

Red Notice

A monthly update on global investigations and prosecutions

Akin Gump
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ANTICORRUPTION DEVELOPMENTS

DOJ Unseals Indictment of Two More Individuals Connected With PDVSA Corruption Scheme

On February 26, 2019, the U.S. Department of Justice (DOJ) announced the unsealing of an indictment against two individuals alleged to have been involved in a corrupt payment scheme to secure contracts and other benefits with Venezuela's state-owned energy company, Petroleos de Venezuela S.A. (PDVSA). Specifically, the DOJ alleges that both individuals, Rafael Enrique Pinto Franceschi ("Pinto") and Franz Herman Muller Huber ("Muller"), Venezuelan citizens and Florida residents, worked for the same unnamed U.S.-based PDVSA supplier—Pinto as a sales representative and Muller as president of the company. Pinto and Muller are alleged to have made payments to PDVSA officials in exchange for insider information and assistance for their company in securing PDVSA contracts between 2009 and 2013. The DOJ further alleges that the men channeled a percentage of payments from PDVSA to the company back to the PDVSA officials involved in the scheme using a Panamanian shell company and a Swiss Bank account. Pursuant to the indictment, DOJ has charged the individuals with several counts of conspiracy to violate, among other statutes, the Foreign Corrupt Practices Act (FCPA), as well as wire fraud. Two of the three PDVSA officials to whom Pinto and Muller are alleged to have made improper payments, Jose Camacho and Ivan Guedez, have already pleaded guilty. The DOJ first brought charges relating to the PDVSA improper payment scheme in late 2015, and as previously covered in several Red Notice editions (most recently in [November 2018](#)), the DOJ has since indicted 21 individuals, 15 of whom have pleaded guilty to date.

More information

- [DOJ Press Release](#)
- [Indictment - Pinto and Muller](#)
- [DOJ Enforcement Action: Jose Camacho](#)
- [FCPA Professor](#)

New York Real Estate Broker Ordered to Pay Restitution for FCPA Violation

On February 25, 2019, Andrew Simon, a commercial real estate broker, was ordered to pay \$500,000 in restitution after pleading guilty to one count of conspiracy to violate the Foreign Corrupt Practices Act (FCPA). Simon first entered a plea of not guilty to a superseding indictment filed against him on March 30, 2018, but later changed his plea to guilty in documents that remain under seal. As covered previously by [Red Notice](#), the superseding indictment alleged that Simon conspired with two other real estate brokers, Joo Hyun Bahn and San Woo, to channel improper payments through a blogger named Malcolm Harris in order to induce a sovereign wealth fund in the Middle East to purchase the Landmark 72 building in Hanoi, Vietnam. Instead, Harris deceived the brokers by posing as an agent of a Qatari official, but never intended to pass along the \$500,000 he received in improper payments. The DOJ alleged that the scheme was orchestrated by Bahn's father, Ban Ki Sang, who was also indicted.

Bahn was sentenced to six months for his role in the conspiracy in September 2018 and agreed to pay \$225,000 to the SEC to settle civil FCPA violations. Harris pleaded guilty for his role in the offense in June 2017 and was sentenced to 42 months in jail.

More information

- [Restitution Order](#)
 - [Superseding Information](#)
 - [The FCPA Blog](#)
-

Micronesian Official Arrested in Hawaii in Money Laundering Scheme

On February 12, 2019, the DOJ unsealed charges against Micronesian citizen Master Halbert, the Assistant Secretary of Civil Aviation in the Federated States of Micronesia (FSM) Department of Transportation, Communications, and Infrastructure. In his role as a government official, Halbert oversaw FSM's aviation programs, including management of its airport. He is alleged to have participated in a scheme to obtain engineering contracts from FSM in exchange for improper payments and has been charged with one count of conspiracy to commit money laundering. The allegations against Halbert date back to 2010 and include claims that he sought thousands of dollars in cash payments and requested that he receive a vehicle for his personal use that could later be sold in order to make further improper payments. A criminal complaint was filed against Halbert under seal on January 24, 2019, and Halbert was arrested in Honolulu, Hawaii, on February 11, 2019.

Halbert's charges relate to the prosecution of Frank James Lyon, a U.S. citizen and co-owner of Hawaii-based engineering firm Lyon Associates, Inc. On January 22, 2019, Lyon pleaded guilty to conspiring to make corrupt payments to Micronesian government officials, including Halbert, in order to secure contracts worth almost \$8 million.

