

Red Notice

A Monthly Update on Global Investigations and Prosecutions



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ANTICORRUPTION DEVELOPMENTS

DOJ Issues First-Ever Declinations Requiring Disgorgement of Profits to Resolve FCPA Violations

On September 29, 2016, the Department of Justice (DOJ) for the first time announced declinations for two privately held companies while also requiring the companies to disgorge all profits attributable to their violations of the Foreign Corrupt Practices Act (FCPA). The DOJ stated that this new means for resolving cases is a result of the DOJ's FCPA Pilot Program announced in April 2016. Although, earlier this year, the DOJ announced declinations for three public companies that had previously disgorged their tainted profits to the Securities and Exchange Commission (SEC), the DOJ has not previously required disgorgement in connection with its own declinations.

The companies subject to declination with disgorgement, both privately held Texas companies, are HMT LLC, a manufacturer of above ground liquid storage tanks for the oil and gas industry, and NCH Corporation, a cleaning products manufacturer. According to the DOJ's declination letter, HMT paid about \$500,000 in bribes to officials in Venezuela and China and will disgorge about \$2.7 million in related profits. According to the DOJ's declination letter with respect to NCH, a China-based NCH subsidiary provided Chinese officials with about \$44,000 in cash,

gifts, meals and entertainment, generating profits of \$335,000, which the company agreed to disgorge. Because of the companies' timely self-disclosure and full cooperation, the DOJ suspended its investigations in favor of compelling total disgorgement. The companies are also required to forego tax deductions for any portion of the disgorged amount.

For more information, read the DOJ letters [here](#) and [here](#), as well as coverage in [The FCPA Blog](#).

GlaxoSmithKline Settles China-Based FCPA Violations for \$20 Million

Pharmaceutical giant GlaxoSmithKline plc (GSK) agreed to pay the SEC a \$20 million civil penalty to settle charges related to an investigation into several of GSK's China-based subsidiaries for alleged violations of the internal controls and recordkeeping provisions of the FCPA.

According to the SEC's administrative order, from at least 2010 until June 2013, GSK's Chinese subsidiaries undertook various schemes to bribe Chinese officials, especially health care professionals, to increase sales of GSK products in China. These bribes were improperly recorded as legitimate expenses, such as conference fees, employee expenses and marketing costs, and tens of millions of dollars in expenses were found to be either inflated or fabricated to support events that never occurred. The SEC found that these illegal sales practices were widespread among the subsidiaries, noting that, in one instance, a regional manager approved arrangements that provided for holiday gifts to be given to a health care professional in exchange for his promise to prescribe 40 boxes of the GSK subsidiary's product each month.

In explaining the remediation factors that led to settlement, the SEC noted that GSK cooperated with the SEC's investigation and made global changes to its business practices, including eliminating payments to doctors for speaking about the company's prescription medicines and altering the compensation structure for its sales force to eliminate incentive pay based on the number of prescriptions generated.

For additional information, see the SEC [notice](#) and coverage in [The FCPA Blog](#).

Grifols SA Announces Declination by DOJ

Spanish pharmaceutical company Grifols SA ("Grifols") announced in an SEC filing on October 7, 2016, that the DOJ is closing its investigation into potential FCPA violations without filing charges. This is the second declination received by the company since 2012. The 2012 declination related to certain conduct by the Talecris Group, prior to its acquisition by Grifols, in connection with sales to central and eastern European countries. Despite the DOJ's previous declination, the company indicated that it "continue[d] with the in-depth review of potential irregular practices" as recently as June 2016 as reflected in its Form 6-K issued at that time.

For additional information, see the SEC [notice](#) and coverage in [The FCPA Blog](#).

AC Boilers Faces Nine-Month World Bank Debarment and 15-Month Conditional Non Debarment

On October 11, the World Bank announced the debarment of Italian boiler manufacturer AC Boilers SpA ("AC Boilers") and two of its affiliates for violation of the Bank's integrity compliance guidelines while bidding on a Bank-financed contract related to Egypt's El Tebbin Power Project. The Bank found that AC Boilers "recklessly failed to disclose" payments to, and the identities of, certain agents employed by the company during that bidding. AC Boilers and its affiliates – AC Boilers Egypt S.A.E. and Centro Combustione Ambiente – will face the nine-month debarment as part of a Negotiated Resolution Agreement between the company and the World Bank Integrity Vice Presidency. Following that nine-month period, AC Boilers and its affiliates will face an additional 15 months of conditional non debarment, during which time the companies can work on Bank projects if certain compliance conditions are satisfied. Additionally, prior to removal from the debarment list, each of the debarred companies will have to demonstrate compliance with the World Bank's Integrity Compliance Guidelines.

