

# Red Notice

A Monthly Update on Global Investigations and Prosecutions



October 2017

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## **Global Compliance Overhaul for SAP as DOJ and SEC Investigate Payments Allegedly Related to South African Government Contracts**

On October 26, 2017, German software company SAP SE announced its voluntary disclosure to, and cooperation with, U.S. authorities resulting from allegations that commissions paid to agents and companies related to the Gupta family were funneled to South African government entities or agents. The Gupta family members are alleged confidants of South African President Jacob Zuma and are facing allegations of unduly influencing South African government contracts.

SAP indicated that it had voluntarily disclosed the information to the U.S. government in July 2017 as a result of an internal investigation. In addition to taking disciplinary action against three employees, SAP will hire additional legal-compliance staff to its operations in Africa and will eliminate sales commissions on all public-sector deals in countries with a rating below 50 in Transparency International's Corruption Perceptions Index, including Brazil, China, India, Italy, Mexico, Russia and South Africa.

SAP's press release is available [here](#). For more information, see *The New York Times'* coverage [here](#).

## **Core Laboratories Reports DOJ Declination Letter Concluding FCPA Investigation Related to Unaoil**

On October 25, 2017, Dutch oil services company Core Laboratories ("Core Labs"), disclosed in a Securities and Exchange Commission (SEC) filing that it had received a declination letter from the Department of Justice (DOJ) ending the DOJ's investigation of Core Labs' "interactions" with Unaoil. Monaco-based Unaoil has been under scrutiny by U.S., U.K. and Iraqi authorities since March 2016 for allegedly paying bribes on behalf of several major oil and gas companies. The DOJ's letter closed the inquiry without taking any action against Core Labs. Core Labs has also reported that its relationship with Unaoil is being investigated by the SEC, an investigation that remains pending.

Core Labs' Form 10-Q is available [here](#). For more information, see *The Wall Street Journal's* coverage [here](#) and the *FCPA Blog's* coverage [here](#).

## **German Logistics Company Employees Fined but Avoid Jail Time in Angola Bribery Case**

On October 20, 2017, three former employees of the freight forwarding company F.H. Bertling ("Bertling") were sentenced by a London court after pleading guilty in March to conspiracy to pay bribes to an agent of Sonangol, the state-owned Angolan oil company. The U.K.'s Serious Fraud Office (SFO) began investigating Bertling in September 2014. In addition to the individuals sentenced, three other officers and the company itself have pleaded guilty, while a fourth officer was acquitted in September 2017. Each of the three employees sentenced received a \$26,000 fine and a 20-month prison sentence, which was suspended for two years. They were also disqualified from serving as company directors for five years.

The SFO's press release on the sentencing is available [here](#). For more information, see *The Wall Street Journal's* coverage [here](#), and the *FCPA Blog's* coverage [here](#).

## **New Antibribery Guidance Tool Made Available by UK NGO**

On October 11, 2017, Transparency International UK, in coordination with FTI Consulting Inc., launched its free "Global Anti-Bribery Guidance" to offer best practices for companies worldwide. The guidance covers five principles of practice for companies: commit, assess, implement and improve, monitor and review, and engage. The guidance also includes a variety of resources, such as substeps for each goal, implementation checklists and links to additional information.

The guidance is available from Transparency International UK [here](#).

## **Survey Finds Bribes for Public Services Rife in Latin America and the Caribbean**

On October 9, 2017, Transparency International issued its report titled *People and Corruption: Latin America and the Caribbean* in which it found that one in three people using public services in Latin America and the Caribbean paid a bribe in the last year. The report also states that the police departments are the least trusted public institutions and that despite public protests in some countries, corruption generally continues to increase. According to the report, Brazil has made some progress recently with Operation *Lava Jato* (car wash), a far-reaching criminal investigation that has exposed systemic corruption within the country's elite.

Transparency International's report can be found [here](#). For more information, see *The Guardian's* coverage [here](#).

