

Red Notice

A Monthly Update on Global Investigations and Prosecutions



January 2017

Share This Page



中文 >

НА РУССКОМ ЯЗЫКЕ >

IN THIS ISSUE

Anticorruption Developments

- [Las Vegas Sands Corporation Agrees to Pay Approximately \\$7 Million to Resolve DOJ FCPA Enforcement Action](#)
- [Orthofix International N.V. Agrees to Pay More Than \\$6 Million to Resolve SEC FCPA Enforcement Action](#)
- [Rolls-Royce PLC Has Agreed to Pay \\$800 Million to Globally Resolve Bribery-Related Enforcement Actions](#)
- [U.S. Supreme Court to Review Limitations on SEC Disgorgement](#)
- [Sociedad Quimica y Minera de Chile S.A. Agrees to Pay Approximately \\$30.5 Million to Resolve FCPA Enforcement Actions](#)
- [Zimmer Biomet Inc. Agrees to Pay More Than \\$30 Million to Resolve FCPA Enforcement Actions](#)
- [Three Indicted on FCPA Violations for Attempting to Make an Improper Payment](#)
- [Mondelēz International, Inc. Agrees to Pay \\$13 Million to Resolve SEC FCPA Enforcement Action](#)
- [General Cable Pays \\$75.5 Million to Resolve FCPA Enforcement Action](#)
- [Anticorruption Spotlight: SEC Issues Two Whistle-Blower Determinations](#)
- [Anticorruption Spotlight: World Bank Adds 17 Entities and Individuals to its Debarment List](#)

Export Control and Sanctions Enforcement

- [OFAC Settles Apparent Violations of Iran and Cuba Sanctions with TD Bank](#)
- [OFAC Settles Apparent Violation of Iran Sanctions with Indian Offshore Drilling Company](#)
- [OFAC Settles Apparent Violations of Cuba Sanctions with Individual and Non-Profit Entity](#)

Export Control and Sanctions Developments

- [DDTC and BIS Request Comments on Additional Proposals for Category XII and Infrared Detection Items](#)
- [BIS Requires Exporters and Reexporters to Confirm Compliance with Hong Kong Import and Export Controls](#)
- [Obama Administration Takes Action to Terminate Sudan Sanctions Program](#)
- [U.S.-India Partnership: BIS Establishes Licensing Policy of General Approval, Expands Validated End-User Program](#)
- [OFAC Publishes Compliance Services Guidance](#)
- [Publication of New FAQs Regarding Vessel Transactions with Cuba](#)
- [Kevin Wolf, Leading Architect of U.S. Export Control Reform, Joins Akin Gump](#)

Global Investigations Resources

- Client Alert: [DDTC and BIS Request Comments on Additional Proposals for Category XII and Infrared Detection Items](#)
- Client Alert: [New Requirements for Exports and Reexports to and from Hong Kong: BIS Requires Exporters and Reexporters to Confirm Compliance with Hong Kong Import and Export Controls](#)
- Client Alert: [U.S.-India Partnership: BIS Establishes Licensing Policy of General Approval, Expands Validated End-User Program](#)
- Client Alert: [Obama Administration To Terminate Sudan Sanctions Program](#)
- Client Alert: [Top 10 Topics for Directors in 2017: CFIUS](#)
- Client Alert: [United States Imposes Cybersecurity Sanctions on Russia](#)
- Client Alert: [OFAC Expands Iran-Related Authorizations for Medicine, Medical Devices and Agricultural Commodities](#)
- [AG Trade Law Blog](#)

ANTICORRUPTION DEVELOPMENTS

Las Vegas Sands Corporation Agrees to Pay Approximately \$7 Million to Resolve DOJ FCPA Enforcement Action

On January 19, 2017, Las Vegas Sands Corporation (“Sands”), a Nevada-based gaming and resort company, executed a nonprosecution agreement (NPA) with the Department of Justice (DOJ) resolving the government’s investigation of alleged violations of the Foreign Corrupt Practices Act (FCPA).

