

Red Notice

A Monthly Update on Global Investigations and Prosecutions



APRIL 2015

Introduction

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

This month in anticorruption developments, Canadian transportation giant faces scrutiny for alleged bribery in South Africa, Oregon-based technology company settles Foreign Corrupt Practice Act (FCPA) charges after self-reporting to U.S. officials, the World Bank debars a French telecommunications company, two individuals are sued by their former employer for their roles in a bribery scheme that resulted in criminal charges for the company, Iceland draws criticism for failure to progress in its effort to fight bribery and a former Export-Import Bank official pleads guilty to bribery charges.

In export control and sanctions enforcement news, nine defendants are charged with engaging in illegal exports to Iran in violation of the International Emergency Economic Powers Act (IEEPA), five individuals and a company plead guilty to Arms Export Control Act (AECA) violations, a foreign national agrees to a 20-year denial of export privileges and a data processing services company settles with the Office of Foreign Assets Control (OFAC).

Finally, in developments in export control and sanctions law, the State Department announces a new requirement for permanent exports of unmanned aerial systems and reorganizes the structure of the Office of Defense Trade Controls Licensing (DTCL).

Thank you as always for reading *Red Notice*.

ANTICORRUPTION DEVELOPMENTS

Canadian Transportation Company Probed for Suspect South Africa Payments

In April, South Africa's public corruption watchdog began investigating whether Canadian transit company Bombardier made illegal payments to a third-party middleman, Peter-Paul Ngwenya, in an effort to secure a \$3 billion railway construction contract. The group is investigating allegations that the transportation giant paid millions of dollars in success fees under the multibillion dollar contract to participate in a consortium of five partners that were constructing the "Gautrain"—an 80 kilometer high speed transit rail connecting Johannesburg and Pretoria with OR Tambo, South Africa's biggest airport. Gautrain construction was completed in 2012.

TRANSLATIONS

中文 >

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WRITING AND SPEAKING ENGAGEMENTS

Akin Gump is pleased to announce the launch of its new blog, [AG Trade Law](#), which will provide readers with timely updates on, and analysis of, legal, regulatory and policy developments affecting international trade. If you would like to subscribe to receive email digests of our posts, please click [here](#). To follow us on Twitter, please click [here](#) or follow [@agtradelaw](#).

On May 4-5, partner [Chuck Connolly](#) will speaking at "The Foreign Corrupt Practices Act and International Anti-Corruption Developments 2015," sponsored by the Practising Law Institute (PLI). For more information, please see [here](#).

On April 28 and April 29, Akin Gump hosted a CLE in both our Dallas and Houston offices, "The Cybersecurity Pandemic: A comprehensive look at navigating enterprise risk management, data breach response and multiregulatory compliance," featuring lawyers across our offices and practices.

If you would like to invite Akin Gump lawyers to speak at your company or to your group about anticorruption law, compliance, cybersecurity,

South Africa's Public Protector, Thuli Madonsela, is probing allegations of political interference, relating to political and financial decisions made regarding the Gautrain construction. Bombardier released a statement indicating that it would cooperate with Madonsela's investigation if it was "invited to collaborate with the public protector's investigation." The company also stated that, "Bombardier has always maintained and will continue to maintain the highest standards of ethical behaviour in all of our business operations worldwide."

The investigators are also scrutinizing a \$5 million deal with Ngwenya, the alleged South African middleman involved in obtaining the construction contract. At least one independent watchdog organization has criticized the middleman payment for being "totally disproportionate" and has suggested that there may be concerns of bribery and corruption in the deal. Bombardier has disputed these claims, which are also the subject of pending civil litigation in South Africa.

Similarly, Ngwenya denies paying any bribes on behalf of Bombardier.

To learn more, see coverage at the [FCPA Blog](#) and [CBC News](#).

Oregon-Based Defense Contractor Agrees to Pay Almost \$10 million to Settle SEC FCPA Charges

In early April, Oregon-based technology company, FLIR Systems Inc., agreed to pay \$9.5 million to settle FCPA violations. After discovering the violations internally, the company self-reported the misconduct to U.S. officials and terminated the employees involved. As we reported in an earlier [Red Notice](#), two former FLIR employees, Stephen Timms and Yasser Ramahi, agreed to pay \$50,000 and \$20,000 respectively to settle U.S. Securities and Exchange Commission (SEC) FCPA violation charges in November 2014. While working in FLIR's Dubai office, Timms and Ramahi organized a "world tour" for Middle Eastern government officials involved in fulfilling key provisions of contracts with the company. The 20-night trip included stops in Casablanca, Paris, Dubai, Beirut and New York City. In addition to receiving approximately \$40,000 in travel expenses in connection with factory acceptance test visits, the government officials also received nearly \$7,000 in miscellaneous gifts. Timms and Ramahi later attempted to conceal their misconduct by falsifying corporate records.

