

Akin Gump

STRAUSS HAUER & FELD LLP

Red Notice

A Monthly Update on Global Investigations and Prosecutions



JULY 2015

Introduction

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

This month on the anticorruption front, a construction management company enters into a deferred prosecution agreement (DPA) and pays a multi-million dollar fine to resolve Foreign Corrupt Practices Act (FCPA) charges, the U.S. Securities and Exchange Commission (SEC) completes an anticorruption probe of a South African company without recommending charges, a French company is debarred by the World Bank in connection with a project in China, four manufacturing company executives are sentenced for involvement in improper dealings in India and Libya, and Australia conducts a raid as part of a bribery investigation into an allegedly inflated real estate transaction with the Malaysian government.

In export control and sanctions enforcement news, an international steel supplier settles with the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) for sanctions violations related to shipments to Dubai, an Iranian company pleads guilty to export violations and reaches a settlement with the U.S. Department of Commerce's Bureau of Industry and Security (BIS) and two individuals face enforcement actions in connection with exports to the Middle East.

Finally, in developments in export control and sanctions law, the nuclear agreement with Iran provides for limited relief from U.S. sanctions, and OFAC sanctions two South Sudanese military commanders and publishes regulations to implement the Venezuela sanctions program.

Thank you as always for reading *Red Notice*.

ANTICORRUPTION DEVELOPMENTS

Louis Berger International Resolves Foreign Bribery Charges

In mid-July, New Jersey-based construction management company Louis Berger International Inc. (LBI) entered into a DPA with the Department of Justice (DOJ), and agreed to pay a criminal penalty of \$17.1 million to resolve pending charges for violating the FCPA.

According to the [DPA](#), from 1998 through 2010, LBI, through certain employees, including two former senior vice presidents of the company, Richard Hirsch and James McClung, paid more than \$3.9 million in bribes to several foreign officials in India, Indonesia, Vietnam and Kuwait in exchange for lucrative government construction management contracts. The company sought to

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WRITING AND SPEAKING ENGAGEMENTS

On September 15 and 16, partner [Arnold Spencer](#) and senior counsel [Nicole Sprinzen](#) and Navigant Consulting will co-present "FCPA, Financial Crimes and Other Alligators: Hidden Threats to Your Florida Business Success" in Tampa and Miami, respectively. This program will provide practical tips and best practices for in-house counsel and compliance professionals to avoid the pitfalls of FCPA and other financial crimes investigation and enforcement. For more information, please contact cmcnulty@akingump.com.

On July 30, partner [Edward Rubinoff](#) spoke 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.

Law360 has published the article "Pros And Cons Of CBP's Offer To Help With Customs Disputes," written by Akin Gump international trade partners [Lars-Erik Hjelm](#) and [Stephen Kho](#), counsel [Jean-Rene Broussard](#) and associate [Suzanne Kane](#). The article examines a recent offer by U.S. Customs and Border Protection (CBP) to help U.S. exporters resolve disputes with foreign customs agencies. To read the full article, please click [here](#).

conceal the purpose of these payments by recording them as “commitment fees,” “counterpart per diems” and “other payments to third-party vendors.”

LBI first became aware of the bribes during an internal investigation into government payments the company made during this period of time, and it self-reported the potential FCPA violations to the authorities. In addition to the monetary penalty assessed, the company agreed to implement rigorous internal controls, continue to cooperate fully with the DOJ and obtain a compliance monitor for a minimum of three years. Since 2010, LBI has spent more than \$25 million on reforming internal controls, policies and procedures in Asia and the Middle East, and expanding its ethics program globally.

Hirsch, who was responsible for operations in Indonesia, Thailand, the Philippines and Vietnam, and McClung, who was responsible for LBI’s operations in India and, after Hirsch, for Vietnam, previously pled guilty to FCPA violations in connection with the same conduct and are currently scheduled to be sentenced on November 5, 2015. Both men were terminated in 2012.

The former chairman, chief executive officer (CEO) and president of Louis Berger Group Inc., Derish Wolff, pled guilty in December 2014 and was sentenced on May 8, 2015 to 12 months of home confinement and was fined \$4.5 million for his role in a separate 20-year-long conspiracy to defraud the U.S. Agency for International Development (USAID).

For more information, please read the [DOJ](#) and [FBI](#) press releases and news coverage from the [Huffington Post](#).