Specifically, the DOJ’s enforcement action alleges that, from 2006 through 2009, Sands engaged a consultant for the purpose of promoting the company’s brand in the People’s Republic of China and Macao, but that the consultant failed to provide sufficient documentation of the purpose for the payments demanded (as much as \$700,000 in expenses was unaccounted for); in certain instances, payment was provided without any discernible legitimate business purpose; and Sands terminated a finance department employee who raised concerns about the payments. The DOJ’s enforcement action does not allege that Sands paid any bribes in violation of the FCPA, but that Sands failed to maintain an adequate system of internal accounting controls under the FCPA.

Sands agreed to pay an approximately \$7 million criminal penalty to resolve the enforcement action. Additionally, in May 2016, Sands paid a \$2 million fine to the Nevada Gaming Control Board (NGCB) and, in April 2016, agreed to pay a \$9 million civil penalty to the Securities and Exchange Commission (SEC) to resolve related investigations (a total of approximately \$18 million).

The DOJ’s Press Release and NPA are [here](#), the NGCB’s Stipulation Agreement is available [here](#), and the SEC’s Press Release and Cease-and-Desist Order are available [here](#). For more information, see *The New York Times*’ coverage [here](#); *The Wall Street Journal*’s coverage [here](#), [here](#), [here](#), [here](#) and [here](#); and the FCPA Blog’s coverage [here](#).

Orthofix International N.V. Agrees to Pay More Than \$6 Million to Resolve SEC FCPA Enforcement Action

On January 18, 2017, Orthofix International N.V. (“Orthofix”), a Texas-based medical device company, submitted an offer of settlement to the SEC, resulting in an administrative Cease-and-Desist order resolving the government’s investigation of alleged violations of the FCPA.

Specifically, the SEC’s enforcement action alleges that, on behalf of Orthofix, third-party commercial representatives provided Brazilian-government-employed doctors with improper payments as inducements to use Orthofix’s products. In a [statement](#) announcing the resolution, Orthofix noted that it voluntarily disclosed the alleged misconduct to both the SEC and DOJ and that, “after careful review,” the DOJ declined to bring a criminal enforcement action.

Orthofix agreed to pay a \$2.9 million civil penalty and to disgorge \$3.2 million in profits and interest (a total of \$6.1 million).

The SEC’s Press Release and Cease-and-Desist Order are available [here](#). For more information, see *The Wall Street Journal*’s coverage [here](#) and the FCPA Blog’s coverage [here](#).

Rolls-Royce PLC Has Agreed to Pay \$800 Million to Globally Resolve Bribery-Related Enforcement Actions

On January 16, 2017, Rolls-Royce PLC (“Rolls-Royce”), the United Kingdom-based manufacturer and distributor of power systems for the aerospace, defense, marine and energy sectors, executed deferred prosecution agreements with the DOJ and the United Kingdom’s Serious Fraud Office (SFO), and a leniency agreement with the Brazilian Ministério Público Federal (MPF) to resolve investigations of alleged violations of each country’s antibribery laws and regulations.

Specifically, the DOJ and SFO enforcement actions allege that Rolls-Royce utilized third-party intermediaries to make improper payments to government officials in exchange for those officials’ assistance in providing confidential information and awarding contracts to Rolls-Royce. The enforcement actions further allege that such payments totaled more than \$35 million and were paid in Angola, Azerbaijan, Brazil, China, India, Indonesia, Iraq, Kazakhstan, Malaysia, Nigeria, Russia and Thailand. Also, the Brazilian leniency agreement alleges that third-party intermediaries made improper payments on behalf of Rolls-Royce to secure contracts for the provision of gas turbines to Petróleo Brasileiro SA (“Petrobras”) oil platforms.

To resolve the enforcement actions, Rolls-Royce agreed to pay an approximately \$170 million criminal penalty to the DOJ, an approximately £500 million criminal penalty to the SFO and approximately R\$80 million directly to Petrobras (a total of approximately \$800 million).

The DOJ's Press Release, deferred prosecution agreement (DPA) and Information are available [here](#); the SFO's News Release and DPA are available [here](#); and the MPF's Press Release is available [here](#). For more information, see *The New York Times*' coverage [here](#), *The Wall Street Journal*'s coverage [here](#) and [here](#), and the FCPA Blog's coverage [here](#).

