Akin Gump
STRAUSS HAUER & FELD LLP

Red Notice

A Monthly Update on Global Investigations and Prosecutions

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IN THIS ISSUE

ANTICORRUPTION DEVELOPMENTS

Dun & Bradstreet Agrees to Pay More than $9.2 Million to Resolve SEC FCPA Enforcement Action (But First to Receive Declination Under New DOJ Policy)

On April 23, the Dun & Bradstreet Corporation ("D&B"), a New Jersey-based provider of business information, submitted an Offer of Settlement to the Securities and Exchange Commission (SEC), resulting in an administrative Cease-and-Desist Order resolving the government's investigation of alleged violations of the Foreign Corrupt Practices Act (FCPA).

Specifically, the SEC's enforcement action alleges that, from 2006 through 2012, subsidiaries of D&B made

improper payments in order to obtain or retain business. The first subsidiary is D&B's China-based Dun & Bradstreet International Consultant (Shanghai) Co. Ltd. ("D&B China"). In 2006, D&B China formed a joint venture with Huaxia International Credit Consulting Co. Limited ("Huaxia") called "HDBC." According to the SEC's enforcement action, until mid-2012, HDBC continued Huaxia's practice of utilizing third parties to make improper payments to officials within China's State Administration for Industry and Commerce (AIC) to acquire business information that would not otherwise have been publicly available.

Separately, the SEC's enforcement action also alleges that D&B's Chinese subsidiary, Roadway, which it acquired in 2009, utilized independent vendors to collect data on Chinese citizens later sold for direct-marketing purposes. The SEC further alleges that D&B failed to adequately conduct due diligence on the business practices of the independent vendors to ensure that these vendors complied with the FCPA.

As part of the resolution, D&B has agreed to pay a civil monetary payment of $2 million, disgorge $6,077,820 in ill-gotten profits and pay $1,143,664 in prejudgment interest (for a total of approximately $9.2 million). The SEC specifically noted that the penalty took into consideration D&B's having voluntarily disclosed alleged improper conduct, as well as cooperating fully with the SEC in its investigation and taking appropriate remedial actions.

Notably, the Department of Justice (DOJ), implementing its November 2017 Corporate Enforcement Policy (previously covered in Red Notice), declined to bring an enforcement action, citing D&B's self-disclosure, cooperation, and remedial actions.

Read the SEC's Press Release here and the DOJ's Declination here. For more information, see coverage from *The Wall Street Journal* here, from *Law360* here and from the *FCPA Blog* here.

Guilty Pleas Obtained/Unsealed in Aruba Telecommunications Corruption Scheme

On April 13, Egbert Koolman, a Dutch citizen living in Miami, pleaded guilty to accepting improper payments in violation of the FCPA. Koolman is alleged to have been a product manager of the government-owned Servicio di Telecommunication di Aruba NV (aka Setar) who accepted the payments in return for using his position to award mobile-phone-related contracts. Additionally, the DOJ unsealed the December 2017 guilty plea of Miami businessman Lawrence W. Parker, who has been cooperating with the DOJ's investigation of the scheme.

As part of his plea, Koolman admitted to accepting $1.3 million in improper payments over 10 years. The scheme first came to light in 2016 as part of the disclosure through the Panama Papers of Koolman's ownership of several offshore companies. Similarly, Parker admitted to conspiring to pay more than $700,000 to an official at Setar identified as "Foreign Official A." Parker further acknowledged that his companies won nearly $24 million in mobile-phone orders from Setar.

Parker is scheduled to be sentenced on April 30, and the DOJ has requested that Parker's sentence be reduced from 60 months to 40 months because of his cooperation with U.S. authorities in this case. Koolman is scheduled to be sentenced on June 27.

Read the DOJ's press release here. For more information, see coverage from Reuters here, from the Miami Herald here and from the FCPA Blog here.

