

# Red Notice

A Monthly Update on Global Investigations and Prosecutions



JUNE 2015

## Introduction

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

This month on the anticorruption front, an energy company announces the U.S. Department of Justice (DOJ) has declined to bring charges following an Foreign Corrupt Practices Act (FCPA)-related investigation, the protracted PetroTiger bribery saga also concludes with a prosecution declination from the DOJ, the World Bank debars two foreign companies for misconduct in China and Albania, an alleged bribery scheme unravels at a Canadian mining company in connection with business in Africa, the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) issues two enforcement actions against an individual and a hospitality company, three individuals are acquitted by U.K. authorities of bribery conspiracy charges, and a French court clears 14 companies of bribery related to the U.N. Oil-for-Food program.

In export control and sanctions enforcement news, a man pleads guilty to export violations in connection with an electronics smuggling scheme, the Treasury Department's Office of Foreign Assets Control (OFAC) reaches two settlements related to WMD and terrorism sanctions regulations, and OFAC and the U.S. Department of Commerce Bureau of Industry and Security (BIS) target various entities through recently issued designations.

Finally, in developments in export control and sanctions law, the government solicits comments on proposed rules related to Export Control Reform, OFAC reminds the public of the July 2015 retirement of certain independent data files and various amendments are proposed to export control regulations.

Thank you as always for reading *Red Notice*.

## ANTICORRUPTION DEVELOPMENTS

### DOJ Concludes FCPA Investigation of Oil Exploration Company

Texas-based Hyperdynamics Corp. announced in late May that the DOJ concluded its FCPA investigation and will not bring charges against the company. In September 2013, the company received

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## WRITING AND SPEAKING ENGAGEMENTS

On July 30, partner [Ed Rubinoff](#) will speak on the panel titled "The Cost of Sanctions Non-Compliance – Lessons Learned from Recent Settlements" at ACI's Economic Sanctions West Coast Forum in San Diego, CA. For more information, please click [here](#).

On September 15, partner [Jonathan Poling](#) will present "It's Bound to Happen (and Probably Already Has): Handling Violations," at the Interactive Export Controls Workshop, Export Compliance Training Institute in Alexandria, VA. For more information, please click [here](#).

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.

subpoenas from the DOJ and the Securities and Exchange Commission (SEC) requesting information in connection with its operations in Guinea, West Africa. According to the company's 10-Q filed in November 2013, the investigation focused on whether the company's "activities in obtaining and retaining the Concession rights and our relationships with charitable organizations potentially violate the FCPA and anti-money laundering statutes." Charitable contributions are subject to the FCPA if they provide personal benefit to foreign officials in return for business advantages. The DOJ's [declination letter](#) noted the company's cooperation, stating that "the Department values cooperation with investigations, such as shown here."

In its [press release](#), Hyperdynamics stated that the SEC's investigation has not yet been resolved.

For more information, see the [FCPA Blog](#) and [The Wall Street Journal](#).

## **DOJ Declines to Prosecute Oil and Gas Company After CEO Pleads Guilty to FCPA Conspiracy**

On June 15, 2015, the DOJ [announced](#) that it will not prosecute PetroTiger Ltd., a British Virgin Island oil and gas company operating in Colombia, in connection with FCPA violations that have resulted in guilty pleas from several of the company's top executives. In its statement, the DOJ announced that, due to PetroTiger's "voluntary disclosure, cooperation, and remediation," it would not seek to prosecute the company.

Most recently, Joseph Sigelman, the co-founder and former CEO of PetroTiger, became the company's third executive to plead guilty to conspiring to violate the FCPA. Sigelman entered his plea after two weeks at trial in which the DOJ presented emails, documents and witness testimony showing that Sigelman and two other executives split kickbacks while authorizing hundreds of thousands of dollars in bribe payments to a Colombian official in order to secure a \$39 million contract with Ecopetrol S.A., the state-controlled Colombian oil company. Both of Sigelman's alleged co-conspirators—the company's former general counsel and the company's co-founder—previously plead guilty to related criminal charges and were scheduled to testify at the trial.