U.S. Supreme Court to Review Limitations on SEC Disgorgement

On January 13, 2017, the U.S. Supreme Court granted Charles R. Kokesh's petition for certiorari seeking review of a decision of the U.S. Court of Appeals for the 10th Circuit affirming the District Court's finding that the SEC's issuance of a permanent injunction and disgorgement of profits are remedial in nature and thus not subject to the five-year statute of limitations imposed by 28 U.S.C. § 2462.

In 2014, the SEC won a jury verdict against Kokesh arising from allegations that Kokesh misappropriated funds from four SEC-registered business development companies in violation of federal securities laws. Following the verdict, the District Court entered a final judgment permanently enjoining Kokesh from violating certain provisions of federal securities laws, ordering disgorgement of \$34.9 million plus prejudgment interest of \$18.1 million and imposing a civil penalty of \$2.4 million. Importantly, the civil penalty applied to conduct during only the five years preceding the suit filed by the SEC, while the disgorgement (and related interest) constituted all of Kokesh's ill-gotten gains from the scheme. On appeal, Kokesh argued that Section 2462's five-year statute of limitations applies both to penalties—as the U.S. Supreme Court held in *Gabelli v. SEC*, 133 S. Ct. 1216 (2013)—as well as to equitable remedies, such as disgorgement. In affirming the District Court's final judgment, the 10th Circuit concluded that enjoining one from committing further violations of securities laws is not a penalty and, similarly, that disgorgement is neither a penalty nor a forfeiture but rather more akin to restitution. In so holding, the 10th Circuit joined the D.C. Circuit and the 1st Circuit, but diverged from the 11th Circuit, which had previously held that disgorgement was effectively the same as forfeiture and thus subject to Section 2462's five-year statute of limitations.

Oral argument has not yet been set, but will likely be scheduled for the court's April sitting, with a decision to follow by the end of its October 2016 term in July.

The opinion of the United States Court of Appeals for the 10th Circuit, petition for certiorari, response, reply and amicus curiae brief are available [here](#). For more information, see *The New York Times*' coverage [here](#), *The Wall Street Journal*'s coverage [here](#), the FCPA Blog's coverage [here](#) and *Law360*'s coverage [here](#).

Sociedad Quimica y Minera de Chile S.A. Agrees to Pay Approximately \$30.5 Million to Resolve FCPA Enforcement Actions

On January 13, 2017, Sociedad Quimica y Minera de Chile S.A. (SQM), a Chilean chemicals and mining company that trades American Depositary Receipts on the New York Stock Exchange, executed a DPA with the DOJ and submitted an offer of settlement to the SEC, resulting in an administrative Cease-and-Desist order resolving the government's investigation of alleged violations of the FCPA.

Specifically, the enforcement actions allege that, between 2008 and 2015, SQM made approximately \$630,000 in donations to dozens of foundations controlled by, or closely tied to, Chilean politicians with influence over the government's mining plans in Chile. The enforcement actions further allege that SQM concealed payments to vendors associated with politicians by logging them as consulting and/or professional services that SQM never received. In total, the enforcement actions allege that SQM paid vendors nearly \$15 million without any evidence of having received any goods or services for the payments.

SQM agreed to pay an approximately \$15.5 million criminal penalty to the DOJ and an approximately \$15 million civil penalty to the SEC to resolve the enforcement actions.

The DOJ's Information, DPA and Press Release are available [here](#); and the SEC's Press Release and Cease-and-Desist Order are available [here](#). For more information, see *The Wall Street Journal*'s coverage [here](#) and the FCPA Blog's coverage [here](#).

Zimmer Biomet Inc. Agrees to Pay More Than \$30 Million to Resolve FCPA Enforcement Actions

On January 12, 2017, Zimmer Biomet Inc. ("Biomet"), an Indiana-based medical device manufacturer, resolved a DOJ FCPA investigation through a deferred prosecution agreement and an SEC FCPA investigation through an offer of settlement, resulting in an administrative Cease-and-Desist Order.

