

Red Notice

A Monthly Update on Global Investigations and Prosecutions



MARCH 2015

Introduction

Welcome to the March 2015 edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP.

This month on the anticorruption front, two individuals receive multi-year sentences for Venezuelan bribery, Australian authorities announce the country's second ever foreign bribery enforcement, several individuals are arrested by Colombian officials for alleged participation in the ongoing PetroTiger bribery scheme, two companies make anticorruption-related disclosures in recent U.S. Securities and Exchange Commission (SEC) filings, a pharmaceutical giant previously convicted of bribery dismisses more than one hundred employees in China, and the U.S. Department of Justice (DOJ) reaches a forfeiture settlement with a South Korean kleptocrat in connection with almost 20-year-old bribery charges.

In export control and sanctions enforcement news, a global bank settles sanction and money laundering charges with various authorities, an oilfield services company pleads guilty and pays a more than US\$200 million fine for improper trade dealings in Iran and Sudan, an online payment system provider settles with the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) for alleged infringement of various sanctions regulations, and a Maryland man pleads guilty for export violation in connection with exports to Pakistan while a former resident of Taiwan is sentenced in Illinois for his involvement with weapons of mass destruction (WMD).

Finally, in developments in export control and sanctions law, the United States announces sanctions on Venezuela as part of the president's latest sanctions-related Executive Order (EO), additional parties are added to OFAC's Ukraine-related sanctions designations and the State Department solicits comments in connection with two United States Munitions List (USML) Categories.

Thank you as always for reading *Red Notice*.

ANTICORRUPTION DEVELOPMENTS

Two Former Executives of a US Broker-Dealer Sentenced for Participation in South American Bribery Scheme

Benito Chinaea, the former chief executive officer of U.S. broker-dealer Direct Access Partners (DAP), and Joseph DeMeneses, the company's former managing director, were sentenced on March 27, 2015 by U.S. District Judge Denise L. Cote in connection with their roles in an international bribery scheme. Chinaea and DeMeneses made payments to a high-level official of Banco de Desarrollo

TRANSLATIONS

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НА РУССКОМ ЯЗЫКЕ >

WRITING AND SPEAKING ENGAGEMENTS

On May 5, partner [Jim Benjamin](#) will speak on "What Do You Need to Know When Representing Individuals" at PLI's The Foreign Corrupt Practices Act and International Anti-Corruption Developments 2015 in New York, NY. For more info, click [here](#).

Akin Gump partner [Arnold Spencer](#) summarized key takeaways from the FCPA discussions at the 2015 American Bar Association Annual White Collar Institute held earlier this month. To learn more, read our [blog post](#).

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.

Económico y Social de Venezuela (“Bandes”), a state economic development bank, in exchange for business that produced more than US\$60 million in commissions for the broker-dealer.

Both individuals were sentenced to four years in prison, the longest prison term yet in any Foreign Corrupt Practices Act (FCPA) action in the 2nd Circuit. They were also ordered to forfeit more than US\$6 million, an amount equal to their earnings from the bribery scheme—a US\$3.6 million fine for Chinaa and a US\$2.7 million fine for DeMeneses. Both defendants [pleaded](#) guilty to one count of conspiracy to violate the FCPA and the Travel Act in December 2014.

As we reported in [May 2014](#), Chinaa and DeMeneses, in collaboration with other colleagues, coordinated bribes between 2008 and 2012 to a Bandes official, Maria De Los Angeles Gonzalez. Gonzales was responsible for supervising the bank’s overseas trading transactions and used her position to direct Bandes’ trading activity to DAP. In exchange, DAP agents and employees would overcharge Bandes for purchases and undercharge it for sales, and then divide the profits from the resulting revenues with Gonzales. In an attempt to cover up the scheme, the payments to Gonzalez were transmitted through third parties veiled as “foreign finders” and into offshore banking accounts. Chinaa and DeMeneses also admitted that they used DAP funds, which were disguised as “loans” in DAP’s accounting records, to reimburse DeMeneses and another co-conspirator, for the nearly US\$1.5 million of personal funds they used to pay the bribes.