Associate of Macau Businessman Convicted in UN Bribery Case Pleads Guilty

On April 4, Julia Vivi Wang, a Chinese-born naturalized U.S. citizen, pleaded guilty to conspiracy to violate the FCPA by acting as go-between in a scheme to bribe the late former President of the General Assembly, John Ashe, and other United Nations officials. The DOJ alleged that Wang acted as intermediary for Chinese billionaire Ng Lap Seng, who sought to win support for the development and construction of a new U.N. conference center. Ng was convicted in July 2017 and is potentially facing more than six years in prison.

For more information, see coverage from *Reuters* here, from *Law360* here and from the *FCPA Blog* here.

U.S. Court Dismisses Suit Alleging that Failure to Report FCPA Investigation Violated Duties to Shareholders

On March 30, a judge for the U.S. Federal District Court for the Southern District of New York dismissed with prejudice a class action lawsuit brought on behalf of shareholders of Brazilian aerospace company Embraer. The suit claimed that Embraer's failure to reveal to its shareholders that several company executives had participated in a bribery scheme until announcing that U.S. authorities had declined to prosecute was a violation of a number of securities rules and laws, including making false statements. Embraer reached a deferred prosecution with the DOJ, and settled with the SEC, with a payment of $205 million in fines, disgorgement and interest in October 2016. The announcement of these agreements was the first time that the company revealed that it had uncovered corrupt activities among some of its executives, though it had previously notified shareholders that the investigation was taking place and that a negative outcome was possible. The court found that Embraer had given sufficient information by way of the disclosures that it had made of the investigation, and noted that a company was not duty-bound to disclose "uncharged, unadjudicated wrongdoing" under the relevant laws.

For more information, see coverage from The *Wall Street Journal* here, from *Law360* here and from the *New York*

Law Journal here. See previous coverage in Red Notice here.

Anticorruption Spotlight: World Bank Announces Debarments

On April 16, the World Bank (the "Bank") announced the debarment of Kenya-based Africa Railways Logistics Limited (ARLL) for two years. According to the Bank, ARLL had sought to improperly influence customs officials and procedures in connection with two International Finance Corporation (IFC)-financed projects related to railway materiel and logistics in Kenya and Uganda. Two related companies, Africa Railways Limited and Rift Valley Railways Kenya Limited entered conditional nondebarment agreements with the Bank. According to the Bank, this is its first debarment related to an IFC investment.

The debarment of ARLL 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.

Read the World Bank's press release here. For more information, see coverage from the *FCPA Blog* here.

Anticorruption Spotlight: SEC Whistleblower Awards

The SEC issued two whistleblower awards in April. The first, on April 5, for $2.2 million was for a whistleblower who first reported the misconduct to another agency, but later reported the same to the SEC. This was the first test of the so-called "safe harbor" under the Exchange Act for whistleblower reporting whereby the SEC will still grant an award even if information is reported to another agency first, as long as the SEC receives the same information from the whistleblower within 120 days of the initial report. This is key because, in order for a whistleblower to be eligible to receive an award, he or she must report original information to the SEC. Since agencies that receive such information pass it along to the relevant SEC offices, a subsequent report from a whistleblower of the same information could be seen as not from an original source. The safe-harbor rule means that the SEC will treat the information as first reported to the SEC when it was reported to another agency, provided that the whistleblower subsequently contacts the SEC.

Separately, on April 12, the SEC granted a whistleblower award of $2.1 million. By law, the SEC cannot disclose the identity of the whistleblower.

Read the SEC's press release and order for the April 5 award here and here. For more information about this award, see coverage from the *FCPA Blog* here. Read the SEC's press release and order for the April 12 award here and here.