The enforcement actions allege that Biomet violated its 2012 DOJ DPA and SEC Cease-and-Desist order by continuing to engage a third-party distributor in Brazil that was known to have made improper payments to Brazilian government officials on Biomet's behalf. Additionally, the enforcement actions allege that Biomet failed to implement an adequate system of internal accounting controls at the company's Mexican subsidiary, resulting in the provision of improper payments to Mexican customs officials through customs brokers and subagents. The subsidiary, JERDS Luxembourg Holding S.ár.l. (JERDS)—the parent of Biomet 3i Mexica S.A. de C.V.—separately pleaded guilty to causing Biomet to violate the books and records provisions of the FCPA.

Biomet agreed to pay an approximately \$17 million criminal fine to the DOJ; pay a \$6.5 million civil penalty to the SEC; and disgorge \$6.5 million in profits and interest, also to the SEC.

The DOJ's Press Release, Biomet DPA and JERDS Information are available [here](#), and the SEC's Press Release and Cease-and-Desist Order are available [here](#). For more information, see *The Wall Street Journal's* coverage [here](#) and [here](#), and the FCPA Blog's coverage [here](#).

Three Indicted on FCPA Violations for Attempting to Make an Improper Payment

On January 10, 2017, the U.S. Attorney's Office for the Southern District of New York announced the unsealing of an indictment charging Joo Hyun Bhan, aka Dennis Bahn; Ban Ki Sang (the brother of former U.N. Secretary-General Ban Ki-moon); and Malcolm Harris with, inter alia, violations of the antibribery provisions of the FCPA. Bhan and Sang are alleged to have conspired to provide an improper payment to Harris, the purported agent of a Middle-Eastern government official, to ensure the close of an \$800 million deal for a 72-story skyscraper in Vietnam, which would have led to a multimillion-dollar commission. Notably, the indictment further alleges that Harris defrauded the defendants of the improper payment and had fabricated his relationship with the unnamed foreign official.

The DOJ's Press Release is available [here](#). For more information, see *The New York Times'* coverage [here](#), *The Wall Street Journal's* coverage [here](#) and the FCPA Blog's coverage [here](#).

Mondelēz International, Inc. Agrees to Pay \$13 Million to Resolve SEC FCPA Enforcement Action

On January 6, 2017, Mondelēz International, Inc. ("Mondelēz"), a U.S.-based food, beverage and snack manufacturer, resolved an SEC enforcement action through the submission of an offer of settlement, which resulted in an administrative Cease-and-Desist order.

Specifically, the SEC's enforcement action alleges that, in 2010, Mondelēz's indirect subsidiary Mondelēz India Foods Private Limited fka Cadbury India Limited ("Cadbury India") retained a consultant to assist the company in obtaining various licenses and approvals necessary to build additional production facilities in India. According to the SEC's enforcement action, Cadbury India's books and records did not accurately and fairly reflect the nature of the services rendered by the consultant and, relatedly, did not sufficiently implement adequate FCPA compliance controls, which "created the risk" that funds paid to the consultant (approximately \$100,000) could be used for improper or unauthorized purposes.

Mondelēz agreed to pay a \$13 million civil penalty to resolve the SEC's enforcement action.

The SEC's Cease-and-Desist Order is available [here](#). For more information, see *The Wall Street Journal's* coverage [here](#) and the FCPA Blog's coverage [here](#).

General Cable Pays \$75.5 Million to Resolve FCPA Enforcement Action

On December 29, 2016, General Cable Corp. ("General Cable"), a Kentucky-based manufacturer and distributor of cable and fiber-optic wire, executed an NPA with the DOJ and submitted an offer of settlement to the SEC, resulting in an administrative Cease-and-Desist order resolving the government's investigation of alleged violations of the FCPA.

Specifically, the enforcement actions allege that, between 2002 and 2013, General Cable subsidiaries facilitated improper payments to foreign government officials through third-party agents and distributors to obtain or retain business in Angola, Bangladesh, China, Egypt, Indonesia and Thailand.

