

# Red Notice

A Monthly Update on Global Investigations and Prosecutions



NOVEMBER 2015

## Introduction

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

This month on the anticorruption front, a pharmaceutical company discloses a Foreign Corrupt Practices Act (FCPA) investigation in a recent filing, New Zealand passes anticorruption legislation, and the United States finalizes the transfer of more than US \$1 million in forfeited assets to the Republic of Korea in connection with a corruption scheme involving a former president.

In export control and sanctions enforcement news, a multinational financial services provider settles alleged sanctions violations with a financial regulatory agency, a New York branch of a Brazilian bank pays a penalty in connection with alleged Iran-related funds transfers, and a Philadelphia-based company resolves apparent violations of Cuban Assets Control Regulations (CACR) with the Treasury Department's Office of Foreign Assets Control (OFAC).

Finally, in developments in export control and sanctions law, the Obama Administration announces individual sanctions targeting former and current Burundi government officials and separately revokes sanctions against Liberia, and OFAC issues general licenses related to activity in Iran and Belarus.

Thank you as always for reading *Red Notice*.

## ANTICORRUPTION DEVELOPMENTS

### Alexion Receives Subpoena from DOJ in FCPA Investigation

On November 2, 2015, drugmaker Alexion Pharmaceuticals Inc. [announced](#) in a quarterly securities filing that it recently received a request from the U.S. Department of Justice (DOJ) for the voluntary production of documents related to the company's compliance with the FCPA. Alexion, a Connecticut-based biopharmaceutical company that focuses on the development of treatments for rare diseases, disclosed in May 2015 that it had received a subpoena from the Securities and Exchange Commission (SEC) related to an investigation of the company's grant application activities and potential violations of the FCPA. While the SEC's subpoena also requested information related to Alexion's June 2014 voluntary recall of its drug Soliris, the company's best known drug, the DOJ's request was limited to compliance with the FCPA.

Alexion said that it is fully cooperating with the investigations and that it "does not currently believe a loss related to these matters is probable or that the potential magnitude of such loss or range of loss,

## TRANSLATIONS

中文 >

НА РУССКОМ ЯЗЫКЕ >

## WRITING AND SPEAKING ENGAGEMENTS

Akin Gump lawyers issued a client alert analyzing the DOJ's recent revision of the United States Attorneys' Manual (USAM). This update emphasizes priority on individual prosecutions in corporate criminal cases. Read more [here](#).

On Wednesday, December 2, partner [Chuck Connolly](#) will co-chair the Corporate Counsel Symposium hosted by the New York City Bar. Partner [Parvin Moyne](#) will present on "Compliance Challenges: What Keeps In-House Counsel Up at Night" at this program.

On November 19, partner [Jim Benjamin](#) and senior consultant [Vena Chang](#) presented a program titled "Pitfalls in Running Investigations in China." If you're interested in the program materials, please contact [NewYorkEvents@akingump.com](mailto:NewYorkEvents@akingump.com).

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.

if any, can be reasonably estimated.”

To learn more, read coverage from [The Wall Street Journal](#).

### **New Zealand Passes Anticorruption Bill**

Early this month, New Zealand’s parliament passed a bill designed to combat money laundering, bribery, identity theft and drug-related crime. According to Justice Minister Amy Adams, the Organised Crime and Anti-Corruption Legislation Bill will protect the New Zealand economy by allowing police to share information with their international counterparts, increasing private sector bribery and corruption penalties and bolstering foreign bribery enforcement. Pursuant to the new bill, banks must report to police all international wire transfers over US \$666 (NZD 1,000) and all cash transactions of US \$6,656 (NZD 10,000) or more. Passage of the bill was not without controversy; the New Zealand bill permits facilitation payments to foreign officials under certain circumstances, which Labour and Green party critics likened to bribery.

See more information at the [Business Standard](#) and [Radio New Zealand News](#).

### **US Returns Forfeited Assets to South Korea**

On Monday, November 9, 2015, Korean Minister of Justice Kim Hyun-Woong met with U.S. Attorney General Loretta E. Lynch to finalize the return transfer of US \$1.1 million of forfeited assets to the Republic of Korea. The assets, forfeited in two U.S. civil forfeiture actions settled earlier this year, were linked to a corruption scheme organized by former Korean President Chun Doo Hwan.

As reported in the [March 2015 Red Notice](#), a criminal court in Korea convicted Chun in 1997 of taking more than US \$200 million in bribes during his presidency. According to the DOJ, the former president’s family members and associates laundered profits from his public corruption scheme into the United States. The forfeited assets recovered by the DOJ are just a fraction of the approximately US \$212 million Chun was ordered to pay in restitution.

