

# Red Notice

A Monthly Update on Global Investigations and Prosecutions



MAY 2015

## Introduction

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

This month on the anticorruption front, a German engineering firm tests Brazil's recently implemented anticorruption statute, a financial regulatory agency targets virtual money exchange, a long-running U.K. investigation into alleged engineering procurement bribery scheme yields final guilty plea, a U.S. mining company denies accusations of bribery engulfing a pending Peruvian mining project, and a data and solutions provider reveals likely financial losses in connection with anticorruption investigations abroad.

In export control and sanctions enforcement news, a financial institution receives a precedent-setting sanctions violations sentence, two Chinese nationals are sentenced for an arms embargo violation, a Florida man and business are sentenced for infringement of sanctions regulations, the jury hands down guilty verdict related to illicit Iranian export plot and a federal judge denies inclusion of evidence from a warrantless laptop search in sanctions violations case.

Finally, in developments in export control and sanctions law, the State and Commerce Departments publish proposed rules reforming the export controls on another category of military items and the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) publishes additional Cuba- and Ukraine-related guidance.

Thank you as always for reading *Red Notice*.

## ANTICORRUPTION DEVELOPMENTS

### German Company Makes Disclosure Under Brazil's New Anticorruption Law

Bilfinger, a German engineering and construction services firm, is the first international company to seek leniency under Brazil's recently implemented antibribery law known as the Clean Companies Act (CCA), which went into effect in January 2014. The company disclosed to Brazil's Comptroller General that it may have paid €1 million in bribes to Brazilian officials in connection with a €6 million contract to equip security centers at various venues for the 2014 World Cup. In March 2015, Bilfinger announced that it was conducting an internal investigation into the allegations.

Under the CCA, Brazil's comptroller general may enter into leniency agreements with subjects who self-report violations. Criminal penalties under the CCA include debarment, suspension and dissolution. Civil fines can range from one percent to 20 percent of a

## TRANSLATIONS

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## WRITING AND SPEAKING ENGAGEMENTS

Akin Gump lawyers recently analyzed FinCEN's April 2015 Geographic Targeting Order (GTO) lowering reporting thresholds and triggering additional recordkeeping requirements for exporters in the Miami region. To read more, click [here](#).

On June 24, partners [Edward Rubinoff](#) and [Shiva Aminian](#) will present a CLE program in the Century City office titled, "Export Controls and Sanctions Update in 2015."

On June 3, partner [Tatman Savio](#) will be moderating a panel on "How to Incorporate Asian and US Export Controls into an Effective Global Trade Compliance Programme: Strengthening Internal Policies and Procedures in Response to Recent Regulatory Changes and Heightened Enforcement Risks" at [ACI's Export Controls Compliance](#) conference in Singapore.

On May 19, partner [Jonathan Poling](#) spoke on the [American Bar Association's Export Controls & Economic Sanctions Committee](#) "Sanctions Compliance Challenges Facing Financial Institutions" panel in New York, NY.

On May 11, counsel [Rebekah Jones](#) spoke on "Enforcement and

company's gross revenue in the year prior to the government's investigation. Companies that voluntarily disclose violations under the CCA's leniency provisions may have fines reduced by up to two-thirds. Five other companies are also reportedly seeking leniency under the new law.

In 2013, Bilfinger paid \$32 million and entered into a Deferred Prosecution Agreement with the U.S. Department of Justice (DOJ) to settle FCPA charges related to a different bribery scheme in Nigeria. To learn more about the presidential decree implementing the CCA, see our AG Deal Diary [post](#).

For more information, see the coverage in [Reuters](#).

## FinCEN Issues Inaugural Fine to Virtual Currency Trader

On May 5, 2015, FinCEN assessed a \$700,000 fine against Ripple Labs Inc., a San Francisco-based virtual currency trading company, and its wholly-owned subsidiary, XRP Fund II, LLC, for violations of the Bank Secrecy Act (BSA).

