

Akin Gump

STRAUSS HAUER & FELD LLP

Red Notice

A Monthly Update on Global Investigations and Prosecutions



NOVEMBER 2013

INTRODUCTION

Welcome to the November 2013 edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP.

On the anticorruption front, a Swiss tech company's former exec is charged in the US related to allegations of long-running bribery schemes in China; a US company agrees to pay an eight figure settlement to close an FCPA case; the World Bank's investigative arm reveals that it may be very actively enforcing its anti-corruption guidelines in the coming year; and a bribery scandal involving US Navy officers costs an Asia firm over \$200 million in government contracts.

In export control and sanctions enforcement news, a Turkish trading company pays a three quarters of a million USD fine, a Swedish company pays a USD 125,000 fine and a UAE finance firm pays a USD 1.5 million fine for separate and unrelated violations of the Iranian Transactions and Sanctions Regulations (ITSR); a Singapore company is folded into a denial order initially levied against its owner; a California manufacturer settles allegations of violations of both the ITSR and the Cuban Assets Control Regulations; and the Bureau of Industry and Security reaches settlements with two companies for their respective alleged violations of the Export Administration Regulations.

Finally, developments in export control and sanctions law include the implementation of the first set of final rules in the President's Export Control Reform Initiative; a court decision that could potentially make export license information available under Freedom of Information Act requests; and publication by the Bureau of Industry and Security of a final rule aimed at clarifying elements of the Commerce Control List.

Thank you as always for reading *Red Notice*.

SPEAKING ENGAGEMENTS

Partners [Paul Butler](#) and [Chuck Connolly](#) presented on the Foreign Corrupt Practices Act at the Institute of Finance & Management's Controller's Summit in Las Vegas, NV earlier this month, and new partner [Steven Reich](#) spoke at the National Association of Criminal Defense Lawyers' 9th Annual Defending the White Collar Case Seminar: In & Out of Court, in Washington, DC.

If you would like to invite Akin Gump Strauss Hauer & Feld LLP lawyers to speak at your company or to your group about anticorruption law, compliance, enforcement and policy or other international investigation and compliance topics, please contact Mandy Warfield at mwarfield@akingump.com or +1.202.887.4464.

ANTICORRUPTION DEVELOPMENTS

Swiss Tech Company's Former Executive Indicted on FCPA Charges

In early October 2013, a former executive with Maxwell Technologies, Inc. ("Maxwell") was charged in the United States for participating in a six year conspiracy to bribe officials at state-owned and state-controlled companies in China (*United States v. Riedo*, No. 13-CR-03789 (S.D. Cal.)). Alain Riedo, former General Manager of Maxwell's Switzerland unit, allegedly paid the state companies' officials to win contracts for Maxwell to provide electronic storage devices in violation of the Foreign Corrupt Practices Act (FCPA). In 2011, California-based Maxwell Technologies paid over USD 14 million to resolve a Securities and Exchange Commission and Department of Justice (DOJ) probe into its role in the China bribery scheme. A Maxwell spokesperson says that although Riedo has not been with the company since 2009, Maxwell's liability insurance will pay for Riedo's defense. According to DOJ, Riedo remains at large. Read [more](#) at *Bloomberg*.