SEC Concludes FCPA Investigation of South African Mining Company

Johannesburg-based Gold Fields Ltd., one of the world’s largest mining companies, announced in late June that the FCPA unit of the SEC concluded its investigation and will not recommend enforcement action against the company. As a New York Stock Exchange-traded company, Gold Fields is subject to the SEC’s enforcement jurisdiction under the FCPA. Begun in 2013, the SEC investigation targeted a Black Economic Empowerment (BEE) transaction in connection with Gold Fields’ attempts to procure a license to mine the South Deep gold mine in South Africa. The BEE program, implemented in 2003 by the South African government, was intended to make reparations for apartheid to certain groups of South Africans. In its investigation, the SEC examined allegations that Gold Fields granted a nine percent stake to the chairwoman of the African National Congress, the country’s governing social democratic political party.

Gold Fields’ [press release](#) and associated news reports do not provide a basis for the SEC’s determination. However, the press release states that “[the] notice has been provided under the guidelines set out in the final paragraph of the Securities Act Release No 5310, which states in part that the notice ‘must in no way be construed as indicating that the party has been exonerated or that no action may ultimately result from the staff’s investigation’.”

For more information about the investigation and its conclusion, please see the [FCPA Blog](#) and the [Wall Street Journal](#).

World Bank Group Announces Debarment of Engineering Firms

On July 1, 2015, the World Bank [announced](#) the debarment of Artelia Ville et Transport SAS (“Artelia SAS”) and Guangzhou Artelia Environmental Protection Ltd. (“Artelia China”) in connection with fraudulent conduct related to World Bank-financed projects in China. Artelia SAS and Artelia China are affiliates of the Artelia Group, a French engineering and design firm. The World Bank debarred Artelia

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 or +1 202.887.4464.



SAS for one year, and Artelia China for three years. The Bank also required that Artelia SAS make €445,000 in restitution payments. In addition, the Bank announced a two-year, conditional nondebarment of Artelia Eau et Environment SAS (AEE) for conducting business in the name of another company in West Africa. AEE may continue to bid for World Bank-financed projects on the condition that it complies with the terms of its settlement agreement with the Bank. As part of the settlement, Artelia SAS and its affiliates have agreed to implement a corporate compliance program consistent with the World Bank Integrity Compliance Guidelines.

Norway Jails Former Yara Execs for India, Libya Bribes

On July 7, 2015, a Norwegian court convicted and sentenced four former executives of Norwegian fertilizer manufacturer Yara in connection with a bribery scheme in India and Libya. Norwegian authorities charged that the defendants arranged for more than \$8 million of bribes to Indian and Libyan government officials in order to gain access to those markets. The former CEO, Thorleif Enger, received a three-year sentence, the toughest among the four executives. Kendrick Wallace, the company's former general counsel, was sentenced to two and one-half years, and two other former company executives were sentenced to two years each. Each of the defendants vowed to appeal the decision. Last year, Norwegian authorities fined Yara \$48 million in connection with the same bribery scheme. The case began when the company discovered the scheme and self-disclosed it to the Norwegian authorities in 2011.

For more information, see [Reuters](#) and the March 2014 *Red Notice issue*.

Australian Police Raid Melbourne Properties in Foreign Bribery Probe

In late June, Australian officials raided a home and business in Melbourne, Australia in connection with an ongoing foreign bribery investigation there. The raid came one day after Malaysia announced its intention to investigate allegations of corruption levied against Malaysian officials related to a multi-million-dollar real estate transaction in Australia.

According to press reports covering the investigation, Malaysian government officials allegedly spent millions of dollars of government funds to purchase the Dudley International House, an apartment block in Melbourne purportedly purchased by the Malaysian government in 2013 to provide housing to Malaysian students studying in Melbourne. According to Australian media reports, the Malaysian government officials allegedly overpaid for the real estate by more than 4.75 million Australian dollars (USD \$3.66 million) and allegedly received kickbacks from the transaction. The suspected kickbacks were paid to Malaysian firms with close ties to a senior government official at Majlis Amanah Rakyat ("MARA"), a government investment agency responsible for promoting development and providing financial assistance to ethnic Malays. To date, neither Australian nor Malaysian authorities have announced charges arising from the raid. MARA and the Malaysian Anti-Corruption Commission are working together to conduct an internal investigation of the organization.