More information

- [DOJ Release](#)
 - [Halbert Complaint](#)
 - [The FCPA Blog](#)
-

Former Union President Sentenced to 58 Months in Prison for Receipt of Improper Payments

On February 8, 2019, U.S. District Judge Alvin K. Hellerstein sentenced Norman Seabrook, the former president of the labor union Correction Officers' Benevolent Association (the "Union"), to 58 months in prison for his role in an improper payments scheme. A jury found that Seabrook directed \$20 million of the 20,000-member Union's money to Platinum Partners, a now-defunct hedge fund, in exchange for \$60,000 in cash and the promise of more money. Platinum Partners went bankrupt in 2016 and lost 95 percent of the Union's

money. Seabrook was ordered to pay \$19 million in restitution for the Union's loss.

More information

- [Law360 Post-Sentencing](#)
 - [The New York Times](#)
 - [Law360 Pre-Sentencing](#)
-

Petrofac Executive Pleads Guilty to Corrupt Payment Scheme

On February 6, 2019, the U.K. Serious Fraud Office (SFO) announced that David Lufkin, a former executive at a subsidiary of U.K.-based Petrofac Limited ("Petrofac"), pleaded guilty to 11 counts of bribery for his role in an improper payments scheme. Lufkin, previously Global Head of Sales for Petrofac International Limited, admitted to making corrupt payments with the goal of influencing contract awards for which Petrofac was competing in Iraq and Saudi Arabia. SFO has been investigating Petrofac since May 2017 and alleges that beginning in 2012, Petrofac made improper payments in excess of \$6 million in Iraq for contracts worth more than \$730 million, and made approximately \$45 million in improper payments in Saudi Arabia for contracts worth more than \$3.5 billion.

More information

- [SFO press release](#)
 - [The FCPA Blog](#)
-

Former CEO of Canadian Engineering Firm Pleads Guilty to Making Corrupt Payments

On February 1, 2019, Pierre Duhaime, the former CEO of Canada's largest construction management and engineering firm, SNC-Lavalin, pleaded guilty to helping a public servant commit breach of trust. Duhaime's trial was set to begin on February 4, 2019, on allegations that he willfully ignored indications of corruption related to SNC-Lavalin's \$1.3 billion contract to construct a super-hospital in Montreal. In his plea, Duhaime did not admit knowledge or authorization of any improper payments, and 14 additional charges against him, including fraud, conspiracy and forgery, were dropped. Duhaime has been sentenced to 20 months of house arrest, 240 hours of community service and was ordered to make a \$200,000 donation to a crime victim compensation fund.

Duhaime left his position of CEO of SNC-Lavalin in 2012 after an internal investigation found that he approved \$56 million in improper payments to undisclosed agents. SNC-Lavalin has been under investigation by Canadian authorities since 2012 for alleged corrupt payments to Libyan officials to secure engineering contracts.

More information

- [The FCPA Blog](#)
 - [CBC News](#)
-

Anticorruption Currents: World Bank Debars Two Nigerian Waste Management Companies and Their Owner

On February 6, 2019, the World Bank announced that two Nigerian-based waste management firms, Rojoke CNE Services Ltd. ("Rojoke") and CNE Environmental & Waste Services Ltd. (CNE), and their owner, Robinson Ekenedilichukwu Ojoko, were debarred from World Bank-financed projects for five years. Ojoko and his companies were debarred for engaging in fraudulent practices during the procurement of two waste collection contracts by falsifying documents and misrepresenting the ownership interest of Ojoko, who serves as an employee of the Nigerian Delta state government.

This 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. The list of all World Bank debarred entities and individuals is available [here](#).

More information

- [World Bank Press Release](#)
- [The FCPA Blog](#)

EXPORTS, SANCTIONS AND CUSTOMS ENFORCEMENTS

OFAC Penalizes German Chemical Company for Violations of Cuba Sanctions

On February 14, 2019, the United States Department of the Treasury's Office of Foreign Assets Control (OFAC) announced a \$5,512,564 penalty against AppliChem GmbH ("AppliChem"), a German company that manufactures chemicals and reagents for the pharmaceutical and chemical industries, for 304 violations of the Cuban Assets Control Regulations (CACR).