For additional information, see the [Bank press release](#).

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EXPORT CONTROL AND SANCTIONS ENFORCEMENT

DDTC Announces Consent Agreement in Connection with Unauthorized Brokering of Weapons Destined for Libya

On October 5, 2016, the U.S. Department of State, Directorate of Defense Trade Controls (DDTC) announced a consent agreement with Marc Turi ("Turi") and Turi Defense Group, Inc. (TDG) in connection with unauthorized brokering activities and the unauthorized proposal for sale or transfer of defense articles to a Section 126.1 prohibited country. According to the DDTC charging letter, in 2011, Turi and TDG were denied a license request to engage in brokering activities involving light and heavy armaments and ammunition on behalf of the Libyan Transitional National Council. Around the same time, Turi and TDG were granted a license to engage in brokering

activities on behalf of the government of Qatar for similar items. After receiving this license, DDTC alleged that Turi and TDG sent correspondence to individuals attempting to divert to Libya the defense articles approved in the Qatar transaction. The activities in question ultimately did not result in an export to Libya.

Turi and TDG settled with DDTC without admitting or denying the allegations, but agreed to a suspended \$200,000 civil penalty. The penalty will be waived if they comply with the consent agreement, including refraining from participating in activities subject to the International Traffic in Arms Regulations for the next four years. In determining the penalty, DDTC considered the following mitigating factors: investigative cooperation, the belief that the activities were authorized, agreement to toll the statute of limitations and the absence of a transfer of defense articles to Libya.

For additional information, please see the DDTC charging [letter](#), [consent agreement](#) and [order](#).

New York Resident and Two Russian Nationals Arrested for Alleged Conspiracy to Export Advanced Microelectronics from the United States to Russia

On October 6, 2016, the U.S. Department of Justice (DOJ) announced that federal agents arrested a naturalized U.S. citizen and two Russian nationals for engaging in a conspiracy to export advanced microelectronics from the United States to Russia. The items in question include digital-to-analog converters and integrated circuits used in radar and surveillance systems, missile guidance systems and satellites. Such items are controlled by the Department of Commerce's (DOC) Bureau of Industry and Security (BIS) for national security reasons and cannot be exported to Russia without a license. DOJ alleges that the individuals used two Brooklyn-based front companies to evade export controls by providing false end-user information to suppliers and falsely classifying exported goods on documents submitted with the DOC. To further conceal the destination of the exports, the individuals shipped the items first to Finland and then to Russia. If convicted, the individuals face up to 25 years in prison and a \$1 million fine.

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

Two Individuals Sentenced in Connection with Illegal Exports to Syria

On October 26, 2016, the U.S. Attorney's Office for the Middle District of Pennsylvania announced that two individuals were sentenced for conspiring to export illegal goods to Syria, including a portable multigas scanner for the detection of chemical warfare agents. According to the press release, one of the individuals operated an export business in Hallstead, Pennsylvania, and conspired with the other to export items from the United States to customers in Syria through third countries. The individuals evaded U.S. export controls by preparing false invoices, which undervalued and mislabeled the goods being purchased and also listed false information regarding the identity and geographic location of the purchasers of the goods. One of the individuals was sentenced to a 37-month prison term and ordered to forfeit \$45,698. The other was sentenced to 12 months of home confinement, a fine of \$2,600 and a term of supervised release of two years, and was ordered to forfeit \$45,698.

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

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EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

New Round of Cuba Sanctions Changes Expand Opportunities for Health Sector

On October 17, 2016, the Office of Foreign Assets Control (OFAC) and BIS implemented amendments to the Cuban Assets Control Regulations and Export Administration Regulations, respectively, that further ease U.S. sanctions and export controls targeting Cuba, particularly in the areas of medical research, pharmaceuticals, and trade and commerce between the United States and Cuba. These changes continue the administration's policy of easing sanctions on Cuba to support the Cuban people and follow prior regulatory changes that occurred in January 2015, September 2015, January 2016 and March 2016.