The Australian raid is the latest in a long line of corruption allegations involving Malaysian state-linked entities. Earlier this month, Malaysia's debt-riddled development fund, 1Malaysia Development Bhs., denied allegations that it funneled money into Prime Minister Najib Razak's personal bank accounts. The numerous allegations of corruption involving Malaysian government officials prompted repeated calls from political opponents for Rezak's resignation.

For more information, see [Reuters](#) and [Business Insider](#).

Oklahoma Company Agrees to \$214,000 Settlement with OFAC for Apparent Violations of WMD-Related Regulations

Great Plains Stainless Co. (GPS), of Oklahoma, agreed late this month to a \$214,000 settlement with OFAC for two alleged violations of the Weapons of Mass Destruction Proliferators Sanctions Regulations (WMDPSR) that occurred when GPS sold goods from its Chinese vendor to a customer in Dubai between April 2009 and July 2009. The first violation comprised the shipment of the goods by the Chinese vendor to the customer aboard a vessel that the U.S. government had blocked under the WMD sanctions program. The second violation involved GPS requesting the creation of new shipping documents to conceal the blocked vessel's involvement in the transaction and then providing the modified documents to its customer in an apparent attempt to avoid the WMDPSR prohibitions and facilitate the release of the goods being held in Dubai.

OFAC found that GPS did not voluntarily self-disclose the apparent violations, had no sanctions compliance program in place and appeared to have acted willfully in connection with the second violation. Nonetheless, the settlement amount represented a reduction from the base penalty of \$340,000, reflecting OFAC's consideration of the fact that GPS is a small company that took remedial action and did not have reason to know that the goods would ship aboard a blocked vessel.

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

Iranian Corporation Pleads Guilty to Export Violation and Settles with BIS

Earlier this month, an Iranian company, Falcon Instrument & Machinery FZE ("Falcon"), previously known as FIMCO, pleaded guilty in the U.S. District Court for the Middle District of Pennsylvania to conspiracy to circumvent U.S. export licensing requirements. The conspiracy was in furtherance of an attempt to illegally export to Iran a U.S.-origin machine used to manufacture automobile and aircraft parts, and which allegedly also had possible military applications. Falcon and its co-conspirators failed to request export authorization from the U.S. government and agreed to falsify shipping documents to conceal the true end user in Iran. BIS intercepted the shipment.

As part of the plea agreement, Falcon agreed that the government would recommend a fine of \$250,000, subject to court approval. Separately, the Falcon reached an \$837,500 settlement agreement with BIS under which Falcon will pay a \$587,500 civil penalty. BIS agreed to suspend collection of the additional \$250,000 for two years and to waive collection if Falcon complies with the plea agreement terms and conditions. BIS will also impose a two-year denial of export privileges against the company

For additional information, see the DOJ [press release](#), *Law360 coverage*, and the December 2014 [Red Notice](#) on one of Falcon's co-conspirators.

Taiwanese Businessman Pleads Guilty to Iran Sanctions Violations

Late last month, Kunlin Hsieh, of Taiwan, pleaded guilty in the U.S. District Court for the Western District of Texas to violations of the Iranian Transaction and Sanctions Regulations (ITSR) and the International Emergency Economic Powers Act (IEEPA) arising from a conspiracy to ship U.S. communications technology to Iran. Hsieh worked as a sales manager for Taiwan-based Junbon Enterprises Co., Ltd. He admitted to conspiring with others between October 2007 and August 2014 to procure dual-use electronic parts from U.S.

companies that could be used in missile guidance systems and military radar networks. The U.S. companies were not informed that the parts were destined for Iran, and Hsieh never obtained the requisite authorizations from OFAC to ship the goods to Iran. Hsieh faces a possible 20-year prison sentence and \$1 million fine.

For additional information, see the DOJ [press release](#) and local media reports from [Taiwan](#) and [San Antonio](#).

Maryland Man Sentenced for AECA Violations Involving Firearms Exports to Pakistan

In late June, the U.S. District Court for the District of Maryland sentenced Kamran Ashfaq Malik, of Maryland, to two years in prison followed by five years of supervision. Malik pleaded guilty in March 2015 to violating the Arms Export Control Act (AECA) in connection with the illegal export of semiautomatic rifles, accessories and parts to Pakistan. Because these items are controlled defense articles, they require authorization from the U.S. Department of State for export from the United States. Malik faced a possible 10-year prison sentence.

