

Red Notice

A Monthly Update on Global Investigations and Prosecutions



February 2018

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ANTICORRUPTION DEVELOPMENTS

U.S. Agencies Decline to Prosecute Teradata for Alleged FCPA Violations

On February 26, 2018, Teradata Corporation, an Ohio-based enterprise software database management company, announced in its 10-K filing that the Securities and Exchange Commission (SEC) and Department of Justice (DOJ) had both declined to prosecute the company for alleged misconduct at its subsidiary in Turkey. Teradata voluntarily disclosed the misconduct at issue to U.S. authorities in February 2017, informed the

agencies of its internal investigation and remedial measures, and fully cooperated with the government's subsequent inquiries.

For more information, see Teradata's 10-K filing [here](#) and coverage from the *FCPA Blog* [here](#).

Recent U.S. Supreme Court Decision Limits Whistleblower Protections Under Dodd-Frank

On February 21, 2018, the U.S. Supreme Court issued a unanimous decision in *Digital Reality Trust v. Somers*, in which it held that the protections against retaliation for whistleblowers under Dodd-Frank apply only to whistleblowers who report violations to the SEC and not, for instance, to those who report violations of securities laws to their supervisors, as the SEC had interpreted the law to apply in its rulemaking.

For more information, see Akin Gump's Client Alert on this topic, available [here](#).

Former Officials of Venezuelan State-Owned Energy Company Charged with FCPA Violations and Money-Laundering

On February 12, 2018, the DOJ unsealed a 20-count indictment against five former officials of Venezuela's state-owned oil company, Petroleos de Venezuela S.A. (PdVSA), alleging that the officials accepted at least \$27 million in bribes from vendors of PdVSA in exchange for winning contracts with the company. The DOJ alleges that the bribes were funneled through Swiss and U.S. bank accounts and laundered through real estate transactions and other investments in the United States. In addition, one of the charged defendants holds dual U.S.-Venezuelan citizenship. Two of the individuals charged face allegations that they conspired to violate the Foreign Corrupt Practices Act (FCPA), and all five were charged with at least one count of money laundering. The DOJ has charged a total of 15 individuals in this case, 10 of whom have pleaded guilty. The case was investigated with the assistance of Spanish and Swiss authorities, U.S. Immigration and Customs Enforcement's Homeland Security Investigations and the DOJ Criminal Division's Office of International Affairs.

In a related lawsuit filed in federal court in Houston on February 16, 2018, Texas energy company Harvest Energy Resources, Inc. claimed that it lost almost half a billion dollars in revenue after refusing to pay bribes to the former head of PdVSA, who was also Venezuela's oil minister. Harvest Energy said that its refusal to pay four separate bribes of \$10 million resulted in the ministry withholding its approval for the company to make sales in Venezuela in two different deals.

The DOJ's most recent indictment and related press release are available [here](#). For more information, see coverage from *FCPA Blog* [here](#) and coverage from *Compliance Week* [here](#).

For more information on Harvest Energy's lawsuit, see coverage from *Bloomberg* [here](#), from *Law360* [here](#) and from the *Houston Chronicle* [here](#).

Latvian-Based Bank Forced to Close After FinCEN Announces Plans to Block Its Access to U.S. Markets over North Korean Money Laundering Concerns

On February 13, 2018, the Financial Crimes Enforcement Network (FinCEN) announced a notice of proposed rulemaking to block Latvia-based ABLV Bank from accessing U.S. markets after determining that the bank was an institution of primary money laundering concern. FinCEN invoked this rarely used power, citing concerns that ABLV accounts had been used to launder funds connected to illicit activity in Russia, Azerbaijan and Ukraine. In addition, ABLV accounts were purportedly used to funnel money to United Nations-designated entities involved in North Korea's ballistic missile program.

After FinCEN announced its rulemaking to impose the ban against ABLV—which would have taken two months to implement—the European Central Bank (ECB) observed a flood of withdrawals from the bank and sought to impose a moratorium on ABLV transactions. On February 23, 2018, ECB declared ABLV “failing or likely to fail,” and, the next day, ABLV announced it would be liquidated.

See FinCEN's press release [here](#) and the ECB's press release [here](#). For more information, see coverage from *The Wall Street Journal* [here](#) and [here](#), and from *Reuters* [here](#).

Corruption Investigations of Core Laboratories Concluded

On February 12, 2018, Dutch oil services company Core Laboratories N.V. announced via an SEC filing that the SEC had ended its investigation of the company's interactions in Iraq in 2016 with Monaco-based Unaoil. As reported by Red Notice in [October 2017](#), Core Labs previously announced that the DOJ had concluded its investigation of the same conduct.

