

Red Notice

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ANTICORRUPTION DEVELOPMENTS

The U.S. Court of Appeals for the 10th Circuit Rules That the SEC's Use of ALJs is Unconstitutional

On December 27, 2016, the U.S. Court of Appeals for the 10th Circuit ruled 2-1 that the Securities and Exchange Commission's (SEC) process for hiring administrative-law judges (ALJ) violates the Appointments Clause of the U.S. Constitution. The decision states that, in 2012, the SEC brought an administrative action against David Bandimere, a Colorado businessman, alleging violations of various securities laws. An SEC ALJ presided over a trial-like hearing and concluded that Mr. Bandimere was liable for the violations, barred him from the securities industry, ordered him to cease and desist from violating securities laws, imposed civil penalties and ordered disgorgement. Thereafter, the SEC reviewed and affirmed the ALJ's initial decision in a separate opinion.

The 10th Circuit concluded that SEC ALJs are "inferior officers who must be appointed in conformity with the Appointments Clause," and, because the SEC's ALJs are not appointed by the president, a court of law or a

department head, the court set aside the SEC's opinion as the product of an unconstitutional process. The 10th Circuit's opinion creates a circuit split with the U.S. Court of Appeals for the D.C. Circuit, which in, August 2016, concluded that, because ALJ decisions are not final until reviewed and affirmed by the SEC's presidentially appointed commissioners, the ALJs need not be appointed in conformance with the Appointments Clause.

The 10th Circuit's opinion is available [here](#). The D.C. Circuit's opinion is available [here](#). For more information, see *The Wall Street Journal's* coverage [here](#), [here](#) and [here](#).

Teva to Pay \$519 Million to Resolve FCPA Enforcement Action

On December 22, 2016, Teva Pharmaceutical Industries Ltd. ("Teva"), an Israeli company and the world's largest maker of generics by sales, and its wholly owned Russian subsidiary, Teva LLC, resolved Department of Justice (DOJ) and SEC enforcement actions.

According to the enforcement actions, since 2001, the companies are alleged to have made improper payments to government officials in Mexico, Russia and Ukraine to increase or enable sales of Teva's multiple sclerosis drug, Copaxone.

Teva agreed to pay approximately \$519 million to resolve the enforcement actions (including a criminal penalty of \$283,177,348; the disgorgement of \$214,596,170 in profits; and \$21,505,654 in prejudgment interest). With respect to Teva, the DOJ's Press Release, Information and Deferred Prosecution Agreement are available [here](#), and the SEC's Press Release and Complaint are available [here](#). With respect to Teva LLC, the DOJ's Press Release, Information and Deferred Prosecution Agreement are available [here](#).

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

Odebrecht and Braskem to Pay \$3.6 Billion to Resolve Global Antibribery Enforcement Actions

On December 21, 2016, Odebrecht SA, a Brazilian construction conglomerate, and one of its affiliates, Braskem SA, a Brazilian petrochemical manufacturer, resolved enforcement actions with authorities in the United States, Brazil and Switzerland. The DOJ and SEC alleged violations of the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA).

According to the enforcement actions, since 2001, the companies are alleged to have made improper payments to secure public works or infrastructure contracts in Angola, Argentina, Brazil, Colombia, the Dominican Republic, Ecuador, Guatemala, Mexico, Mozambique, Panama, Peru and Venezuela.

Odebrecht and Braskem agreed to pay a total of at least \$3.6 billion to globally resolve the enforcement actions. Odebrecht's approximately \$2.6 billion share (of which 10 percent will be paid to the United States) of the penalty is subject to an analysis of the company's claimed inability to pay the United States Sentencing Guidelines' recommended penalty of \$4.5 billion. Braskem agreed to pay approximately \$957 million (of which 15 percent of the criminal penalty will be paid to the United States) to globally resolve the enforcement actions (including approximately \$325 million in disgorged profits). With respect to Odebrecht, the DOJ's Press Release, Information and Plea Agreement are available [here](#). With respect to Braskem, the DOJ's Press Release, Information, and Plea Agreement are available [here](#), and the SEC's Press Release and Complaint are available [here](#).

