcement, in 2010, PBSJ was acquired by a U.K. design firm and is now known as The Atkins North America Holdings Corp. Read the SEC release and additional coverage at *CFO Magazine* and the *Tampa Bay Business Journal*.

Non-Profit Executive Indicted for Bribery in Afghanistan

In mid-December, a former international aid worker was indicted in the U.S. District Court for the Eastern District of Texas for allegedly soliciting and accepting $66,000 in bribes from Afghan contractors in exchange for awarding contracts funded by the U.S. government. George E. Green, 57, of Carrollton, Texas allegedly received the bribes while working for International Relief and Development Inc. (IRD) in Afghanistan. Green served as director of contracts, procurement and grants for IRD from late 2011 to May 2012 as part of a cooperative agreement with the U.S. Agency for International Development (USAID) focused on achieving agricultural development in Afghanistan.

The indictment alleges that after Green solicited and received the bribes from representatives of an Afghan firm that contracted with the IRD, Green attempted to conceal the bribe proceeds and avoid mandatory cash reporting requirements when he returned to the United States. The indictment also asserts that Green continued to solicit bribes from the Afghan firm after he left IRD by suggesting that he still maintained contract procurement discretion.

The government began investigating Green after IRD officials reported his conduct as suspicious. The five-count indictment charges Green with one count of conspiracy to structure financial transactions, one count of wire fraud, and three counts of receiving bribes in connection with a program receiving federal funds. If convicted on all counts, Green could be facing up to 55 years in prison.

IRD, which has a large presence in Iraq and Afghanistan, receives over 80 percent of its budget from USAID. Following the announcement of the indictment, the Senate Foreign Relations Committee asked USAID to conduct a thorough review of its contracting practices.

Learn more by reading the DOJ's press release and news coverage by the *Washington Post*.

EXPORT CONTROL AND SANCTIONS ENFORCEMENT

New York Company Reaches BIS Settlement for Alleged Violations of the EAR

Late last month, B&H Foto & Electronics Corp. of New York agreed to a $275,000 settlement with BIS for alleged violations of the Export Administration Regulations (EAR) involving 50 unlicensed exports of optical sighting devices subject to the EAR to Hong Kong, Kazakhstan, Russia, Saudi Arabia and South Africa. The combined value of the optical sighting devices was $23,000, a fraction of the settlement amount. The settlement was, however, a large reduction from the maximum permissible penalty of $250,000 per violation.

Find out more by reading the settlement agreement and order here.

New Hampshire Firm Fined for ITAR Violations

The U.S. District Court for the District of New Hampshire is reported to have fined Netria Corp. of Exeter, New Hampshire, more than $12,000 for violations of the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR). The company admitted to brokering the sale and export of aircraft parts to Malaysia without obtaining a required license from the U.S. Department of State's Department of Defense Trade Controls. The parts, valued at approximately $2 million, are listed on the U.S. Munitions List and are subject to the ITAR.

For additional information, see local coverage in New Hampshire's *Union Leader*.

EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

OFAC and BIS Update Cuba-Related Regulations

Earlier this month, OFAC and BIS issued regulatory amendments implementing the Cuba policy shift announced by President Obama in December 2014. Changes to the Cuban Assets Control Regulations (CACR) and the EAR took effect on January 16, 2015.

While the Cuba embargo remains in place, modifications liberalize some of the previous restrictions, including revised rules that authorize certain trade with Cuba, increased remittances and improved information flow to and from Cuba, as well as nontourist travel to Cuba when it fits the criteria of one of 12 newly issued general licenses.

BIS's new Support for the Cuban People license exception permits U.S. persons to engage in the export and reexport to Cuba of, among other items, certain communications-related goods, building materials and tools for private agricultural activities. The amended regulations also permit U.S. financial institutions to provide specified services that were previously prohibited. For example, U.S. depository institutions may now open correspondent accounts at Cuban financial institutions to support certain newly authorized transactions. In addition, the amendments reflect the Obama administration's stated objective of providing support for Cuban citizens. An example is the authorization of certain micro-financing activities and entrepreneurial and business training for Cubans.

Despite revisions to the Cuba-related regulations, companies remain at risk of civil and criminal liability if entering the Cuban market, unless they take a cautious approach with the appropriate compliance measures in place.

To learn more, see the Federal Register Notices on the CACR and EAR amendments, OFAC's Cuba FAQs and Akin Gump's international trade alert. For the *Red Notice* reporting on the Cuba policy changes announced last month, see the December issue.

President Obama Issues North Korea-Related Executive Order, and OFAC Responds with New Designations

Earlier this month, President Obama issued an executive order expanding sanctions against North Korea for the country's "provocative" actions, including the cyber-related activities in late 2014 against Sony Pictures Entertainment and threats against moviegoers and movie theaters, as well as its ongoing serious human-rights abuses. OFAC responded with additional designations to the SDN List of North Korean entities, government officials and representatives, citing its commitment to defending U.S. citizens and businesses and responding to attempted national security threats.

For additional information, see the White House's announcement and the Treasury Department designations and press release.

OFAC Names Four Additional Russians to Magnitsky Sanctions List

Late last month, OFAC, in concert with the State Department, added the names of four Russian individuals to its SDN List under the

Magnitsky Act. Those designated under the Magnitsky Act are alleged to have committed human-rights abuses in Russia and are subject to visa bans and asset freezes. The new designations are an example of the Obama administration's effort to increase pressure on Russia for its actions in Crimea.

To learn more, see the State Department's press statement and coverage on *The FCPA Blog*.

OFAC Publishes Ukraine-Related General License Number 5

Late last month, OFAC issued Ukraine-Related General License Number 5, a narrow license to permit persons to wind down specified transactions prohibited by Executive Order 13685 until February 1, 2015, by following certain conditions. The Executive Order prohibits U.S. persons from various activities in Crimea, including new investment in, importation from and/or exportation to Crimea. The license applies only to transactions begun prior to December 20, 2014.

For further information, find the text of the General License here and the Executive Order here.

OFAC Releases New SDN List Format

OFAC announced the release this month of a new format for its SDN List. OFAC collaborated with the United Nations and the Wolfsberg Group of International Banks to develop the new format with the objective of improving sanctions compliance. The new format incorporates the addition of search values and is capable of running original language script (e.g., Arabic script) searches.

For more information, read the Treasury Department explanation.

CONTACT INFORMATION

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The "Anticorruption Developments" section of Red Notice is edited by Courtney Cardin and Jennifer Hildebrand. The "Export Control and Sanctions Developments and Enforcement" sections are edited by Annie Schlapprizzi.

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