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

Corruption Investigation of Juniper Networks Concluded

On February 12, 2018, California-based networking equipment company Juniper Networks, Inc. announced that the DOJ had concluded its investigation of the company related to potential violations of the FCPA. Juniper

Networks did not state what activity or operations were under investigation, and the SEC investigation of the company remains pending.

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

Rabobank to Pay \$369 Million Penalty for Money Laundering Scheme

On February 7, 2018, the DOJ announced that Rabobank National Association—the California subsidiary of Dutch Coöperatieve Rabobank U.A.—had pleaded guilty to a conspiracy charge for attempting to evade U.S. regulators by concealing deficiencies in its anti-money laundering program from the Office of the Comptroller of the Currency. According to the DOJ, these deficiencies allowed hundreds of millions of dollars to be transferred through the bank from untraceable sources in Mexico in violation of the Bank Secrecy Act. Rabobank's plea follows a deferred prosecution agreement and earlier guilty plea entered by Rabobank's former vice president on charges relating to the same activities.

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

Swiss Authorities Bar Gazprombank Switzerland from New Private Clients Due to Money Laundering Concerns

On February 1, 2018, Switzerland's chief banking regulator acted to ban Gazprombank Switzerland—the Swiss banking subsidiary of the Russian state-owned energy company Gazprom—from accepting new private clients, based on a finding that the bank's anti-money laundering policies and procedures were inadequate. Swiss authorities investigated Gazprombank Switzerland, along with a number of other Swiss banks, following revelations from information contained in the Panama Papers.

For more information, see coverage from *Reuters* [here](#) and from the *FCPA Blog* [here](#).

DOJ Seeks Information Regarding Global Sports Corruption

On January 31, 2018, it was reported that the DOJ, through the U.S. Attorney's Office for the Eastern District of New York ("E.D.N.Y."), delivered subpoenas seeking information concerning major international sporting organizations' potential involvement in racketeering, money laundering, and fraud. This investigation builds on the ongoing investigation of Fédération Internationale de Football Association (FIFA) by E.D.N.Y. and seeks information regarding the U.S. Olympic Committee, the International Olympic Committee and the International Association of Athletics Federation, as well as sports marketing companies involved in the bidding process to host major sporting events.

For more information, see coverage from *The New York Times* [here](#), from *The Guardian* [here](#) and from *Sports Illustrated* [here](#).

Anticorruption Spotlight: World Bank Announces Debarments

On February 23, 2018, the World Bank (the "Bank") announced that it had debarred Swiss-based ConvaTec International Services GmbH (CISG) and its Malaysia-based affiliate, ConvaTec Malaysia Sdn Bhd, from participating in Bank-financed projects for 18 months. According to the Bank, the companies engaged in fraudulent practices by misrepresenting their commission payments related to two health care projects in Bangladesh that closed in June 2017. Cidron Healthcare Limited, the New Jersey-based parent company of CISG and ConvaTec Malaysia, was sanctioned with conditional nondebarment and will remain eligible to participate in Bank-financed projects if it satisfies obligations imposed by the Bank under a settlement agreement.

The World Bank's press release regarding ConvaTec, CISG and Cidron Healthcare is available [here](#). For more information, see coverage from the *FCPA Blog* [here](#).

On February 22, 2018, the World Bank announced that it had debarred a Pakistan-based manufacturer of electrical appliances and its affiliates from participating in Bank projects for 33 months. The company, Pak Electron Limited (PEL), engaged in collusive practices during contract bidding for an electricity distribution and transmission project in Pakistan.

The World Bank's press release regarding PEL is available [here](#).

On February 1, 2018, the World Bank announced that it had debarred three construction firms based in Argentina from participating in Bank projects for 18 months. The three companies—Gavinor, S.R.L., J.C. Segura Construcciones S.A., and a joint-venture, Constructura J.C. Segura Construcciones S. A.-Gavinor S.R.L.-UTE—misrepresented their work on an agriculture development project in Argentina, which closed in 2017.

The World Bank's press release regarding the Argentine companies is available [here](#). For more information, see coverage from the *FCPA Blog* [here](#).

With the exception of Cidron Healthcare, all of the above 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](#).

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EXPORT CONTROL, SANCTIONS AND CUSTOMS ENFORCEMENT

Commerce Issues Order to Block Illicit Iran Aircraft Network

On February 5, 2018, the Department of Commerce's Bureau of Industry and Security (BIS) issued a press release describing its recent action ordering a temporary denial of export privileges to a Turkish individual, Gulnihal Yegane, and three Turkish companies affiliated with her. BIS issued the order to prevent an "imminent violation" of export regulations arising from Yegane's attempted procurement of U.S.-origin aircraft engines and parts for Iranian airlines.