For additional information, see the DOJ [press release](#) and the March 2015 [issue](#) of the *Red Notice*.

EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

Nuclear Deal with Iran Provides for Lifting of Most EU Sanctions But Few US Sanctions

On July 14, 2015, Iran and the P5+1 countries (China, France, Germany, Russia, the United Kingdom and the United States), with the High Representative of the European Union for Foreign Affairs and Security Policy, finalized the Joint Comprehensive Plan of Action (JCPOA), a nuclear agreement that would grant Iran sanctions relief in exchange for implementing significant limitations on its nuclear program.

Under the agreement, Iran will be required to remove two-thirds of its uranium-enriching centrifuges and reduce its existing low-enriched uranium stockpiles by up to 98 percent, among other nuclear-related measures. In announcing the deal, President Obama emphasized that the agreement, which is expected to freeze most of Iran's nuclear efforts for a decade, is "not built on trust," but "verification." The International Atomic Energy Agency (IAEA) will monitor and verify Iran's nuclear-related measures and inspect its facilities, including military sites. If any issues or disputes arise over Iran's nuclear commitments, a joint commission, consisting of the P5+1 and Iran, will attempt to resolve the matter over a 30-day period. If unresolved after 30 days, the issue will be referred to the United Nations Security Council (UNSC), which will vote on whether to continue sanctions relief or re-impose sanctions on Iran.

In exchange, most European Union (EU) and United Nations (U.N.) sanctions against Iran will be lifted. The United States will generally remove only secondary sanctions that apply to non-U.S. persons. U.S. sanctions that apply to U.S. persons will largely remain in place, with the exception of a permissible licensing regime for the importation into the United States of Iranian carpets and foodstuffs (including caviar and pistachios), and exports of civil aircraft and parts. U.S. sanctions will also continue to apply to non-U.S. entities owned or controlled by U.S. persons, but certain transactions by such entities may be licensed if they are consistent with the terms of the JCPOA. In sum, Iran will still be subject to robust U.S. sanctions, but opportunities will exist for certain non-U.S., as well as U.S., companies in a limited number of industries.

For additional information, see coverage in [The Washington Post](#),

[remarks](#) by the Treasury secretary, and Akin Gump's July 15 International Trade [alert](#).

OFAC Designates Two Military Commanders for Undermining Stability, Peace and Security in South Sudan

Early this month, OFAC added two persons to its South Sudan-related Specially Designated Nationals List ("SDN List"). The action took place in conjunction with similar sanctions by the U.N. The two new designees are the commander of the South Sudan military and the opposition commander, both of whom the Obama administration accuses of undermining security, peace and stability in South Sudan by violating ceasefire agreements. U.S. persons, wherever located, are prohibited from transactions with the designated commanders. The designations took place pursuant to Executive Order (EO) 13664, which authorizes OFAC to sanction individuals who threaten peace in South Sudan, and they represent the third round of designations since President Obama signed the EO in April 2014. This month's designations are the first South Sudan-related designations that have been coordinated with U.N. action.

For more information, see OFAC's [press release](#).

OFAC Issues Regulations to Implement Venezuela Sanctions Program

Earlier this month, OFAC published regulations that implement the Venezuela Defense of Human Rights and Civil Society Act of 2014 (the "Act"), signed into law in December 2014, and Executive Order (EO) 13692, issued in March 2015. The Act directs the president to impose sanctions against any person, including any current or former official of the government of Venezuela or person acting on behalf of that government, who is determined to have ordered or otherwise directed serious human rights abuses toward, or the arrest or prosecution of, a person in Venezuela primarily because of the person's legitimate exercise of freedom of expression or assembly; or knowingly materially assisted, sponsored or provided significant financial, material or technological support for, or goods or services in support of, the commission of such acts.

The EO declares human rights abuses and conditions in Venezuela to be a threat to the national security of the United States and imposes sanctions against seven of Venezuela's military, law enforcement and security officials responsible for the human rights abuses associated with antigovernment protests that began in February 2014 and the persecution of persons in Venezuela exercising freedom of speech or assembly. 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.

OFAC expects to supplement the recently published regulations with more comprehensive ones, possibly inclusive of additional guidance and interpretive information, as well as additional general licenses. 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 additional information, see the OFAC [press release](#) and Federal Register [Notice](#), as well as the [December 2014](#) and [March 2015](#) issues of the *Red Notice*.

CONTACT INFORMATION

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