Of note, the DOJ provided a 50 percent discount off the lowest-recommended criminal penalty pursuant to the U.S. Sentencing Guidelines as a result of General Cable having (a) voluntarily disclosed the conduct in a timely manner; (b) fully cooperated in the investigation; and (c) remediated, including by terminating those involved in the improper conduct and ending relationships with third-party agents and distributors participating in the misconduct.

General Cable agreed to pay a \$20.5 million criminal penalty to the DOJ, and to disgorge \$55 million in profits and interest to the SEC (for a total of approximately \$75.5 million).

The DOJ's Press Release and Non-Prosecution Agreement are available [here](#). The SEC's Press Release and Administrative Cease-and-Desist Order are available [here](#). For more information, see *The New York Times'* coverage [here](#), *The Wall Street Journal's* coverage [here](#) and the FCPA Blog's coverage [here](#).

Anticorruption Spotlight: SEC Issues Two Whistle-Blower Determinations

In January, the SEC issued two whistle-blower determinations, bringing the total number of whistle-blower awards to 41 since it first began the practice in 2012. In total, more than \$148 million in has been paid for whistle-blower information.

Specifically, on January 6, 2017, the SEC awarded approximately \$5.5 million to an anonymous whistle-blower who provided information that led to a successful enforcement action. According to the SEC's Order, the whistle-blower was employed at the company involved in the wrongdoing and reported the information directly to the SEC. The SEC's Press Release and Order are available [here](#).

Additionally, on January 23, 2017, the SEC awarded more than \$7 million split between three whistle-blowers that provided information that led to a successful prosecution of an investment scheme. Pursuant to the SEC's Order, the first whistle-blower provided information that was a primary impetus for the SEC's subsequent investigation and was awarded more than \$4 million. The Order further provides that the other two whistle-blowers provided new information during the SEC's investigation that significantly contributed to the success of the SEC's enforcement action and were jointly awarded more than \$3 million. The SEC's Press Release and Order are available [here](#).

Whistle-blower awards—provided for under the Dodd-Frank Act—can range from 10 percent to 30 percent of the money collected when monetary sanctions from a successful enforcement exceed \$1 million. Notices of Covered Actions – enforcement actions with sanctions greater than \$1 million—are posted on the SEC's [website](#), and claims must be submitted within 90 days of such posting.

Anticorruption Spotlight: World Bank Adds 17 Entities and Individuals to its Debarment List

In January, the World Bank added 17 individuals to its debarment list, including one added by cross-debarment by other Multilateral Development Banks under the 2010 Agreement of Mutual Recognition of Debarments (available [here](#)). The World Bank did not release details about any of the debarments. The list of all World Bank debarred entities and individuals is available [here](#).

[Back to top.](#)

EXPORT CONTROL AND SANCTIONS ENFORCEMENT

OFAC Settles Apparent Violations of Iran and Cuba Sanctions with TD Bank

On January 13, 2017, the Treasury Department's Office of Foreign Assets Control (OFAC) announced that it had entered into a settlement agreement with Toronto-Dominion Bank ("TD Bank"), a financial institution based in Toronto, Canada. As part of the settlement, TD Bank has agreed to remit \$516,105 to settle potential civil liability for 167 apparent violations of the Cuban Assets Control Regulations (CACR) and the Iranian Transactions Sanctions Regulations (ITSR). According to OFAC, the apparent violations stem from various transactions undertaken by TD Bank implicating U.S. sanctions on Cuba and Iran. These transactions included processing import-export letters of credit to or through the United States for a customer owned by a Cuban company and maintaining accounts for the sales agent of an Iranian entity listed on OFAC's Specially Designated Nationals (SDN) List.

In determining the settlement amount, OFAC weighed several aggravating and mitigating factors. As aggravating factors, OFAC considered that several bank employees (including those involved in compliance) were aware of the apparent violations due to gaps in the bank's procedures and a failure to document customer ties to countries subject to sanctions. OFAC also considered that TD Bank is a large, sophisticated financial institution, and its compliance program was inadequate to identify and prevent transactions that involved sanctioned countries. As mitigating factors, OFAC recognized that the bank's managers did not appear to have actual knowledge of the violations, some of the transactions in question were eligible for specific licenses, the bank did not have an OFAC enforcement history in the past five years, and the bank engaged in substantial remediation and cooperation with OFAC.