Prior to announcing the sentences, Judge Cote also denied DAP’s request for restitution of more than US\$14 million, stating that she regarded DAP as an uncharged co-conspirator.

To date, five DAP employees, as well as Gonzalez, have pleaded guilty to their roles in this bribery plot. According to the DOJ [press release](#), this conviction demonstrates the DOJ’s continued focus on individual accountability in anticorruption enforcement.

Learn more at [Business Insider](#) and [Bloomberg](#).

Islamic State-Linked Engineering Firm Hit with Bribery Charges

The Australian Federal Police (AFP) [announced](#) at the end of February that three directors of Lifese Engineering, an Australian engineering and construction firm, have been charged with conspiracy to bribe a foreign public official. Earlier in February, the AFP raided the homes and offices of Lifese directors John Jousif and brothers Mamdouh and Ibrahim Elomar, and arrests promptly followed. The three directors are accused of scheming to launder more than AU\$1 million, which they then sought to pass on to Iraqi government officials in order to secure multimillion-dollar contracts for their firm.

The Elomar family is notorious in the Australian press—Mamdouh’s son, Mohamad Elomar, is reported to have prominent ties to terrorist groups, including the radical Islamic State network. Mohamad’s older brother, Mohammed Ali Elomar, is currently incarcerated in an Australian prison for his role in an Australian terror plot.

Although the AFP currently has 14 public, active investigations related to foreign bribery, this case is only the second of its kind to reach the Australian courts, signaling increased attention by the Australian federal authorities to the issue of foreign bribery.

“Foreign bribery undermines the credibility of Australian businesses here and overseas, and where there are allegations that Australian companies or citizens are circumventing lawful processes when pursuing business opportunities, the AFP will investigate,” said Manager AFP Fraud and Anti-Corruption, Commander Linda Champion.

Mamdouh and Ibrahim Elomar could each face up to 10 years in prison if convicted of the bribery charges. Jousif, who is facing an additional count of money laundering, could serve up to 25 years in prison if he is convicted.

Read more at the [Sydney Morning Herald](#) and [Sourceable](#).

Bribery Charges Announced for Employees of Colombian State-Run Oil Company Ecopetrol SA

In mid-March, Colombian officials arrested six current and former employees of the state-run oil company Ecopetrol SA and one individual with close ties to the oil services company PetroTiger Ltd. These seven individuals face charges for their alleged role in a bribery scheme in which British Virgin Islands-based PetroTiger is alleged to have paid 2 billion Colombian pesos (approximately US\$800,000) to the defendants in exchange for the award of a lucrative oil services contract with Ecopetrol SA.

Two of the individuals arrested by Colombian officials are also involved in the ongoing investigation into PetroTiger executives' role in the bribery scheme in the United States. The DOJ alleged that Ecopetrol employee David Duran received US\$333,500 in bribes from PetroTiger executives in exchange for contracts with Ecopetrol. According to charging documents, the bribes were funneled through a fraudulent consulting agreement under which Duran's wife, Johanna Navarro, was hired to provide consulting services to PetroTiger. Navarro also has been arrested by Colombian officials for her role in the scheme.

PetroTiger's board of directors first reported the bribery scheme to U.S. and Colombian officials back in 2011. Since that time, several PetroTiger executives have been arrested and charged for FCPA violations. PetroTiger co-CEO Knut Hammarskjold and former PetroTiger General Counsel Gregory Weisman both pleaded [guilty](#), in February 2014 and November 2013, respectively, to charges in connection with their roles in the scheme. As we reported in [June 2014](#), PetroTiger co-CEO Joseph Sigelman has been charged in connection with the scheme and is awaiting trial scheduled for May in Camden, New Jersey.

Mr. Sigelman's case has been reported as an opportunity for a federal court to hear and evaluate the government's methods of investigating and prosecuting overseas FCPA cases, including the increased use of undercover informants and wiretapping.

Read more at the [WSJ](#) and the [Petro Global News](#).

