

# Red Notice

A Monthly Update on Global Investigations and Prosecutions



March 2018

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## ANTICORRUPTION DEVELOPMENTS

### Canadian Mining Company Settles with SEC over FCPA Charges

On March 26, Kinross Gold Corporation settled with the Securities and Exchange Commission (SEC) over its alleged failure to implement and maintain adequate anticorruption controls at two of its subsidiaries in Mauritania and Ghana. As part of the settlement, Kinross agreed to pay a civil penalty of \$950,000. In a separate SEC filing, Kinross noted that the Department of Justice (DOJ) had declined to prosecute after conducting an investigation of

these same issues.

The SEC's press release is available [here](#), and the settlement order [here](#). For more information, see coverage from the *FCPA Blog* [here](#) and from *4-Traders* [here](#).

### **South Africa's Zuma Summoned to Appear in Court over Decade-Old Corruption Charges**

On March 26, South African law enforcement authorities summoned the former South African President Jacob Zuma to appear in court to face charges of corruption related to a military arms deal in which he was involved in the 1990s. Allegations of wrongdoing were first leveled against Zuma in 2005, and he was indicted in 2007, though the case was withdrawn in 2009, just a few weeks before he assumed the presidency. Prosecutors reinstated the charges earlier this month, following Zuma's resignation at the behest of the leadership of his political party, the ANC, in February 2018. Zuma is scheduled to appear in court on April 6.

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

### **Peru's President Resigns over Odebrecht Bribery Scandal**

On March 21, Peru's President Pedro Pablo Kuczynski tendered his resignation rather than face an impeachment vote over allegations of his involvement in a widespread \$800 million corruption scheme related to Brazilian construction company Odebrecht, which has reached the highest levels of governments across Latin America. *Red Notice* has been following the Odebrecht fallout as it has unfolded, most recently in the [December 2017](#) publication.

President Kuczynski previously denied any connection to the bribery schemes, including denying that he had received any campaign contributions from Odebrecht. New allegations surfaced that President Kuczynski received payments from Odebrecht through his consulting firm, where he allegedly used his government contacts while serving as finance minister to lobby on Odebrecht's behalf. President Kuczynski has been barred from leaving Peru for the next 18 months, and First Vice President Martín Vizcarra has replaced him. President Kuczynski is not the first Peruvian leader to be embroiled in the Odebrecht scandal—former President Alejandro Toledo fled the country in February 2017 after a Peruvian judge ordered his arrest.

For more information, see coverage from *The Washington Post* [here](#), from *The Wall Street Journal* [here](#), from *Bloomberg* [here](#) and from *The Economist* [here](#).

### **Sarkozy Charged, Detained over Allegations of Campaign Finance Donations from Gaddafi**

On March 20, former French President Nicolas Sarkozy was taken into police custody on allegations that the late Libyan leader Muammar Gaddafi illegally provided millions of euros in campaign donations to Sarkozy's 2007 presidential campaign. While an investigation into these campaign finance issues has been ongoing since 2013, this week Sarkozy was detained and questioned by police for two days before French authorities officially placed him under investigation, which, in the French legal system, is the equivalent of being formally charged.

Sarkozy is subject to several other criminal investigations in France and has been ordered to stand trial related to separate allegations that he improperly sought to obtain information about a criminal case by offering the prosecutor a promotion.

For more information, see coverage from *Reuters* [here](#) and [here](#), from *The New York Times* [here](#), from *The Wall Street Journal* [here](#) and from *Time Magazine* [here](#).

### **\$2 Million Penalty for Maryland Company in Russian Corruption Scheme**

On March 13, Transport Logistics International, Inc. (TLI) entered into a Deferred Prosecution Agreement with DOJ for making improper payments to JSC Techsnabexport (TENEX), a subsidiary of Russia's State Atomic Energy Corporation, in exchange for the award of uranium transport contracts. TLI agreed to pay a penalty of \$2 million, consistent with its inability to pay a higher penalty calculated under the U.S. Sentencing Guidelines. TLI's co-presidents have also been charged in the scheme, one of whom pleaded guilty in 2015 and is awaiting sentencing. *Red Notice* reported on the charging of the other co-president of TLI in [January 2018](#). The TENEX official who accepted the payments from TLI, Vadim Mikerin, is currently serving a 48-month prison sentence in Maryland.

See DOJ's press release [here](#). For more information, see coverage from the *FCPA Blog* [here](#) and *Compliance Week* [here](#).

