

Red Notice

A Monthly Update on Global Investigations and Prosecutions



July 2016

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ANTICORRUPTION DEVELOPMENTS

U.K. Serious Fraud Office Charges F.H. Bertling and Seven Individuals with Bribery

The U.K. Serious Fraud Office (SFO) has charged logistics services provider F.H. Bertling Ltd. ("F.H. Bertling") and seven individuals with bribing an agent of Sonangol EP, an Angolan state-owned oil company, of violating the Prevention of Corruption Act 1906. According to the SFO, the bribes were made between January 2005 and December 2006 to advance F.H. Bertling's business interests in Angola. The charges announced on July 13 were the result of the SFO's investigation that began in September 2014.

The defendants are set to appear at Westminster Magistrates' Court on August 4, 2016.

Court Approves SFO's Second DPA

On July 11, 2016, Lord Justice Leveson at Southwark Crown Court, sitting at the Royal Courts of Justice, approved the SFO's application for its second Deferred Prosecution Agreement (DPA). While the SFO would not identify the counterparty to the DPA to avoid prejudicing ongoing related legal proceedings, the SFO has indicated that the company is a U.K. company with a U.S. registered parent company. The company was indicted on charges of conspiracy to corrupt and bribe in violation of the Criminal Law Act 1977, as well as failure to prevent bribery in contravention of Section 7 of the Bribery Act 2010. The underlying allegations relate to the exchange of illegal payments in return for securing contracts in foreign jurisdictions. After the court approved the DPA, the SFO suspended the indictment.

For commentary on the effectiveness of the SFO's DPAs in encouraging self-reporting, see coverage in the [The Wall Street Journal](#).

Two Former Louis Berger Executives Sentenced for FCPA Violations

Nearly a year after Louis Berger International Inc., a New Jersey-based construction management company, entered into a deferred prosecution agreement requiring payment of a \$17.1 million criminal penalty related to \$3.9 million in bribes to government officials in India, Indonesia, Vietnam and Kuwait, two of the company's former executives were sentenced for their involvement in the scheme. James McClung and Richard Hirsch, both of whom pleaded guilty to one count of conspiracy to violate the Foreign Corrupt Practices Act (FCPA) and one substantive count of violating the FCPA, were sentenced by U.S. District Judge Mary L. Cooper in Trenton, New Jersey. McClung was sentenced to a year and a day in jail. Hirsch, who will avoid jail time, was sentenced to two years probation and fined \$10,000.

DOJ Returns Proceeds of Forfeited Properties to Taiwan

The Department of Justice (DOJ) recently returned approximately \$1.5 million to Taiwan. The funds resulted from the sale of a forfeited New York condominium and a Virginia residence belonging to Taiwan's former President Chen Shui-Bian and his wife. Chen, who was in office from 2000 until 2008, was convicted of bribery in Taiwan in 2009. Because then-First Lady Wu Shu-Jen purchased the properties with money derived from \$6 million in bribes paid to the presidential family, the homes were subject to forfeiture. Speaking about the DOJ's Kleptocracy Initiative, Assistant Attorney General Leslie R. Caldwell reiterated that the DOJ is "committed to rooting out foreign official corruption and preventing corrupt officials from enjoying their spoils in the United States."

Brokerage Firm Charged with AML Violations

On June 1, 2016, the Securities and Exchange Commission (SEC) reached a settlement with Wall Street-based brokerage firm Albert Fried & Company ("AF & Co") for failing to file Suspicious Activity Reports (SARs) for five years despite red flags in customer trading activity. The case marks the first time that the SEC has filed charges against a company solely for failing to file SARs when required. The SEC alleged that AF & Co failed to file SARs when certain trades exceeded 80 percent of the market for a given security on a single day and also when customers requesting trades were the subject of grand jury subpoenas that AF & Co had received. Despite these high-risk signals, AF & Co failed to file any SARs. The brokerage firm will pay a \$300,000 penalty to settle the charges without admitting or denying the SEC's findings.

World Bank Debars Information Computer Systems CJSC (Incom) for a Minimum Period of 22.5 Years

On July 5, 2016, the World Bank announced a lengthy debarment of 22.5 years against Ukrainian IT firm Information Computer Systems CJSC ("Incom"). The penalty is the second leveled against Incom since 2014, when it was debarred for three years. The second debarment results from Incom's collusive behavior and payment of bribes in order to secure IT contracts in Ukraine worth \$43 million, as well as Incom's repeated attempts to undermine and obstruct the World Bank's investigation of the company's illegal activity. It is the longest debarment ever handed down by the Bank, short of indefinite debarment. In addition, Incom's president and vice president received debarments of 11.5 and 8.5 years, respectively, while BMS Consulting LLC and Roma LLC were debarred for six and seven years, respectively, for colluding with Incom in the scheme.