US Tech Company Self-Reports Internal FCPA Probe to SEC

Akamai Technologies, Inc., a Cambridge, Massachusetts-based cloud services provider, disclosed earlier this month that it has retained outside counsel to conduct an internal investigation into the company's sales practices in an unnamed foreign country. According to the company's March 2, 2015 annual [Form 10-K](#) filing, in which the investigation was first publicly disclosed, the probe will assess Akamai's compliance with the FCPA and other applicable local laws and regulations. A company spokesperson stated that in February 2015, the company voluntarily disclosed the investigation to the DOJ and the SEC. Although limited details were immediately available, Akamai represented that the business revenue from sales in this undisclosed country represented less than one percent of its total annual revenue since 2012.

Learn more at [Bloomberg](#) and [Compliance Week](#).

General Cable Allocates US\$24 Million in Connection with FCPA Investigation

At the end of February, Kentucky-based utility developer General Cable announced that it reserved US\$24 million for possible disgorgement of profits related to an ongoing investigation of an alleged bribery scheme in violation of the FCPA. In September, we [reported](#) that General Cable disclosed potential FCPA violations related to business transactions in Angola, Thailand, India and Portugal in its 8-K filed on September 22, 2014.

The company self-disclosed the potential violations involving illicit payments made by employees of the company's Angola and Portugal operations to Angolan public utility officials for more than a decade. In the company's recent [amended 8-K filing](#), the company revealed that the reserved US\$24 million "does not include provisions for any fines, civil or criminal penalties, or other relief, any or all of which could be substantial."

The company said it is cooperating with ongoing related DOJ and SEC investigations.

See additional coverage at [Law360](#) and the [FCPA Blog](#).

GlaxoSmithKline Fires 110 Employees in China for 2013 Bribery

British pharmaceutical conglomerate GlaxoSmithKline (GSK) recently dismissed 110 employees from its Chinese operation. In a statement released by the company, GSK explained that the dismissals were the result of an internal investigation into employee misconduct that took place prior to mid-2013. The dismissals come on the heels of GSK's September bribery conviction in a Chinese court. The company confirmed the dismissals in an official statement, but did not disclose the specifics of the alleged misconduct, noting only that "[w]here evidence of misconduct has been found, we take appropriate disciplinary action up to and including termination of employment."

The number of disciplinary cases reported in the company's annual report reached 652 in 2014, more than a 1,200 percent increase from the 48 disciplinary actions reported by GSK in 2013. GSK indicated that the large increase in disciplinary cases in China is due to increased employee and expense-claims monitoring, as well as the conduct of an ongoing internal investigation into GSK's China operations.

Bloomberg has [reported](#) that the laid-off employees issued a statement protesting their dismissals.

Red Notice previously covered enforcement efforts related to GSK in [September](#) and [October 2014](#), when GSK was fined a record 3 billion yuan (\$479 million) in China for funneling that amount of money to travel agencies to facilitate bribes to doctors and officials. In those cases, five GSK executives received suspended jail sentences, including the former head of GSK in China.

Read more at [Reuters](#) and [Bloomberg](#) coverage.

South Korea Kleptocrat Forfeits More Than US\$1 Million to DOJ

In early March, the DOJ [announced](#) in a press release that it reached a settlement to forfeiture of nearly US\$1.2 million in a civil case involving the former president of South Korea, Chun Doo Hwan. This follows Chun's 1997 conviction in connection with bribery charges in Korea for receiving approximately US\$200 million in bribes from Korean companies and businesses.

According to settlement documents, the ex-president and his family members laundered a portion of the funds through various trusts and shell companies, both in South Korea and the United States. Assistant Director in Charge of the FBI David Bowdich made it clear

that “[t]he U.S. will not idly stand by and serve as a money laundering haven for foreign officials to hide corrupt activities.”

In addition to securing the forfeiture assets through the U.S. settlement, the DOJ also revealed that it successfully assisted the government of South Korea in recovering more than US\$27.5 million in funds from an outstanding criminal restitution order against the former president. According to the [settlement documents](#), a former associate of Chun’s paid the US\$27.5 million to partially satisfy Chun’s outstanding judgment from his previous 1997 criminal conviction in which Chun was ordered to return the bribe money.