The BIS order explains that, in September 2016, one of Yegane's affiliated companies was identified as the consignee of an unlicensed shipment of a Boeing 737 aircraft engine from the United States to Turkey and that additional documentation indicated that the engine was, contrary to export records, ultimately destined for sale or lease to an Iranian airline. The U.S. government ultimately prevented the attempted illicit transshipment and returned the engine to the United States. Further investigation indicated that Yegane was later involved in other attempted transshipments of aircraft engines or parts through her other affiliated companies, at least one of which was successful. Based on these activities and Yegane's history of involvement in illicit aviation procurement, BIS has suspended export privileges to Yegane and her affiliated companies for 180 days.

For more information, read the BIS press release [here](#) and its temporary denial order [here](#).

Pure Collection and CEO Settle FCA Suit

On February 13, 2018, the DOJ issued a press release announcing that U.K. retailer Pure Collection Ltd. and CEO Samantha Harrison have agreed to pay a total of \$908,100 to settle allegations that they violated the False Claims Act (FCA) and improperly avoided U.S. customs duties on merchandise that they shipped to their U.S. customers. The FCA action alleged that Pure Collection, a knitwear retailer specializing in the sale of cashmere, had evaded U.S. customs duties by splitting large orders into multiple lower-value shipments in order to qualify the shipments as "Section 321" or "de minimis" shipments that were exempt from customs duties and taxes. The de minimis exception applies to low-value shipments under \$800 (previously \$200), provided that the shipment is not part of one single order or contract that is sent separately for the express purpose of securing free entry.

The DOJ also asserted that Pure Collection systematically falsified shipping and payment records for the shipments in order to make it appear that the packages were part of separate orders. The whistleblower in the case was a former Pure Collection employee who claimed that he was trained to systematically split large customer orders to avoid paying U.S. customs duties. According to the DOJ complaint, Pure Collection advertised on its website that "we do our utmost to prevent customs fees," and it guaranteed reimbursement of any customs fees that were levied.

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

Two Men Arrested and Charged With Illegally Exporting UAV Parts and Technology to Hizballah

On February 16, 2018, the DOJ issued a press release announcing the indictment of three individuals currently in custody in South Africa for conspiring to illegally export goods and technology from the United States to Lebanon and Hizballah in violation of U.S. export controls. The indictment alleges that, from 2009 through December 2013, the defendants "willfully conspired" to send inertial measurement units suitable for use in unmanned aerial vehicles (UAVs), a jet engine, piston engines and recording binoculars.

For more information, read the DOJ's press release [here](#).

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EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

OFAC Announces Shipping-Related North Korea Designations, Issues Targeted Advisory on North Korea's Shipping Practices

On February 23, 2018, the Department of Treasury's Office of Foreign Assets Control (OFAC) announced North

Korea-related sanctions designations and issued a targeted advisory concerning deceptive shipping practices by North Korea. The sanctions designations include 27 shipping companies and 28 vessels, and include shipping companies based in China, North Korea and Panama.

The OFAC advisory, "Sanctions Risks Related to North Korea's Shipping Practices," highlights deceptive practices that North Korean vessels have used to circumvent sanctions restrictions, including by painting over vessel names, utilizing ship-to-ship transfers (STS) near the Korean peninsula, falsifying documents and tampering with Automatic Identification Systems. The OFAC advisory notes ways to mitigate sanctions risks associated with these deceptive practices, reminds parties subject to U.S. and U.N. sanctions of potential penalties, and identifies North Korea sanctions resources. In the annexes of the advisory, OFAC provides a condensed guide for the shipping industry on U.S. and U.N. sanctions on North Korea, clarifies prohibited activities that could lead to OFAC designation as a sanctioned party, and lists North Korean vessels capable of engaging in STS transfers of petroleum.

For further information, please see the OFAC [web notice and designations](#), as well as the [North Korea sanctions advisory](#).

Publication of New Venezuela-Related Frequently Asked Questions

On February 12, 2018, OFAC issued new FAQs 553 and 554 to provide additional guidance on certain debt transactions prohibited by Executive Order 13808. Under the Executive Order, U.S. persons and persons within the United States are barred from "engaging in transactions related to, providing financing for, or otherwise dealing in new debt" of (i) Venezuela's state-owned oil company, PdVSA, with a maturity date of more than 90 days; and (ii) the Venezuelan government (excluding PdVSA) with a maturity date of more than 30 days. FAQ 553 defines "new debt" as debt created on or after August 25, 2017. The FAQ further explains that OFAC will not consider debt created prior to that date to be new debt so long as its terms do not change on or after that date. Therefore, such preexisting debt does not need to conform with the 30- and 90-day restrictions and may be collected by U.S. persons.

