

Red Notice

A Monthly Update on Global Investigations and Prosecutions



July 2017

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IN THIS ISSUE

Anticorruption Developments

- [U.K. Opens Corruption Investigation of Rio Tinto over Guinea Operations](#)
- [Ex-Fugitive Pleads Guilty in Haiti Teleco Case](#)
- [New SEC Chairman Jay Clayton Gives First Public Speech](#)
- [U.K. Law Enforcement Announces International Anti-Graft Center](#)
- [World Bank Debars Germany's Fichtner GmbH for Africa Misconduct](#)
- [World Bank Sanctions \(but Does Not Debar\) CDM Smith for Noncompliance in Vietnam](#)
- [FIFA Releases Full "Garcia Report" on Corruption in the World Cup Bidding Process](#)
- [U.S. Charges Colombia Anti-Graft Prosecutor with Money Laundering](#)
- [U.S. Declines to Prosecute Engineering Company for Bribery](#)
- [DOJ Compliance Counsel Departs Ahead of Schedule](#)

Export Control, Sanctions and Customs Enforcement

- [OFAC Imposes \\$2 Million Penalty for Violations of U.S. Sanctions Targeting Russia](#)
- [OFAC Announces \\$12 Million Settlement Agreement with Two Singaporean Companies for Apparent Violations of Iran Sanctions](#)
- [Two Iranian Nationals Charged for Illegally Hacking Software to Sell to Iran](#)
- [DOJ Seeks Forfeiture of Thousands of Iraqi Artifacts Imported by Hobby Lobby](#)

Export Control and Sanctions Developments

- [President Trump Extends Sudan Sanctions Review Period by Three Months](#)
- [OFAC Imposes Sanctions on President Maduro and Thirteen Venezuelan Officials Targeted for Undermining Venezuela's Democracy](#)
- [OFAC Releases New Cuba Sanctions FAQs Relating to President Trump's Cuba Announcement](#)
- [OFAC Issues Guidance on Annual Report of Blocked Property](#)

Global Investigations Resources

- Client Alert: [FinCEN Action Demonstrates the Agency's Ability to Use Anti-Money Laundering Laws Against Non-U.S. Entities](#)
- Client Alert: [Cuba Sanctions: President Trump Announces Tightening of U.S. Sanctions While Maintaining Certain Sanctions Relief Implemented by the Obama Administration](#)
- [AG Trade Law Blog](#)
- [Writing and Speaking Engagements](#)

ANTICORRUPTION DEVELOPMENTS

U.K. Opens Corruption Investigation of Rio Tinto over Guinea Operations

On July 24, 2017, the United Kingdom's Serious Fraud Office (SFO) announced that it had opened an investigation into the mining giant Rio Tinto PLC after the company allegedly made payments to a contractor in Guinea to secure mining rights to Guinea's valuable iron ore reserves in the Simandou region. In November 2016, Rio Tinto had notified authorities in the United Kingdom, the United States, and Australia about its concerns over

\$10.5 million in payments made in connection with the iron ore deposits.

For more information, see the *FCPA Blog's* coverage [here](#), Bloomberg's coverage [here](#) and *The Wall Street Journal's* coverage [here](#). The SFO news release is available [here](#).

Ex-Fugitive Pleads Guilty in Haiti Teleco Case

On July 19, 2017, Amadeus Richers, the former general manager of Miami-based Cinergy Telecommunications Inc., pled guilty to one count of conspiracy to violate the Foreign Corrupt Practices Act (FCPA) in the U.S. District Court for the Southern District of Florida. Richers—the ninth defendant to plead guilty or be convicted in this case—admitted that he took part in a conspiracy to pay \$3 million in bribes to Haitian telecom officials.

For more information, see *The Washington Post's* coverage [here](#), *Law360's* coverage [here](#), and the *FCPA Blog's* coverage [here](#). The Department of Justice's (DOJ) press release is available [here](#). The case is *United States v. Esquenazi et al.*, case number 1:09-cr-21010 in U.S. District Court for the Southern District of Florida.