Read more at the [FCPA Blog](#) and [Reuters](#).

EXPORT CONTROL AND SANCTIONS ENFORCEMENT

Commerzbank Reaches US\$1.45 Billion Global Settlement with US Authorities for US Sanctions and Money Laundering Violations and Enters Deferred Prosecution Agreement

German bank Commerzbank AG and its U.S. branch, Commerzbank AG New York Branch, (collectively, Commerzbank) agreed earlier this month to a US\$1.45 billion settlement with various U.S. federal and state agencies for allegedly moving funds through the U.S. financial system between 2002 and 2010 in unauthorized transactions involving individuals, entities and countries subject to U.S. sanctions programs and failing to report suspicious transactions in violation of the Bank Secrecy Act. This global settlement involved OFAC, the DOJ, the Board of Governors of the Federal Reserve System (Federal Reserve Board), and New York State Department of Financial Services (DFS).

Commerzbank’s US\$260 million settlement with OFAC related to allegations that it engaged in certain payment practices to escape U.S. sanctions restrictions in 1,596 transactions between 2005 and 2010 by removing, omitting, obscuring or otherwise failing to include references to U.S. sanctioned persons in payment messages to U.S. financial institutions. The related transactions resulted in apparent violation of the Iranian Transactions and Sanctions Regulations (ITSR), the Sudanese Sanctions Regulations (SSR), the Weapons of Mass Destruction Proliferators Sanctions Regulations (WMDPSR) and Executive Order 13382, the Burmese Sanctions Regulations (BSR), and the Cuban Assets Control Regulations (CACR).

The large settlement amount reflects OFAC’s estimation that: (1) Commerzbank’s alleged violations constituted an egregious case; (2) Commerzbank did not submit a voluntary self-disclosure; (3) Commerzbank acted with reckless disregard for U.S. sanctions regulations; (4) Commerzbank’s management had reason to know of the practices leading to some of the apparent violations; and (5) Commerzbank did not have adequate sanctions compliance policies or procedures despite its commercial sophistication. With a base penalty amount of US\$574,801,770, however, the settlement amount also reflects OFAC’s consideration of the fact that Commerzbank cooperated in the investigation, agreed to a statute of limitations tolling agreement with multiple extensions, adopted remedial measures, and had not received a Finding of Violation or penalty notice from OFAC in the five years leading up to the earliest problematic transaction.

Commerzbank separately entered a three-year deferred prosecution agreement with state and federal prosecutors, admitting that it violated New York law by falsifying New York financial institution records and admitting criminal conduct in violation of the BSA and the International Emergency Economic Powers Act (IEEPA). In connection with these violations, Commerzbank agreed to forfeit US\$563 million and pay a fine of US\$79 million. OFAC’s civil penalty

will be settled by these payments.

In addition, Commerzbank agreed to pay a civil penalty of US\$200 million to the Federal Reserve Board and US\$610 million to DFS.

Read the [OFAC settlement agreement, summary](#) of the OFAC action, OFAC [press release](#), and DOJ [press release](#). Additional news coverage is available through [Reuters](#) and [Forbes](#).

BVI Holding Company Agrees to Guilty Plea including US\$232.7 Million Penalty for IEEPA Violation

In late March 2015, Schlumberger Oilfield Holdings Ltd. (SOHL), incorporated in the British Virgin Islands, agreed to plead guilty and pay a US\$232.7 million penalty to the U.S. government for conspiracy to violate IEEPA by facilitating transactions in Iran and Sudan and exporting technical services involving these sanctioned countries. The penalty includes a US\$155.1 million criminal fine, the largest IEEPA-related fine ever, as well as a US\$77.6 million criminal forfeiture. The terms of the plea agreement also impose on SOHL a three-year period of corporate probation.