Separately, OFAC issued a Finding of Violation to TD Bank for conduct by its subsidiaries, Internaxx and TD Waterhouse Investment Services (TDWIS)—entities that engage in online brokerage and banking operations. The Finding of Violation stems from the processing of securities-related transactions through the U.S. financial system for four customers with ties to Iran and Cuba between 2003 and 2008. In issuing the Finding of Violation, OFAC highlighted the importance of compliance for entities with subsidiaries in high-risk industries, such as securities trading, as well as the need to mitigate risk associated with online payment platforms that do not restrict access for individuals located in comprehensively sanctioned countries.

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

OFAC Settles Apparent Violation of Iran Sanctions with Indian Offshore Drilling Company

On January 12, 2017, OFAC announced that Aban Offshore Limited ("Aban"), an offshore drilling company based in Chennai, India, agreed to pay \$17,500 to settle potential liability for a violation of the ITSR. According to OFAC, the apparent violation stems from a transaction undertaken by Aban's subsidiary, which placed an order for oil rig supplies from a U.S. vendor with the purpose of reexporting these supplies to the United Arab Emirates for use on an oil drilling rig located in Iranian territorial waters. Aban did not voluntarily disclose the transaction to OFAC and faced a statutory maximum penalty of \$250,000.

In determining the settlement amount, OFAC weighed several aggravating and mitigating factors. With regard to aggravating factors, OFAC considered that Aban failed to exercise caution in its exports of U.S.-origin goods, the reexported equipment aided Iran's energy sector, Aban is a large sophisticated company, and Aban lacked an OFAC compliance program at the time of the transaction. With regard to mitigating factors, OFAC recognized that Aban did not have an OFAC enforcement history in the preceding five years; Aban took remedial action by implementing a compliance program; and Aban cooperated substantially with OFAC, including by conducting an internal investigation that provided OFAC with detailed, well-organized information.

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

OFAC Settles Apparent Violations of Cuba Sanctions with Individual and Non-Profit Entity

On January 12, 2017, OFAC announced that an individual, and the nonprofit organization that he represented, the Alliance for Responsible Cuba Policy Foundation (the "Alliance"), agreed to pay \$10,000 to settle apparent violations of the CACR. According to OFAC, the violations stem from unauthorized travel to Cuba in 2010 and 2011 by the individual, as well as the provision of unauthorized travel services for 20 individuals for those same trips. In these transactions, OFAC concluded that the individual acted in his personal capacity, but held himself out as a representative of the Alliance.

While the maximum civil monetary penalty amount for the alleged violations was \$1,430,000, the settlement amount was significantly reduced after OFAC's consideration of aggravating and mitigating factors. With respect to aggravating factors, OFAC considered that the individual appeared to have knowledge that the transactions violated the CACR due to a cautionary letter he received from OFAC for similar trips in the past. OFAC also considered that he appeared to have knowingly facilitated unauthorized business travel for other persons. With regard to mitigating factors, OFAC considered that the trips resulted in minimal harm to the current objectives of the U.S. Cuba sanctions program, and that the investigation involved an individual acting in his personal capacity and a small non profit entity. OFAC also considered that mitigation was warranted due to the financial condition of the individual and the Alliance.

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

[Back to top.](#)

EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

DDTC and BIS Request Comments on Additional Proposals for Category XII and Infrared Detection Items

On January 13, 2017, the departments of State and Commerce each published a Notice of Inquiry (NOI) requesting comments on additional proposals for U.S. Munitions List (USML) Category XII and related controls for items subject to the Export Administration Regulations (EAR). The agencies are requesting comments to understand the effects of Export Control Reform (ECR) changes that went into effect on December 31, 2016, and proposals that could lead to stricter controls if implemented in future rulemakings. The companies affected by these changes are generally those that deal in sensors, lasers, infrared detection items and guidance equipment. Public comments are due by March 14, 2017.