As part of Sigelman's plea deal, the DOJ dropped additional charges against Sigelman, including counts of money laundering and wire fraud related to the kickback scheme. Sigelman was sentenced to probation rather than jail time and will pay approximately \$239,000 in disgorgement, in addition to a court-imposed fine.

To learn more about the preceding developments, see Red Notice coverage in [March 2015](#) and [June 2014](#). Additionally, see [Bloomberg](#) and [FCPA Blog](#) coverage [here](#) and [here](#).

## **World Bank Debars Four Subsidiaries of China Gezhouba Group Co. Ltd**

On May 29, 2015, the World Bank [announced](#) the debarment of four subsidiaries of China Gezhouba Group Co. Ltd. (China Gezhouba Group) in connection with misconduct involving three World Bank-funded projects in the People's Republic of China. China Gezhouba Group operates as a general construction contractor of various projects primarily in China.

The World Bank announced an 18-month debarment for Gezhouba No. 1 Engineering Co. Ltd., Gezhouba No. 5 Engineering Co. Ltd., and Gezhouba No. 6 Engineering Co. Ltd. and their affiliates. In addition, the World Bank debarred China Gezhouba Three Gorges Engineering Co. Ltd. and its affiliates for six months. The parent company, China Gezhouba Group, received a Letter of Reprimand from the World Bank, which is valid for six months, but which will not



prevent the parent company from participating in World Bank-funded projects.

In its announcement, the World Bank noted the level of cooperation by the company in connection with the investigation and the proactive nature of the company's efforts to put in place remedial measures to ensure that the misconduct does not reoccur. Under the terms of the settlement, the affected subsidiaries must implement a corporate compliance program consistent with the World Bank Group Integrity Compliance Guidelines.

Pursuant to the Agreement of Mutual Recognition of Debarments—entered into on April 9, 2010 by the World Bank Group, African Development Bank Group, Asian Development Bank, European Bank for Reconstruction and Development and Inter-American Development Bank—the debarred affiliates qualify for cross-debarment by the other Multilateral Development Banks that participated in the Agreement.

### **World Bank Debars Iberdrola Ingeniería y Construcción, S.A.U. and Iberdrola S.A.**

On June 1, 2015, the World Bank announced a settlement with two Spanish companies: Iberdrola Ingeniería y Construcción, S.A.U. (Iberinco) and its parent company, Iberdrola, S.A (Iberdrola). The settlement relates to misconduct by Iberinco in connection with two power projects in Albania between 2004 and 2005. Specifically, the misconduct involved failure to disclose certain agency relationships in two separate tender offers in violation of the World Bank Procurement Guidelines. The World Bank debarred Iberinco for 12 months, to be followed by a six-month, conditional nondebarment. In addition, Iberinco must pay \$350,000 in restitution to the Albanian government. The parent company, Iberdrola, also received a Letter of Reprimand for failure to supervise its subsidiary.

In its announcement, the World Bank noted the level of cooperation it received from the company. As part of the announcement, World Bank Integrity Vice President Leonard Frank McCarthy stated, “Steps toward stronger compliance and transparency standards while acknowledging misconduct are always welcomed by the World Bank Group. This case offers a clear example of how a company shifted course and sought corrective action in light of investigative evidence. Our objective is to work with more companies to achieve that goal.”

Under the terms of the settlement, Iberinco must enhance its compliance program so that it is consistent with the World Bank Group Integrity Compliance Guidelines.

### **Police Raid at Canadian Mining Firm Exposes Bribery Allegations in Congo**

According to recently unsealed court records, in January 2015, the Royal Canadian Mounted Police (RCMP) raided the offices of MagIndustries Corp., a Toronto-based mining and forestry firm. The RCMP first began investigating the company in October 2013, when a Canadian whistleblower reported to the Canadian embassy in the Democratic Republic of the Congo that he had been fired for refusing to approve an allegedly improper “black money” payment. After conducting an internal investigation, the company confirmed that its subsidiary based in the Republic of the Congo, Eucalyptus Fibre Congo, made approximately \$76,500 in illegal payments to Congolese officials in 2012 in order to obtain unfair business advantages for its mining projects.