### **Israeli Real Estate Investment Company Charged with FCPA Violations**

On March 9, the SEC announced that it had settled violations of the books and records provisions of the Foreign Corrupt Practices Act (FCPA) with Elbit Imaging, Ltd., an Israeli holding company focused on real estate investment and development. Elbit and its Netherlands-based, majority-controlled subsidiary, Plaza Centers NV, were said to have paid millions of dollars in improper payments through third-party consultants related to real estate development projects in Romania and the sale of real estate assets in the United States. Elbit agreed to a

cease-and-desist order and to pay a \$500,000 civil penalty. In its press release, the SEC stated that the settlement took into account “Elbit’s self-reporting, cooperation, remedial acts,” and other mitigating factors.

See the SEC’s press release [here](#) and the order [here](#). For more information, see coverage from *The Wall Street Journal* [here](#) and from the *FCPA Blog* [here](#).

### **Sanofi Announces DOJ Declination**

On March 7, French pharmaceutical company Sanofi SA announced in an SEC filing that DOJ had ended its investigation of alleged improper payments made by Sanofi subsidiaries. Sanofi first disclosed that it was investigating information that it had received regarding potential FCPA violations involving drug sales in Africa and the Middle East in its 2012 annual report, noting then that it had disclosed this investigation to U.S. authorities. Sanofi’s latest announcement notes that the SEC investigation remains open.

Sanofi’s 20-F filing is available [here](#). For more information, see coverage from *The Wall Street Journal* [here](#) and from the *FCPA Blog* [here](#).

### **U.S. Authorities Conclude Investigation of Texas-Based Oil Equipment Company**

On February 28, Exterran Corporation—an oil and gas equipment company located in Houston, Texas—stated that the SEC and DOJ had ended their investigations without taking any enforcement actions regarding allegations of FCPA violations by Exterran’s Italian subsidiary, Belleli EPC. Exterran first disclosed an internal investigation of material accounting errors and irregularities in Belleli records for contracts related to desalination plant equipment designated for Middle East clients in April 2016, after which both agencies began their own investigations.

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

### **Clarification of “Adequate Procedures” Under the UK’s Bribery Act**

On February 21, a jury verdict that was issued against Skansen Interiors Limited for making improper payments to secure an almost \$8.5 million contract shed light on what might be required of companies seeking to invoke the Bribery Act defense that it had “adequate procedures” in place to prevent the payments. The jury found that, even though Skansen had relevant policies and financial controls, it did not have a specific antibribery policy and had no justification for the lack of such a policy. Skansen also had no dedicated compliance officer or any documentation of training programs to encourage compliance with the relevant policies.

For more information, see Akin Gump’s Client Alert from March 12 on this topic, available [here](#).

### **Anticorruption Spotlight: World Bank Announces Additional Debarments**

On March 19, the World Bank (the “Bank”) announced that Manila-based consulting firm, Innogy Solutions, Inc., and its president Lloly Yana de Jesus were barred from Bank projects for five and a half years. Innogy was sanctioned after de Jesus improperly used confidential information to obtain a Bank contract and failed to disclose a conflict of interest.

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

On March 28, the Bank also announced the debarment of three companies and the conditional non-debarment of a fourth company related to misconduct on Bank matters in Bangladesh, India, and Timor-Leste. Belgian medical device company, Eckert & Ziegler BEBIG s.a., was debarred for two years for fraudulently misrepresenting commission amounts it had agreed to pay a local agent in relation to bids for health sector contracts in Bangladesh.

RKD Construction Pvt. Ltd., an Indian construction company engaged to expand or build roads in Odisha State, was debarred for eighteen months for double-billing practices. According to the Bank, RKD’s debarment reflects that it has repaid all of the funds obtained through the fraudulent practices.

Egis International Indonesia, a subsidiary of Egis International, was debarred for fifteen months for misrepresenting the availability of a key specialist on a contract for climate resilient road work in Timor-Leste. Parent company Egis International will be subject to conditional non-debarment for a period of fifteen months. A company engaged in the same joint venture, Lelo Engineering Consultant, Unipessoal, Lda, was debarred for fifteen months in November 2017 for its participation.

The World Bank’s press release regarding Eckert & Ziegler, RKD, Egis International, and Lelo Engineering is available [here](#).

Each of these debarments 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](#)). The list of all World Bank debarred entities and individuals is available [here](#).

