

Red Notice

A Monthly Update on Global Investigations and Prosecutions



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ANTICORRUPTION DEVELOPMENTS

Keppel Offshore Reaches Deal with DOJ and Guilty Plea by Counsel Unsealed

On December 22, 2017, Keppel Offshore & Marine Ltd. (KOM), a Singapore-based company that operates shipyards and repairs and upgrades shipping vessels, and its wholly owned subsidiary, Keppel Offshore & Marine USA Inc. (KOM USA), agreed to pay more than \$422 million to resolve the Department of Justice's (DOJ) investigation of alleged violations of the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA) as well as parallel investigations by Brazilian and Singaporean enforcement agencies. KOM entered into a non-prosecution agreement with the DOJ while KOM USA and a former senior member of KOM's legal department pleaded guilty in connection with the resolution.

Specifically, the DOJ alleges, beginning in at least 2001 and continuing until at least 2014, KOM paid approximately \$55 million in bribes to officials at the Brazilian state-owned oil company Petrobras and to the

then-governing political party in Brazil. The DOJ further alleges that KOM concealed the payments by paying outsized commissions to an intermediary, under the guise of legitimate consulting agreements, which the in-house attorney is alleged to have drafted.

Read the DOJ's press release, DPA and Plea Agreement [here](#). For more information, see coverage from *The Wall Street Journal* [here](#), *Law360* [here](#), and *The FCPA Blog* [here](#) and [here](#).

Guilty Plea by Former Embraer Executive Regarding Aramco Bribes

On December 21, 2017, Colin Steven, former Vice President of Sales and Marketing for Embraer SA's Executive Jet Division pleaded guilty to charges of facilitating a bribe to an employee of Saudi Aramco to secure a contract for the sale of three jets.

In October 2016, the Brazilian aircraft maker settled with the DOJ and Securities and Exchange Commission (SEC) for charges related in part to the same bribes, paying \$205 million in fines.

For more information, see the complaint [here](#), the DOJ press release [here](#), coverage from *Reuters* [here](#), from *CNBC* [here](#), and from *The FCPA Blog* [here](#).

Odebrecht Corruption Reaches High-Level Officials in Peru, Colombia and Ecuador

Following the December 2016 resolution of multi-national enforcement actions by Odebrecht SA, several high-level government officials have now been implicated or sentenced for their roles in the alleged bribery schemes.

Specifically, on December 4, 2017, four Peruvian businessmen were sentenced to 18 months of preventive detention, for allegedly providing improper payments to former Peruvian President Alejandro Toledo. Current President Pedro Pablo Kuczynski has denied allegations that he received campaign donations or bribes from Odebrecht despite being implicated by the company's former president.

Similarly, on December 12, 2017, a former Colombian vice-minister for transportation was sentenced to five years and two months imprisonment for his alleged role in the same corruption scheme.

And on December 14, 2017, Ecuadorian Vice President Jorge Glas was sentenced to six years imprisonment for allegedly having received improper payments in the corruption scheme.

Red Notice previously covered the Odebrecht enforcement actions [here](#) and [here](#). For more information, read coverage of the Peruvian sentences from *Telesur* [here](#) and [here](#), coverage of the Colombian official's sentencing from *Reuters* [here](#) and coverage of the Ecuadorian official's sentencing from OCCRP [here](#).

Former DOJ Fraud Section Official Outlines FCPA's Successes and Failures 40 Years On

On December 13, 2017, former DOJ Fraud Section compliance counsel expert Hui Chen outlined her views on why the FCPA has come to dominate the corporate compliance landscape, as well as where she sees anti-corruption enforcement trends heading. Chen notes that a focus solely on the FCPA, as opposed to a broad suite of corporate compliance laws, regulations and processes, has led companies to focus on compliance programs that check a list for regulators, rather than examining whether the programs are effective in achieving their purposes. Chen focuses on the growth of international enforcement trends, propelled by U.S. enforcement leadership, and the implications for companies operating globally.

Read Chen's article on *Law360* [here](#).

U.S. and UK Regulators Indicate They are Moving Towards Regulating Bitcoin as Part of Anti-Corruption Laws

Recent statements from the SEC and the UK Treasury indicate that those agencies are working to ensure that cryptocurrencies will be regulated under existing anti-corruption and fraud prevention rules in both countries. In a note sent to the UK Parliament in November, but released on December 4, 2017, the economic secretary to the UK Treasury told lawmakers that the agency considered cryptocurrency platforms to fall under the UK Anti-Money Laundering and Counter Terrorist Financing regulations. Similarly, a SEC public statement released on December 11, 2017, indicates that the SEC considers that many cryptocurrency issues—including initial coin offerings—fall under U.S. securities regulations and the SEC's enforcement jurisdiction.

The SEC's Public Statement is available [here](#), and the notice from the UK Treasury is available [here](#). For more information, see *Reuters'* coverage [here](#) and reporting from *Business Insider* [here](#).