In March 2013, FinCEN issued guidance that required any exchanger of virtual currency to register as a Money Services Business (MSB) under the BSA. The BSA requires that all MSBs implement and maintain an anti-money laundering (AML) program, and that they report any suspicious transactions. In connection with its AML program, an MSB also must implement Know-Your-Customer (KYC) procedures.

Despite the new FinCEN guidance, Ripple Labs, the second-largest virtual currency trader by market capitalization after Bitcoin, failed to register as an MSB. During the month of April 2013, Ripple Labs sold approximately \$1.3 million worth of XRP, the company's virtual currency, despite its failure either to register as an MSB or implement AML and KYC procedures. In July 2013, Ripple Labs incorporated XRP Fund II, LLC, which also engaged in the sale of XRP without initially registering as an MSB.

On the same day that FinCEN announced its penalty, Ripple Labs also entered into a settlement with the United States Attorney's Office for the Northern District of California, under which Ripple Labs agreed to forfeit \$450,000 to settle related criminal charges. Ripple Lab's forfeiture will be credited towards the \$700,000 civil penalty. In addition to the monetary penalties, Ripple Labs agreed to conduct all future XRP activity through a registered MSB and to implement sufficient AML and KYC controls. Ripple Labs also agreed to review transactions for the past three years and to report any suspicious activity, to retain independent auditors responsible for reviewing the company's compliance program every two years through 2020 and to implement an effective monitoring program covering all future transactions.

Announcing FinCEN's penalty, Richard Weber, Chief of IRS Criminal Investigation, said, "Federal laws that regulate the reporting of financial transactions are in place to detect and stop illegal activities, including those in the virtual currency arena. Unregulated, virtual currency opens the door for criminals to anonymously conduct illegal activities online, eroding our financial systems and creating a Wild West environment where following the law is a choice rather than a requirement."

For more information, see FinCEN's [press release](#) and [statement of facts and violations](#) as well as additional coverage in [CoinDesk](#).

## British National Pleads Guilty in Energy Corruption Case

On May 11, 2015, the U.K.'s Serious Fraud Office (SFO) announced that Graham Marchment, a British procurement engineer, pleaded guilty to charges of conspiracy to engage in corruption in violation of the Criminal Law Act 1977. Marchment admitted that, between 2004 and 2008, he conspired with four others to leak confidential

Investigation: Understanding Trends and Responding to Non-Compliance" at [SMI's Defense Exports Asia Pacific](#) conference in Singapore.

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](mailto:mwarfield@akingump.com) or +1 202.887.4464.



information to bidders in connection with more than \$60 million of procurement contracts related to oil and gas engineering projects in Egypt, Russia and Singapore. In exchange for the information, bidders provided Marchment and his coconspirators with kickbacks disguised as commissions. A Southwark Crown Court sentenced Marchment to two and a half years in prison for each of the three counts against him, to be served concurrently.

Marchment's guilty plea marks the end of a seven-year, multi-jurisdictional investigation by the SFO and City of London Police. In January 2012, Marchment's coconspirators were convicted for their role in the scheme. At that time, Marchment resided in the Phillipines, which did not have an extradition treaty with the U.K. Marchment was apprehended when he returned to the U.K. in December after he was unable to renew his expired passport.

To learn more, see the [SFO's press release](#) and [WSJ coverage](#).

### **Arizona-Based Mining Company Suspends Peruvian Mine Project Amid Bribery Allegations, Protests**

On May 12, 2015, Southern Copper Corporation filed a Form 8K with the Securities and Exchange Commission (SEC) stating that its Peruvian branch publicly rejected allegations by a local TV station in Peru that it offered bribes to protest leaders in exchange for an end to the demonstrations against its proposed mining operation there. Southern Copper is headquartered in Phoenix, Arizona and majority-owned by Mexico's largest mining company, Grupo México. The ongoing protests, which have left three dead and more than 200 injured, are in response to proposals for Southern Copper's Tia Maria mining project, which is estimated to produce 120,000 metric tons of copper cathodes each year for the next 20 years. Southern Copper is currently awaiting a construction permit to begin operations on the Tia Maria project after the Peruvian government approved its environmental impact assessment in August 2014.

