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, banned 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 commission, the SEC’s process for hiring ALJs is unconstitutional. The 10th Circuit remanded the case to the SEC for further proceedings consistent with its decision.

Teva to Pay $519 Million to Resolve FCPA Enforcement Action

To settle allegations that it violated the Foreign Corrupt Practices Act (FCPA), Teva Pharmaceuticals agreed to pay $519 million. The SEC and the Department of Justice (DOJ) alleged that Teva and its U.S. subsidiary, Teva Pharmaceuticals U.S.A., Inc., failed to devise and maintain adequate internal controls over the sales and marketing of Teva’s generic pharmaceutical products.

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

Odebrecht and Braskem have agreed to pay $3.6 billion to resolve global investigations related to bribery to obtain or retain business in Brazil, Peru, Argentina, Venezuela, Ecuador, Colombia, and other Latin American countries. The investigations were related to a massive bribery and money laundering scheme that spanned several decades.

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

The U.S. Department of Justice (DOJ) and the Israeli National Anti-Corruption Authority launched an investigation into alleged bribery to obtain mining rights in Guinea. The investigation is focused on allegations that Guinean government officials accepted bribes from foreign companies in exchange for granting mining rights.

SEC Enforcement Director Andrew J. Ceresney to Step Down

Andrew J. Ceresney, the SEC Enforcement Director, has announced that he will be stepping down from his position. Ceresney is credited with leading the SEC’s efforts to combat insider trading, accounting fraud, and other financial misconduct.

Anticorruption Spotlight: SEC Issues Two Whistleblower Determinations

The SEC issued two whistleblower determinations, one of which was in connection with the Teva settlement and the other with the Odebrecht and Braskem settlements.

Anticorruption Spotlight: World Bank Adds Three Individuals to its Debarment List

The World Bank added three individuals to its debarment list in December 2016. The debarments were based on allegations of fraud and corruption in connection with World Bank-financed projects.

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

Export Control and Sanctions Developments

- President Obama Issues Executive Order in Response to Malicious Russian Cyber Activity
- OFAC Updates SDN and SSI Lists to Target Ukraine Sanctions Evasion and Publishes Russia/Ukraine-Related General License 11
- OFAC Publishes Iran-Related FAQ and General License J-1
- OFAC Amendments Expand Opportunities for Agriculture and Health Sectors in Iran and Clarify Definition of Iranian-Origin Goods
- Amendment to the Export Administration Regulations: Removal of Special Iraq Reconstruction License
Separately, on December 19, 2016, Israeli officials placed billionaire Beny Steinmetz under house arrest.

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.


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.


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.


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.
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 related sanctions. FAQ M.4 clarifies that, while the Joint Comprehensive Plan of Action (JCPOA) does not

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

**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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