FAQ 554 clarifies that payments made outside the 30- and 90-day windows are prohibited, absent a license, even where payments were intended to occur within the applicable windows, but failed to be made. OFAC explains that it will consider license applications on a case-by-case basis and generally will adjudicate them favorably when (i) the debt arises from an agreement that otherwise complies with applicable sanctions rules; (ii) the new debt was created prior to March 14, 2018; (iii) the relevant Venezuelan government entity failed to pay within the agreed-upon, authorized time period; and (iv) the transaction is not otherwise prohibited under Executive Order 13808 or 13692, or other OFAC sanctions.

For additional details, read OFAC's FAQs [here](#).

State Changes Policy on Exports of Defense Articles and Defense Services to South Sudan

On February 14, 2018, Department of State's Directorate of Defense Trade Controls (DDTC) issued a final rule amending International Traffic in Arms Regulation § 126.1(d)(2) to include South Sudan in the list of countries to which a policy of denial applies on the export of defense articles and defense services. The amendments also prohibit brokers from engaging, or making a proposal to engage, in brokering services related to South Sudanese transactions without prior approval by DDTC. The final rule explains that these policy changes reflect the U.S. government's opposition to the trade of arms to South Sudan and its contribution to the conflict and humanitarian crisis, promote the cessation of hostilities and align the United States with existing restrictions on certain exports to South Sudan by the European Union.

The final rule also adds a paragraph specifying exceptions to the policy of denial for which licenses may be approved on a case-by-case basis. This licensing policy generally applies to the export of defense articles and services to support peacekeeping operations.

For more information, see the DDTC web notice [here](#) and the final rule [here](#).

OFAC Publishes Quarterly Report of Licensing Activity

On February 2, 2018, OFAC published its quarterly report of licensing activity under § 906(b) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) from October through December 2017. Under this statute and associated regulations, OFAC processes license applications requesting authorization to export agricultural commodities, medicine, and medical devices to Iran and Sudan.

During the time covered by the quarterly report, OFAC received 73 applications and issued 70 determinations. OFAC issued only nine licenses and one amendment, all for exports to Iran. OFAC also made two denials and issued 18 "return-without-action" letters. The remaining determinations included the provision of general information letters, or general guidance or interpretation letters. The average processing time for a license was 46 business days, compared to 30 business days for a "return-without-action" letter and 184 business days for a denial letter. This represents a significant decrease in processing time over the previous quarter.

For more information, read OFAC's Quarterly Report [here](#).

Proposed Bill Seeks to Modernize Export Controls for Dual-Use Items

On February 15, 2018, House Foreign Affairs Committee Chairman Ed Royce (R-CA) and Ranking Member Eliot Engel (D-NY) introduced legislation, titled the "Export Control Reform Act of 2018," in the U.S. House that would establish a permanent statutory basis for the control of commercial and some military items licensed by the Department of Commerce. The bill also would require the Department of Commerce to lead an interagency effort to identify emerging critical technologies that present national security concerns.

Consistent with existing law, the bill would provide enforcement authority, including the ability to impose criminal and civil penalties for violations. The bill would also replace the Cold War-era Export Administration Act of 1979, an authority that lapsed in 2001, but would carry over provisions relating to antiboycott and sanctions related to the proliferation of ballistic missiles and chemical and biological weapons.

For further information, see the [press release](#) from Rep. Royce's office and a [section-by-section analysis](#) by the House Foreign Affairs Committee.

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WRITING AND SPEAKING ENGAGEMENTS

On Thursday, March 1, Akin Gump's international trade group will be speaking at a seminar titled "International Sanctions and Antibribery Laws: Risk and Compliance Considerations" at Ararat Park Hyatt Hotel, Moscow.

On Monday, March 5, [Kevin Wolf](#) will speak on a CFIUS panel at the Dwight D. Eisenhower School for National Security and Resource Strategy in Washington, D.C.

On Friday, March 9, [Steve Kho](#) will speak on the panel "Trade Disputes: What You Need to Know" at the 2018 International Trade Update at Georgetown Law School in Washington, D.C.

On Thursday, March 22, [Christian Davis](#) and [Dan Feldman](#) will present on a panel, "Identifying and Mitigating Regulatory and Reputational Risk in Your Supply Chain," hosted by Akin Gump and ACC NCR's Global Issues Forum in Akin Gump's Washington, D.C. office. Guest panelist will be BJ Shannon, Customs Counsel at Raytheon.

On Thursday, March 22, [Kevin Wolf](#) will speak at the 23rd Annual NASA Export-Import Compliance Program Review on the panel, "Export Control Reform and National Security" in Huntsville, AL.

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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