In May, a local Peruvian television channel reported that a former lawyer for Southern Copper met with and offered bribes to a leading opponent of the mine to broker an end to the protests. Southern Copper has maintained that the lawyer was not representing the company, and acted on his own during the conversation. Peru's Energy and Mines Minister, Rosa Ortiz, refused to continue talks with Southern Copper about its construction permit after a purported audio recording of the conversation between the lawyer and the protest leader surfaced. Ortiz has requested that German Larrea, the CEO of Grupo México, come to Lima to explain the company's role in the matter.

In light of the increasingly violent protests, on May 15, Southern Copper announced a formal 60-day suspension to the mining project development schedule.

To learn more, please see the coverage in [Reuters](#).

### **Dun & Bradstreet Discloses Investigation Costs and Possible Settlement**

In its May 6, 2015 Form 10-Q filed with the SEC, Dun & Bradstreet (D&B)—a U.S. commercial data and business solutions provider—stated it was "probable" that the company would incur a financial loss as a result of the ongoing SEC and DOJ probe into corruption allegations relating to its now-shuttered data collection operations in China. In the filing, D&B disclosed that the DOJ notified the company in February 2015 that it would likely propose settlement terms related to the investigation.

This disclosure relates to the company's 2012 decision to temporarily suspend and then permanently terminate operations at its Shanghai Roadway D&B Marketing Services branch. D&B closed this practice in the face of allegations that the company had violated

Chinese data privacy laws through its data collection services. In December 2012, the Chinese government imposed monetary fines on the Shanghai branch and four of its employees, also sentencing the employees to prison terms for illegally obtaining private information about Chinese citizens. D&B opened an internal investigation into the matter, and voluntarily disclosed to the SEC and DOJ its findings related to possible misconduct, including FCPA violations.

For more information, read *Compliance Week's* [press release](#).

## EXPORT CONTROL AND SANCTIONS ENFORCEMENT

### **BNP Paribas Sentenced for Sanctions Violations, Will Pay Nearly \$9 Billion in Penalties**

On May 1, 2015, the U.S. District Court for the Southern District of New York sentenced French bank BNP Paribas S.A. (BNPP) in connection with the bank's July 2014 plea of guilty for violations of the International Emergency Economic Powers Act (IEEPA) and the Trading with the Enemy Act (TWEA). The court placed BNPP on probation for five years; the bank also will pay an \$8.83 billion forfeiture and a fine of \$140 million. BNPP admitted to knowingly and willfully moving more than \$8.8 billion through the U.S. financial system between 2004 and 2012 on behalf of sanctioned entities in Cuba, Iran and Sudan. The implicated transactions led to more than 3,800 apparent violations of U.S. sanctions programs.

In late June 2014, BNPP agreed to a global settlement with the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) and several U.S. state and federal government agencies, including the DOJ, the New York County District Attorney's Office, the Federal Reserve Board of Governors and the Department of Financial Services of the State of New York. This month's sentencing is part of BNPP's agreement with DOJ to plead guilty to the IEEPA and TWEA charges and pay \$8.9 billion, representing the proceeds derived from the transactions at issue. In addition to its federal criminal conviction, BNPP pleaded guilty in New York State Supreme Court to falsifying business records and conspiring to falsify business records. BNPP also agreed to a cease and desist order and to pay a civil monetary penalty of \$508 million to the Board of Governors of the Federal Reserve System. The New York State Department of Financial Services announced that BNPP agreed, among other things, to terminate or separate from the bank 13 employees, including the Group Chief Operating Officer and other senior executives; suspend U.S. dollar clearing operations through its New York Branch and other affiliates for one year for business lines on which the misconduct centered; extend for two years a monitorship put in place in 2013; and pay a monetary penalty of \$2.24 billion. In satisfying its criminal forfeiture penalty, BNPP will receive credit for payments it made in connection with its resolution of these related state and regulatory matters. OFAC also levied a fine of \$963 million, which will be satisfied by payments made to DOJ.