In a [press release](#) issued by the SEC, Kara Brockmeyer, chief of the SEC Enforcement Division's FCPA Unit, stated, "Flir's deficient financial controls failed to identify and stop the activities of employees who served as de facto travel agents for influential foreign officials to travel around the world on the company's dime." Without admitting or denying the charges in the order, FLIR agreed to pay a \$1 million civil penalty and a disgorgement of \$7,534,000 plus \$970,584 in prejudgment interest for a total penalty of more than \$9.5 million.

The SEC noted that after disclosing the violation, FLIR cooperated with the SEC's investigation. Under the settlement agreement with the SEC, FLIR also agreed to update the SEC periodically over the next two years regarding the status of the company's FCPA compliance policies, trainings and monitoring activities. The U.S. Department of Justice (DOJ) declined to bring charges.

To learn more, read FLIR's announcement to investors and new coverage from [The Hill](#) and the [Portland Business Journal](#).

French-Based Telecommunications Company Debarred by World Bank for 18 Months

In late April, the World Bank [announced](#) the 18-month debarment of the French telecommunications company, Alcatel-Lucent Trade

enforcement and policy or other international investigation and compliance topics, please contact Mandy Warfield at mwarfield@akingump.com or +1 202.887.4464.

International A.G. (Alcatel-Lucent), and an affiliated entity, Alcatel Saudi Arabia Limited, for failing to disclose that two agents hired by Alcatel-Lucent assisted company affiliates in securing various contracts in 2006.

According to an investigation conducted by the World Bank Integrity Vice Presidency, Alcatel-Lucent hired two agents to assist Egyptian and Italian affiliates of the company, Alcatel-Lucent Egypt for Telecommunications, S.A.E. and Alcatel-Lucent Italia, S.p.A., to secure a World Bank training and services contract for more than \$30 million. The contract was part of an estimated \$65 million World Bank-financed private and finance sector development project in the Republic of Iraq.

The debarment of Alcatel-Lucent and Alcatel Saudia Arabia Limited was imposed as part of a Negotiated Resolution Agreement (NRA) with the World Bank. The NRA also includes the conditional non-debarment of the Egyptian and Italian Alcatel affiliates for failing to disclose the conduct in connection with their work to secure the training and services contract as well as Alcatel subsidiaries, Telettra International S.A and Telettra Saudi Arabia, under the condition that these entities fulfill certain conditions. According to the NRA, to avoid debarment, the affiliates are required to cooperate with the World Bank Integrity Vice President and adopt a compliance program that satisfies the World Bank Integrity principles. Leonard McCarthy, World Bank Integrity Vice President, pointed to the case an example “of how companies need to use caution when working with agents.”

See more at [The Financial](#) and the [National Mirror](#).

Montreal-Based Engineering Firm Sues Former Executives over Canadian Charges of Corporate Bribery

This month, SNC-Lavalin Group Inc. filed suit against two former company executives, who it alleges were at the center of the bribery that resulted in SNC-Lavalin being criminally charged by Canadian authorities in February 2015.

In our February [Red Notice](#) edition, we reported that the Royal Canadian Mounted Police (RCMP) charged SNC-Lavalin with bribery under Canada’s Corruption of Foreign Public Officials Act and fraud in connection with work performed by the company in Libya between 2001 and 2011. At that time, the company claimed that the charges “are without merit” and contended that “if charges are appropriate, we believe that they would be correctly applied against the individuals in question and not the company.”

Consistent with its claim at the time that the RCMP levied charges, SNC-Lavalin has now brought suit against Riadh Ben Aissa and Sami Bebawi, former senior SNC managers, alleging that they embezzled CAD \$127 million from the company. This is the same amount of which the RCMP alleged the company defrauded the Libyan government. SNC-Lavalin has also named a Swiss lawyer and a private Swiss banker as defendants in its civil complaint, alleging that they helped facilitate the crime.