MagIndustries began but did not complete an investigation into further allegations of misconduct, including those described in the recently released search warrant documentation. The payments at the center of the investigation are alleged to have been approved by top executives at MagIndustries, including Director and CEO Longbo Chen and Vice President of Mining Development Fuliang Wang. As a result of the investigation, MagIndustries could be delisted from the

Toronto Stock Exchange (TSX). TSX has given MagIndustries 30 days to comply with the conditions of its listing. MagIndustries suspended its investigation into this matter due to the resignation of the three directors who led the special investigative committee, as well as for a lack of funds. The company's auditor has since resigned.

To learn more, see *CBCNews* coverage [here](#) and [here](#).

## **FinCEN: Compliance Officer Banned for Life After Yemen Money Transfers**

On June 1, 2015, FinCEN [fined](#) King Mail & Wireless Inc., a Michigan-based money transfer business, and its owner for willful and repeated violations of the Bank Secrecy Act (BSA). In its final [assessment](#), FinCEN stated that King Mail & Wireless failed to maintain a required anti-money laundering program, engaged in high-risk transactions and failed to report suspicious transactions. Among the high-risk transactions, the company processed \$2.7 million in wire transfers to Yemen without maintaining proper records or performing due diligence on the individuals involved in the transactions.

In addition to a \$12,000 civil money penalty, Ali Al Duais, who was both the company's owner and designated compliance officer, agreed to immediately and permanently cease serving as an employee, officer, director or agent of any financial institution located or conducting business in the United States.

For more information, see [The WSJ](#).

## **FinCEN Fines Hotel and Casino for Anti-Money Laundering Violations**

On June 3, 2015, FinCEN [assessed](#) a \$75 million civil money penalty against a hotel and casino in the Northern Mariana Islands for violations of the BSA. The fine is the largest ever levied by FinCEN against a casino and the fourth largest ever imposed by the agency.

For years, Tinian Dynasty Hotel & Casino, owned by Hong Kong Entertainment (Overseas) Investments, Ltd., failed to establish and implement an effective anti-money laundering program or conduct audits of its compliance system as required by the BSA. It also failed to detect suspicious transfers or submit suspicious activity reports when transactions were conducted above the reporting threshold.

During an investigation of the casino, employees provided agents posing as gamblers with more than \$200,000 in chips without filing Currency Transaction Reports (CTR), which are generally required to be filed with FinCEN for any exchange of currency of more than \$10,000. During a subsequent search of the casino, law enforcement agents found more than 2,000 unfiled CTRs. A Tinian Dynasty VIP services manager also informed an agent posing as a representative of a Russian businessman that the casino would not file CTRs for large transactions.

A federal criminal case against Tinian Dynasty is pending in Northern Mariana Islands District Court for 158 counts of anti-money laundering violations from September 2009 to April 2013. Prosecutors alleged that Tinian Dynasty failed to report \$138 million in currency transactions. The case is scheduled to go to trial on June 30, 2015.

For more details, please see FinCEN's press release and news coverage from [Compliance Week](#) and [The WSJ](#).

## **U.K. Defendants Acquitted in Nigerian Corruption Trial**

Three employees of Swift Technical Solutions, Ltd., a U.K.-based provider of manpower for the oil and gas industry, were found [not guilty](#) of corruption-related offenses before the Southwark Crown



Court in London. The United Kingdom's Serious Fraud Office (SFO) alleged that, in 2008 and 2009, the defendants conspired to bribe Nigerian officials on the boards of revenue in Lagos State and Rivers State in Nigeria. Because the acts in question took place before the passage of the U.K. Bribery Act 2010, the case proceeded under the U.K. Prevention of Corruption Act 1906.