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

United States and Israeli Corruption Officials Take Aim at Alleged Guinean Mining Rights Bribery

With two recent arrests, U.S. and Israeli anticorruption officials have increased their scrutiny of the acquisition of mining rights in the Republic of Guinea.

On December 13, 2016, Mahmoud Thiam, former Minister of Mines and Geology of the Republic of Guinea, was arrested and charged with two counts of money laundering in a criminal complaint filed in the Southern District of New York. The money laundering, the complaint alleges, relates to transfers of nearly \$9 million paid to Thiam by a Chinese conglomerate. In exchange for the payment, Thiam purportedly facilitated the award of nearly exclusive investment rights in Guinea's valuable mining sector, as well as other sectors of the Guinean economy. To hide the basis for the money paid to him by the Chinese conglomerate, Thiam allegedly misrepresented his occupation and source of the funds to U.S. banks and the Internal Revenue Service.

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

Separately, on December 19, 2016, Israeli officials placed billionaire Beny Steinmetz under house arrest

(following his posting of \$26 million in bail) for allegedly making improper payments to Guinean officials to secure the mining rights in the Simandou mountain range previously owned by Rio Tinto PLC, a major British-Australian mining corporation.

According to reports, Rio Tinto alleged that Steinmetz, owner of the mining company BSG Resources Ltd. (BSGR), made improper payments to Thiam to oust Rio Tinto from its sole rights to the Simandou mountain range. BSGR's mining rights in the Simandou mountain range were revoked in 2014 by the then-newly elected Guinean government for allegedly making improper payments to the previous government.

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

SEC Enforcement Director Andrew J. Ceresney to Step Down

On December 8, 2016, the SEC announced that Andrew J. Ceresney, the SEC Enforcement chief, will leave the agency by the end of the year. Stephanie Avakian will become the acting director of the enforcement unit when Ceresney departs.

Ceresney joined the SEC in early 2013 with Chairwoman Mary Jo White and, according to the press release announcing his departure, brought a record number of enforcement actions during his tenure. Prior to joining the SEC, Ceresney was a partner at Debevoise & Plimpton LLP following his service as Deputy Chief Appellate Attorney in the U.S. Attorney's Office for the Southern District of New York and as an Assistant United States Attorney with the Office's Securities and Commodities fraud Task Force and Major Crimes Unit.

The SEC's Press Release is available [here](#). For more information, see *The Wall Street Journal's* coverage [here](#).

Anticorruption Spotlight: SEC Issues Two Whistleblower Determinations

In December, the SEC issued two whistleblower determinations, bringing the total number of whistleblower awards to 37 since it first began the practice in 2012. In total, more than \$136 million has been paid for whistleblower information. In FY 2016 (through September 30, 2016), the SEC awarded more than \$57 million to 13 whistleblowers, including six of the 10 largest awards.

Most recently, on December 9, 2016, the SEC awarded more than \$900,000 to an anonymous whistleblower who provided information that led to a successful enforcement action. The SEC's Press Release and Order are available [here](#).

Separately, on December 5, 2016, the SEC awarded approximately \$3.5 million to an anonymous whistleblower who provided information that led to a successful enforcement action. The SEC also concluded that two other claimants were not entitled to whistleblower awards for the enforcement action. The second claimant's claim was denied because, the SEC stated, the claimant failed to provide original information that led to a successful enforcement action, and the claim was untimely submitted. No basis is provided for the SEC's denial of the third claimant's claim (because the denial was unchallenged). The SEC's Press Release and Order are available [here](#).

For more information, see *The Wall Street Journal's* coverage [here](#) and [here](#), and the FCPA Blog's coverage [here](#).

Whistleblower 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 Three Individuals to its Debarment List

In December, the World Bank added three 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](#).