Specifically, in its civil complaint, SNC-Lavalin alleges that Ben Aissa, who oversaw the company’s international construction business in the early 2000s, set up agent firms that SNC-Lavalin used to help it win contracts in certain countries. According to the complaint, unbeknownst to SNC-Lavalin, the firms were actually “alter egos” controlled by Ben Aissa, that he personally vouched for the legitimacy of one of the agent firms and that the fees that he negotiated for the agent firms were for his own gain. While based in the Tunisia office, Ben Aissa allegedly used these agent firms to funnel bribes to Libyan officials in an attempt to secure lucrative utilities and infrastructure contracts in Libya between 2001 and 2011. The complaint further alleges that Ben Aissa did not disclose the scheme to company senior management other than Bebawi, with whom he agreed to share the proceeds. According to the complaint,

SNC-Lavalin did not learn that Ben Aissa owned and controlled the agent firms until the RCMP raided the company's headquarters in April 2012.

Separately, Ben Aissa was reported to have been the subject of Swiss enforcement proceedings resulting in his conviction and a three-year sentence for bribing the son of former Libyan dictator Moammar Gadhafi in order to win construction projects for SNC-Lavalin while collecting tens of millions of dollars for himself. Ben Aissa is reportedly now cooperating with the RCMP in its ongoing investigation of SNC-Lavalin's business dealings in Libya.

See additional coverage at [The Globe and Mail](#) and the [Toronto Sun](#).

OECD Says Iceland Has Demonstrated Lack of Progress in Fighting Bribery

The Organization for Economic Cooperation and Development (OECD) Working Group on Bribery has expressed "serious concerns" about Iceland's lack of progress in implementing recommendations made to the country in 2010 to help fight foreign bribery.

The OECD Working Group on Bribery assesses the anti-bribery measures of the 41 countries that are signatories to the OECD Anti-Bribery Convention through a multiphase monitoring process. In addition to regular reports, in 2014, the Working Group began issuing targeted public statements for those countries that had not implemented key recommendations.

In one such [statement](#) released on April 9, 2015, the OECD group noted that since 2010, Iceland has taken steps to fully implement only two of 17 recommendations and stated, "The Working Group is especially disappointed that Iceland has not implemented recommendations to effectively criminalize bribery of officials in foreign state-owned entities." The Working Group noted that Iceland had formed a steering group to implement the remaining recommendations, but had made little additional effort to implement them. Other recommendations that Iceland has not implemented include clarifying the obligation of officials to report foreign bribery, criminalizing bribery of officials in foreign state-owned companies, implementing legislation to protect whistleblowers and raising maximum penalties for foreign bribery.

The OECD gave Iceland until October to demonstrate that it has taken steps to implement the recommendations and stated that if "significant progress" is not made by that time, the OECD will consider unspecified "additional measures."

To learn more, see coverage at [WSJ](#) and the [Reykjavik Grapevine](#).

Former Export-Import Bank Official Pleads Guilty to Bribery While Congress Debates the Future of the Bank

On April 22, 2015, Johnny Gutierrez, a former loan officer with the Export-Import Bank of the United States (Ex-Im Bank), [pleaded](#) guilty before U.S. District Judge Gladys Kessler of the District of Columbia to one count of bribery of a public official. Gutierrez admitted that on 19 occasions between 2006 and 2013, he accepted cash and other things of value in return for "being influenced in the performance of his official acts." Gutierrez admitted to endorsing the approval of unqualified loan applications and improperly expediting other applications in exchange for the illicit payments.

According to the DOJ's press release, Gutierrez admitted he "intentionally ignored the fact that one company had previously defaulted in 10 previous transactions guaranteed by the bank[.]" Despite the fact that the applicant had already cost the Ex-Im Bank more than \$20 million in its previous dealings, Gutierrez continued to accept bribes from the applicant in exchange for recommending the approval of the applicant's loan.

The investigation was conducted by the Ex-Im Bank's Inspector General's Office and the Federal Bureau of Investigation (FBI).

At the same time, the House Committee on Oversight and Government Reform, chaired by Rep. Jason Chaffetz (R-UT) has been holding hearings scrutinizing the Ex-Im Bank. The Bank is a federal agency that serves as the official export agency of the United States, providing loan guarantees or direct financing to assist U.S. firms, or U.S. divisions of foreign firms, export goods. Congress is considering reauthorization of the agency, which was created more than 80 years ago and is scheduled to expire on June 30, 2015.

Press reports have indicated that Gutierrez allegedly accepted cash payments in exchange for trying to help a Florida company obtain financing through Ex-Im Bank, and that a total of four agency employees have been suspended or removed in connection with investigations into their behavior (although they were not all related to the investigation into Gutierrez). It appears that additional charges may follow. The Deputy Inspector General of the Bank, Michael T. McCarthy, responded to inquiries from Rep. Chaffetz on behalf of the Committee and stated that he could not provide certain requested information in his letter or in testimony scheduled before the Committee on April 15 because of the pending charges and because the bribery investigation "remains open as to other subjects."