This latest round of changes by the Obama administration provide new opportunities for U.S. companies operating in the health sector to engage in joint research activities with Cuban nationals and obtain Food and Drug Administration approval for and commercialize Cuban-origin pharmaceuticals. Additionally, the changes make it easier for U.S. companies to negotiate transactions with Cuban counterparties that require OFAC approval by allowing them to negotiate and execute "contingent contracts" that are expressly contingent on OFAC authorization or such authorization being no longer required. Notwithstanding these latest changes, the U.S. embargo against Cuba continues to broadly restrict trade, financial services and travel between the two countries, absent general or specific authorization by OFAC and/or BIS.

For additional information, please see the OFAC [press release](#) on the updated regulations and the [Presidential Policy Directive](#) issued by the White House Office of the Press Secretary. Additional discussion and analysis is provided in the Akin Gump [International Trade Alert](#) from October 19, 2016.

OFAC Issues Guidance on U.S. Dollar Transactions Involving Iran

On October 7, 2016, OFAC updated its Frequently Asked Questions regarding U.S. sanctions on Iran. The updated guidance clarifies (i) the circumstances under which non-U.S. financial institutions may engage in U.S. dollar transactions involving Iran (ii) when residual “secondary” U.S. sanctions on Iran can affect transactions involving affiliates of Iranian Specially Designated Nationals and (iii) U.S. government expectations for conduct of compliance screening and due diligence in Iran-related transactions otherwise permissible under U.S. sanctions relief implemented pursuant to the Joint Comprehensive Plan of Action (JCPOA) in January 2016. These clarifications are particularly relevant for transactions involving non-U.S. financial services institutions. Such institutions have generally been reluctant to support or participate in Iran-related transactions, despite the sanctions relief measures under the JCPOA implemented by the United States and the European Union.

Please see the OFAC [press release](#) for additional information, as well as the discussion on the impact of this new guidance in the Akin Gump [International Trade Alert](#) from October 11, 2016.

President Issues Executive Order Terminating Sanctions on Myanmar

On October 7, 2016, President Obama issued an Executive Order that effectively lifts all sanctions against Myanmar by terminating the long-standing national emergency relating to Burma (aka Myanmar) and revoking the Executive Orders that authorized past sanctions. Accordingly, OFAC announced that all property and interests in property that had been blocked pursuant to the Burmese Sanctions Regulation (BSR) are now unblocked.

The development follows over four years of White House engagement with the government of Myanmar to improve relations. The two governments now intend to work together toward a bilateral investment treaty, improvements to labor standards and human rights, and to combat money laundering, corruption and trafficking.

Nonetheless, OFAC still retains authority to continue or initiate investigations and enforcement actions for apparent violations of the BSR that were in effect at the time of the underlying activities. Political and reputational risks also remain in relation to doing business in the country. In light of the above, businesses considering new opportunities in the country will need to ensure a proper read of the dynamic U.S.-Myanmar relationship moving forward.

For additional information, please see the discussion in the Akin Gump [International Trade Alert](#).

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WRITING AND SPEAKING ENGAGEMENTS

On November 1-2, [Christian Davis](#) will speak at the EAR and ITAR Enforcement Seminars hosted by the Export Compliance Training Institute in Alexandria, VA.

On November 14, [Rebekah Jones](#) will speak on the pre-conference working group titled “How to Conduct Effective Third Party Due Diligence When Data Is Unavailable or Unreliable: How Far You Have to Go to Vet a Third-Party Post-Panama Paper and Unaoil” at the American Conference Institute (ACI) Asia-Pacific Summit on Anticorruption Compliance and Risk Management in Singapore.

On November 15, [Natasha Kohne](#) will be presenting on “Lessons Learned from Cybersecurity & Data Protection Roundtable: Role of GC” at the RSA Conference in Abu Dhabi.

On November 17, [Tatman R. Savio](#) will speak on the panel titled “Iran Sanctions—Perception vs. Reality: What Is and Is Not Allowed for Companies and Their Subsidiaries, and a Practical Review of General Licenses H, I, G” at the American Conference Institute (ACI) Asia Summit on Economic Sanctions Compliance and Enforcement in Singapore.

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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