The three defendants—Bharat Sodha, Nidhi Vyas and Trevor Bruce—were each brought to trial on two separate counts of conspiracy to make corrupt payments. After the prosecution rested, the judge ordered Vyas's acquittal on the first count of conspiracy, and the jury acquitted on the second. The jury likewise acquitted Sodha of all charges and acquitted Bruce of one count of conspiracy, but was unable to reach a verdict on the remaining count. Once the SFO indicated that it would not seek a retrial on this count, the defendants were declared not guilty on all charges.

According to the SFO, Swift Technical Solutions was not charged due to its cooperation with the investigation, and a fourth defendant was not prosecuted due to health concerns.

For more information, see [Compliance Week](#) and the [FCPA Blog](#).

### **French Judiciary Exonerates 14 Companies Facing Bribery Charges in Connection with Middle East Contracts**

On June 18, 2015, a French court acquitted 14 companies accused of bribery in connection with the U.N. Oil-for-Food program, which operated between 1996 and 2003. The program required that the Iraqi government deposit proceeds from oil sales into a designated U.N. bank account. Further, the program permitted the government to use the funds to buy only food and medicine and other humanitarian goods and services. At issue in this case was the practice of Iraqi government officials to overcharge companies by 10 percent and then deposited the overcharged amount into Iraqi government accounts. Lawyers for the companies, which included Renault Trucks, Schneider Electric and Legrand, successfully argued that no individuals had profited from the Iraqi kickback scheme.

This ruling is consistent with a 2013 case in which another major French company was tried for similar conduct. In that case, the company was acquitted after it was found that "[c]orruption involves the personal enrichment of the corrupt, but in this case it was not proven that any foreign public official or private individual was personally enriched."

For more details, see the [FCPA Blog](#) and [Law360](#).

## **EXPORT CONTROL AND SANCTIONS ENFORCEMENT**

### **New Jersey Man Pleads Guilty to IEEPA and Money Laundering Charges Related to Smuggling Sensitive Electronic Components Worth over \$65 Million to Russia**

Earlier this month, Alexander Brazhnikov Jr., a Moscow-born U.S. citizen, pleaded guilty in the U.S. District Court for the District of New Jersey to conspiracy to violate the International Economic Emergency Powers Act (IEEPA) in connection with his nearly eight-year involvement in a procurement network that smuggled more than \$65 million in electronics from the United States to Russia. Brazhnikov Jr., the owner of four microelectronics export companies in New Jersey, was responsible for almost 2,000 illegal shipments of electronic components controlled under the Export Administration Regulations (EAR) administered by the U.S. Department of Commerce Bureau of Industry and Security (BIS).

The procurement network consisted of Brazhnikov Jr.; his

companies; his father Alexander Brazhnikov Sr.; and his father's Moscow-based procurement firm. Father and son worked together to purchase components from U.S. manufacturers and vendors on behalf of their customers in Russia, who were authorized to sell the components to Russia's Ministry of Defense and Federal Security Service, as well as Russian entities involved in designing weapons. Brazhnikov Jr. repackaged and shipped the components to Moscow, routinely providing false end-user and valuation information and directing that the shipments be sent to shell addresses in Russia controlled by the Moscow-based network.

Brazhnikov Jr. also pleaded guilty to conspiracy to commit money laundering. After his arrest in June 2014, U.S. officials seized more than \$4 million in proceeds related to the illegal shipments and more than \$600,000 in assets. Funds for the procurement network's transactions came from customer purchases and were deposited into a Russia-based account. The network ordered disbursements from the Russian account into a U.S.-based account of Brazhnikov Jr. through foreign accounts held by shell corporations in several countries. According to the government, the procurement "network's creation and use of dozens of bank accounts and shell companies abroad was intended to conceal the true sources of funds in Russia, [and] the identities of the various Russian defense contracting firms receiving U.S. electronics components."

Brazhnikov Jr. agreed to entry of a \$65 million forfeiture money judgment. He will be sentenced in September 2015. He faces possible prison sentences ranging from five to 20 years for the charges and fines ranging from \$250,000 to \$500,000.

