

Red Notice

A Monthly Update on Global Investigations and Prosecutions



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IN THIS ISSUE

Anticorruption Developments

- [Convicted Printing Company Ordered to Pay £2.2 Million](#)
- [FinCEN Issues Rules Requiring Additional Transparency in Cash Real Estate Transactions](#)
- [Venezuelan Banker Avoids Jail Time in FCPA Case](#)
- [Former Panamanian President Linked to SAP Bribery Scheme](#)

Export Control and Sanctions Enforcement

- [Iranian Corporation Sentenced for Export Violation](#)
- [Architectural Design Company Agrees to \\$140,500 Settlement with OFAC in Connection with Alleged Violations of Cuba Sanctions](#)
- [California Man Pleads Guilty to Syria Sanctions-Related Conspiracy](#)

Export Control and Sanctions Developments

- [JCPOA Implementation](#)
- [OFAC Adds Eleven Persons and Entities to SDN List for Alleged Ballistic Missile Procurement for Iran](#)
- [OFAC and BIS Announce Amendments to Cuba Sanctions and Export Controls](#)
- [OFAC Issues Cybersecurity Sanctions Regulations](#)
- [BIS Guidance on Charging and Penalty Determinations in Settlement of Enforcement Cases](#)

Global Investigations Resources

- [Client Alert: Obama Administration Further Relaxes Sanctions in Support of Cuba Policy](#)
- [Client Alerts: Implications of Iran Nuclear Deal for U.S. Companies and Non-U.S. Companies](#)
- [AG Trade Law Blog](#)
- [Writing and Speaking Engagements](#)

ANTICORRUPTION DEVELOPMENTS

Convicted Printing Company Ordered to Pay £2.2 Million

On January 8, 2016, the Serious Fraud Office (SFO) [announced](#) that Smith & Ouzman Ltd, a U.K. security printing company, was ordered to pay a £2.2 million penalty for corrupt payments to public officials in Africa. The sentence came after a four-year investigation that culminated in the company's 2014 conviction under the Prevention of Corruption Act 1906 ("the Act"). As we reported in our February 2015 [Red Notice](#), the company was found guilty of making corrupt payments to secure business contracts. The company's chairman, Christopher Smith, and his son, sales and marketing director Nicholas Smith, were convicted and sentenced last year for agreeing to make payments to public officials in Kenya and Mauritania in violation of the Act.

The penalty levied against the company includes a fine of £1,316,799, as well as £881,158 to satisfy a confiscation order applied for by the SFO and £25,000 in costs. The company has 28 days to pay the confiscation order, six months to pay costs and up to five years to pay the fine. Phil Ouzman, the current chairman of Smith & Ouzman, [said](#) that the company has "taken the matter very seriously and learned many lessons during this difficult time."

The case marks the SFO's first corporate conviction involving bribery of a foreign public official. In announcing the penalty, the director of the SFO, David Green, commented that, "The bribery of foreign officials by UK companies damages this country's reputation, commercially, politically and ethically. The SFO will pursue such criminal behaviour at both the corporate and individual level."

Learn more at the SFO case information [page](#) and coverage from [BBC](#) and the [Independent](#).

FinCEN Issues Rules Requiring Additional Transparency in Cash Real Estate Transactions

On January 13, 2016, the Financial Crimes Enforcement Network (FinCEN), issued two Geographically Targeted Orders (GTOs) related to "all-cash" purchases of high-end residential real estate in the Borough of Manhattan in New York, New York, and Miami-Dade County, Florida. The GTOs require title insurance companies to record and report to FinCEN the actual ownership information of legal entities purchasing certain high-value residential real estate without external financing. In New York, all-cash purchasers of real estate transactions valued at \$3 million or more must be reported; transactions valued at \$1 million or more trigger the reporting requirements in Miami-Dade County.

FinCEN director Jennifer Shasky Calvery explained that the agency "is seeking to understand the risk that corrupt foreign officials, or transnational criminals, may be using premium U.S. real estate to secretly invest millions in dirty money." Both [The New York Times](#) and the [Miami Herald](#) have chronicled the notable amount of suspicious hidden-purchaser transactions in previous investigative coverage.

The information collected pursuant to the GTOs will reportedly be compiled in a database and turned over to law enforcement officials. In light of the intensified scrutiny given to this issue by FinCEN and other law enforcement officials, title insurance companies and others involved in the real estate acquisition process should be cautious with respect to both the reporting requirements and the individual investors involved in purchases. Stated simply, the source of money provided by investors is not always apparent, and undisclosed participants can scuttle a deal.