## **Middleman in South Korean Construction Company Bribery Scheme Sentenced to 42 Months in Prison**

On October 5, 2017 after pleading guilty in June, Malcolm Harris, the middleman who defrauded the brother and nephew of former United Nations Secretary-General Ban Ki-moon by posing as an official of a Middle Eastern sovereign wealth fund, was sentenced to 42 months in federal prison. As reported in the [January 2017 Red Notice](#), Harris posed as an agent of a foreign government involved in an \$800 million real estate deal for a skyscraper in Hanoi, Vietnam, that Joo Hyun Bahn (aka Dennis Bahn) and his father, Ban Ki Sang, were seeking to sell on behalf of South Korean construction company, Keangnam Enterprises Co., Ltd. Unbeknownst to Bahn and Sang, Harris kept the money that they allegedly paid to him for use as bribes in his personal account without any intention of paying foreign officials. Bahn's trial is scheduled to begin in February 2018, but Sang remains at large.

The DOJ's press release regarding Harris' sentencing is available. For more information, see the *FCPA Blog's* coverage [here](#).

### **Retired U.S. Army Colonel Indicted for Conspiring to Bribe Haiti Officials**

On October 4, 2017, the DOJ announced its indictment of retired U.S. Army Colonel Joseph Baptiste. The indictment charges counts of conspiracy and conspiracy to commit money laundering that violate the Foreign Corrupt Practices Act (FCPA) and the Travel Act. The DOJ alleges that Baptiste conspired to bribe Haitian government officials to obtain government approval for an \$84 million port development project in the Mole-Saint-Nicolas area of Haiti. Baptiste allegedly solicited bribes totaling \$50,000 from undercover FBI agents who posed as potential investors seeking to obtain and retain business in the country. He allegedly told the agents that he would pay Haitian officials through a charitable nonprofit that he controlled, but instead used the money to pay for personal expenses. Baptiste allegedly intended to use future payments from the investors to make bribe payments in connection with the port development project.

The DOJ's indictment is available [here](#). For more information, see *The Boston Globe's* coverage [here](#) and the *FCPA Blog's* coverage [here](#).

### **World Bank Debars Three After Probe of Manila Environmental Projects**

On October 4, 2017, the World Bank announced the debarment of two companies and an individual for violations related to World Bank-financed projects. The bank debarred Berkman International Inc. for five years, as well as the Center for Environmental Studies and Management, Inc. (CESM) and a Berkman consultant Belen Gacad for 18 months. Berkman and Gacad sought to influence World Bank-financed contracts through improper payments. Similarly, CESM concealed conflicts of interest with a procurement consultant while seeking contracts. The companies and Gacad will not be able to participate in World Bank-financed contracts for the period of debarment. The regional development banks also joined the debarment agreement, meaning that the debarment could apply to their financing as well.

All three debarments qualify for cross-debarment by other Multilateral Development Banks under the Agreement of Mutual Recognition of Debarments that was signed on April 9, 2010 (available [here](#)). The list of all World Bank debarred entities and individuals is available [here](#).

For more information, see the World Bank's press release [here](#) and the *FCPA Blog's* coverage [here](#).

### **Financial Crimes Enforcement Network Releases Technical Corrections to Customer Due Diligence Rule for Financial Institutions**

On September 18, 2017 the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") released technical corrections to its May 2016 rule regarding requirements for anti-money laundering programs at covered financial institutions as those programs relate to customer information at the end of September 2017. The May 2016 rule outlines four elements identified by FinCEN as core to customer due diligence programs at financial institutions: (1) customer identification and validation; (2) beneficial ownership identification and verification; (3) understanding of the nature and purpose of customer relationships to develop a customer risk profile; and (4) monitoring or reporting of suspicious transactions and, on a risk basis, maintaining and updating customer information. Of the four, only the first element has been an explicit requirement of anti-money laundering programs to-date. The deadline for covered institutions to comply is May 11, 2018.