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

### **Chicago Company Agrees to \$392,000 Settlement with OFAC for Apparent Violations of WMD-Related Regulations**

John Bean Technologies Corporation (JBT), of Chicago, Illinois, agreed earlier this month to a \$391,950 settlement with the Treasury Department's Office of Foreign Assets Control (OFAC) for alleged violations of Executive Order 13382 and the Weapons of Mass Destruction Proliferators Sanctions Regulations (WMDPSR), which aim to financially isolate proliferators of weapons of mass destruction (WMD) by freezing their assets. According to OFAC, in April 2009, JBT sold goods to a Chinese customer that were shipped to the customer by the Islamic Republic of Iran Shipping Lines (IRISL), an entity on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) aboard a blocked vessel. When JBT presented documents connected to the shipment to a bank in the United States for payment pursuant to a letter of credit, the bank refused to advise the letter of credit. In May 2009, in an effort to receive payment, JBT allegedly presented shipment-related documents to a Spanish bank, Banco Santander. Between May and July 2009, according to OFAC, JBT reimbursed JBT AeroTech Spain for: (1) payments that the Spanish sister company made to a freight forwarder for IRISL's shipping services and (2) fees that the sister company paid Banco Santander for negotiating the letter of credit.

OFAC found that JBT did not voluntarily disclose the apparent violations and that its management was aware of conduct leading to some of the apparent violations. The settlement, a reduction from the base penalty of \$670,000, reflects, among other factors, OFAC's determination that JBT took remedial action and cooperated with OFAC in the investigation.

Find out more by reading [OFAC's enforcement notice](#).

### **New York Branch of the National Bank of Pakistan Agrees to \$28,800 Settlement with OFAC for Apparent Violations of Global Terrorism Sanctions Regulations**

The New York branch of the National Bank of Pakistan (“NBP New York”) agreed in mid-June to a \$28,800 settlement with OFAC for seven apparent violations of the Global Terrorism Sanctions Regulations (GTSR). Between June 2013 and January 2014, NBP New York processed seven fund transfers to or from the account of LC Aircompany Kyrgyztransavia, an entity on the SDN List. Although NBP New York employed interdiction software, the software failed to flag the transactions.

OFAC found that NBP New York did not voluntarily disclose the apparent violations. The settlement, a reduction from the base penalty of \$64,000, reflects, among other factors, OFAC’s determination that NBP New York’s management did not have knowledge of the issue leading to the apparent violations (because the interdiction software failed to identify the SDN) and that the bank took remedial action, including enhancement of its interdiction software.

OFAC commented that its enforcement action highlights the risk that foreign financial institutions with U.S. locations face when they have accountholders subject to OFAC sanctions.

Find out more by reading [OFAC’s enforcement notice](#).

### **Iraq-Based Airline Added to OFAC SDN List and BIS Temporary Denial Order**

Late last month, OFAC and BIS took action against Al-Naser Airlines of Iraq. BIS added the airline to an existing Temporary Denial Order (TDO) against Iranian airline Mahan Air. According to the TDO, BIS determined that Al-Naser Airlines was seeking to acquire at least two Airbus aircraft on behalf of Mahan Air. BIS issues TDOs denying export privileges to prevent ongoing or imminent export control violations. In parallel to the BIS action, OFAC added Al-Naser Airlines to its SDN List, under the “Specially Designated Global Terrorist” and “Iranian Financial Sanctions Regulations” programs.

For additional information, see the [BIS press release](#) and the [OFAC announcement](#).

### **OFAC Targets Hizballah Support Network in Sanctions Designations**

Earlier this month, OFAC designated three individuals and two entities for providing support and services to Hizballah, ranging from holding properties and opening bank accounts on behalf of Hizballah to serving as investment mechanisms and supplying the group’s vehicle needs. In announcing the designations, OFAC emphasized the direct links between Hizballah’s terrorist and commercial activities. OFAC also affirmed its objective of disrupting the group’s use of the legitimate commercial sector for material and financial support to carry out terrorist acts.

For additional information on the new designations, see [OFAC’s press release](#).