U.S. Medical Device Company Settles FCPA Charges for USD 13.3 Million

Michigan-based medical device firm Stryker Corp. ("Stryker") reached a settlement with the Securities and Exchange Commission (SEC) in late October 2013 to resolve a Foreign Corrupt Practices Act (FCPA) investigation into the company's subsidiaries in Latin America and eastern Europe. The SEC's investigation was first disclosed by the company in 2007 and involved the company's alleged payment of approximately USD 2.2 million to foreign government officials. The allegations—which Stryker has neither admitted nor denied in its agreement with the SEC—cite instances of illegal payments to win or retain business on behalf of Stryker's operations in Mexico, Argentina, Greece, Romania and Poland. The company's Poland entity allegedly paid a total of USD 460,000 in 32 illegal payments for business in that country, including a Stryker-provided United States and Aruba vacation for a hospital director and her spouse. In another allegation, Stryker's Mexico business purportedly paid USD 46,000 to an official at a local agency with the help of its outside counsel. According to the SEC, the Stryker subsidiary asked the law firm to make the payment to the agency official, and the law firm subsequently billed the company for unperformed legal services in the amount of the payment. Stryker's settlement includes USD 7.5 million in disgorgement of profits, USD 2.2 million in interest, and a USD 3.5 million penalty. In a statement, a company spokesperson said that Stryker has also enhanced its anticorruption compliance program. Read the SEC's [administrative order](#), the SEC's [release](#) and *The Wall Street Journal's* [article](#) on the Stryker settlement.

World Bank Report Shows 41 Active Corruption Investigations

The World Bank's Integrity Vice Presidency (INT), the bank unit dedicated to investigating and prosecuting corruption and other illicit practices in bank-financed projects, released its annual report in October, which shows that INT is currently involved in 41 active corruption investigations. In addition, INT found substantial evidence to support 15 cases in FY13 where corrupt practices were the primary type of misconduct under investigation. When INT substantiates an allegation of corrupt practices, the unit's principal function is to initiate sanctions proceedings, a process through which the firm or firms involved are debarred from further business performed in connection with World Bank-financed development projects for a period of time and/or until the firm can show improvements to its compliance program. In recent years, INT has strengthened its cooperation with national law enforcement authorities and refers cases to local authorities when it uncovers violations of national laws. Last year, ten cases that INT referred to national authorities prompted authorities to open new investigations, and an INT referral to Swedish authorities has already resulted in convictions. Similarly, national authorities also provide INT with new information and referrals, and INT regularly opens investigations based on allegations provided by national authorities. According to INT, these include instances where the U.S. Department of Justice uncovers information during a Foreign Corrupt Practices Act investigation that touches upon a bank-financed development project. For instance, INT's FY13 report claims that it is wrapping up two investigations spawned by national authorities' referrals involving two companies executing bank-financed projects valued at over USD 41 million. Read INT's annual report [here](#).

U.S. Government Debars Singapore Company for Allegedly Bribing U.S. Navy Officials

Singapore-based Glenn Defence Marine Asia Ltd. (GDMA) was debarred by the U.S. government earlier in October, terminating the firm's nearly USD 205 million in contracts with the Navy, after charges were filed in federal court alleging that GDMA conspired to bribe multiple U.S. Navy officials to enhance its business with the Navy. GDMA held contracts with the Navy to provide services for Navy ships, such as security, refueling and waste removal when those ships visited ports with GDMA service facilities. According to the charges, GDMA's owner, Leonard Glenn Francis, provided a Navy commander with prostitutes, concert tickets and travel in exchange for steering Navy vessels to ports in the Pacific Rim with GDMA facilities. Read more on the Navy bribery scandal at the [Washington Post](#) and [FCPA Blog](#).

California Pipe Manufacturer Agrees to Settlement with OFAC of More than USD 400,000

On October 24, 2013, Ameron International Corporation (“Ameron”), a cement pipe manufacturer based in California, agreed to a settlement of USD 434,700 to resolve allegations by the Office of Foreign Assets Control (OFAC) that it violated the Iranian Transactions and Sanctions Regulations (ITSR) and the Cuban Assets Control Regulations. OFAC alleged that Ameron had been engaged in a number of activities involving Iran or Iranian companies between March 2005 and October 2006, including approving expenditure requests to purchase materials for an Iranian project; referring to foreign subsidiaries business opportunities in which it was barred from participating under the ITSR; and providing materials to a Dutch subsidiary with knowledge that the materials were destined for a company in Iran. In addition, between 2005 and 2006, Ameron allegedly made sales of concrete pipes to a consortium including a Cuban entity. The apparent violations were regarded as non-egregious by OFAC, but Ameron did not voluntarily self-disclose any of the apparent violations to OFAC. OFAC also faulted Ameron for having an inadequate compliance program and demonstrating “reckless disregard” for sanctions requirements. Read the OFAC [enforcement action](#) and [press coverage](#).