FinCEN's May 2016 final rule can be found [here](#), and the technical corrections can be found [here](#). For more information, see the *FCPA Blog's* coverage [here](#).

### **Anticorruption Spotlight: SEC Issues Whistle-Blower Determination**

In October, the SEC issued a whistle-blower determination, bringing the total number of whistle-blower awards to 47 since it first began the practice in 2012. Awards totaling more than \$162 million have been paid for whistle-blower information.

For example, on October 12, 2017, the SEC awarded more than \$1 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 "a company outsider" who provided the SEC with "new information and substantial corroborating

documentation of a securities law violation by a registered entity that impacted retail customers.” 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 postings.

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## EXPORT CONTROL AND SANCTIONS ENFORCEMENT

### **Luxury Goods Company Agrees to Pay \$334,800 to Settle Civil Liability for Apparent OFAC Violations**

On September 26, 2017, the Department of Treasury’s Office of Foreign Assets Control (OFAC) announced that Richemont North America, Inc. d.b.a. Cartier has agreed to pay \$334,800 to settle potential civil liability for apparent violations of the Foreign Narcotics Kingpin Sanctions Regulations. According to OFAC, between 2010 and 2011, Richemont exported four jewelry shipments to Shuen Wai Holding Limited in Hong Kong, an entity on the Specially Designated Nationals and Blocked Persons (SDN) list. In each instance, an individual purchased the jewelry from a Cartier boutique in the United States and provided Shuen Wai’s name, address and country location as they appear on the SDN List, for the shipment of the jewelry.

OFAC considered aggravating and mitigating factors when evaluating the settlement for this case. Aggravating factors included that Richemont (i) failed to exercise minimal caution, (ii) caused significant harm to the objectives of U.S. sanctions regulations and (iii) is a sophisticated entity with global operations in an industry at a high risk for money laundering. Mitigating factors included that Richemont (i) had no prior violation history in the five years prior to the first apparent violation; (ii) cooperated with OFAC throughout the investigation, including by entering multiple tolling agreements; and (iii) took remedial action.

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

### **Three Miami Residents Plead Guilty to Conspiracy to Illegally Export Prohibited Articles to Syria in Violation of U.S. Export Controls and Sanctions Laws**

On October 4, 2017, the DOJ announced that Ali Caby, Arash Caby and Marjan Caby, residents of Miami, pleaded guilty to violating the International Emergency Economic Powers Act (IEEPA) in connection with a conspiracy to illegally export aviation parts and equipment to Syria without first obtaining a license from OFAC. According to the press release, the three defendants worked at and/or managed AW-Tronics, a Miami export company with operations in Bulgaria, which shipped and exported various aircraft parts to Syrian Arab Airlines, an SDN. Two of the defendants closely supervised and encouraged AW-Tronics employees in the willful exportation of the parts and equipment without a license. The third defendant, as the company’s compliance officer and auditor, facilitated the exports by submitting false and misleading electronic export information to federal agencies.

The defendants are scheduled for sentencing on December 19, 2017, and they face a maximum of five years in prison, three years of supervised release and a \$250,000 fine.

For further information, please see the [DOJ press release](#) and previous coverage in the [February 2017 issue](#) of Red Notice.

### **Connecticut Company Settles Three Apparent Violations of Sudanese Sanctions Regulations for \$372,465**

On October 5, 2017, OFAC announced that BD White Birch Investment LLC (“White Birch”) had agreed to pay \$372,465 to settle potential civil liability for three apparent violations of the Sudanese Sanctions Regulations. According to the press release, White Birch facilitated the sale and shipment in 2013 of more than 500 metric tons of Canadian-origin paper from Canada to Sudan valued at \$354,602. Apparently, internal personnel at White Birch and its Canadian subsidiary were actively involved in facilitating the transactions.

