

Akin Gump
STRAUSS HAUER & FELD LLP

Red Notice

A Monthly Update on Global Investigations and Prosecutions



NOVEMBER 2014

Introduction

Welcome to the November 2014 edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP.

This month on the anticorruption front, a life sciences company settles multi-country bribery investigations, a Bangladeshi court exonerates four engineering firm executives and a former CEO of a global bank is found guilty of bribery by a German court.

In export control and sanctions enforcement news, an industrial manufacturer settles with the Office of Foreign Assets Control (OFAC) for alleged violations of a Cuba sanctions program, an oil field equipment company settles apparent Iranian Transactions and Sanctions Regulations (ITSR) violations and a Georgia man is sentenced for exporting defense articles without required authorization.

Finally, in developments in export control and sanctions law, OFAC updates FAQs related to payments to Iranian civil aviation authorities, OFAC sanctions former Yemeni president, U.S. Department of Commerce's Bureau of Industry and Security (BIS) imposes license requirements for items intended for military use in a South American country and a final rule regarding President Obama's Export Control Reform Initiative is released.

Thank you as always for reading *Red Notice*.

ANTICORRUPTION DEVELOPMENTS

Bio-Rad Agrees to Pay \$55 Million in FCPA Settlement

Earlier this month, a California-based life sciences company agreed to pay \$55 million to resolve parallel investigations by the U.S. Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) related to bribery allegations in Russia, Vietnam and Thailand. The [DOJ](#) and [SEC](#) charged New York Stock Exchange-traded Bio-Rad Laboratories with violations of the Foreign Corrupt Practices Act (FCPA) in connection with \$7.5 million in bribes paid to foreign officials between 2005 and 2010 to secure business opportunities.

In the company's settlement agreement with the DOJ, Bio-Rad admitted to paying bribes to Russian officials via third-party agents. The agents, who had no legitimate workforce, were hired to encourage Russia's Ministry of Health to award Bio-Rad lucrative contracts with the Russian government. The bribes were funneled through the agents' off-shore bank accounts and concealed in Bio-Rad's books as commissions for the agents. Members of Bio-Rad's management reviewed and approved the phony commission payments and referred to them in code as "bad debts." Bio-Rad profited approximately \$35 million as a result of the bribes.

The SEC determined that Bio-Rad also used intermediaries to bribe officials in [Vietnam](#) and Thailand. Bio-Rad's subsidiary in Singapore sold products at a steep discount to the Vietnamese government through distributors in Vietnam who used the discounted pricing to pay bribes to government officials. Similarly, Bio-Rad failed to detect that a recently acquired Thai subsidiary was engaging in a scheme to bribe Thai officials by paying phony commission to Thai sales agents.

Bio-Rad self-reported the improper payments to U.S. officials and cooperated with the resulting investigations. Through its investigation, the SEC determined that the company violated the antibribery, internal controls and books and records provisions of the Securities

TRANSLATIONS

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RELATED NEWS

Please visit AG Deal Diary to learn more about this month's hot topics in the antibribery space, including [DOJ clarification on successor liability for foreign acquisitions](#) and takeaways from the [Transparency International study on the OECD Anti-Bribery Convention](#).

On December 3-4, 2014, partners [Jonathan Poling](#) and [Edward Rubinoff](#) will speak at the ACI's 5th Annual Economic Sanctions Boot Camp, "Comprehensive Update on the Ever Changing Global Sanctions Restrictions," in New York, NY. Click [here](#) for more information.

On December 10, partners [Wynn Segall](#) and [Ed Rubinoff](#) will present during Akin Gump's energy briefing webinar, "The Global Energy Industry: 2014 Year-End Energy Briefing" from 12:30 p.m. to 2:00 p.m. EST. For more information, please contact [Jamie Honeycutt](#).

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.

Exchange Act of 1934. The DOJ charged the company with violating the FCPA by failing to maintain adequate internal controls and falsifying records to conceal bribes to foreign officials.

To conclude the parallel investigations, Bio-Rad agreed to pay the SEC \$40.07 million in disgorgement and prejudgment interest, and a criminal fine of \$14.35 million to the DOJ. Pursuant to a deferred prosecution agreement with the DOJ, Bio-Rad also agreed to provide periodic reports to the DOJ regarding the company's compliance efforts for two years. The DOJ credited the company's [non-prosecution agreement](#) "in large part, to Bio-Rad's self-disclosure of the misconduct and full cooperation with the department's investigation."

In the wake of the DOJ and SEC investigations, Bio-Rad now faces potential class action lawsuits. Several law firms have announced investigations of bribery and breaches of fiduciary duty in connection with possible lawsuits on behalf of Bio-Rad's shareholders.

For more information, see the [press release](#) issued by Bio-Rad and news coverage at [Reuters](#).