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EXPORT CONTROL AND SANCTIONS ENFORCEMENT

New Jersey Man Sentenced for Participation in Illegal International Procurement Network

On June 30, 2016, the U.S. District Court for the District of New Jersey sentenced Alexander Brazhnikov, a naturalized U.S. citizen, to 70 months in prison for his role in an illegal international procurement network. The network obtained and smuggled sensitive, controlled electronics valued at more than \$65 million from the United States to Russia – many of which were sent to military and security force end users. Brazhnikov pled guilty to one count of conspiracy to commit money laundering, one count of conspiracy to smuggle electronics from the United States and one count of conspiracy to violate the International Emergency Economic Powers Act (IEEPA).

Brazhnikov was the CEO and owner of four New Jersey-based export companies used in the conspiracy to conceal the nature and destination of shipments and to hide the proceeds. According to court documents, Brazhnikov conspired with his father, the owner of a Moscow-based procurement firm that initiated purchase orders from U.S. vendors on behalf of Russian clients. Brazhnikov's New Jersey-based firms then purchased the components from the U.S. distributors, repackaged them and shipped them to Russia. Dozens of offshore accounts and shell companies were used to conceal the sources of funds and hide the ultimate destinations of goods. In addition to his prison term, Brazhnikov was sentenced to forfeiture in the amount of \$65 million, a \$75,000 fine and three years of supervised release.

For more information, see the DOJ [press release](#).

U.S.-Russian Dual Citizen Sentenced to 10 Years in Prison for Illegal Exports

On July 21, 2016, the DOJ announced that Alexander Fishenko, a dual citizen of the United States and Russia and founder of Houston-based Arc Electronics Inc. ("Arc"), was sentenced to 10 years in prison and ordered to forfeit more than \$500,000 in connection with illegal exports from the United States to Russia. As reported in the September 2015 issue of *Red Notice*, Fishenko pled guilty to DOJ criminal charges alleging that he led a Russian military procurement network that illegally exported to Russia advanced microelectronics that could be used in radar and surveillance systems, missile guidance systems and detonation triggers. To evade the associated export controls, Fishenko provided false-user information, did not disclose the nature of his business as an exporter of military equipment to Russia and falsely classified exported goods on export documentation.

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

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EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

OFAC Amends Regulations Implementing the Federal Civil Penalties Inflation Adjustment Act

On July 1, 2016, the Department of the Treasury's Office of Foreign Assets Control (OFAC) issued an interim final rule to amend the maximum amount of civil monetary penalties that may be assessed under OFAC regulations. The amendment adjusts civil penalties for inflation in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990. For instance, the final rule adjusts the maximum civil penalty for IEEPA-based sanctions to the greater of \$284,582 or twice the amount of the underlying transaction per violation. The penalty amount had previously been \$250,000 per violation.

The regulations take effect on August 1, 2016. OFAC will consider any comments received on or before that date.

For more information, see the Federal Register [notice](#).

OFAC Publishes General License and FAQs Related to Sanctions on Waked Money Laundering Organization

On July 1, OFAC released General License 4C, extending the authorization for U.S. persons to engage in certain transactions related to the Soho Mall complex in Panama until January 6, 2017. Similarly, on July 21, OFAC issued General Licenses 5B and 6B, which authorize certain transactions and activities necessary for the reorganization of Balboa Bank & Trust and Balboa Securities, Corp., respectively. These licenses expire on February 3, 2017.

For more information, see the [text](#) of General Licenses 4C, 5B and 6B and updated OFAC [FAQs](#). See also Akin Gump's May [issue](#) of *Red Notice* for more details on the Waked Money Laundering Organization designations.

DDTC Re-Launches "Company Visit Program"

The State Department, Directorate of Defense Trade Controls (DDTC) has restarted its Company Visit Program (CVP) after a three-month hiatus. Under the program, DDTC compliance officials and other associated government regulators visit sites of International Traffic in Arms Regulation (ITAR)-regulated companies. The stated purpose of these visits is to gather information and best practices on how companies are complying with ITAR. The DDTC will share these best practices with the companies in post visit summaries.

There are two types of CVP visits: (1) outreach visits that are focused on education and (2) compliance visits that are for oversight purposes. DDTC asserts that neither type of visit should be considered an audit or inspection. The compliance visits, however, are likely to include more in-depth oversight and may be a component of DDTC consent agreements. In fact, three of the eight CVP visits conducted in 2015 were associated with consent agreement monitoring. DDTC plans between eight and 16 visits in 2016. Participation in CVP visits is subject to the consent of the company being visited.

For more information, read the DDTC [FAQ](#) on the CVP and a CVP PowerPoint [Overview](#).

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WRITING AND SPEAKING ENGAGEMENTS

On August 4, Jim Benjamin will speak at the PLI seminar "Ethics in Banking and Financial Services 2016" in New

York, NY. For more information, please click [here](#).

On September 30, Jim Benjamin and Parvin Moyne will speak at PLI seminar "White Collar Crime 2016: Prosecutors and Regulators Speak" in New York, NY. 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 or +1 202.887.4464.

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The "Export Control and Sanctions Developments and Enforcement" sections are edited by [Johann Strauss](#).

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