OFAC considered aggravating and mitigating factors in evaluating the settlement for this case. Aggravating factors included that White Birch (i) is a large and sophisticated company; (ii) exhibited reckless disregard for U.S. sanctions by failing to exercise minimal caution; (iii) personnel attempted to conceal the ultimate destination of the goods from the confirming bank on a letter of credit; (iv) supervisory or managerial personnel had knowledge of, and/or were actively involved in, the conduct; (v) had an inadequate or nonexistent compliance program at the time of the apparent violations; and (vi) did not initially cooperate with OFAC’s investigation, particularly when it submitted materially inaccurate, incomplete and/or misleading information to OFAC. Mitigating factors included that White Birch (i) had no prior violation history in the five years prior to the first apparent violation, and (ii) took

remedial action, including instituting compliance policies and training.

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

## **Ali Eslamian and Equipco (UK) Ltd. Ordered to Pay \$250,000 to Settle Alleged Violation of Temporary Denial Order**

On September 28, 2017, the Commerce Department's Bureau of Industry and Security (BIS) entered into an agreement with Ali Eslamian, CEO of Equipco (UK) Ltd. and Skyco (UK) Ltd. to settle a violation of the Export Administration Regulations (EAR) for \$250,000. According to the BIS order, between late 2011 and early 2012, Eslamian, acting through Equipco, violated an August 2011 BIS temporary denial order (TDO) that prohibited him from directly or indirectly participating in any transaction involving any item subject to the EAR. Specifically, Eslamian violated the TDO by ordering and negotiating with a Brazilian airline to purchase an aircraft engine subject to the EAR. Eslamian had previously been denied export privileges based on his connections to an Iranian airline company.

For further information, please see the [BIS Order](#).

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## **EXPORT CONTROL, SANCTIONS AND CUSTOMS DEVELOPMENTS**

### **Implementing CAATSA - OFAC Issues Amended Russia-Related Sectoral Sanctions Under Directives 1 and 2; State Department Issues Belated List and Guidance on Extraterritorial Sanctions Affecting Russian Defense and Intelligence Sector Entities**

On September 29, 2017, as a result of the Countering America's Adversaries Through Sanctions Act (CAATSA) passed by Congress earlier this year, OFAC modified Directives 1 and 2 of Executive Order 13662 to reduce the permissible maturity for new debt issued by certain Russian financial and energy entities, as well as entities owned 50 percent or more, directly or indirectly, by such entities, either individually or in the aggregate. These modifications become effective on November 28, 2017.

In addition, on October 1, 2017, the cybersecurity-related provisions of Section 224 of CAATSA came into effect, requiring the President to impose sanctions on any party that he determines knowingly engages in activities undermining the cybersecurity of "any person, including a democratic institution, or government" on behalf of Russia. Section 224 also requires the President to impose sanctions on any person who knowingly assists, supports, or provides goods or services in support of such activities. To date, sanctions have not been imposed on any person pursuant to this section; however, on September 29, 2017, President Trump delegated much of his authority to designate persons under Section 224 to the Secretary of Treasury and the Secretary of State, who also, as of yet, have not imposed sanctions pursuant to that section.

Also, on October 27, 2017, three weeks after the congressionally mandated deadline of October 1, 2017, the U.S. State Department issued guidance to Congress identifying (i) 33 entities that are part of, or operating for or on behalf of, the defense sector of the government of the Russian Federation and (ii) six entities that are part of, or operating for or on behalf of the intelligence sector of the government of the Russian Federation. This list provides the basis for U.S. sanctions action against companies found to engage in a "significant transaction" with the listed entities, which the Trump administration is required to implement by January 29, 2018. Punitive sanctions under these provisions of CAATSA include prohibitions on financing and financial services by certain public financial institutions, restrictions on debt and extensions of credit by other U.S. financial institutions, restrictions on other financial and property transactions, restrictions on investments in a sanctioned entity and restrictions on U.S. export licensing.