To learn more, see coverage from [The New York Times](#), the [FCPA Blog](#) and the [Miami Herald](#).

Venezuelan Banker Avoids Jail Time in FCPA Case

Maria de los Angeles Gonzalez de Hernandez, a former senior official at Venezuelan-owned Banco de Desarrollo Económico y Social de Venezuela, has successfully avoided additional jail time for her role in a business trading scheme involving New York-based Direct Access Partners (DAP). Gonzalez admitted that DAP paid her roughly \$5 million for referrals that ultimately amassed \$60 million in fees for the Wall Street brokerage firm.

As *Red Notice* reported in our [May 2014](#), [March 2015](#) and [December 2015](#) issues, five former DAP executives have received prison sentences for their roles in the scheme. Notably, Benito Chinaea (former DAP CEO) and Joseph DeMeneses (former DAP managing director) each received four-year sentences, the longest prison terms issued to date for violations of the Foreign Corrupt Practices Act.

In deciding not to similarly sentence Gonzalez on conspiracy charges relating to money laundering and violations of the Travel Act, U.S. District Court Judge Denise Côte noted Gonzalez's degree of remorse. Judge Côte did order Gonzalez to forfeit the \$5 million she profited from through her role in the DAP scheme. Following the sentencing, Gonzalez's attorney stated that she and her client were "enormously grateful for the court's compassion and understanding."

The U.S. Securities and Exchange Commission uncovered the arrangement between DAP and Gonzalez during a routine review and announced charges against those involved in [May 2013](#) and [April 2014](#). DAP's parent company later filed for bankruptcy.

Learn more at [Reuters](#) and [The WSJ](#).

Former Panamanian President Linked to SAP Bribery Scheme

A U.S. federal judge in the Northern District of California named the former president of Panama, Ricardo Martinelli, as a co-conspirator in a bribery plot that allegedly facilitated millions of dollars in sales for German software company SAP. Judge Charles R. Breyer mentioned Martinelli's name during the sentencing proceedings for former SAP executive Vicente Garcia, who was ordered to serve 22 months in prison in mid-December. The day after the order was publicly released, the judge sealed the order, which directed Garcia to refrain from contact with "any co-conspirator in this case," including Martinelli and six others. Martinelli has not been charged in connection with Garcia's case, but this allegation comes after other unrelated claims of corruption and improper behavior have been made against the former president. Denying any connection, Martinelli tweeted on December 30, "I do not know Vicente Garcia, nor do I know anything about an SAP contract."

To learn more, see the [Reuters](#) coverage and background information regarding this case in the August 2015 edition of [Red Notice](#).

[Back to top.](#)

Iranian Corporation Sentenced for Export Violation

Earlier this month, a federal district court judge sentenced an Iranian company, Falcon Instrument & Machinery FZE ("Falcon"), previously known as FIMCO, to pay a criminal penalty of \$100,000 for violating U.S. export control laws. The criminal penalty is less than the \$250,000 Falcon had agreed to pay as part of a plea agreement in June 2015. The company admitted in the plea agreement to exporting a U.S.-origin bar peeling machine used in the production of high-grade steel for automobile and aircraft parts and controlled by the Bureau of Industry and Security (BIS) for having both civilian and military applications. Falcon and its co-conspirators failed to request an export license for the item and agreed to falsify shipping documents to conceal the end user in Iran.

The reduction in the penalty comes after Falcon filed its sentencing memorandum in December 2015, in which it requested that the court impose no penalty beyond the \$587,500 civil penalty it agreed to pay to BIS in connection with the alleged export violation. Despite the reduction in the criminal penalty, BIS noted in its press release that the sentence, in addition to the six-figure civil penalty paid to BIS, reflects the seriousness of the violation and BIS's efforts to fully prosecute companies that violate U.S. export control laws.

For additional information, see the [BIS](#) and [DOJ](#) press releases, coverage in [Law 360](#) and the July 2015 issue of [Red Notice](#).

Architectural Design Company Agrees to \$140,500 Settlement with OFAC in Connection with Alleged Violations of Cuba Sanctions

On January 20, 2016, WATG Holdings (WATG), a company headquartered in California, agreed to pay \$140,500 to the Treasury Department's Office of Foreign Assets Control (OFAC) to settle potential liability for apparent violations of Cuba-related sanctions. The alleged violations stem from transactions conducted by WATG's U.K. subsidiary involving a contract to perform architectural and design work for a Cuban hotel in which Cuban nationals maintained a property interest. In connection with the contract, WATG received three payments from a Qatari company for work performed on the hotel totaling \$284,515, which included a \$72,199 write-off of the contract's original value.