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EXPORT CONTROL AND SANCTIONS ENFORCEMENT

Department of Commerce Denies Export Privileges for ZTE

On April 16, 2018, U.S. Secretary of Commerce Ross announced the denial of export privileges ("Denial Order") against Zhongxing Telecommunications Equipment Corporation ("ZTE Corporation") of Shenzhen, China, and ZTE Kangxun Telecommunications Ltd. ("ZTE Kangxun") of Hi-New Shenzhen, China (collectively, ZTE). Both ZTE Corporation and ZTE Kangxun now appear on the Department of Commerce's (DOC) Bureau of Industry and Security's (BIS) Denied Persons List.

This Denial Order follows ZTE's March 2017 combined civil and criminal penalty settlement and forfeiture totaling $1.19 billion for violations of U.S. export control laws and sanctions against North Korea and Iran. ZTE's 2017 settlement also included a seven-year suspended denial of export privileges that could be triggered if ZTE did not meet the terms of the agreement and/or if the company committed additional violations of the Export Administration Regulations (EAR). The Denial Order has activated the previously suspended denial of export privileges and will have a significant impact on both U.S. and non-U.S. companies.

For additional information, please see the DOC's press release and Denial Order and Akin Gump's Client Alert on this topic.

Bulgarian National Arrested for Conspiracy to Defraud the United States and Illegally Export Prohibited Articles to Syria

On April 11, 2018, the Department of Justice's (DOJ) National Security Division announced the arrest of Zhelyaz Andreev, a Bulgarian national, in connection with a conspiracy to defraud the U.S. government and violations of U.S. sanctions targeting Syria.

According to the press release, Andreev was charged with exporting dual-use goods to Syrian Arab Airlines ("Syrian Air"), a Specially Designated National (SDN). The Department of the Treasury's Office of Foreign Assets Control (OFAC) has blocked Syrian Air for transporting weapons and ammunition to Syria in conjunction with

Hizballah and the Iranian Revolutionary Guard Corps. According to court documents, Andreev worked with airline officials at the Bulgaria office of AW-Tronics, a Miami export company, which exported the dual-use goods to Syrian Air.

For additional information, read the DOJ's press release.

FedEx Settles Alleged Export Violations Resulting from Inadequate Screening

On April 24, 2018, FedEx Express of Memphis, Tennessee settled alleged violations of the EAR with BIS. Under the terms of the settlement agreement, FedEx agreed to pay a civil penalty of $500,000 and to hire a third party to audit its compliance with U.S. export controls for fiscal years 2017 to 2020 and submit the findings to BIS.

According to the charging documents, FedEx allegedly caused, aided or abetted 53 EAR violations between July 2011 and January 2012 by facilitating the export of civil aircraft parts and equipment used to manufacture electron microscopes to parties on the Entity List without the required BIS licenses. The designated parties were Aerotechnic France SAS, listed in connection with Iran transactions, and the Pakistan Institute for Nuclear Science and Technology, listed in connection with support for nuclear and missile activities in Pakistan.

BIS noted that, although the exporters provided name and address information, and FedEx had a system in place to screen this information, FedEx's screening system failed to identify names on the Entity List, unless they were an exact match, even if the address information was identical. As a result, the screening system did not flag that these transactions involved designated parties and presented export licensing issues.

For additional information, see the BIS Order, Settlement Agreement and Charging Documents.

Chinese Electronics Exporter Settles Alleged Violations of the EAR

On April 24, 2018, Weiming Zhang and his company, Seasia Enterprises, Inc., settled one alleged violation of the EAR. Under the terms of the settlement agreement, Zhang and Seasia agreed to a civil penalty of $100,000 and a five-year export ban, the latter of which, along with $50,000 in penalties, is suspended pending compliance with the order during a five-year period of probation.

According to the charging documents, Zhang and Seasia conspired to violate the EAR by exporting controlled electronics equipment without a license and concealing the controlled shipments. Zhang and Seasia represented the activities as domestic transactions to U.S. manufacturers and deliberately relabeled packaging to falsely identify the contents of their shipments. In addition, Zhang and Seasia transshipped the equipment to China via Hong Kong while falsely claiming that Hong Kong was the final destination.