See more at the [WSJ](#) and the [Daily Caller](#).

EXPORT CONTROL AND SANCTIONS ENFORCEMENT

Four Companies and Five Individuals Indicted for Illegally Exporting Technology to Iran

Earlier this month, the U.S. Attorney's Office for the Southern District of Texas unsealed a 24-count indictment charging nine defendants with violating the International Economic Emergency Powers Act by engaging in illegal exports to Iran. The defendants, a mix of companies and individuals from Texas, California, Taiwan, Turkey and Iran, allegedly formed a procurement network that operated in the United States to funnel goods to Iran. The defendants are accused of circumventing U.S. sanctions laws to export to Iran sensitive U.S. technologies useful to Iran's military programs, including uninterruptible power supplies and high-technology microelectronics that can be used in surface-to-air and cruise missiles. The network allegedly shipped at least \$24 million in commodities to Iran between July 2010 and April 2015.

The nine defendants are: Texas-based Smart Power Systems Inc. (SPS) and Iran-based sister company Faratel, along with co-owners Bahram Mechanic of Houston and Khosrow Afghahi of Los Angeles, and SPS vice president Tooraj Faridi; trading company Hosoda Taiwan Limited Corporation and its senior manager Arthur Shyu of Taiwan; and shipping company Golsad Istanbul Trading Ltd. and its employee Matin Sadeghi of Turkey.

The indictment alleges that Faratel regularly sent lists of commodities to be procured to Mechanic, Faridi and Afghani. Mechanic allegedly sent the orders to Shyu, who purchased the commodities through Hosoda and shipped them to Turkey. In Turkey, according to allegations in the indictment, Sadeghi acted as a false buyer on behalf of Golsad and shipped the commodities to Faratel.

Mechanic and Faridi appeared this month before a Magistrate Judge in the Southern District of Texas, while Afghahi will appear before a court in the Central District of California. There are outstanding warrants for the arrest of Shyu and Sadeghi who are thought to be outside of the United States. If convicted, individual defendants face a possible 20-year prison sentence, and the corporate defendants could be fined as much as \$1 million per count.

The Department of Commerce is designating seven individuals and entities on the Bureau of Industry and Security (BIS) Entity List in connection with these charges for facilitating the defendants' illegal export of controlled items. The BIS Entity List identifies non-U.S. persons that are prohibited from receiving items subject to the Export Administration Regulations (EAR) unless the exporter obtains a license from BIS, which reviews such requests with a presumption of denial.

For additional information, see the DOJ [press release](#) IEEPA Indictment and Entity List Rule as well as coverage by [CNN](#).

Former NYPD and CBP Officers Sentenced to Three Years for AECA Violations

In late March 2015, the U.S. District Court for the Eastern District of New York sentenced Rex Maralit, of New Jersey, and Wilfredo Maralit, of California, to three years in prison. The brothers pleaded guilty to violating the Arms Export Control Act (AECA) in June 2014 in connection with unlicensed exports to the Philippines of various military-type firearms, magazines and accessories. Rex, a former New York City police officer, and Wilfredo, a Customs and Border Protection officer, used their official status to obtain and export the weapons without the necessary U.S. State Department authorization.

For additional information, see the DOJ [press release](#) and [Daily Mail](#) coverage.

New Jersey Owner of Defense Contracting Businesses Pleads Guilty to AECA Violation

Early this month, Hannah Robert, of New Jersey, pleaded guilty in the U.S. District Court for the District of New Jersey to violations of the AECA arising from a conspiracy to illegally export military blueprints to India. Robert owned two New Jersey-based companies that contracted with the U.S. Department of Defense (DoD) to produce defense hardware and spare parts. Between June 2010 and December 2012, she transferred export-controlled technical data to a colleague in India without obtaining the necessary licenses from the U.S. State Department in order to submit bids to potential foreign customers. Exported technical data included drawings of parts used in torpedo systems on nuclear submarines, F-15 fighter planes and attack helicopters. Robert used her position as volunteer web administrator of a church to transfer thousands of drawings by uploading the drawings to the password-protected church site and providing her colleague in India with the username and password.

In addition to the unlicensed technical data exports, Robert's company produced faulty wing pins for the F-15 fighter and issued false inspection reports and certifications that failed to accurately state that the pins were manufactured in India. As a result of the defect, DoD had to ground 47 F-15s for inspection and repair at a cost of over \$150,000. Robert must pay more than \$180,000 to DoD as part of the plea agreement. She faces a possible five-year prison sentence.