New SEC Chairman Jay Clayton Gives First Public Speech

On July 12, 2017, SEC Chair Jay Clayton gave his first public remarks since assuming leadership of the SEC, taking over for former Chair Mary Jo White. Clayton outlined eight principles that he said would guide his time as Chair of the SEC and discussed how he intended to put those principles into practice.

A key theme that emerged was Clayton's belief that there is a need to re-evaluate the current regulatory regime. Clayton called for assessing whether the SEC has begun implementing regulatory requirements that go "beyond the core concept of materiality," and whether rules are functioning in line with investors' expectations, and considering the total costs of compliance with the rules – as well as the potential for those costs to "skyrocket." Emphasizing the effect of these rules on the market, Clayton cited a near 50 percent decline in the total number of U.S.-listed public companies and pointed to the increase in regulatory requirements as a deterrent to new public listings. In addition, Clayton focused on the impact of new technology in the marketplace; the increased threat of cyberattacks; and the need to ensure that investors are aware of, and able to utilize all available resources that may increase investor engagement.

The full text of Clayton's remarks is available [here](#).

U.K. Law Enforcement Announces International Anti-Graft Center

On July 5, 2017, the United Kingdom's National Crime Agency (NCA) announced that it would be joining forces with law enforcement agencies from seven countries—including the United States, Australia, Canada, New Zealand and Singapore—to combat corruption. Last year, during the [Anti-Corruption Summit](#), the United Kingdom promised to take steps to prevent economic crimes. The International Anti-Corruption Coordination Center will be located in London.

The NCA's announcement can be found [here](#). For more information, see *The Wall Street Journal's* coverage [here](#), the *FCPA Blog's* coverage [here](#) and Interpol's statement [here](#).

World Bank Debars Germany's Fichtner GmbH for Africa Misconduct

On June 30, 2017, the World Bank announced the debarment of Fichtner GmbH & Co. KG through the execution of a Negotiated Resolution Agreement following a World Bank investigation that concluded that a former employee accepted bribes to influence contract awards in the Democratic Republic of Congo. Fichtner has been debarred for a period of 15 months.

The debarment qualifies for cross-debarment by other Multilateral Development Banks under the Agreement of Mutual Recognition of Debarments that was signed on April 9, 2010 ([available here](#)). The list of all World Bank debarred entities and individuals is available [here](#).

For more information, see the *FCPA Blog's* coverage [here](#).

World Bank Sanctions (but Does Not Debar) CDM Smith for Noncompliance in Vietnam

On June 30, 2017, the World Bank announced that CDM Smith would be "conditionally non-debarred" for failing to disclose a subcontract agreement for the company's Da Nang Priority Infrastructure Investment Project in Vietnam.

For more information, see the *FCPA Blog's* coverage [here](#). The World Bank press release can be found [here](#), and the CDM Smith press release is available [here](#). For more information on CDM Smith's declination with disgorgement to resolve its FCPA offenses in India can be found here see the *FCPA Blog's* coverage [here](#).

FIFA Releases Full "Garcia Report" on Corruption in the World Cup Bidding Process

On June 27, 2017, the International Federation of Association Football (FIFA) released the Garcia Report – a 430-

page investigative report on the bidding process for the 2018 and 2022 World Cup competitions. The Garcia Report was authored in 2014 by Michael J. Garcia, a former U.S. Attorney who served as FIFA's Chief Ethics Investigator from 2012 to 2014. Previously, only a 40-page summary of the report was available.

For more information, see *The Washington Post's* coverage [here](#) and *The New York Times* coverage [here](#). The full Garcia Report is available [here](#) and FIFA's Ethics Committee's report is available [here](#).