In 2013, the Anti-Corruption Division of the Korean Supreme Prosecutor’s Office and prosecutors from the DOJ’s Kleptocracy Asset Recovery Initiative launched investigations into the potential laundering of bribery proceeds into the United States by Chun and his associates. Kleptocracy prosecutors worked across federal agencies and with Korean law enforcement agencies on the investigation. This marks the first instance of the United States returning laundered money to South Korea since their Treaty on Mutual Legal Assistance in Criminal Matters came into force in 1997. According to the [Korea Times](#), it also marks the first successful case in which the Korean Ministry of Justice recovered assets of a high-profile public official hidden overseas.

See the [DOJ press release](#) and coverage at [FCPA Blog](#) and [Arirang](#).



## **EXPORT CONTROL AND SANCTIONS ENFORCEMENT**

### **Deutsche Bank Agrees to Pay US \$258 Million to New York Department of Financial Services to Settle Alleged Sanctions Violations**

On November 4, 2015, Deutsche Bank agreed to pay US \$258 million to the New York Department of Financial Services (NYDFS) and will install an independent monitor to settle alleged violations of New York Banking laws. The alleged violations stem from transactions conducted by employees of Deutsche Bank on behalf of countries and entities subject to U.S. sanctions. Enforcement officials claimed that between 1999 and 2006, employees at the bank engaged in

banking practices that facilitated U.S. dollar clearing transactions for bank customers who were from sanctioned countries or listed on the Specially Designated Nationals (SDN) list maintained by OFAC. As part of the settlement, Deutsche Bank agreed to work with an independent monitor to conduct a comprehensive review of its sanctions compliance program and institute corrective measures in its U.S. dollar clearing business. It also agreed to take steps to terminate employees deemed by the agency to have played central roles in facilitating the transactions at issue.

For additional information, see the NYDFS [press release](#) and [consent order](#).

### **Banco do Brasil, S.A. Agrees to US \$139.5K OFAC Settlement for Apparent Violations of Iran-Related Sanctions**

Earlier this month, the New York Branch of Banco do Brasil, S.A. (BBNY) agreed to pay US \$139,500 to settle civil charges connected to seven apparent violations of the Iranian Transactions and Sanctions Regulations (ITSR). According to OFAC, between June 2010 and June 2012, BBNY transferred funds on behalf of a customer that resulted in payments for Iranian-origin goods in violation of the ITSR. BBNY was initially alerted to the sanctions risk given that the customer's name, Isfahan Internacional Importadora Ltda, referenced a location in Iran. Despite these risks, BBNY added the customer to their Iran sanctions "exceptions list" of false hits in reliance on the client's verbal representations that they did not trade products to and from Iran.

In determining the settlement amount, OFAC considered that BBNY did not voluntarily disclose the violations, they did not review and update their false hit list, and several BBNY employees failed to exercise a minimal degree of care in guarding against sanctions violations and may have had reason to know that the conduct at issue would violate the ITSR. Nonetheless, the settlement is lower than the US \$310,000 base penalty in light of several mitigating factors. Specifically, OFAC considered that BBNY had not previously received a penalty notice or Finding of Violation, BBNY took responsive remedial action, and BBNY cooperated with OFAC during the course of the investigation.

For additional information, see the [OFAC web notice](#).

### **Philadelphia-Based Travel Company Agrees to a US \$43K Settlement with OFAC for Apparent Violations of Cuba-Related Sanctions**

Late last month, a Philadelphia-based travel company, Gil Tours Travel, Inc. ("Gil Travel"), agreed to pay US \$43,875 to OFAC in connection with apparent violations of the CACR. The apparent violations concern the provision of travel services for 191 people traveling to Cuba between October 2009 and August 2010. The services in question involved referring nonprofit agencies to tour operators in Cuba without the requisite OFAC authorization. In determining the penalty, OFAC considered that Gil Travel had awareness that it was providing travel services that could be in violation of the CACR and did not maintain a sanctions compliance program at the time of the violations. The settlement is less than the base penalty amount of US \$97,500 in light of the fact that Gil Travel cooperated with OFAC during the investigation and had not received a penalty notice or Finding of Violation in the five years preceding the date of the first transaction.

For more information, see the [OFAC web notice](#) and coverage in [The Wall Street Journal](#).

## **Executive Order Imposing Targeted Sanctions on Individuals in Burundi**

On November 23, 2015, following reports of ongoing violence in Burundi since the disputed reelection of President Pierre Nkurunziza in April of this year, President Obama issued a new Executive Order (EO) declaring the violence and human rights abuses and conditions in Burundi—including arbitrary arrests, political repression and targeted killings of civilians—to be a threat to the national security of the United States.

The EO does not target the people of Burundi, but rather four of Burundi's current and former government officials who the Obama administration believes are responsible for, are complicit in, or who have contributed to conditions that threaten Burundi's security and stability. The sanctions block the property and property interests of the named individuals that are subject to U.S. jurisdiction or in the possession of U.S. persons.