Acquittals in Bangladesh for Engineering Firm Plagued by Corruption Charges

Canadian engineering firm SNC-Lavalin Group Inc. was cleared of wrongdoing amid allegations that members of the firm paid millions in bribes to secure a World Bank contract in Bangladesh. On October 27, 2014, a Bangladeshi court acquitted all four SNC-Lavalin defendants implicated in the suit.

SNC-Lavalin executives had been accused of bribing government officials in connection with the so-called Padma Bridge contract. Estimated to be worth approximately \$3 billion, the massive contract included a \$1.2 billion loan from the World Bank. When allegations of impropriety regarding the contract procurement arose, the World Bank issued the company a warning and then, unsatisfied with the company's response, terminated the loan, effectively killing the project before the contract could be awarded. The World Bank also debarred SNC-Lavalin and its 100 subsidiaries from bidding on the Bank's projects for a period of ten years, and referred the matter to both the Royal Canadian Mounted Police (RCMP) and the Bangladeshi government.

Bangladesh's Anti Corruption Commission had been investigating SNC-Lavalin's conduct since 2011 and announced formal charges against the company in 2012. According to Bangladeshi officials, files uncovered by a search warrant executed by the RCMP on the company's Oakville, Ontario, office included a diary indicating that several Bangladeshi officials were slated to receive a percentage of the multibillion-dollar contract.

The acquittals come as good news for scandal-ridden SNC-Lavalin. As we reported in our [October issue](#), the engineering titan recently saw a former top executive plead guilty to corruption charges in Switzerland only to be extradited to Canada to face charges for additional corruption crimes. An investigation of SNC-Lavalin's behavior in Algeria is also ongoing.

See additional news coverage at the [FCPA Blog](#) and [The Daily Star](#).

German Courts Find Former CEO of International Bank Guilty of Bribery Charges

Late last month, German courts found the ex-CEO of Munich-based BayernLB (Bayerische Landesbank) guilty of bribing an Austrian politician to facilitate a multibillion-dollar acquisition. Werner Schmidt, the ex-CEO of BayernLB, pleaded guilty to bribing Jörg Haider, then-State Governor of the Austrian state of Carinthia during negotiations in connection with the acquisition of Austrian Banking Group Hypo Alpe-Adria Bank International Group, AG ("Alpe-Adria").

In 2007, BayernLB, controlled by the German state of Bavaria, acquired Alpe-Adria for approximately \$2.1 billion. To facilitate the deal, Schmidt arranged, via a BayernLB subsidiary, for a €2.5 million soccer team sponsorship deal and a soccer stadium for Carinthia.

BayernLB ultimately lost €3.7 billion on its investment in Alpe-Adria. In 2009, Alpe-Adria was acquired by Austria to prevent its collapse and to avoid significant repercussions for Eastern European economies.

Schmidt received a suspended 18-month sentence from the court. In lieu of serving a prison sentence, Schmidt will remain on probation for three years and was ordered to pay a €100,000 (\$127,000) fine. Schmidt and his attorneys are contemplating an appeal. Seven of

Schmidt's former BayernLB colleagues were charged with embezzlement in connection with the acquisition. Though most of the charges were dismissed, a few employees were forced to pay fines to resolve the charges. Haider, who received the bribes orchestrated by Schmidt, passed away in 2008.

Read more at [BBC](#) and [Reuters](#).

EXPORT CONTROL AND SANCTIONS ENFORCEMENT

ESCO Corporation Agrees to More than \$2 Million Settlement with OFAC for Apparent Violations of the Cuban Assets Control Regulations

ESCO Corporation, based in Portland, Oregon, entered into a \$2,057,540 settlement with OFAC for alleged violations of the Cuban Assets Control Regulations (CACR) related to its Canadian subsidiary's purchase, between 2007 and 2011, of briquettes made or derived from Cuban nickel. The Cuban-origin nickel was allegedly sourced from persons on OFAC's Specially Designated Nationals List (SDN). Although OFAC did not disclose the number of apparent violations, it stated that the subsidiary conducted "large-volume and high-value transactions," thereby causing significant harm to the objectives of the Cuba sanctions program.

OFAC found that ESCO acted with reckless disregard for the sanctions program, failing to recognize "red flags" in the public domain indicating that the briquettes were derived from Cuban nickel. However, the settlement, a reduction from the base penalty of \$3,048,208, reflects, among other factors, OFAC's determination that ESCO voluntarily disclosed the alleged violations, had implemented compliance enhancements and had cooperated with the investigation.

Find out more by reading OFAC's [enforcement notice](#) and coverage by [The Wall Street Journal](#) and the [FCPA Blog](#).

Indam International, Inc. Reaches OFAC Settlement for Apparent Violations of the ITSR

Indam International, Inc. based in Houston, Texas, agreed to a \$44,850 settlement with OFAC for alleged violations of the ITSR for exporting or attempting to export nine shipments of unidentified goods to the United Arab Emirates with reason to know the shipments were ultimately destined for two oil drilling rigs in or destined for Iranian waters.