U.S. Charges Colombia Anti-Graft Prosecutor with Money Laundering

On June 23, 2017, Luis Gustavo Moreno Rivera, the Director of the National Anti-Corruption Unit in Colombia's Attorney General's office, was charged with one count of conspiracy to launder money in order to promote foreign bribery. Rivera is alleged to have taken bribes to subvert investigations in the United States and Colombia. He was arrested in Colombia and faces extradition to Miami, which typically takes several months.

The DOJ's press release is available [here](#), and the Colombian Attorney General's Office's statement can be found [here](#). For more information, see *The New York Times's* coverage [here](#), the *FCPA Blog's* coverage [here](#) and the *BBC's* coverage [here](#).

U.S. Declines to Prosecute Engineering Company for Bribery

On June 21, 2017, the DOJ announced that it would not prosecute CDM Smith for violations of the FCPA in relation to bribes paid to the Indian national highway authority from 2011 to 2015 in exchange for highway construction and design contracts that resulted in approximately \$4 million in profits. In the DOJ's [letter](#), it stated that it would not prosecute CDM Smith because CDM Smith timely and voluntarily self-disclosed the misconduct, conducted its own investigation, fully cooperated, agreed to disgorge all illicit profits, enhanced its compliance program and terminated all employees deemed to be complicit.

For more information, see *The Wall Street Journal's* coverage [here](#), the *FCPA Blog's* coverage [here](#) and *Law360's* coverage [here](#).

DOJ Compliance Counsel Departs Ahead of Schedule

On June 23, 2017, Compliance Counsel Expert at the Fraud Section in the Criminal Division, Hui Chen, left her role at the DOJ. In her [statement](#) announcing her departure, Chen explained that her decision was based on a variety of factors.

For more information, see *The Washington Post's* coverage [here](#) and *NPR's* coverage [here](#). The DOJ's announcement of its initial hiring of Chen can be found [here](#).

[Back to top.](#)

EXPORT CONTROL, SANCTIONS AND CUSTOMS ENFORCEMENT

OFAC Imposes \$2 Million Penalty for Violations of U.S. Sanctions Targeting Russia

On July 20, 2017, the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) announced that it had assessed a \$2 million penalty against Texas-based ExxonMobil Corporation (ExxonMobil) for violations of U.S. sanctions targeting Russia. According to the OFAC press release, the enforcement action stems from transactions undertaken by ExxonMobil in May 2014 when its U.S. subsidiaries engaged in a transaction with Igor Sechin, the president of Rosneft OAO and an individual on OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List). The transaction in question involved ExxonMobil's signing of legal documents related to oil and gas projects in Russia, which were countersigned by Sechin on behalf of Rosneft OAO. OFAC considered this to constitute dealing in services with a designated party.

According to the press release, OFAC considered that ExxonMobil did not voluntarily self-disclose the violations in its penalty determination. The aggravating factors include: (1) reckless disregard for U.S. sanctions with dealing in the blocked services of an SDN; (2) knowledge by company senior executives of Sechin's status as an SDN; (3) serious harm caused to the sanctions program; and (4) ExxonMobil's status as a sophisticated and experienced oil and gas company that routinely deals in goods, services and technology subject to U.S. sanctions and export controls. In terms of mitigating factors, OFAC acknowledged that ExxonMobil had not received a penalty notice or Finding of Violation from OFAC five years prior to the transaction at issue.

Following the announcement, ExxonMobil condemned the enforcement action in a public statement and filed a complaint in the Northern District of Texas challenging the penalty as unfounded and unjust as a matter of law.

For additional information, please see the OFAC [web notice](#) and [press release](#) issued by ExxonMobil.