The EO also expands the basis for making further sanctions designations beyond those outlined in the EO to address more generally the violence and human rights abuses in Burundi, including such activities directed against United Nations peacekeepers. 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 Burundi. While the current sanctions are limited to a small number of individuals, companies should ensure that they are conducting robust due diligence with their counterparties in Burundi.

For more information, see the [EO](#) and [fact sheet](#), as well as coverage by [Reuters](#).

## **Obama Administration Lifts Economic Sanctions Against Liberia**

On November 12, 2015, the Obama Administration issued an EO terminating economic sanctions against Liberia. The sanctions were originally imposed by a July 2004 EO in response to the policies of Liberia's then-president, Charles Taylor, who was sentenced to 50 years in prison in 2012 for his role in atrocities committed in neighboring Sierra Leone during its civil war in the 1990s. The EO notes Liberia's progress in promoting democracy and institutional development, as well as the conviction of Charles Taylor, as the grounds for terminating the sanctions.

See the [Executive Order](#) and coverage in [Reuters](#) for additional information.

## **OFAC Expands List of Medical Supplies Eligible for Export to Iran under a General License**

On November 2, 2015, OFAC updated the list of medical supplies eligible for export or reexport to Iran under an ITSR general license. The updated list includes more than 60 additional export-eligible items, including items critical for the care of infants, such as infant warmers and neonatal intensive care devices used in maternity units. Additionally, the types of eligible radiology equipment have been expanded to include the full suite of radiology technology, including MRI machines, X-ray machines, PET machines and similar equipment. This development provides greater opportunities for businesses to engage in permissible sales of medical equipment to Iran and should reduce the number of specific license applications required by medical device exporters.

For additional information, including a full list of items eligible for export under the general license, see the [OFAC press release](#) and coverage in [PressTV](#) and the [AG Trade Law blog](#).



## OFAC Issues Temporary General License for Transactions Involving Certain Belarusian Entities

On October 30, 2015, OFAC issued a temporary general license, valid through April 30, 2016, permitting certain transactions with nine Belarusian entities on the SDN list, including Belneftekhim, a petroleum and chemical company, and eight related companies. Belneftekhim was originally placed on OFAC's SDN list in 2006 for being controlled by an SDN, Belarusian President Alexander Lukashenko. The U.S. Department of State explained that that the temporary relief was in response to the Belarusian government's August 2015 release of six political prisoners.

Under the general license, blocked property and interests in property of the nine companies remain blocked, and U.S. persons conducting any transaction valued more than US \$10,000 must file a report with the U.S. Department of State within fifteen days of executing the transaction. U.S. persons should be cautious in using the general license and consider whether sanctioned persons not subject to the license may be conducting transactions through the nine entities. In parallel with this U.S. temporary relief, the EU announced a temporary lifting of sanctions on Belarus, which included removal of the asset freeze and travel ban on President Lukashenko. Under the EU policy, the sanctions will be dropped if they are not reimposed by the EU's 28 members at the end of this period.

For additional information, see the [General License](#), State Department press [briefing](#), and coverage in [The Wall Street Journal](#).

## CONTACT INFORMATION

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

[Edward L. Rubinoff](#) at +1 202.887.4026 or [erubinoff@akingump.com](mailto:erubinoff@akingump.com) or [Nicole H. Sprinzen](#) at +1 202.887.4301 or [nsprinzen@akingump.com](mailto:nsprinzen@akingump.com).

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

The "Anticorruption Developments" section of *Red Notice* is edited by [Jonathan Vukicevich](#). The "Export Control and Sanctions Developments and Enforcement" sections are edited by [Annie Schlapprizzi](#).

Translations of *Red Notice* into Chinese and Russian are available on a delayed basis. Please check via the links above or archived editions links below to view past translated editions.

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

---

[Archived Editions](#) • [Archived Editions – Chinese](#) • [Archived Editions – Russian](#) • [Subscribe to Red Notice](#)

[www.akingump.com](http://www.akingump.com)



© 2015 Akin Gump Strauss Hauer & Feld LLP. All rights reserved. Attorney advertising. This document is distributed for informational use only; it does not constitute legal advice and should not be used as such. IRS Circular 230 Notice Requirement: This communication is not given in the form of a covered opinion, within the meaning of Circular 230 issued by the United States Secretary of the Treasury. Thus, we are required to inform you that you cannot rely upon any tax advice contained in this communication for the purpose of avoiding United States federal tax penalties. In addition, any tax advice contained in this communication may not be used to promote, market or recommend a transaction to another party. Lawyers in the London office provide legal services through Akin Gump LLP, practicing under the name Akin Gump Strauss Hauer & Feld. Akin Gump LLP is a New York limited liability partnership and is authorized and regulated by the Solicitors Regulation Authority under number 267321. A list of the partners is available for inspection at Eighth Floor, Ten Bishops Square, London E1 6EG.

[Update](#) your preferences | [Subscribe](#) to our mailing lists | [Forward](#) to a friend | [Opt out](#) of our mailing lists | [View](#) mailing addresses