In determining the settlement amount, OFAC considered that WATG did not voluntarily disclose the apparent violations; is a large, sophisticated, multinational architectural design company; and lacked a comprehensive compliance program at the time of the apparent violations. Nonetheless, the settlement is less than the potential penalty amount due to OFAC's consideration of mitigating factors, such as WATG's lack of prior sanction violations and remedial action taken to develop a comprehensive sanctions compliance program.

For more information, see OFAC's [Enforcement Notice](#).

California Man Pleads Guilty to Syria Sanctions-Related Conspiracy

Earlier this month, Amin al-Baroudi, a Syrian-born U.S. citizen residing in California, pleaded guilty in U.S. Federal Court to charges that he conspired to export U.S.-origin goods to Syria in violation of U.S. sanctions on Syria. According to the Department of Justice (DOJ), from December 2011 through March 2013, al-Baroudi and his co-conspirators exported U.S. tactical equipment, including rifle scopes, night-vision goggles, knives and bullet proof vests, to Syria. The DOJ reported that the purpose was to supply the items to insurgent groups in Syria seeking to overthrow the Assad government. The goods were transported aboard two commercial flights to Turkey and then transferred to Syria. Al-Baroudi is scheduled for sentencing on May 6, and he faces a maximum penalty of 20 years in prison.

For more information, see the DOJ [press release](#) and coverage in [newsplex](#).

[Back to top.](#)

JCPOA Implementation

On January 16, 2016, the International Atomic Energy Agency (IAEA) verified that Iran had implemented its key nuclear-related measures described in the Joint Comprehensive Plan of Action (JCPOA), a nuclear deal reached on July 14, 2015, between Iran and the P5+1 (China, France, Germany, Russia, the United Kingdom and the United States, coordinated by the European Union's High Representative for Foreign Affairs and Security Policy). IAEA verification of Iran's nuclear commitments triggered "Implementation Day" under the agreement, which commenced the suspension and/or easing of U.N., U.S. and EU nuclear-related sanctions.

Pursuant to the JCPOA, the U.S. and EU have lifted nuclear-related sanctions for non-U.S. persons and EU persons, respectively, who engage in transactions involving certain sectors of the Iranian economy (e.g., financial, banking, energy, petrochemical, shipping, shipbuilding, and automotive sectors, among others). Notwithstanding JCPOA sanctions relief, U.S. export controls on goods, technology, and services that restrict trade with to Iran also remain intact. Consequently, non-U.S. persons are generally prohibited from using or re-exporting, directly or indirectly, U.S.-origin goods, technology or services or other items to or in Iran from a third country, if (i) the items are controlled for export from the United States to Iran, and (ii) the non-U.S. person knows or has reason to know that the re-export is intended specifically to Iran or the Government of Iran. The same restrictions also apply to non-U.S. manufactured items containing 10 percent or more U.S. controlled content.

Furthermore, U.S. secondary sanctions that are not nuclear-related (i.e., sanctions related to terrorism, human rights and ballistic missiles-related concerns) continue to apply to non-U.S. persons and provide a basis for the imposition of punitive sanctions on non-U.S. persons who engage in transactions with Iranian or Iran-related sanctioned individuals and entities on the SDN List. Similarly, although most Iran-related EU sanctions have been lifted, the EU also continues to maintain sanctions against Iran that prohibit EU persons from engaging in activities that intersect EU anti-terrorism, human rights and nonproliferation policy concerns associated with Iran.

Sanctions affecting U.S. persons and foreign entities owned or controlled by U.S. persons remain largely intact. OFAC will also continue to identify various Iranian persons and entities on their list of Specially Designated National's and Blocked Persons (SDN List) for which U.S. persons and foreign entities owned or controlled by them are prohibited from conducting business.

The JCPOA does provide some limited relief for U.S. persons and their U.S.-owned or -controlled entities. OFAC has issued General License H, which allows entities owned or controlled by U.S. persons to enter into transactions involving Iran except under eight enumerated circumstances. The license also authorizes U.S. persons, including senior management, to be involved in the initial determination to engage in activities with Iran under the general license and to provide training on Iran sanctions compliance. However, the general license does not allow U.S. persons to be involved in ongoing Iran-related operations or decision making.

In addition to General License H, OFAC also issued a statement of licensing policy that may establish more favorable treatment of license applications for Iran-related transactions relating to the export and reexport to Iran of commercial passenger aircraft and related parts. The JCPOA sanctions relief will also authorize the importation into the United States of Iranian-origin carpets, textile floor and wall coverings, and pistachios and caviar. Although restrictions continue to exist with respect to debits and credits to Iranian accounts, payments are authorized for these imports. Notably, the Iranian Transactions and Sanctions Regulations amendment authorizing such imports will go into effect only after publication in the *Federal Register*.