In 2012, Illinois Tool Works, Inc. (ITW) purchased AppliChem. During the preceding diligence and negotiations, ITW identified references to the target's business with sanctioned countries and demanded that AppliChem, whose former owners were to continue to manage the company after closing, cease all transactions with Cuba. In January 2012 and April 2012, ITW sent repeated warnings to AppliChem's managerial team that Cuba business must cease. ITW disclosed AppliChem's previous transactions with Cuba in a voluntary self-disclosure to OFAC in 2013, and OFAC issued a cautionary letter in 2015.

Nonetheless, in January 2016, ITW became aware through an anonymous report to its ethics helpline that AppliChem had been continuing to transact with Cuba. Between May 2012 and February 2016, it fulfilled 304 invoices worth \$3.4 million for shipments to Cuba in violation of the CACR. AppliChem did so through an established process to hide the true destination of the shipments and use an external company and consulting group outside of ITW's oversight. This process was referred to internally as the "Caribbean Procedures."

ITW subsequently filed a second voluntary self-disclosure with OFAC, which concluded that the apparent violations constitute an egregious case. In determining the settlement amount, OFAC weighed various aggravating and mitigating factors. Aggravating factors included that AppliChem's management acted willfully, written procedures were used to engage in a pattern of conduct in violation of the CACR, AppliChem's \$3.4 million in sales to Cuba over five years significantly harmed the CACR objective of maintaining a comprehensive embargo, and AppliChem is a large, sophisticated company. Mitigating factors included ITW's cooperation with OFAC, which included filing a voluntary self-disclosure, promptly responding to requests for information, performing a thorough internal investigation and signing a tolling agreement.

More information

- [OFAC Settlement Agreement](#)
- [OFAC Web Notice](#)

Connecticut Company Settles Potential Civil Liability for Apparent Violations of the Iranian Transactions and Sanctions Regulations

On February 21, 2019, OFAC announced a \$506,250 settlement with ZAG IP, LLC (formerly known as ZAG International, LLC) (ZAG), a Connecticut company, for five apparent violations of the Iranian Transactions and Sanctions Regulations (ITSR). OFAC determined that ZAG voluntarily self-disclosed the apparent violations to OFAC and that the apparent violations constitute a non-egregious case.

Between July 2014 and January 2015, ZAG purchased cement materials of Iranian origin in five separate transactions from a company located in the United Arab Emirates (UAE).

The aggregate value of the five transactions was \$14,495,961. While the UAE company incorrectly informed ZAG that the cement materials were not subject to U.S. sanctions related to Iran, ZAG knew that the materials were sourced from Iran. ZAG further resold the materials and transported them to a company in Tanzania.

In determining the settlement amount, OFAC weighed various aggravating and mitigating factors. Aggravating factors included ZAG acted with reckless disregard for sanctions requirements; ZAG's senior management was aware of the transactions; the transactions conferred significant economic benefits to Iran; ZAG is a sophisticated, global company with experience and expertise in international transactions; and ZAG did not have a sufficient compliance program in place at the time of the transactions. Mitigating factors included that ZAG had not received a Penalty Notice or Finding of Violation from OFAC in the preceding five years; ZAG was a small business entity as defined by the U.S. Small Business Administration's standards; ZAG undertook significant remedial measures by conducting a thorough internal investigation and enhancing its sanctions compliance policy and procedures, including by developing a compliance manual and appointing a sanctions compliance officer; and ZAG cooperated with OFAC's investigation by providing all relevant information and timely responding to requests for information. OFAC determined that the apparent violations constitute a non-egregious case.

More information

- [OFAC Settlement Agreement](#)
 - [OFAC Web Notice](#)
-

Settlement Agreement Between the OFAC and Kollmorgen Corporation

On February 7, 2019, OFAC announced that the Kollmorgen Corporation ("Kollmorgen"), a company based in Radford, Virginia, agreed to pay \$13,381 to settle potential civil liability for its Turkish affiliate, Elsim Elektrotechnik Sistemler Sanayi ve Ticaret Anonim Sirketi ("Elsim"), for six apparent violations of the ITSR. According to OFAC, on six occasions between July 2013 and July 2015, Elsim serviced machines containing motion control products that were located in Iran. Elsim also provided products, parts or services valued at \$14,867 with knowledge that they were destined for Iranian end-users.