This sentencing was historic, marking the first time that a financial institution has been convicted and sentenced for U.S. economic sanctions violations. The total monetary penalty is the largest ever imposed in a criminal case. Some of the forfeiture could go to individuals harmed by the three sanctioned countries under a new program announced by the Department of Justice.

For additional information, see the [DOJ press release](#), coverage in [Reuters](#) and on the [FCPA Blog](#), and the July issue of [Red Notice](#).

### **Sentencing of Two Chinese Nationals in Defense Article Export Scheme**

In late April 2015, the U.S. District Court for the District of New Mexico sentenced cousins Bo Cai and Wentong Cai, of China, to two



years and 18 months in prison, respectively. Upon serving their sentences, each will be deported. They pleaded guilty in 2014 to violating the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR) in connection with a conspiracy to illegally export to the People's Republic of China sensors manufactured for the U.S. Department of Defense that are used for line-of-sight stabilization and precision motion control systems on weapons. Because of an arms embargo against China, the United States does not issue licenses for the export of such sensors to China.

For additional information, see the [DOJ press release](#), [local news coverage](#), and the [August 2014](#) and [December 2014](#) issues of *Red Notice*.

### **Florida Company and Owner Sentenced for Violating BIS Denial Order and the IEEPA**

Late last month, the U.S. District Court for the Southern District of Florida sentenced Russell Henderson Marshall, a U.K. citizen residing in Florida, to 41 months in prison, after which he will be removed from the United States. His Florida company, Universal Industries Limited Inc., received a one-year term of probation and small fine. Both defendants were previously convicted in 2011 for violating the AECA. As a consequence of that conviction, the Department of Commerce's Bureau of Industry and Security (BIS) issued an order denying their export privileges, prohibiting the defendants from participation in transactions involving exports of items subject to the Export Administration Regulations (EAR). The defendants subsequently attempted to send military aircraft parts subject to the EAR to Thailand and Pakistan, in violation of the denial order. They pleaded guilty to violating the IEEPA in February 2015. The presiding U.S. District Judge found that the BIS denial order was a national security control, violation of which subjected Marshall to enhanced sentencing.

For additional details, see the [DOJ press release](#) and [local media coverage](#).

### **Federal Jury in California Convicts Former Iranian National for Illegal Export Scheme**

In late April 2015, a San Diego jury found Arash Ghahreman, a former Iranian national and naturalized U.S. citizen, guilty of IEEPA and money laundering violations for attempt and conspiracy to export goods to Iran and for aiding and abetting transfers of money from the United Arab Emirates (UAE) to the United States in support of an illegal export. Prosecutors presented evidence showing that Ghahreman was involved in an Iranian procurement network using a UAE front company to purchase U.S. goods and technology for illegal export and transshipment to Iran. According to DOJ, Ghahreman and his co-defendants (collectively, the defendants) negotiated, over a six-month period, with undercover U.S. agents posing as U.S. goods and technology brokers in order to procure military electronic components and marine navigation components for illegal export to Iran. Negotiations culminated in an agreement between the defendants and the agents, in furtherance of which the defendants wired roughly \$60,000 as partial payment from a UAE account to the agents' bank account. Ghahreman will be sentenced in July 2015.

For additional information, see the [DOJ press release](#) and [local media coverage](#).

### **D.C. Federal Judge Rules Warrantless Laptop Search Unlawful in Export Case**

Earlier this month, a U.S. District Court Judge ruled that incriminating emails obtained from a laptop seized by the U.S. Department of Homeland Security from South Korean citizen Jae Shik Kim in

December 2012, before Kim boarded a flight in Los Angeles, cannot be used as evidence in a case accusing Kim of conspiracy to send aircraft parts to China and Iran. Officials conducted a warrantless search of the laptop and found emails that discussed the potential procurement of aircraft parts for a buyer in China. The judge ruled that there was little suspicion of ongoing criminal activity at the time of the laptop search, rendering the warrantless search unreasonable.