For additional information, see BIS Order, Settlement Agreement and Charging Documents.

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EXPORT CONTROL, SANCTIONS AND CUSTOMS DEVELOPMENTS

OFAC Sanctions Leading Russian Businessmen, Government Officials and Companies

On April 6, 2018, OFAC placed on the SDN List seven prominent Russian businessmen, 12 companies that they own or control, 17 senior Russian government officials, and a state-owned Russian weapons trading company and its subsidiary Russian bank.

In connection with the designations, OFAC issued two general licenses to allow U.S. persons (i) to divest or transfer debt, equity or other holdings of three specific sanctioned entities to non-U.S. persons until May 7, 2018 (and to facilitate such divestment or transfer by non-U.S. persons); and (ii) to wind down operations, contracts or other agreements involving 12 specific sanctioned entities (and entities they own by 50 percent or more) until June 5, 2018. Importantly, these general licenses do not allow U.S. persons to distribute or otherwise provide funds to sanctioned persons.

Subsequently, on April 23, 2018, OFAC issued an additional general license authorizing U.S. persons to engage in specified transactions related to maintenance or wind-down of operations, contracts or other agreements involving key Russian aluminum producer United Company RUSAL PLC (RUSAL), an SDN, until October 23, 2018. The previous general license applicable to RUSAL had imposed a June 5, 2018, deadline on such activities.

For additional information on the April 6 action, read OFAC's press release and Akin Gump's Client Alert. For additional information on the April 23 action, read OFAC's press release and Akin Gump's Client Alert. Akin Gump has also prepared an additional Client Alert analyzing the implications of these designations on investment funds.

State Releases Factsheet Concerning UAS Export Policy

On April 19, 2018, the State Department announced that the President approved a new policy on the export of unmanned aerial systems (UAS) that replaces the previous policy from 2015. According to the statement, the new policy advances five objectives with respect to UAS transfers: (i) increasing trade opportunities for U.S. companies, (ii) bolstering partner security and counterterrorism capabilities, (iii) strengthening bilateral relationships, (iv) preserving U.S. military advantage and (v) preventing the proliferation of weapons of mass destruction delivery systems. The policy also sets out various "transfer conditions" for armed, unarmed and civil UAS transfers. Finally, the policy identifies certain end-use assurances, end-use monitoring and additional security conditions, and principles of proper use that will apply to military UAS transfers.

For additional information, see the State Department's press release.

DHS Publishes 11 FAQs on CAATSA's North Korean Forced-Labor Provisions

On March 30, 2018, the Department of Homeland Security (DHS) released eleven Frequently Asked Questions (FAQs) regarding Title III, Section 321(b) of the Countering America's Adversaries Through Sanctions Act (CAATSA), which prohibits the importation of merchandise produced with the forced labor of North Korean nationals or citizens. The FAQs clarify the following:

- The "clear and convincing evidence" standard used to rebut the presumption of forced labor "generally means that a claim or contention is highly probable."
- Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) "may consider a company's due diligence" when contemplating engaging in an enforcement action.
- Import transactions that do not directly violate the forced-labor presumption i.e., the presumption that significant goods made by North Korean nationals or citizens are forced-labor goods prohibited from importation under the Tariff Act of 1930 (19 U.S.C. § 1307), may nevertheless violate other provisions of CAATSA or other U.S. laws and regulations.

The FAQs also provide some guidance on how to ensure compliance with the forced-labor provisions, including specific diligence efforts, information resources and reporting tools.

More recently, on April 13, 2018, officials from CBP; ICE; and the departments of State, Treasury and Labor held a joint conference on Section 321(b) at which they addressed various questions from industry stakeholders, including enforcement and compliance-related issues discussed in the FAQs.

For additional information, read DHS's FAQs here.

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WRITING AND SPEAKING ENGAGEMENTS

On May 15-16, Kevin Wolf will be speaking at the BAE Systems Compliance Conference in Surrey, U.K.

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.

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