Beyond the actions regarding the Iranian Revolutionary Guard Corps discussed below, a number of other significant changes to Russia-related sanctions required by CAATSA must be implemented by October 31, 2017. Section 223 of CAATSA requires the Secretary of the Treasury to modify Directive 4 of Executive Order 13662 by October 31, 2017, with effect by January 29, 2018, to prohibit U.S. persons from providing, exporting or re-exporting goods, services (except for financial services) or technology in support of exploration or production for new deepwater, Arctic offshore or shale projects located anywhere in the world (versus current restrictions on only such projects within Russia) that (i) have the potential to produce oil and (ii) involve a person subject to Directive 4, which "has a controlling interest or a substantial non-controlling ownership interest in such a project" of 33 percent or more.

For further information and detailed analysis, please see the Akin Gump Client Alert on modified Directives 1 and 2 [here](#) as well as the Akin Gump Client Alert on the State Department's new list of Russian defense and intelligence sector entities [here](#).

### **OFAC Targets the Iranian Revolutionary Guard Corps, Amends Global Terrorism Sanctions Regulations, and Issues Related FAQs**

On October 13, 2017, OFAC announced its designation of Iran's Islamic Revolutionary Guard Corps (IRGC) as a sanctioned entity based on the IRGC's support for the IRGC-Qods Force ("Qods Force"), an entity designated in 2007 for its support of terrorist groups. In its press release, OFAC notes the central role that the IRGC has played in Iran's status as a prominent state sponsor of terror, and points to the key role of the Qods Force in enabling Syrian President Bashar al-Assad and providing support for terrorism. In addition, on October 30, 2017, OFAC amended the Global Terrorism Sanctions Regulations (GTSR) to apply the blocking provisions of the GTSR to foreign persons that have been identified by OFAC as officials, agents, or affiliates of the IRGC, effective on October 31, 2017. Both changes are being made pursuant to Section 105 of CAATSA.

The IRGC was already blocked under sanctions relating to WMD proliferation and human rights abuses, and persons who engaged in certain activity involving the IRGC were already subject to secondary sanctions. However, OFAC's recent actions limit transactions with the IRGC and foreign persons identified by OFAC as officials, agents, or affiliates of the IRGC even further, by prohibiting activities related to personal communication, humanitarian donations, information or informational materials, and travel, as well as blocking the property and interests in property of foreign persons that have been identified by OFAC as officials, agents, or affiliates of the IRGC.

For further information, please see the E.O. 13224-related [OFAC press release](#), the GTSR-related [web notice](#), and the OFAC [IRGC-related FAQs](#).

### **CBP Enforces CAATSA's Prohibition On Importation of Goods Made With North Korean Labor**

Among other provisions, CAATSA amended the North Korean Sanctions and Policy Enhancement Act to create a rebuttable presumption that "any significant goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part by the labor of North Korean nationals or citizens" are prohibited from entry into the United States under Section 307 of the Tariff Act of 1930 ("Section 307"). This provision bans imports of merchandise made with convict, forced or indentured labor. Notably, this amendment places the burden of proof on the importer to overcome the presumption by presenting "clear and convincing evidence" that imported merchandise was not produced with convict, forced or indentured labor. This requirement is in contrast to the government's typical burden under Section 307 to establish that imported merchandise is produced with forced labor before taking an enforcement action.

On October 24, 2017, Acting Commissioner of U.S. Customs and Border Protection (CBP) Kevin McAleenan testified before the Senate Finance Committee that CBP is increasing its scrutiny of imported merchandise that it suspects may have been produced with North Korean labor and has seized at least six shipments of seafood from China that were processed with North Korean labor. CBP has also begun issuing requests for information to importers regarding North Korean labor in their supply chains.

For further information, please see the [testimony](#) of Acting CBP Commissioner Kevin McAleenan before the Senate Finance Committee. For additional analysis of Section 307, please see the Akin Gump [Client Alert](#).