## **Anticorruption Spotlight: SEC Issues Whistleblower Determinations**

On March 19, the SEC announced that it was issuing “its highest-ever Dodd-Frank whistleblower awards,” indicating that two whistleblowers would share a nearly \$50 million award, and a third would receive more than \$33 million. The previous record was an award of \$30 million, issued in 2014. By law, the SEC does not disclose information regarding the identity of whistleblowers, but an attorney for the whistleblowers stated that they provided information that assisted the SEC in obtaining a \$415 million settlement with Bank of America in 2016 related to allegations that the Bank misused customer funds and assets in order to prioritize profits. This determination brings the total number of whistleblower awards to 53 since the SEC first began the practice in 2012. Awards totaling more than \$262 million have been paid for whistleblower information.

On March 6, the SEC denied a whistleblower award on the basis that the submissions did not qualify as “original information,” nor did the information “lead to” a successful enforcement action, as required under the Securities Exchange Act.

On March 27, the SEC denied a second whistleblower award and issued a lengthy order explaining that the claimant’s public online posting of whistleblower information did not qualify as providing information to the SEC and that claimant’s provision of additional materials could not be considered voluntary when the SEC had previously requested the information from the claimant’s employer.

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.

The SEC’s press release announcing its March 19 whistleblower award is available [here](#). The SEC’s March 6 order denying an award is available [here](#). Its March 27 order denying an award is available [here](#).

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

### **Iranian Charged with Funneling \$115 Million Through U.S. Banks**

On March 20, 2018, the DOJ unsealed an indictment charging Ali Sadr Hashemi Nejad (“Sadr”), an Iranian national, for his alleged involvement in a scheme to funnel \$115 million in payments for a Venezuelan housing complex through the U.S. financial system for the benefit of Iranian individuals and entities. The six-count indictment includes charges of conspiracy to defraud the United States, conspiracy to violate the International Emergency Economic Powers Act (IEEPA), bank fraud, conspiracy to commit bank fraud, money laundering and conspiracy to commit money laundering.

According to the indictment, Iran and Venezuela entered into a Memorandum of Understanding in 2005 to construct a housing infrastructure project in Venezuela that would benefit both governments. The project was led by Stratus Group, an Iranian conglomerate controlled by Sadr and his family. Sadr was a member of the executive committee overseeing the project and was responsible for managing the project’s finances. In connection with this role, Sadr took steps to evade U.S. economic sanctions and to defraud U.S. banks by concealing the role of Iran and Iranian parties in U.S. dollar payments sent through the U.S. banking system related to the project in a series of financial transactions between 2010 and 2013 totaling \$115 million. In at least one instance, those proceeds were then used to purchase real property in California.

For additional information, please see DOJ’s [press release](#).

### **BIS Issues Penalties for Tech Company’s Exports to Russia**

On February 26, 2018, the Department of Commerce’s Bureau of Industry and Security (BIS) issued \$100,000 in penalties and 10-year export bans to Trilogy International Associates and William Michael Johnson, Trilogy’s president. The penalties stem from violations of the Export Administration Regulations in 2010 involving the exportation of an explosives detector and 115 analog-to-digital converters, controlled for national security purposes, to Russia without required BIS licenses.

The order ends a years-long proceeding that involved challenges to BIS’s consolidated treatment of Trilogy and Johnson as a single party. The administrative law judge in the case ultimately recommended \$50,000 in monetary penalties and seven-year export bans against both Trilogy and Johnson. BIS, however, concluded that these penalties did not adequately address the serious nature of the violations. Noting Trilogy’s and Johnson’s sustained procurement and export activities and willful ignorance of regulatory obligations, along with their refusal to acknowledge compliance obligations during proceeding, BIS doubled the monetary penalties and added three years to the scope of the export bans.

For additional details, please see [Federal Register Notice](#) covering BIS’s order and [Law360’s coverage](#).

## **Canadian Man Arrested for Smuggling \$2.3 Million in Petroleum Equipment to Iranian Oil Companies**

On March 15, 2018, the U.S. Attorney's Office for the Western District of Washington announced the arrest of Mehran Ghanouni, a Canadian citizen, on charges in connection with a conspiracy to export \$2.3 million in petroleum equipment to oil companies owned by the government of Iran and making false statements that the equipment was destined for companies in Kuwait, Iraq and the United Arab Emirates.

According to the press release, Ghanouni operated a number of companies in both the United States and Canada. He and his conspirators allegedly attempted to illegally export the petroleum equipment on 35 different occasions between 2014 and 2016. The press release describes at least three incidents in 2014 in which Ghanouni's company, Integrated Control Systems, exported parts claiming false destinations, including one shipment seized by U.S. Customs and Border Protection ("CBP"). Additional shipments in January 2015 and February 2016 were also destined for Iran with falsely claimed alternative destinations.

For additional information, read DOJ's [press release](#).