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EXPORT CONTROL AND SANCTIONS ENFORCEMENT

Consultant to Iranian Mission to the United Nations Pleads Guilty to Filing False Income Tax Return and Conspiring to Violate Sanctions Laws

On November 21, 2016, Ahmad Sheikhzadeh, a U.S. citizen, pleaded guilty to filing false income tax returns and conspiring to transfer funds to Iran in violation of the International Emergency Economic Powers Act (IEEPA). According to the Department of Justice (DOJ) press release, Sheikhzadeh was employed as a consultant to Iran's Permanent Mission to the United Nations (IMUN). From 2008 to 2012, he filed personal income tax returns

that substantially understated his cash salary from IMUN. In addition, distinct from his work with IMUN, Sheikhzadeh provided money-remitting (i.e., “hawala”) services to co-conspirators in the United States to facilitate investments in Iran and to direct disbursements from Iranian bank accounts. He engaged in these money transfers without a license from the Treasury Department’s Office of Foreign Assets Control (OFAC), in violation of IEEPA. Sheikhzadeh is set to be sentenced on March 30, 2017, and faces up to 23 years in prison. He has already agreed to pay more than \$147,000 in restitution and forfeiture.

For additional information, please see the DOJ [press release](#) and [coverage](#) in *Reuters*.

Singapore Man Pleads Guilty to Plot Involving Illegal Exports of Radio Frequency Modules From the U.S. To Iran

On December 15, 2016, the DOJ announced that Steven Lim, a citizen of Singapore, pleaded guilty to conspiracy to defraud the U.S. government by dishonest means. The guilty plea follows Lim’s extradition from Indonesia earlier this year. The charges against Lim date back to a 2010 conspiracy indictment for the illegal export of U.S.-origin radio frequency modules with sophisticated wireless data transmission capabilities to Iran. Such devices are commonly found in commercial applications, such as office-based local area networks for printers, but the modules are export-controlled due to potential use in remote detonation systems in improvised explosive devices (IEDs). Between June 2007 and February 2008, Lim and his co-conspirators caused more than 6,000 modules to be exported from the United States to Iran through Singapore, at least 14 of which were later found in unexploded IEDs in Iraq. According to the DOJ, Lim misrepresented to the Minnesota manufacturer of the devices that Singapore was the final destination of the items, causing the manufacturer to file false documents with the U.S. government.

For additional information, please see the DOJ [press release](#) and coverage in the [April 2016](#) issue of *Red Notice*.

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EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

President Obama Issues Executive Order in Response to Malicious Russian Cyber Activity

On December 29, 2016, President Obama issued an Executive Order, amending Executive Order 13694, that imposes sanctions on Russian individuals and entities in response to the “Russian government’s ... cyber operations aimed at the U.S. election.” Executive Order 13694 was originally issued in April 2015 to provide the basis for sanctioning individuals and entities involved in “significant malicious cyber-enabled activities” but had not been used previously to designate individuals or entities. This authority has now been amended to allow for the imposition of sanctions on individuals and entities determined to be responsible for “tampering, altering, or causing the misappropriation of information with the purpose or effect of interfering with or undermining election processes or institutions.” As a result of this action by President Obama, OFAC has added six individuals and five entities to the SDN List.

For additional information, please see the OFAC [announcement](#), the [amended Executive Order](#) and the White House [press release](#).

OFAC Updates SDN and SSI Lists to Target Ukraine Sanctions Evasion and Publishes Russia/Ukraine-Related General License 11

On December 20, 2016, OFAC announced updates to the Specially Designated Nationals (SDN) List and Sectoral Sanctions Identifications (SSI) List, to target sanctions evasion and other activities related to the conflict in Ukraine. Seven individuals, eight entities and two vessels were added to the SDN List, while 26 entities were added to the SSI List.

On the same day, OFAC also published General License 11 (GL 11) regarding transactions with FAU Glavgosekspertiza Rossii. FAU Glavgosekspertiza Rossii is a Russian federal institution authorized to conduct official examinations of project documentation for significant construction works in Russian Federation territory. Subject to restrictions, GL 11 authorizes transactions that are ordinarily incident and necessary to requesting, contracting for, paying for, receiving, or utilizing a project design review or permit from FAU Glavgosekspertiza Rossii’s offices in the Russian Federation.