### **OFAC Publishes Venezuela FAQs**

On October 3, 2017, OFAC issued an additional FAQ clarifying what it considers to be "profit" for purposes of economic sanctions related to Venezuela. Under the Venezuela-related economic sanctions issued this past August, U.S. persons are prohibited from engaging in certain transactions involving the Venezuelan government and entities that it owns or controls, including Petróleo de Venezuela S.A. As part of these measures, U.S. persons are prohibited from providing "dividend payments or other distributions of profits" to the Venezuelan government and any directly or indirectly owned or controlled entities.

In the recently issued FAQ, OFAC clarifies the meaning of "profit" as net income after taxes or, generally, total sales minus total costs and expenses for a business. By way of example, OFAC states that transactions involving the government of Venezuela and related to payments for goods and services, taxes or royalties are not considered "profit" for purposes of Venezuelan sanctions. Similarly, OFAC notes that principal and interest payments related to bonds and promissory notes would not be considered "distributions of profit." However, OFAC notes that other restrictions may still apply to these types of transactions.

For further information on the new FAQ, please see the [OFAC web notice](#); for further information and detailed analysis of the new Venezuela-related economic sanctions, see the Akin Gump [Client Alert](#).

### **Trump Administration Lifts U.S. Sanctions on Sudan, but Important Limitations Remain**

On October 6, 2017, OFAC revoked the core U.S. sanctions regime against Sudan and issued related FAQs. Effective October 12, U.S. persons are no longer generally prohibited from engaging in transactions involving Sudan or the government of Sudan, and OFAC will remove the Sudanese Sanctions Regulations from the Code of Federal Regulations. The action follows the State Department's confirmation that Sudan has carried out "its pledge to maintain a cessation of hostilities in conflict areas in Sudan; continuing improvement of humanitarian access through Sudan; and maintaining its coordination with the United States on addressing regional conflicts and the threat of terrorism."

However, other U.S. trade regulations continue to restrict trade with, or in, Sudan. For example, U.S. export controls remain in place, given Sudan's continuing designation as a State Sponsor of Terrorism, and provisions of the Trade Sanctions Reform and Export Enhancement Act of 2000 and Darfur-related sanctions remain in place. OFAC also retains authority to designate specific individuals associated with Sudan, and many U.S. states have passed sanctions measures that require divestment, government contracts disqualification and other punitive measures against companies that engage in business activities involving Sudan.

For further information and detailed analysis, please see the Akin Gump [Client Alert](#).

## **Census Begins Review of Routed Export Reporting Requirement**

The U.S. Bureau of the Census ("Census") has issued a notice requesting comments on the definition of "routed export transaction" and the responsibilities of parties in routed export transactions. The routed export transaction reporting requirements are often a source of confusion and added transactional costs for U.S. exporters, foreign consignees and freight forwarders. Interested parties have until December 5, 2017, to submit written comments to Census.

For further information and detailed analysis, please see the Akin Gump [Client Alert](#).

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## **WRITING AND SPEAKING ENGAGEMENTS**

On November 2, [Tatman R. Savio](#) will speak on the panel "U.S. and EU Economic Sanctions Annual Review: What Areas Present the Most Risk in Asia" at ACI's Asia Pacific Summit on Economic Sanctions Compliance and Enforcement in Singapore.

On November 7 and 9: Akin Gump will host the event, "The Impact of Economic Nationalism on International Trade, Investment and M&A" at Brown's Hotel in London, U.K. on November 7 and at the Hotel Metropole Geneve in Geneva, Switzerland on November 9. If you are interested in attending these programs, please contact Neyna Bhudia at [neyna.budia@akingump.com](mailto:neyna.budia@akingump.com).

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](mailto:mwarfield@akingump.com) or +1 202.887.4464.

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## **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](mailto:pbutler@akingump.com)) and [Christian Davis](#) ([chdavis@akingump.com](mailto:chdavis@akingump.com)).

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

The "Export Control, Sanctions and Customs Developments and Enforcement" sections are edited by [Suzanne Kane](#).

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*Red Notice* is a monthly publication of Akin Gump Strauss Hauer & Feld LLP.

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