Swedish Firm Settles Allegations of Violations of the ITSR

KMT Group AB (“KMT”), of Stockholm Sweden, on October 25, 2013 reached a settlement of USD 125,000 with the Office of Foreign Assets Control (OFAC) for alleged violations of the Iranian Transactions and Sanctions Regulations (ITSR) by company subsidiaries. The subsidiaries—one based in the United States, the other in Germany—worked in concert in 2009 as, respectively, the manufacturer of pipe cleaning units and the sales agent of those units, to export pipe cleaning units from the United States to Germany with the intention of reexporting the materials to South Pars Industrial Gas Complex in Iran. The attempted reexport was blocked, and the items were seized by U.S. Customs and Border Protection upon their redelivery to the United States. Although the base penalty for these violations was USD 500,000, OFAC considered the alleged violations to be non-egregious, as reflected in the fact that KMT was only fined USD 125,000. Read the OFAC [enforcement action](#).

UAE Investment Firm Fined for Violations of the ITSR

On October 21, 2013, the Office of Foreign Assets Control (OFAC) imposed a USD 1.5 million penalty against Alma Investment LLC (“Alma”), a UAE-based investment and finance company. OFAC alleged that, between September 2009 and February 2010, Alma was the origination point of a number of funds transfers—totaling more than USD 100,000—that were processed through United States financial institutions for the benefit of individuals in Iran. The Iranian Transactions and Sanctions Regulations prohibit such funds transfers, as they constitute direct or indirect exports of services from the United States to Iran. The amount of the penalty, which was not discounted from the base penalty, reflects OFAC’s conclusion that Alma’s actions were both reckless and made with the knowledge of management. Read the Department of the Treasury [enforcement information](#).

Two Companies Settle with BIS Following Initiation of BIS Administrative Proceedings

On September 30, 2013 and October 9, 2013, the Bureau of Industry and Security (BIS) entered into separate settlement agreements with Total Cargo Logistics, Inc. (“TCL”) and Aeronet Inc. (“Aeronet”), respectively, to resolve allegations that the companies facilitated violations of the Export Administration Regulations (EAR). BIS alleged that TCL in March 2010 aided in the unlicensed export of primer cleaners and PVC cement from the United States to Syria. BIS alleged that, in February 2009, Aeronet forwarded computer equipment subject to the EAR valued at USD 130,000 to Mahan Airways, a Denied Person under a Temporary Denial Order. Aeronet and TCL each agreed to pay civil penalties of USD 27,000. Read the BIS [TCL order](#) and the BIS [Aeronet order](#).

BIS Issues Extended Denial Order Against Singapore Durable Goods Wholesaler

Following a denial of export privileges issued by the Bureau of Industry and Security (BIS) on July 21, 2013 against Chan Heep Loong, an exporter from Singapore who is alleged to have caused the illegal transshipment of engines and other equipment from the United States to Iran, BIS on September 30, 2013 issued an order extending that denial order to Loong’s company, Tysonic Enterprises (“Tysonic”), also of Singapore. Loong owns and operates Tysonic, which allegedly was involved in two of the transactions and resulting violations that led to the denial order against Loong. The denial order will remain in effect against both Loong and Tysonic until July 29,