Although federal officials had received information at the time of the search that Kim was involved in a prior shipment of export-controlled items to a Chinese individual who sent them to Iran, the judge reasoned that the laptop search “was predicated upon the . . . expectation that the computer would contain evidence of past criminal activity” and was not founded on the necessary “objective manifestation” that the accused, at that time, was engaged in criminal activity or was about to be engaged in criminal activity.

The judge rejected the government’s argument that laptops should be treated as other containers subject to warrantless border searches: “One cannot treat an electronic storage device like a handbag simply because you can put things in it and then carry it onto a plane,” she wrote.

Kim was indicted in March 2013 on counts of IEEPA and AECA violations, allegedly conspiring with individuals in Iran and China to attempt to purchase U.S.-origin accelerometers, used on aircraft and in missile navigation systems.

For additional detail, see coverage in [Law360](#) and in the [Star Tribune](#).

## EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

### **BIS and DDTC Propose Rules on Export Controls Related to Certain Military Fire Control, Range Finder and Optical Items and Night Vision Software and Technology**

Earlier this month, BIS and the U.S. Department of State’s Directorate of Defense Trade Controls (DDTC) published proposed amendments to shift control of certain articles subject to Category XII of the ITAR to the EAR under new 600 series Export Control Classification Numbers (ECCNs). Articles impacted include military fire control, range finder, military optical, optical and guidance items. In addition, the BIS rule proposes to increase controls of certain software and technology related to night vision articles, including by eliminating the applicability of some license exceptions and by expanding the scope of restrictions on exports and reexports of certain cameras such as thermal imaging cameras. Both BIS and DDTC have invited comments on the proposed rules, which are part of President Obama’s Export Control Reform Initiative.

For more information, see the [BIS](#) and [DDTC](#) proposed rules.

### **OFAC Publishes Travel Guidance Related to Cuba**

Earlier this month, OFAC published guidance related to transportation between the United States and Cuba. An OFAC general license permits carrier services to facilitate travel between the two countries via aircraft for twelve categories of travel specified in the Cuban Assets Control Regulations (CACR). The new guidance outlines which individuals may be transported between the United States and Cuba by air carrier services acting under the general license and by commercial passenger vessels with specific OFAC licenses. It also highlights the need to obtain BIS authorization for the “temporary sojourn” of aircraft and vessels in Cuba and requires persons providing travel and carrier services pursuant to general or specific licenses to retain for five years customer certifications indicating the section of the CACR authorizing each customer’s travel to Cuba.

The guidance also defines the type of cargo that may be transported by the travel and carrier services from Cuba to the United States and vice versa. For example, the services may transport up to \$400 in Cuban merchandise for personal use that accompanies an authorized customer traveling to the United States. For travel to Cuba, the services may transport baggage accompanying an authorized customer if BIS has authorized the export.

See the guidance on [OFAC's website](#).

### **OFAC Issues New and Revised FAQs on Ukraine-Related Sanctions**

OFAC revised two existing Frequently Asked Questions (FAQs) and issued one new FAQ on Ukraine-related sanctions. Revised FAQ 395 clarifies the circumstances under which U.S. persons may and may not deal in or process transactions under a letter of credit. Revised FAQ 419 explains the debt prohibitions imposed by the Ukraine-related sanctions in connection with payment terms for various types of transactions. Finally, new FAQ 453 describes how OFAC interprets General License 6, which authorizes U.S. financial institutions to process personal, noncommercial remittances from or to Crimea.

See the [FAQs](#) page on OFAC's website for additional information.

## **CONTACT INFORMATION**

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*Red Notice* is a monthly publication of Akin Gump Strauss Hauer & Feld LLP.

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