According to court filings, from 2004 to 2010, SOHL's Drilling & Measurements (D&M) business segment, a U.S.-based oilfield services provider, facilitated trade with Iran and Sudan from D&M's Texas office, and D&M employees in the United States made and implemented decisions directly affecting D&M's Iran and Sudan operations. The court filings also indicate that D&M maintained an illegal process for approving capital expenditure requests for Iran and Sudan. Under this process, D&M personnel operating outside the United States apparently referred to Iran as "Northern Gulf" and Sudan as "Southern Egypt" or "South Egypt" in email communications with D&M personnel in the United States or used incorrect country codes that referred to non-embargoed countries. A U.S. manager then reportedly approved the disguised Iran- and Sudan-related requests.

In addition, D&M's Texas office also apparently illegally exported services to Iran and Sudan, according to the court filings. This reportedly occurred when D&M oilfield technicians located in Iran and Sudan experienced technical problems; the technicians queried a computer system that automatically routed questions to a local technical expert. Sometimes, however, the queries were automatically routed to D&M personnel located in the United States, resulting in prohibited technical services being provided to Iran or Sudan.

Though SOHL had a U.S. sanctions compliance program, it reportedly failed to adequately train D&M personnel to comply with the program.

As part of the plea agreement, Schlumberger Ltd., SOHL's parent company, with principal offices in Paris, Houston and The Hague, has agreed to cooperate with U.S. authorities during SOHL's three-year probation. It has also agreed to hire a consultant who will review the parent company's internal sanctions policies, procedures and company-generated sanctions audit reports. In addition, the parent company guaranteed and secured payment of the US\$232.7 million penalty by its subsidiaries.

Press reports regarding this plea agreement include a statement from Schlumberger that "[t]his plea fully resolves the investigation of the Company, and we understand there is no ongoing investigation of Company personnel. The Company cooperated with the investigation, and we are satisfied that this matter is finally resolved."

The plea agreement is contingent on court approval in the U.S. District Court for the District of Columbia.

To learn more, see the DOJ's [press release](#) and coverage in

PayPal Agrees to US\$7.65 Million Settlement with OFAC for Apparent Violations of Multiple Sanctions Programs

PayPal, Inc., a licensed money services business (MSB) based in San Jose, California, entered into a US\$7,658,300 settlement with OFAC for alleged violations of the WMDPSR, ITSR, CACR, SSR and Global Terrorism Sanctions Regulations (GTSR). According to OFAC, PayPal failed to use adequate screening procedures and technology to identify the possible involvement of sanctions targets in transactions it processed. The company consequently processed more than 490 transactions over a four-year period that either referenced the sanctioned country or an associated term (e.g., "Cuban" or "Tehran") or involved a PayPal account for sanctioned individuals. The most problematic transactions related to apparent violations of the WMDPSR involving an A.Q. Khan associate on OFAC's Specially Designated Nationals (SDN) List. Although PayPal filters identified transactions on behalf of this SDN on several occasions, its Risk Operations Agents dismissed the alerts without following company policy, which required reviewing additional information in order to clear the transactions. For the last transaction the company processed, a PayPal Risk Operations Agent had requested the SDN's passport, which matched information on the SDN List, and nevertheless dismissed the match.

OFAC found that the WMDPSR violations constituted an egregious case in that: 1) the company acted with reckless disregard for the sanctions program in connection with failings in the alert process; 2) PayPal agents repeatedly ignored warning signs, thereby engaging in a pattern of conduct; 3) PayPal undermined the WMDPSR sanctions program and its objectives by providing economic benefit to a Specially Designated National; and 4) multiple agents failed to follow the company's policies and procedures. Additional aggravating factors included the fact that: 1) company supervisors and management knew of the behavior leading to the apparent violations; and 2) PayPal did not have an adequate compliance program. However, the settlement, a reduction from the base penalty of US\$17,018,443, reflects, among other factors, OFAC's determination that PayPal 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 [ABC News](#).

Maryland Man Pleads Guilty to AECA Violations for Firearms Exports to Pakistan

In early March 2015, Kamran Ashfaq Malik, of Maryland, pleaded guilty in the U.S. District Court for the District of Maryland to violations of the Arms Export Control Act (AECA) arising from the illegal export of semiautomatic rifles, accessories and parts to Pakistan. Between September and October 2012, Malik bought approximately 48 AR-15 100 round dual drum magazines from firearms dealers. He made some purchases in his own name and others under the name of an associate, at times using a false shipping address. Between October and November 2012, Malik shipped or caused others to ship firearms and parts and accessories to Pakistan without a required export license. He attempted to escape detection by falsely labeling the contents of packages, listing false return addresses, and instructing an associate to do the same. The court set sentencing for June 26, 2015. Malik faces up to 10 years in prison.