Kollmorgen acquired Elsim in 2013. In the course of its pre-acquisition due diligence, Kollmorgen determined that Elsim had previously made sales to, and had customers in, Iran. Accordingly, Kollmorgen completed a wide-range of measures to ensure that Elsim complied with U.S. sanctions post acquisition. These included reviewing Elsim's customer database, conducting trainings and issues warnings regarding ITSR compliance, and requiring certification from Elsim's senior management that no Elsim products or services were being sent or provided to Iran.

Nonetheless, Elsim continued to willfully dispatch employees to Iran to fulfill services agreements and completed other transactions. Elsim management reportedly threatened to fire employees if they refused to travel to Iran and directed returning employees to falsify corporate records by listing the travel to Iran as vacation rather than business-related. Additionally, upon being notified of an internal investigation by Kollmorgen's outside counsel into Iran-related activities, Elsim managers attempted to obstruct the investigation by instructing employees to erase references to Iran from company records.

In determining the settlement amount, OFAC weighed various aggravating and mitigating factors. Aggravating factors included Elsim's willful provision of goods and services to Iran, Elsim management's knowledge of and direction to employees to travel to Iran, Elsim management's attempts to conceal Iran-related activity by falsifying records, and the conferring of economic benefit upon Iran. Mitigating factors included that neither Kollmorgen nor Elsim had received a Penalty Notice or Finding of Violation from OFAC in the five years preceding July 2013, Kollmorgen cooperated with OFAC by conducting an extensive internal investigation and submitting a comprehensive voluntary self-disclosure to OFAC, and Kollmorgen's extensive preventative and remedial conduct. OFAC determined that the apparent violations constitute a non-egregious case.

In addition, in an unprecedented action, OFAC concurrently designated a Turkish National

as a Foreign Sanctions Evader (FSE) in connection with this civil enforcement action. OFAC added Evren Kayakiran (“Kayakiran”), a Turkish national, to the Foreign Sanctions Evader List (FSE List) pursuant to Executive Order (E.O.) 13608, which targets efforts by foreign persons to engage in activities intended to evade U.S. economic and financial sanctions with respect to Iran and Syria. According to OFAC, Kayakiran was the former managing director of Elsim and directed employees to violate sanctions against Iran and then attempted to conceal the violations. As a result of the designation, all transactions or dealings involving Kayakiran, direct or indirect, in or related to goods, services or technology in or intended for the U.S., or provided by or to a U.S. person, are prohibited. Additionally, U.S. financial institutions must reject payments involving Kayakiran.

More information

- [OFAC Enforcement Information](#)
 - [OFAC Press Release](#)
 - [OFAC Web Notice](#)
-

Tobacco Cos. Dodged Cigar Import Excise Taxes, CBP Says

On February 1, 2019, U.S. Customs and Border Protection (CBP) filed a lawsuit in the U.S. Court of International Trade against two tobacco companies to recover over \$364,000 in unpaid federal excise taxes on cigar imports. CBP’s complaint alleges that, between February 4, 2014, and July 13, 2014, Kebuth Inc. (“Kebuth”), a Nebraska corporation, acted as a pass-through entity for Good Times USA LLC (“Good Times”), a Florida company, to purchase and import 21 shipments of large cigars from Rolinda Investments (“Rolinda”), a cigar manufacturer and exporter in the Dominican Republic, without paying the proper amount of excise taxes.

According to the complaint, Kebuth, the importer of record, and Good Times, named as consignee for each entry, had an agreement whereby Kebuth provided two invoices to Good Times for each cigar shipment from Rolinda. One receipt itemized products and costs and another included federal excise taxes, U.S. Department of Agriculture tobacco buyout payments and other fees incident to entry. Good Times allegedly wired funds to Kebuth for the cost of the first invoice plus commission, then it wired funds to cover the second invoice after confirming the first fund transfer had been passed to Rolinda. CBP alleged in its complaint that Kebuth and Good Times made false declarations on entries as to the prices at which the cigars were sold by failing to disclose this “special arrangement” and instead basing the value of the merchandise for excise tax purposes on transaction value, which is only appropriate for arm’s-length transactions. CBP also alleged that, by using transaction value at the time of entry despite not qualifying for that type of treatment, Good Times and Kebuth made “material false statements.”

More information

- [Law360](#)
 - [Complaint](#)
-

e.l.f. Cosmetics, Inc. Settles Potential Civil Liability for Apparent Violations of the North Korea Sanctions Regulations

On February 7, 2019, OFAC announced that e.l.f. Cosmetics, Inc. (ELF), a cosmetics company headquartered in California, agreed to pay \$996,080 to settle potential civil liability for apparent violations of the North Korea Sanctions Regulations (NKSr). According to OFAC, between April 2012 and January 2017, ELF imported 156 shipments of fake eyelash kits from two suppliers located in China that contained materials sourced from the Democratic People’s Republic of Korea (“North Korea”). The value of the shipments totaled \$4.4 million.