## **Iranian National Sentenced for Conspiring to Illegally Export Restricted Military Technology to Iran**

On March 20, 2018, U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations announced that Aliereza Jalali, an Iranian national, had been sentenced to 15 months in prison for his role in illegally exporting restricted military technology to Iran. Jalali pled guilty to the charge in November 2017.

According to Jalali's guilty plea, he was an employee of a Malaysian-based company, Green Wave Telecommunication, which operated as a front company for Fanavar Moj Khavar ("Fana Moj"), an Iranian company specializing in broadcast and microwave communications. Jalali and his co-conspirators used Green Wave to acquire export-controlled technology on behalf of Fana Moj by contacting producers and distributors of desired technology, soliciting purchase agreements, and negotiating the purchase and delivery of the goods. When the goods were received by Green Wave in Malaysia, Jalali repackaged and exported the items to Fana Moj in Iran. According to the press release, Fana Moj was designated by the United States Department of the Treasury as a Specially Designated National ("SDN") in 2017 for providing financial, material, technological or other support for, or goods or services in support of, the Islamic Revolutionary Guard Corps.

For additional information, please see DOJ's [press release](#) and ICE's [press release](#).

## **Florida Man Pleads Guilty to Conspiracy to Illegally Export Defense Articles to Russia**

On March 20, 2018, DOJ announced that Florida resident Vladimir Nevidomy pleaded guilty to conspiring to illegally export items on the U.S. Munitions List to Russia without a license in 2013. Nevidomy, a naturalized U.S. citizen, faces up to five years' imprisonment on the charges.

According to court documents, Russian customers contacted Nevidomy by email in 2013 to request military-grade night vision and thermal vision devices and ammunition primers. Nevidomy proceeded to obtain at least three night-vision rifle scopes and a thermal multipurpose monocular from U.S. vendors by falsely representing to the vendors that the items were not for export. After obtaining the items, Nevidomy exported them to a co-defendant in Russia by either concealing the defense articles in household goods shipments sent through a freight-forwarding company or using a private Russian postal service that operated in South Florida. An attempted shipment of ammunition primers was seized by CBP.

For additional information, please see DOJ's [press release](#).

## **FDA Bans Feed Importer from Importing Food for Five Years**

On March 1, 2018, the Food and Drug Administration's (FDA) Office of Regulatory Affairs (ORA) debarred animal food company Meunerie Sawyerville, Inc. from importing articles of food or offering such articles for import into the United States for five years. Meunerie Sawyerville has previously pled guilty in the U.S. District Court for the District of Vermont to two felony counts related to the importation of food for (1) causing the introduction of an adulterated drug (cattle feed containing monensin) into interstate commerce with the intent to defraud and mislead, and (2) knowingly and intentionally making a false statement to the U.S. government by submitting a false manifest listing a fictitious importer to CBP. The company had ignored a directive to warehouse its imported cattle feed after it was sampled at the border and found to contain an excessive concentration of monensin. Instead, the company's president instructed the driver to deliver the feed to the intended Vermont farmer and later imported a batch of FDA-compliant feed under false customs documentation. The latter batch was ultimately presented in place of the adulterated feed for inspection by the government. In affirming the five-year debarment, the FDA's Office of Scientific Integrity concurred with ORA's proposal and noted in particular the "nature and seriousness of the offenses and the nature and extent of Meunerie Sawyerville management's participation in the offenses."

For additional information, please see the Federal Register [notice](#) announcing the decision.

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### **OFAC Amends and Reissues the North Korea Sanctions Regulations**

On March 1, 2018, the Offices of Foreign Assets Control (OFAC) announced the amendment and reissuance of the North Korea Sanctions Regulations (31 C.F.R. Part 510) in their entirety. The final rule reissuing the regulations took effect on March 5, 2018. The amendments expand the existing regulations by implementing recent changes required by Executive Orders (EO) 13687, 13722 and 13810; the North Korea Sanctions and Policy Enhancement Act of 2016 and the Countering America's Adversaries Through Sanctions Act of 2017. OFAC also issued new and updated North Korea FAQs to reflect these changes.

New provisions in the regulations incorporate general licenses that were previously located only on OFAC's website. OFAC also issued four new general licenses to authorize certain transactions relating to the investment and reinvestment of funds, certain payments for legal services, and official activities of the U.S. government and international organizations.

The regulations otherwise continue to block all property and interests in property of the Government of North Korea and the Workers' Party of Korea. The regulations also continue to generally prohibit U.S. persons from engaging in transactions with the blocked entities without prior OFAC authorization and require U.S. persons to block property or interests in property that are in, or come within, their possession or the territory of the United States.