## **EXPORT CONTROL AND SANCTIONS DEVELOPMENTS**

### **DDTC and BIS Seek Comments on Proposed Export Control Rules Regarding Definitions of Electronic Transmissions, Defense Services and Other Key Terms**

On June 3, 2015, the U.S. Department of State’s Directorate of Defense Trade Controls (DDTC) and BIS published proposed rules amending the International Traffic in Arms Regulations (ITAR) and the EAR in an attempt to further implement the president’s Export Control Reform (ECR) initiative and refine these regulations. Under

the proposed rules, certain electronic transmissions of encrypted controlled technical data across borders would no longer be considered “exports.” DDTC also proposes amending the definition of “defense services” and providing definitions for other terms that had been previously undefined. BIS also intends to codify its deemed reexport guidance. Finally, the proposed rules align certain definitions of common terms between the ITAR and the EAR. The agencies published a [chart](#) comparing these terms. DDTC and BIS are soliciting comments from industry and will consider all comments submitted by August 3, 2015, before publishing final rules.

For additional information on the proposed changes, see the June 24, 2014, [blog entry](#) in *AG Trade Law* and the [Federal Register announcement](#).

### **OFAC Issues Reminder Regarding the Retirement of Independent Data Files for Non-SDN Sanctions Lists**

Earlier this month, OFAC issued a reminder regarding the imminent retirement, in July 2015, of individual independent data files for three of its non-SDN sanctions lists. The non-SDN sanctions lists include the Non-SDN Palestinian Legislative Council List (NS-PLC List), the Foreign Sanctions Evaders List (FSE List), the Sectoral Sanctions Identifications Lists (SSI List), the non-SDN Iran Sanctions Act List (NS-ISA List), and the Part 561 List. The three independent data files to be retired are the NS-PLC List, the FSE List and the SSI List. OFAC now offers its non-SDN sanctions lists in a consolidated set of data files, “the Consolidated Sanctions List,” which may be used in lieu of the independent data files to maintain an automated sanctions screening program. Because the list retirement may affect automated download processes, users should take immediate steps to modify these processes to use the Consolidated Sanctions List.

For additional information, see OFAC’s [website](#).

### **Proposed ITAR Amendment to Clarify Registration and Licensing Requirements for U.S. Persons Employed by Foreign Persons**

Late last month, DDTC proposed an ITAR amendment to clarify the licensing and registration requirements for U.S. persons who provide defense services to a foreign-person employer. One of several proposed amendments, for example, clarifies that the ITAR’s registration requirement for persons who engage in the United States in the manufacture, export or temporary import of defense articles also applies to U.S. persons who perform defense services abroad. The State Department is accepting industry comments until July 27, 2015.

For additional detail on the proposed amendments, see the [Federal Register notice](#).

### **DDTC and BIS Propose Companion Amendments to Harmonize Destination Control Statements under the EAR and ITAR**

In late May, DDTC and BIS issued proposed companion rules to amend the ITAR and the EAR in furtherance of ECR. The proposed amendments harmonize the language required in the ITAR and in the EAR for destination control statements. The proposed change acknowledges that, in connection with ECR, the transfer of jurisdiction from the ITAR to the EAR for certain controlled items has “increased the incidence of exporters shipping articles subject to both the ITAR and the EAR in the same shipment,” causing confusion among exporters as to which destination control language should be used. The DDTC proposal includes additional amendments clarifying ITAR provisions that apply to the export of EAR-controlled items when exported pursuant to a DDTC authorization and pertaining to DDTC authorization to export or retransfer EAR-controlled items. The DDTC proposed amendments also seek to



clarify when license exemptions apply for exports to or on behalf of a U.S. government agency. DDTTC and BIS will accept comments on the proposed amendments until July 6, 2015.

For additional detail on the proposed amendments, see the [Federal Register notice](#).

## 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 [Jonathan Vukicevich](#). The “Export Control and Sanctions Developments and Enforcement” sections are edited by [Annie Schlappizzi](#).

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

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