In determining the settlement amount, OFAC weighed various aggravating and mitigating factors. Aggravating factors included that the apparent violations may have resulted in U.S.-origin funds coming under the control of the North Korean government, ELF is large

and commercially sophisticated company engaged in a high volume of international trade, and ELF had a non-existent or inadequate compliance program at the time of the alleged violations and appeared not to have exercised sufficient supply chain due diligence. Mitigating factors included an apparent lack of actual knowledge among ELF personnel of the conduct leading to the apparent violations, ELF had not received a Penalty Notice or Finding of Violation from OFAC in the preceding five years, the activity at issue did not constitute a significant part of ELF's business activities, and ELF cooperated with OFAC, including by immediately disclosing the activity, signing a tolling agreement and responding thoroughly to OFAC's request for additional information. OFAC determined that the apparent violations constitute a non-egregious case.

More information

- [OFAC Enforcement Information](#)
- [OFAC Web Notice](#)

EXPORTS, SANCTIONS AND CUSTOMS DEVELOPMENTS

OFAC Sanctions Venezuelan State-Owned Energy Company PdVSA, Releases New General Licenses and FAQs for Venezuela Sanctions Regime

On January 28, 2019, OFAC designated Petróleos de Venezuela, S.A. (PdVSA) on the Specially Designated Nationals and Blocked Persons List (SDN List). As a result of this designation, U.S. persons are prohibited from engaging in nearly all dealings with PdVSA, absent authorization from OFAC. Together with this designation, OFAC issued eight general licenses authorizing certain transactions by U.S. persons that involve PdVSA and amended an existing general license authorizing transactions involving certain Venezuelan sovereign bonds. Following the designation, OFAC offered additional guidance: on January 31, 2019, OFAC issued 11 new Frequently Asked Questions (FAQs) in connection with the PdVSA designation and amended two existing FAQs; and on February 1, 2019, OFAC issued two amended general licenses, along with two related FAQs.

As a result of PdVSA's designation as an SDN, U.S. persons are generally prohibited from engaging in any transactions or dealings involving PdVSA or its property or interests in property. Additionally, U.S. persons must block any property or interests of PdVSA that are in, or come into, their possession or control. These restrictions apply not only to PdVSA but also to any entity in which PdVSA has a direct or indirect ownership interest of 50 percent or more ("PdVSA Entities").

In addition, non-U.S. persons can also be exposed to potential "secondary" sanctions for engaging in certain business involving PdVSA. Specifically, E.O. 13850 permits (but does not require) the Secretary of the Treasury, in consultation with the Secretary of State, to add to the SDN List any person determined to "have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of" PdVSA Entities or determined "to be owned or controlled by, or to have acted or purported to act for or on behalf of" PdVSA Entities.

Companies with business that intersect with PdVSA or the Government of Venezuela—particularly securities traders and energy companies—should be mindful that they do not engage in transactions that violate restrictions under this complex sanctions regime.

More information

- [Akin Gump February 6 Client Alert](#)
- [Akin Gump February 13 Client Alert](#)
- [OFAC January 28 Press Release](#)
- [OFAC January 28 Designation and Issues of General Licenses](#)
- [OFAC January 31 FAQs](#)
- [OFAC February 1 Issuance of General Licenses and FAQs](#)

- [OFAC Issues Amended General Licenses and Guidance Concerning Dealings in Bonds of the Government of Venezuela and PdVSA Securities](#)
- [OFAC Sanctions Venezuelan State-Owned Energy Company PdVSA, Releases New General Licenses and FAQs for Venezuela Sanctions Regime](#)
- [New Executive Order Seeks to Expand Buy American Requirements Imposed on Federally Funded Infrastructure Projects](#)

WRITING AND SPEAKING ENGAGEMENTS

On April 25, 2019, [Kevin Wolf](#) will present at the annual Export Control Coordinators Organization on export controls issues relevant to U.S. Department of Energy employees, and DOE contractors and subcontractors.

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 Jaime Sheldon at +1 212.407.3026 or [email](#).

[More information](#) for lawyers in the global investigations and compliance practice.

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