For additional information, see the DOJ [press release](#) and coverage in [NBC Philadelphia](#).

Egyptian Company and Two Managers Plead Guilty to AECA Violations for Attempted Shipment of US Munitions Samples to Egypt

AMA United Group and AMA United partners Amged Kamel Yonan Tawdraus and Malak Neseem Swares Boulos, all of Egypt, pleaded guilty in the U.S. District Court for the Eastern District of New York to violations of the AECA arising from the attempted unlicensed export of samples of items included on the United States Munitions List (USML). Tawdraus and Boulos sought to obtain a land mine, bomblet

bodies, and trumpet liners on behalf of an AMA United customer in Cairo. To this end, they traveled from Egypt to New York in July 2011 to inspect the items and attempted to ship samples to Egypt without obtaining required licenses from the U.S. Department of State. The partners face possible five-year prison sentences, fines and the denial of export privileges.

For additional information, see the DOJ [press release](#) and [Law360](#).

Turkish National Agrees with BIS to 20-Year Denial of Export Privileges for Aiding and Abetting a Violation of a Temporary Denial Order against His Company

In late March, BIS and Yavuz Cizmeci, of Turkey, agreed to a 20-year denial of Cizmeci's export privileges. Cizmeci was President and CEO of Ankair, a charter airline in Turkey. BIS issued a temporary denial order against Ankair in June 2008 in order to prevent Ankair from reexporting a Boeing 747 to Iran Air. A BIS investigation revealed that in approximately July 2008, Cizmeci facilitated the reexport to Iran of the 747 by submitting false documentation to Turkish authorities indicating that the aircraft was destined for Pakistan instead of Iran.

For additional details, see the [BIS press release](#) and [TDO](#).

Georgia Company Agrees to \$23K Settlement with OFAC for Apparent Violations of the Foreign Narcotics Kingpin Sanctions Regulations

First Data Resources, LLC of Atlanta, Georgia, agreed in mid-April to a \$23,336 settlement with OFAC for alleged violations of the Foreign Narcotics Kingpin Sanctions Regulations (FNKSR). According to OFAC, between February and June 2011, First Data provided data processing services to a Specially Designated Narcotics Trafficker (SDNT). First Data employed sanctions interdiction software, which flagged the customer as a possible SDNT, but deficiencies in the software and in First Data's compliance processes prevented its effectiveness in preventing the transactions.

The settlement, a reduction from the base penalty of \$69,144, reflects, among other factors, OFAC's determination that First Data voluntarily disclosed the alleged violations, took remedial action and cooperated with OFAC in the investigation.

Find out more by reading OFAC's enforcement [notice](#).

EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

State Department Announces New Requirement for Permanent Exports of Unmanned Aerial Systems

In late March 2015, the Directorate of Defense Trade Controls (DDTC) at the U.S. State Department announced a new requirement for permanent exports of unmanned aerial systems (UAS). For permanent exports, the DSP-83 Non Transfer and Use Certificate necessary for all UAS exports must now include an addendum with proper use assurances by the foreign end user. Both the U.S. applicant and foreign end user must sign the addendum and submit it when applying for a permanent license. This requirement does not apply to temporary exports of UAS.

For additional information and the required addendum format, see DDTC guidance. To learn more about U.S. policy on UAS exports, see the February [issue](#) of the *Red Notice*.

State Department's Office of Defense Trade Controls Licensing Reorganizes its Structure

Earlier this month, the Office of Defense Trade Controls Licensing (DTCL) within DDTCL reorganized its structure to reflect the post-Export Control Reform (ECR) environment. President Obama's ECR initiative, launched in 2013, caused a 36 percent reduction in licensing requests to DTCL, with some DTCL divisions managing a disproportionate amount of requests. As a result, DTCL is now structured according to four operational divisions: Sea, Land, and Air Systems; Electronic and Training Systems; Light Weapons and Personal Protective Equipment Systems; and Space, Missile, and Sensor Systems. DTCL's electronic licensing system, D-Trade, will automatically route license requests to the correct division. Applicants do not have to make changes to applications as a consequence of the reorganization.

For additional information on the reorganization, see DTCL's [notice](#).

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 [Courtney Cardin](#) and [Jonathan Vukicevich](#). The "Export Control and Sanctions Developments and Enforcement" sections are edited by [Annie Schlappizzi](#).

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