The settlement was a reduction from the base penalty of \$69,000, despite OFAC's determination that Indam failed to conduct due diligence to identify the end users of its shipments and that U.S. Customs and Border Protection (CBP) previously seized an Indam shipment in 2006 similarly destined for a drilling rig in Iranian waters. The reduction apparently reflects OFAC's finding that Indam did not have actual knowledge of the ultimate destination or location of the recipient oil rigs and acknowledgement that the company forfeited to CBP the goods involved in four of the shipments.

Find out more by reading OFAC's [enforcement information](#) and news coverage at [Law360](#).

Georgia Man Sentenced for Violation of Arms Export Control Act and Possession of Pipe Bombs

In mid-October, the U.S. District Court for the Middle District of Georgia sentenced Robert Shubert Sr. to a 78-month prison term, the maximum allowable under U.S. Sentencing Guidelines, following Shubert's guilty plea involving violations of the Arms Export Control Act and possession of an unregistered firearm. Shubert had exported defense articles to a foreign country without authorization over a period of five and a half years, preparing false documentation to facilitate the exports. In addition, authorities found more than 80 pipe bombs in two of his homes. A DOJ official commenting on the case remarked, "Shubert showed a total disregard for the laws of the United States . . . and the potential harm the defense articles he exported could pose to others." The court also imposed a \$15,000 fine and ordered Shubert to forfeit \$147,892.

For additional information, see the DOJ [press release](#) and coverage from [The Macon Telegraph](#).

EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

Update to FAQ on Payments to Iranian Civil Aviation Authorities for Overflights of, or Emergency Landing in, Iran

On November 4, 2014, OFAC updated Frequently Asked Question (FAQ) #417 to clarify that making payments to the Iranian civil aviation authorities for services related to overflights or emergency landings in Iran violates U.S. sanctions law if the U.S. financial system is involved. OFAC further clarified that U.S. persons and U.S.-owned or -controlled foreign entities cannot participate in making any such payments, unless (1) the aircraft involved is U.S.-owned or U.S.-registered or the payments are permitted by a specific OFAC license and (2) the payments comply with the limited scope of [31 C.F.R. Sec. 560.516](#) (e.g., they do not involve debiting or crediting an Iranian account) or are authorized by a specific license.

The original FAQ had stated that it was **not** a violation of U.S. sanctions law to pay the Iranian government for services related to overflights or emergency landings in Iran when an aircraft had both non-U.S. ownership and registration.

For more information, see OFAC's original response to FAQ #417 [here](#) and its update [here](#).

OFAC Sanctions Former Yemeni President and Others for Undermining Stability in Yemen

Earlier this month, OFAC added three persons to its Yemen-related SDN list. The action took place in conjunction with similar sanctions by the United Nations. The most prominent member among the newly named designees is former Yemeni President Ali Abdullah Saleh, accused by the Obama administration of undermining stability in Yemen by supporting the Houthi rebel group's violent acts in the Yemen capital, Sana. The other two designations are for two military leaders of the rebel group.

For more information, see press releases from [OFAC](#) and [the UN](#), [OFAC's designation](#), and coverage by the [New York Times](#), [Reuters](#) and [The Wall Street Journal](#).

BIS Imposes License Requirements for Items Destined for Military Use in Venezuela

On November 7, 2014, BIS amended the Export Administration Regulations (EAR) to impose license requirements on the export, reexport or in-country transfer of certain items to or within Venezuela when destined for a military end use or end user. The amendment is in response to the Venezuelan military's use of violence against its own civilians to quash antigovernment protests beginning in February 2014, and it complements the U.S. arms embargo against Venezuela for failing to provide counterterrorism cooperation.

For more information, see the BIS final rule [here](#).

Clarification to Export Administration Regulations on Control of Spacecraft Systems and Related Items

Earlier this month, BIS issued a final rule, following the publication in May of an interim final rule, which transitioned commercial communication satellites and certain spacecraft-related parts from the U.S. Munitions List (USML) to the Commerce Control List. The final rule makes certain technical corrections and clarifications (e.g., regarding destination control statements and definitions), but the substance of the interim rule remains intact. The final rule is part of President Obama's Export Control Reform Initiative. Remaining on the USML are space-related military functions, manned spacecraft, high-level sensors and some satellite integration/launch services.

For more information, see the final rule [here](#) and coverage [here](#). See Red Notice [coverage](#) on issuance of the interim final rule [here](#).

CONTACT INFORMATION

For more information about the stories highlighted in Red Notice, please contact:

[Edward L. Rubinoff](#) at 202.887.4026 or erubinoff@akingump.com or [Nicole H. Sprinzen](#) at 202.887.4301 or nsprinzen@akingump.com.

Contact information for attorneys in related practices can be found [here](#).

The "Anticorruption Developments" section of Red Notice is edited by [Courtney Cardin](#) and [Jennifer Hildebrand](#). The "Export Control and Sanctions Developments and Enforcement" sections are edited by [Annie Schlapprizzi](#).

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