2023. Read the BIS [order](#).

Turkish Trading Company Assessed Penalty for Violations of ITSR

On September 26, 2013, the Office of Foreign Assets Control (OFAC) assessed a penalty of USD 750,000 against a Turkish trading company for violating the Iranian Transactions and Sanctions Regulations (ITSR). Between February and May 2012, Finans Kiyetli Madenler Turizm Otomotiv Gida Tekstil San. Ve Tic (“Finans”) attempted to process electronic funds transfers totaling almost USD 260,000 through United States financial institutions for the benefit of the Government of Iran and/or persons in Iran. Such actions violate the ITSR prohibition against the direct or indirect export of services from the United States to Iran or the government of Iran. In two of the three attempts, the U.S. financial institution involved blocked the transactions. OFAC found that Finans acted recklessly in its attempts to conceal and/or omit pertinent information regarding the funds transfers; that its management had reason to know of the illegal actions; and that the actions resulted in harm, possibly significant, to the objectives of the U.S. sanctions program against Iran. Finans did not cooperate with OFAC during the investigation and does not appear to have an OFAC compliance program in place. For these reasons, OFAC did not reduce the base penalty of USD 750,000. Read the OFAC [press release](#) and [press coverage](#) by *Law360*.

EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

Export Control Reform: First of Many Final Rules Implemented

The first set of rules implementing export control reform went into effect on October 15, 2013. The aim of these measures is to move items that have been deemed less sensitive from the U.S. Munitions List (USML) to the Commerce Control List. This move allows exporters greater flexibility in the licensing and movement of these items. The first set of rules applies to categories VIII and XIX of the USML, covering, respectively, aircraft and associated equipment and gas turbine engines. The next sets of revised categories—involving military vehicles, vessels, submarines, and auxiliary military equipment—will become effective on January 6, 2014. Read the Department of Justice [media note](#).

Department of Commerce Thwarted in Seeking FOIA Exemption for Export Control Licenses

Congress may have to act soon, and decisively, to protect information provided in export control licenses from disclosure under the Freedom of Information Act (FOIA). A decision by a California district court in July 2013 held that the Department of Commerce’s current framework for denying FOIA disclosure of such licenses is untenable. The department had argued that export license information was protected from release under the FOIA exemption because it is “specifically exempted from disclosure by statute,” in this case, the expired Export Administration Act (EAA). The EAA, while in effect, granted an exemption from FOIA for information, including business proprietary information, found in export control licenses. Since the expiration of EAA, this specific exemption and other facets of the EAA have been extended on a yearly basis by executive order, pursuant to the International Economic Powers Act (IEEPA). The IEEPA itself, however, contains no mention of the exemption of export control licenses from FOIA release. Given this information, the California court determined that, as an executive order is not a statute, the exemption that the department claims is invalid. This ruling contravenes a previous ruling by the Court of Appeals of the District of Columbia in 2003, which held that the IEEPA could be considered the statute under which the sought exemption was given. Disclosure of the FOIA information at issue in the July 2013 case has been stayed pending the department’s appeal of the decision. Due to the conflicting court opinions, it is possible the case could go before the Supreme Court. In the meantime, Congress must determine whether it will re-instate the EAA, securing the confidentiality of export license information and making moot the July 2013 case. Read an [overview](#) of the July 2013 court decision at the Department of Justice website and the [court’s ruling](#), published on the plaintiff’s website.

BIS Revises Export Administration Regulations to Clarify Items on the Commerce Control List

Following a November 29, 2012 proposed rule and public comments concerning that proposed rule, the Bureau of Industry and Security (BIS) published on October 4, 2013 a final rule amending the Export Administration Regulations (EAR), aimed at making elements of the Commerce Control List (CCL) more clear. These amendments fall into six categories: (1) clarifications to extant CCL controls, such as the appropriate use of the terms “components” and “parts”; (2) revisions to conform the CCL to previous amendments to the EAR, as well as other multilateral export control regime control lists; (3) changes to the structure of the CCL; (4) the deletion of a number of Export Control Classification Numbers that are under the exclusive jurisdiction of the Nuclear Regulatory Commission; (5) edits to shipping tolerances and the deletion of all “unit” paragraphs; and (6)

clarifications to the initial implementation rule of April 16, 2013. Read the *Federal Register* [notice](#).

CONTACT INFORMATION

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The "Anticorruption Developments" section of *Red Notice* is edited by [Jacob Weixler](#).

Translations of this edition of *Red Notice* into Chinese and Russian will be available later this month. Please check back via the archived editions link to view past translated editions.

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