OFAC Announces \$12 Million Settlement Agreement with Two Singaporean Companies for Apparent Violations of Iran Sanctions

On July 27, 2017, the OFAC announced that it reached a settlement agreement with two Singaporean companies, CSE TransTel Pte. Ltd (TransTel) and CSE Global Limited (CSE Global), in connection with 104 apparent violations of U.S. sanctions on Iran. According to the OFAC web notice, between June 2012 and March 2013, TransTel violated provisions of the International Emergency Economic Powers Act (IEEPA) and the Iran Transactions and Sanctions Regulations (ITSR) when it caused six financial institutions to engage in the unauthorized exportation or re-exportation of financial services from the United States to Iran. The transactions at issue involved agreement contracts between TransTel and Iranian companies to deliver and install telecommunications equipment for several energy projects in Iran and/or Iranian territorial waters. TransTel and its parent company, CSE Global, maintained a U.S. Dollar (USD) account with a non-U.S. financial institution located in Singapore. TransTel and CSE Global provided this Singaporean bank with a letter of assurance that it would not route any Iranian transactions through the bank. Subsequently, TransTel and CSE Global apparently routed 104 USD wire transfers through the Singaporean bank to third-party vendors associated with the Iran-related business, including several Iranian parties, totaling more than \$11,111,000. These transfers, which made no reference to Iran, thereby apparently caused U.S. financial institutions to export financial services indirectly to Iran.

OFAC evaluated several aggravating and mitigating factors in setting the settlement amount. In terms of aggravating factors, OFAC found that (1) TransTel materially misrepresented to its bank that it would not use its services for Iran-related business; (2) then-senior management had actual knowledge and played an active role in the conduct; (3) the conduct resulted in economic benefit to Iran; and (4) TransTel is a global and commercially sophisticated company. As for mitigating factors, OFAC considered that (1) TransTel had not had a prior OFAC violation; (2) the companies took remedial steps to ensure compliance with U.S. sanctions; and (3) both TransTel and CSE Global provided substantial cooperation during the course of OFAC's investigation.

OFAC states that this case highlights the compliance obligations of all individuals and entities that conduct business in OFAC-sanctioned jurisdictions and that process transactions directly or indirectly through the United States or involving U.S. companies, or U.S. origin goods, services, and technology. To this end, they caution parties to carefully consider representations and warranties made in agreements with financial institutions that provide access to the U.S. financial system to ensure that they are willing and able to act within the parameters of such agreements.

For additional information, please see the OFAC [web notice](#).

Two Iranian Nationals Charged for Illegally Hacking Software to Sell to Iran

On July 17, 2017, the United States Department of Justice (DOJ) unsealed an indictment against two Iranian nationals who allegedly conspired to export stolen software to Iran in violation of U.S. sanctions and export controls. According to the DOJ press release, in October 2012, the two individuals hacked the network of a Vermont company to steal software used to support aerodynamics analysis and design for projectiles. The U.S. government considers the software a "defense article" and cannot be exported outside the United States without a license issued by the U.S. Department of State.

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

DOJ Seeks Forfeiture of Thousands of Iraqi Artifacts Imported by Hobby Lobby

On July 5, 2017, DOJ announced that it had filed a civil complaint against Hobby Lobby Stores, Inc. (Hobby Lobby) demanding the forfeiture of thousands of ancient clay artifacts illegally smuggled from Iraq. The complaint alleges that in December 2010, Hobby Lobby executed an agreement to purchase 5,500 artifacts for \$1.6 million from a dealer in the United Arab Emirates. Hobby Lobby did not formally inspect the articles prior to purchase and did not pay the dealer directly for the artifacts - the money was instead wired to seven personal bank accounts held in the names of other individuals. When the artifacts were shipped to the United States, the documentation filed with U.S. Customs and Border Protection (CBP) falsely and misleadingly described the contents as "ceramic tiles" or "clay tiles (sample)" and listed the country of origin as Turkey. CBP intercepted five shipments, all of which contained the same information.

Hobby Lobby agreed to settle the matter with DOJ by consenting to a forfeiture of the artifacts. The company also agreed to adopt internal policies and procedures on importation of cultural property and agreed to train its personnel, hire qualified outside customs counsel and customs brokers, and submit quarterly reports to the government on any cultural property acquisitions for eighteen months.