French Power Infrastructure Firm Sediver SAS Debarred by The World Bank for Two Years

On December 5, 2017, Sediver SAS, a French manufacturer of power transmission components, entered into a Negotiated Resolution Agreement with The World Bank resulting in a two-year debarment for the company. According to The Bank, Sediver SAS made improper payments to an employee of a consulting company to influence a tender process as part of the Southern Africa Power Market Project (SAPMP) in the Democratic

Republic of Congo (DRC). Additionally, Sediver SAS's parent company, Sediver SpA was conditionally debarred for a period of 18 months and the NRA was executed by their holding company Seves Group S.a.r.l. Seves has agreed to pay a €6.8 million (approximately \$8 million) "financial remedy" to the DRC.

The 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 the World Bank debarred entities and individuals is available [here](#).

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

French Digital Security Company Oberthur Technologies Debarred by The World Bank for Two and a Half Years

On November 30, 2017, Oberthur Technologies SA ("Oberthur"), a French digital security company, entered into a Negotiated Resolution Agreement with The World Bank following the company's acknowledgement of "improper payments to a sub-contractor and collusive misconduct to obtain and modify bid specifications to narrow competition and secure the award of a contract" related to a project to establish a national ID system in Bangladesh. Sanctions on Oberthur (now part of a company known as Idemia) include a debarment for two and a half years.

This debarment qualifies 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](#)).

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

Additional Charges by UK Serious Fraud Office in Unaoil Investigation

On November 30, 2017, the UK's Serious Fraud Office (SFO) announced it was charging two more individuals as part of its ongoing probe of Monaco-based Unaoil SAM ("Unaoil"), for conspiring to make corrupt payments to secure contracts in Iraq for its client SBM Offshore. Paul Bond, a former Senior Sales Manager, and Stephen Whiteley, formerly a Vice President with SBM Offshore and Unaoil's General Territories Manager for Iraq, Kazakhstan and Angola were charged with two counts and one count of conspiracy to make corrupt payments, respectively.

As reported in previous *Red Notice* alerts, the SEC and DOJ continue to investigate companies who had relationships with Unaoil. Only one declination has been issued so far (on behalf of [Core Laboratories](#)).

Read the SFO's press release [here](#). *Red Notice* previously covered the Unaoil investigation in [November](#), [October](#), and [May](#) of 2017. For more information, see coverage from *Reuters* [here](#), and from *The Wall Street Journal* [here](#).

Anticorruption Spotlight: SEC Issues Whistle-Blower Determination

On December 5, 2017, the SEC announced it was awarding a payout of more than \$4.1 million to a foreign whistleblower. The order notes that the whistleblower was a foreign national working outside the United States at the time of disclosure, who subsequently assisted with the SEC's investigation.

The SEC's determination brings the total number of whistle-blower awards to 45 since it first began the practice in 2012. Awards totaling approximately \$160 million have been paid for whistle-blower information.

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.

Read the SEC's order [here](#). For more information, see *The FCPA Blog's* coverage [here](#).

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EXPORT CONTROL AND SANCTIONS ENFORCEMENT

OFAC Issues a Finding of Violation to International Ship Registry for a Violation of Iran-Related Sanctions

On November 28, 2017, the Department of the Treasury's Office of Foreign Assets Control (OFAC) issued a Finding of Violation against Dominica Maritime Registry, Inc. (DMRI), of Fairhaven, Massachusetts, for a violation of the Iranian Transactions and Sanctions Regulations (ITSR). According to the OFAC web notice, DMRI dealt in the interests in property of a blocked person by executing a binding Memorandum of Understanding (MOU) with the National Iranian Tanker Company (NITC), which is an entity of the Government of Iran and, as a result, a blocked person. OFAC considered the MOU to be a contingent contract and therefore property in which NITC had

an interest.

In making its Finding of Violation, OFAC considered several aggravating and mitigating circumstances. Aggravating factors included that (i) DMRI failed to exercise minimal care; (ii) DMRI executives had knowledge of and participated in the conduct that led to the violation; and (iii) DMRI's actions undermined ITSR policy objectives by directly dealing in Iranian blocked property. Mitigating factors included that DMRI (i) had no history of violations in the five preceding years; (ii) is a small company; and (iii) took remedial action by engaging trade counsel, updating its compliance procedures, and establishing a compliance training program. DMRI did not voluntarily disclose the violation, and OFAC considered this violation a non-egregious case.

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

Dental Supply Company Agrees to Pay \$1,220,400 to Settle Alleged Civil Liability for Iran-Related Sanctions Violations

On December 6, 2017, OFAC announced that Dentsply Sirona Inc., a dental equipment and supply producer and successor in interest to Dentsply International Inc. (collectively, Dentsply), agreed to pay \$1,220,400 to settle civil liability for apparent ITSR violations involving shipments by subsidiaries of dental equipment and supplies that were ultimately reexported to Iran. According to the OFAC web notice, between November 2009 and July 2012, two Dentsply subsidiaries exported 37 shipments of dental supplies and equipment from the United States to distributors in third countries, with knowledge or reason to know the supplies were ultimately destined for Iran.