For additional information, see the NOIs ([here](#) and [here](#)) issued by the State and Commerce departments in the Federal Register and discussion in the Akin Gump International Trade [Alert](#).

BIS Requires Exporters and Reexporters to Confirm Compliance with Hong Kong Import and Export Controls

On January 19, 2017, the Department of Commerce's Bureau of Industry and Security (BIS) published a final rule increasing compliance requirements for the export and reexport of certain items controlled under the EAR to and from Hong Kong. Effective April 19, 2017, exporters and reexporters must obtain from their customers or consignees, prior to shipment, a valid import license or written authorization from the Hong Kong government that no such license is required. The rule also prohibits the reexport of EAR-controlled items from Hong Kong, unless the reexporter obtains an export license or other written authorization from the Hong Kong government.

The amendments to the EAR do not impose any new licensing burdens on exports or reexports that are in compliance with Hong Kong export and import control regulations. Rather, they leverage the EAR to effectively compel compliance with Hong Kong export and import control laws by requiring proof of compliance with Hong Kong law as a support document necessary for shipping under an EAR license or license exception.

For those involved in controlled trade with Hong Kong, the failure of counterparties to provide documentation consistent with EAR requirements will likely result in delays and the possibility of penalties once the rule becomes effective. BIS has also issued Frequently Asked Questions (FAQs), which explain the purpose and effect of the new regulatory requirements.

For additional information, please see the new BIS [rule](#) and [FAQs](#), as well as analysis in the Akin Gump International Trade [Alert](#).

Obama Administration Takes Action to Terminate Sudan Sanctions Program

On January 13, 2017, the Obama administration announced that it would lift sanctions imposed on Sudan issued by OFAC under the Sudanese Sanctions Regulations (SSR). Effective January 17, 2017, a general license authorizes all transactions otherwise prohibited by the SSR. This authorization will become permanent on July 12, 2017, provided that the incoming Secretary of State publishes a notice in the Federal Register on or before that date stating that the Government of Sudan has sustained positive action toward cessation of hostilities in conflict areas in Sudan; continued improvement of humanitarian access throughout Sudan, and cooperated with the United States on addressing regional conflicts and the threat of terrorism.

Despite these changes, important limitations remain. For example, these actions do not authorize activities prohibited under the Darfur or South Sudan sanctions programs, and U.S. export controls continue to restrict severely the export or reexport of dual-use items to Sudan. In addition, companies previously doing business in Sudan under authorizations for medical and agricultural items issued pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) remain subject to a one-year contract requirement. Finally, state divestment sanctions laws in many U.S. states continue to prohibit and restrict investments of public state funds in companies that engage in business activities involving Sudan, which poses ongoing challenges for many companies.

For additional information, see the OFAC [web notice](#) and analysis in the Akin Gump International Trade [Alert](#).

U.S.-India Partnership: BIS Establishes Licensing Policy of General Approval, Expands Validated End-User Program

On January 19, 2017, BIS published new regulations that establish a licensing policy of general approval for exports or reexports to, or transfers within, India for most military, satellite and other items subject to the EAR that do not involve weapons of mass destruction. The items subject to the new policy are those that are controlled for “National Security” or “Regional Stability” reasons only, which include most “600 series” military items and most satellite items. BIS has also significantly expanded the scope of potential license-free exports, re exports and transfers of items to India by allowing military end uses for the first time under the Validated End-User (VEU) program, in addition to civil end uses. This rulemaking follows the Obama administration’s recognition of India as a “Major Defense Partner” on June 7, 2016, and implements various commitments made by the United States related to that unique partnership status. It is the first major change to the India VEU program since July 2009, and the broader policy changes reflect the ongoing expansion of U.S.-India cooperation in civil space, defense and other high-technology sectors since 2010.

For additional information, see the new BIS [regulations](#) in the Federal Register and discussion in the Akin Gump International Trade [Alert](#).

OFAC Publishes Compliance Services Guidance

On January 12, 2017, OFAC published *Guidance on the Provision of Certain Services Relating to the Requirements of U.S. Sanctions Laws or Compliance Services Guidance*. OFAC stated that the Compliance Services Guidance does not result in a change in OFAC’s policy with respect to the provision of such services but rather responds to inquiries OFAC received regarding the provision of legal and compliance services.