For additional information, please see the OFAC [announcement and SDN/SSI updates](#), as well as the new [General License 11](#).

OFAC Publishes Iran-Related FAQ and General License J-1

On December 15, 2016, OFAC published updates to two Iran-related FAQs regarding potential snapback of Iran-related sanctions. FAQ M.4 clarifies that, while the Joint Comprehensive Plan of Action (JCPOA) does not “grandfather” contracts signed prior to snapback, the U.S. government has committed to not retroactively impose sanctions for legitimate activity undertaken after Implementation Day. FAQ M.5 discusses that, in the event of

snapback, OFAC anticipates that it would provide a 180-day wind-down period for business involving Iran. This FAQ also explains, to some degree, how OFAC envisions that this wind-down period would operate. OFAC stated that further guidance would be forthcoming if snapback were to occur.

On the same day, OFAC also published General License J-1 (GL J-1), effectively making a minor amendment to now-superseded General License J. Both General Licenses allow the re-export of Eligible Aircraft to Iran on temporary sojourns, subject to certain conditions. The amendment in GL J-1 now allows for code-sharing arrangements.

For additional information, please see the OFAC [FAQ announcement](#), as well as OFAC's [updated FAQs](#) (M.4 and M.5) and [General License J-1](#).

OFAC Amendments Expand Opportunities for Agriculture and Health Sectors in Iran and Clarify Definition of Iranian-Origin Goods

On December 23, 2016, OFAC amended the Iranian Transactions and Sanctions Regulations (ITSR) to expand authorized sales of agricultural commodities, medicine and medical devices to Iran pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA). These changes expand the scope of medical devices and agricultural commodities that are generally authorized for export or re-export to Iran. In response to public feedback regarding improving patient safety, the amendments also provide new and/or expanded authorizations relating to training, replacement parts, software and services that are related to the operation, maintenance and repair of medical devices, and items that are broken or connected to product recalls or other safety concerns.

In addition, the amendment modifies the definition of "Iranian-origin goods" and "goods of Iranian origin" to clarify that this definition does not include certain categories of goods, provided that such goods were not grown, produced, manufactured, extracted or processed in Iran. OFAC also updated its FAQs to provide further explanation of these terms.

Notwithstanding these latest changes, U.S. sanctions against Iran continue to broadly restrict trade between the two countries, absent general or specific authorization from the U.S. government.

For additional information, please see the OFAC [Final Rule](#), OFAC's recently published [new](#) and [updated](#) FAQs for the general license, and the [amended definition](#) of "Iranian-origin goods."

Amendment to the Export Administration Regulations: Removal of Special Iraq Reconstruction License

On December 5, 2016, the Department of Commerce's Bureau of Industry and Security (BIS) published a final rule removing the Special Iraq Reconstruction License (SIRL) from the Export Administration Regulation (EAR), which will be effective January 4, 2017. The final rule notes that, although SIRL was originally intended to assist exporters furthering civil reconstruction efforts, it has seldom been used as a result of its complexity and narrowness – only three SIRLs applications have even been processed since 2004, and only one has been approved. Disuse and the existence of less complex alternatives have led BIS to remove the special license, consistent with the Retrospective Regulatory Review Initiative directing agencies to streamline regulations.

For additional information, please see the BIS [announcement](#), as well as the [Final Rule](#) in the Federal Register.

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WRITING AND SPEAKING ENGAGEMENTS

On January 16, 2017, [Tatman Savio](#) will present on international trade compliance at conference hosted by Dow Jones in Hong Kong.

On January 19, 2017, [Jeff Dailey](#), [Parvin Moyne](#), and representatives from Deloitte will present a CLE for In-House Counsel on accounting fraud issues in New York, NY. If you are interested in attending the program, please contact NewYorkEvents@akingump.com.

On February 1, 2017, [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, DC.

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](#) and Sina Kimiagar.

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