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

[Back to top.](#)

EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

President Trump Extends Sudan Sanctions Review Period by Three Months

On January 13, 2017, President Obama issued Executive Order 13761 to revoke sanctions on Sudan effective July 12, 2017, provided that the incoming Secretary of State issued a report on or before this date finding that Sudan has cooperated in five key areas: countering terrorist groups, ending the threat of the Lord's Resistance Army, ending the government's offensive internal military operations, ending Sudan's destabilizing role in South Sudan, and improving humanitarian access.

Despite statements by the Government of Sudan asserting that Sudan has met these requirements, on July 12, 2017, President Trump issued a new executive order extending the review period set out by another three months. The action leaves in place the OFAC General License, established by the Obama administration on January 13, 2017, which authorizes all prohibited transactions involving Sudan, including transactions involving property in which the Government of Sudan has an interest. The new executive order also revokes provisions in Executive Order 13761 that required the Secretary of State to provide to the President an annual update report regarding whether the Government of Sudan has "sustained the positive actions" in the policy areas referenced above.

For additional information, see the State Department [news release](#), [Executive Order 13761](#), and [discussion](#) in the AG Trade Law blog. Background on the changes to the Sudanese Sanctions Program can also be found in the January 2017 [issue](#) of *Red Notice*.

OFAC Imposes Sanctions on President Maduro and Thirteen Venezuelan Officials Targeted for Undermining Venezuela's Democracy

On July 26, 2017, OFAC announced that it had placed thirteen current or former Venezuelan government officials on the Specially Designated Persons (SDN) List—a measure taken in accordance with Executive Order 13692 which authorizes sanctions against the Government of Venezuela for acts that undermine democracy. The designations were announced in response to the Venezuelan government's decision to proceed with elections for a National Constituent Assembly, a body that will be tasked with rewriting the Venezuelan constitution. The U.S. government has expressed concern that this process will be biased in favor of President Nicolas Maduro and will only serve to consolidate power in the hands of President Maduro's increasingly repressive regime. The individuals subject to sanctions are targeted as current or former officials connected with the election, government corruption, and/or efforts to use violence against opposition protesters.

On July 31, OFAC imposed sanctions on President Maduro himself following the elections.

For additional information, please see the OFAC July 26 [press release](#).

OFAC Releases New Cuba Sanctions FAQs Relating to President Trump's Cuba Announcement

As reported in last month's issue of *Red Notice*, the Trump Administration announced a tightening of U.S. sanctions on Cuba. This announcement was accompanied by a new set of Frequently Asked Questions (FAQs) addressing future changes in the Cuba sanctions program. This month, OFAC updated these FAQs that clarify limitations on group people-to-people travel. Specifically, these FAQs underscore that such travel will require individuals to be accompanied by an employee, consultant, or agent of the sponsoring organization, who will ensure that each traveler maintains a full-time schedule of educational exchange activities. The FAQs also state that a specific license will not be required for companies that sponsor group people-to-people travel, provided the travel falls within the scope of an existing general license and does not involve transactions with entities and subsidiaries included on a forthcoming State Department list.

For additional information, please see the [updated FAQs](#).

OFAC Issues Guidance on Annual Report of Blocked Property

On June 30, 2017, OFAC issued a reminder that September 30, 2017 is the deadline to submit an Annual Report of Blocked Property—a report detailing all property held by financial institutions pursuant to OFAC regulations. Along with the reminder, OFAC issued guidance specifying what information must be included in that report and general filing tips.

For additional information, please see the OFAC [press release](#) and guidance.

[Back to top.](#)

WRITING AND SPEAKING ENGAGEMENTS

If you would like to invite Akin Gump lawyers to speak at your company or to your group about anticorruption law, compliance, cybersecurity, enforcement and policy or other international investigation and compliance topics, please contact Mandy Warfield at mwarfield@akingump.com or +1 202.887.4464.

[Back to top.](#)

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