Pursuant to the Compliance Services Guidance, OFAC clarifies that U.S. persons may provide services to “covered persons” regarding the requirements of U.S. sanctions laws. Covered persons are U.S. and non-U.S. persons, excluding SDNs and individuals to whom a U.S. person is prohibited from exporting services or from whom a U.S. person is prohibited from importing services pursuant to the OFAC regulations (31 C.F.R. Parts 501-598). The types of compliance services covered include, but are not limited to, providing guidance regarding the requirements of U.S. sanctions laws and opining on the legality of specific transactions under U.S. sanctions laws, regardless of whether it would be prohibited for a U.S. person to engage in those transactions.

Still, U.S. persons remain barred from approving, financing, facilitating or guaranteeing a transaction by non-U.S. persons if such transactions would be prohibited if performed by a U.S. person or within the United States. In addition, U.S. persons may not otherwise engage in an exportation of services where such services are prohibited under U.S. sanctions laws.

For additional information, please see the [Compliance Services Guidance and FAQs](#).

Publication of New FAQs Regarding Vessel Transactions with Cuba

On January 6, 2017, OFAC issued five new FAQs (#86-90) pertaining to vessel transactions with Cuba. In particular, these FAQs address the statutory restriction that prohibits certain vessels that engage in the trade with Cuba from entering U.S. ports for 180 days after leaving Cuba absent authorization by OFAC (i.e., the “180-day rule”). The new FAQs describe the 180-day rule and discuss exceptions to the rule, such as engaging in

trade with Cuba that is authorized under the CACR or otherwise exempt from prohibitions (e.g., vessels carrying exclusively informational materials).

For additional information, please see the updated Cuba [FAQs](#).

Kevin Wolf, Leading Architect of U.S. Export Control Reform, Joins Akin Gump

On January 23, 2017, Akin Gump announced that Kevin J. Wolf, a former senior U.S. Department of Commerce official who served for the past seven years as Assistant Secretary of Commerce for Export Administration, joined Akin Gump as a partner in its international trade practice in Washington, D.C. Mr. Wolf was the senior official overseeing the regulation of export controls and the intersection of technology and national security issues. He brings to Akin Gump substantial experience—gained during his tenure in public service, as well as nearly two decades spent in private practice—in the laws, regulations, policies and international arrangements surrounding U.S. export controls.

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

[Back to top.](#)

WRITING AND SPEAKING ENGAGEMENTS

On February 1, [Christian Davis](#) will speak on the panel titled “The Pre-Filing Process and Delays: Key Considerations to Embed into Your Pre-Acquisition Planning and Decision to File” at ACI’s Third National Forum on CFIUS & Team Telecom in Washington, D.C.

On February 15, [Jasper Helder](#) and [Chiara Klau](#) will speak on the panel “What does the future hold for EU dual use controls?” at NeilsonSmith’s EU Trade Controls for North American Companies – The Reach Out Summit, which will be held in Washington, D.C. Mr. Helder will also be speaking on the panel “Alignment of U.S. and EU export and import controls.”

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.](#)

Contact Information

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

Information for lawyers in the global investigations and compliance practice can be found [here](#).

The executive editors of Red Notice are [Paul W. Butler](#) at (pbutler@akingump.com) and [Christian Davis](#) (chdavis@akingump.com).

The "Anticorruption Developments" section of Red Notice is edited by [Stanley Woodward](#).

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

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



© 2017 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. Lawyers in the Hong Kong office provide legal services through Akin Gump Strauss Hauer & Feld, a firm of

solicitors which is regulated by the Law Society of Hong Kong. Their registered office is Units 1801-08 & 10, 18th Floor Gloucester Tower, The Landmark, 15 Queen's Road Central, Central, Hong Kong. Akin Gump Strauss Hauer & Feld LLP, a limited liability partnership formed under the laws of Texas, USA, operates under the laws and regulations of numerous jurisdictions both inside and outside the United States. The Beijing office is a representative office of Akin Gump Strauss Hauer & Feld LLP.

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