For additional information, see the DOJ [press release](#) and coverage in the [Baltimore Sun](#).

Former Taiwan Resident Sentenced for Violation of Anti-Proliferation Laws

In mid-March 2015, the U.S. District Court for the Northern District of Illinois sentenced 69-year old Hsien Tai Tsai, a former resident of Taiwan, to two years in prison following his [guilty plea](#) in October 2014, for conspiring to defraud the United States in its enforcement of the sanctions against proliferators of WMD. OFAC designated Tsai and two Taiwan-based companies with which he was associated as WMD proliferators. Following the designation, Tsai and the designated companies continued conducting business transactions, but tried to conceal their involvement by using different company names.

Tsai faced a possible five-year sentence and US\$250,000 fine. The court credited Tsai for providing substantial and ongoing assistance to the United States in its investigations of WMD proliferators.

For additional information, see the Bureau of Industry and Security (BIS) [press release](#) and [coverage](#) in the *Chicago Tribune*.

EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

United States Implements Targeted Sanctions on Venezuela

On March 9, 2015, following failed diplomatic efforts to bring Venezuela in line with its human rights commitments under international law, President Obama issued EO 13692 declaring human rights abuses and conditions in Venezuela to be a threat to the national security of the United States.

The EO imposes sanctions against seven of Venezuela's military, law enforcement and security officials responsible for the human rights abuses associated with the antigovernment protests that began in February 2014 and the persecution of persons in Venezuela exercising freedom of speech or assembly. OFAC responded by designating the seven individuals named in the EO on its SDN List. The sanctions are designed to impact the named individuals rather than the people or economy of Venezuela.

The EO also expands the basis for making further sanctions designations beyond those outlined in the law to address more generally the erosion of democratic processes and public corruption by senior government officials in Venezuela. Notably, the EO provides the authority to sanction persons who have materially assisted, sponsored or supported such actions.

The establishment of this new sanctions program creates additional risk for companies doing business in Venezuela. While the current sanctions are limited to a small number of individuals, companies should ensure that they are conducting robust due diligence with counterparties in Venezuela.

For more information, see the OFAC [designations](#), Secretary Lew's [statement](#) and the [Executive Order](#). See also Akin Gump's March 11, 2015 International Trade [Alert](#), which provides additional detail.

OFAC Adds New Designations in Ukraine-related Sanctions

In mid-March, OFAC imposed Ukraine-related sanctions on additional individuals and entities, including Russian National Commercial Bank (RNCB) for its operations in Crimea. In announcing the designation of RNCB, OFAC stated that the bank did not operate in Crimea prior to the "occupation and attempted annexation by Russia" and noted that "Russian authorities have used the bank to facilitate illegal efforts to incorporate Crimea into the Russian Federation." According to OFAC, RNCB took over or bought branches of banks that were pulling out of Crimea and currently operates the biggest banking

network in Crimea. The additional designations mark the latest effort by the U.S. government to support Ukraine's sovereignty and territorial integrity.

For additional information, see the new [designations](#), the OFAC [press release](#), and coverage by the [WSJ](#).

State Department Issues Request for Comments related to Export Control Reform

Early this month, the State Department issued a request for comments regarding controls implemented in recent revisions, resulting from the President's Export Control Reform (ECR) initiative, to USML Categories VIII and XIX. The request for comments is in furtherance of the State Department's plan to review and revise USML categories on a periodic basis in execution of ECR to ensure clarity and prevent the imposition of International Traffic in Arms Regulations (ITAR) controls on items "in normal commercial use." The State Department will accept comments until May 1, 2015.

For additional information, see the [Federal Register Notice](#), 22 CFR, March 2, 2015 Public Notice 9050.

CONTACT INFORMATION

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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 Schlappizzi](#).

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