OFAC considered aggravating and mitigating factors when evaluating the settlement in this case, which OFAC determined could have resulted in a civil monetary penalty of \$9,551,082. Aggravating factors included that (i) Dentsply subsidiaries acted willfully, concealed the fact that the goods were destined for Iran and continued to conduct business with distributors even after knowing the products were reexported to Iran; (ii) supervisory and managerial personnel had actual knowledge of, and actively participated in, shipments to Iran and appear to have deliberately concealed their awareness; and (iii) Dentsply is a sophisticated company with knowledge of U.S. sanctions and export requirements. Mitigating factors included that Dentsply (i) had no history of violations in the five preceding years; (ii) caused minimal harm to ITSR program objectives because the exports were likely eligible for a specific license; (iii) took remedial action and voluntarily expanded the scope of review; and (iv) cooperated with OFAC throughout the investigation, including by entering into a tolling agreement.

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

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EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

Trump Administration Issues Executive Order on Human Rights Abuse and Corruption; OFAC Issues Regulations Implementing the Magnitsky Act and Related FAQs

On December 20, 2017, President Trump issued an Executive Order blocking the property and interests in property of persons anywhere in the world determined to be responsible for, or complicit in, serious human rights abuses or corruption, prohibiting U.S. persons from dealing in such property pursuant to the Global Magnitsky Human Rights Accountability Act (Global Magnitsky Act). The following day, OFAC published a Final Rule implementing a different but related statutory authority, the Sergei Magnitsky Rule of Law Accountability Act (Magnitsky Act), and adding the Magnitsky Act Sanctions Regulations (MASR) to the Code of Federal Regulations, as well as issuing related FAQs. The new MASR mirrors other OFAC sanctions programs, prohibiting transactions by U.S. persons with designated parties, blocking property, and providing licenses and exemptions for certain transactions. OFAC also simultaneously made five related designations, bringing the total number of individuals designated under the Magnitsky Act to 49.

While MASR and the Magnitsky Act target parties who were responsible for, financially benefitted from, or participated in efforts to conceal the detention, abuse, or death of Sergei Magnitsky or were involved in the conspiracy he uncovered, the Global Magnitsky Act and Executive Order gives OFAC broader authority to target human rights abusers and corrupt actors globally. This provides a concrete enforcement mechanism that overlaps with the growing trend of awareness and corporate social responsibility campaigns surrounding these issues.

For further information on the MASR, please see the [Final Rule](#) and related [FAQs](#). For further information on the Executive Order, please see [here](#).

OFAC Publishes 2016 Terrorist Assets Report

On December 1, 2017, OFAC released its 2016 Terrorist Assets Report. Included in the report are tables summarizing the assets of foreign terrorist organizations that were frozen under U.S. sanctions programs. The report also contains figures for blocked funds in the U.S. relating to state sponsors of terrorism. Notably, there was a significant reduction in blocked Iranian assets, from nearly \$2 billion in 2015 to approximately \$87.9 million

in 2016. The primary cause of this decline was that victims of terrorism obtained nearly \$2 billion of blocked assets of terrorist organizations and state sponsors of terrorism in 2015 as a result of judgments in U.S. courts.

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

Treasury, State and Commerce Implement Regulations Pursuant to the Trump Administration's Cuba Policy

On November 9, 2017, OFAC, the U.S. Department of State, and the U.S. Department of Commerce's Bureau of Industry and Security (BIS) took coordinated actions to tighten U.S. sanctions against Cuba, pursuant to President Trump's "National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba" issued on June 16, 2017.

OFAC amended the Cuban Assets Control Regulations to prohibit persons subject to U.S. jurisdiction from engaging in direct financial transactions with entities and sub-entities identified on the new Cuba Restricted List. OFAC also tightened restrictions on some areas of generally authorized travel and expanded the scope of individuals deemed to be "prohibited officials of the Government of Cuba."

BIS issued related amendments implementing a general policy of denial for license applications to export items subject to the Export Administration Regulations (EAR) for use by entities and sub-entities on the Cuba Restricted List. Additionally, BIS expanded the scope of License Exception Support for the Cuban People to encourage exports to Cuba for use in Cuban private-sector economic activities.

Opportunities for commercial engagement remain available to U.S. companies with interests and strategic opportunities in Cuba. However, new restrictions on certain entities and persons in the country imposed by the Trump administration will require persons subject to U.S. jurisdiction to engage in enhanced diligence to ensure compliance with these measures.

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

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WRITING AND SPEAKING ENGAGEMENTS

On January 31, [Christian Davis](#) will speak on the panel "Delays, Political Vacancies and Uncertainty: Practitioners Discuss Recent, "On the Ground" Successes and Challenges to Obtaining CFIUS Approvals" at ACI's CFIUS & Team Telecom in Washington, D.C.

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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