For additional information, see the OFAC [statement](#) on Implementation Day and Akin Gump client alerts on the implications of Implementation Day for [U.S. persons](#) and [non-U.S. persons](#).

OFAC Adds 11 Persons and Entities to SDN List for Alleged Ballistic Missile Procurement for Iran

On January 17, one day after the United States lifted sanctions relating to Iran's nuclear program in furtherance of the JCPOA, OFAC designated 11 persons and entities for alleged involvement in Iran's ballistic missile program. The designations include Mabrooka Trading Co. LLC, a company based in the United Arab Emirates (U.A.E.), entities in Mabrooka's U.A.E. and China-based network, and five Iranian individuals involved in the procurement of ballistic missile components for Iran. In a statement, OFAC emphasized its continued commitment to "vigorously press sanctions against Iranian activities outside the [JCPOA] – including those related to Iran's support for terrorism, regional destabilization, human rights abuses, and ballistic missile program."

For additional information, see the OFAC [press release](#) and update to the [SDN List](#).

OFAC and BIS Announce Amendments to Cuba Sanctions and Export Controls

On January 26, OFAC and BIS announced amendments to the Cuban Assets Control Regulations (CACR) and the Export Administrative Regulations (EAR) in furtherance of the administration's policy of easing Cuba-related sanctions. The amended regulations remove current restrictions on payment and financing for certain authorized exports and reexports to Cuba of items other than agricultural commodities and establish a case-by-case licensing policy for exports and reexports of items to Cuba that support the needs of the Cuban people, including to state-owned enterprises. Potential qualifying items include those for purposes of agricultural production, artistic endeavor, education, food processing, disaster preparedness, public health, construction and renovation.

The amended regulations also expand and clarify the scope of authorized travel under various general license categories. Particularly, the general license for information and informational materials now authorizes travel-related transactions in connection with the filming of movies and television programs; music recordings; and the creation of artwork by persons regularly employed or with professional experience in these fields. Additionally, the general license for professional meetings now authorizes transactions relating to the organization of professional meetings and conferences in Cuba.

The amended regulations went into effect on January 27. OFAC is also publishing updated FAQs and Travel Guidance relating to the regulatory changes.

For additional information, read Akin Gump's [client alert](#) and see the OFAC [press release](#), the Final Rules in the *Federal Register* [here](#) and [here](#) and coverage in the *New York Times*. See also OFAC's updated [FAQs](#) and [Travel Guidance](#).

OFAC Issues Cybersecurity Sanctions Regulations

Late last month, OFAC issued regulations designed to implement Executive Order 13694 authorizing sanctions on persons and entities engaged in "malicious cyber-enabled activities," such as cyber attacks and cyber theft. The regulations, which are currently in abbreviated form, provide guidance on prohibited activities, definitions and interpretations; however, they do not identify individuals or entities subject to sanctions. OFAC states that it intends to publish a more comprehensive set of regulations, including general licenses and statements of licensing policy, in the near future.

For more information, see the Final Rule in the *Federal Register* and coverage in *The Wall Street Journal*.

BIS Guidance on Charging and Penalty Determinations in Settlement of Enforcement Cases

BIS recently issued a proposed rule that would revise its guidance on charging and penalty determinations in the settlement of enforcement actions based on alleged violations of EAR. The revised guidance would clarify which factors BIS considers in setting penalties in settlements and deciding to pursue administrative charges or settle allegations. The revisions are designed to make penalties in enforcement actions more predictable and aligned with current OFAC penalty determinations. Comments on the proposed rule will be accepted until February 26, 2016.

For more information, see the Notice of Proposed Rule in the *Federal Register*.

WRITING AND SPEAKING ENGAGEMENTS

On February 10 and 11, partners [Paul Butler](#), [Chuck Connolly](#) and [Jonathan Poling](#) will present "As the World (Bank) Turns: Compliance and Enforcement Principles in World Bank and Other International Financial Institutions Contracting" in Akin Gump offices in Houston and Dallas, respectively. For more information, please contact jstuddard@akingump.com.

On January 14, partner [Wynn Segall](#) spoke about Iran sanctions and their impact on the energy sector during Akin Gump's briefing "The Global Energy Industry: A Look to the Year Ahead in 2016." A copy of the entire presentation is available [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 or +1 202.887.4464.

[Back to top.](#)

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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 Schlappizzi](#).

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