For additional information, please see OFAC's [press release](#) and the [Final Rule](#).

### **OFAC Adjusts Maximum Civil Monetary Penalties for Inflation**

On March 19, 2018, OFAC issued a final rule, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, adjusting the maximum Civil Monetary Penalties (CMP) for violations of statutes that OFAC enforces. The adjusted maximum CMPs are as follows:

IEEPA—the greater of \$295,141 or twice the amount of the underlying transaction

Trading with the Enemy Act—\$86,976

Foreign Narcotics Kingpin Designation Act—\$1,466,485

Antiterrorism and Effective Death Penalty Act of 1996—greater of \$77,909 or twice the amount of which a financial institution was required to retain possession or control

Clean Diamond Trade Act—\$13,333.

For additional information, please see the [Final Rule](#).

### **OFAC Issues FAQs Addressing EO 13827 on the “Situation in Venezuela” and “Questions on Digital Currencies”**

On March 19, 2018, OFAC issued EO 13827 (“Taking Additional Steps to Address the Situation in Venezuela”) to address the Maduro regime’s attempted circumvention of U.S. sanctions by issuing the “petro” cryptocurrency. The E.O. specifically prohibits all transactions by U.S. persons or persons in the United States with the Venezuelan government (including the Central Bank of Venezuela and Petroleos de Venezuela, S.A.) in any digital currency or token issued by the government on or after January 9, 2018. Along with the EO, OFAC issued three FAQs to clarify that (1) “petro” and “petro-gold” are considered digital currency under the E.O.; (2) the bolivar fuerte is **not** considered a digital currency under the EO; and (3) U.S. persons who participated in the petro presale are prohibited from engaging in transactions that involve it, but that OFAC will consider licenses to do so on a case-by-case basis.

Separately, OFAC issued five new FAQs addressing “Questions on Virtual Currency.” Broadly, these FAQs (1) provide general definitions for “virtual currency,” “digital currency,” “digital currency wallet” and “digital currency address”; (2) clarify that the sanctions obligations of U.S. persons and persons subject to OFAC jurisdiction are the same regardless of whether the property or currency in question is digital or physical; (3) describe how OFAC will use existing authorities and techniques to sanction the illicit use of digital currencies; (4) explain that OFAC may add digital currency wallet addresses to the SDN list and require reporting of addresses accordingly; and (5) explain the structure of digital currency wallet addresses that appear on the SDN list.

For additional information, please read [Executive Order 13827](#), [OFAC's press release](#) and [FAQs](#), and OFAC's [Digital Currency-related FAQs](#).

### **OFAC Reaffirms Commitment to Supporting the Iranian People and Fostering Internet Freedom in Iran**

On March 19, 2018, OFAC reaffirmed existing guidance regarding the U.S. government's ongoing commitment to promote the free flow of information to the Iranian people by ensuring that Iranian citizens can exercise their right to freedom of expression and can freely access information on the Internet.

To facilitate this policy, OFAC noted that it has two general licenses that authorize the provision of certain hardware, software and services incident to the exchange of personal communications over the Internet within Iran. Specifically, Section 560.540 of the Iranian Transactions and Sanctions Regulations (ITSR) authorizes the export of certain publicly available, no-cost services and software incident to the exchange of personal communications over the Internet to persons in Iran. General License D-1 further authorizes the export and re-export of certain fee-based services, software and hardware incident to the exchange of personal communications over the Internet to persons in Iran.

OFAC also noted in the press release that it considers applications outside the scope of the general authorizations on a case-by-case basis for foreign policy and national security interests and other factors listed in the ITSR. To support companies considering such exports, OFAC also noted that it has issued FAQs and a detailed guidance document describing the general licenses and its policy for reviewing specific licenses.

For additional information, please see OFAC's [press release](#) and [guidance document](#) on licensing policy related to Internet freedom in Iran.

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## WRITING AND SPEAKING ENGAGEMENTS

[David Applebaum](#), [Todd Brecher](#) and [J. Porter Wiseman](#) have written a chapter titled "FERC Practice and Procedure" in Global Competition Review's new book *The Guide to Energy Market Manipulation*. The chapter provides an overview of the key points to consider for subjects of market manipulation cases and begins by listing some key sources of procedural guidance in enforcement cases. To read the chapter, please click [here](#).

On April 19, [Kevin Wolf](#) will be discussing the latest on CFIUS and export controls at the Delegations of European Parliament (DMAG) meeting at the Embassy of Slovenia 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](mailto:mwarfield@akingump.com) or +1 202.887.4464.

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