

Red Notice

A monthly update on global investigations and prosecutions

Akin Gump
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ANTICORRUPTION DEVELOPMENTS

[DOJ Extends FCPA Corporate Enforcement Policy to Misconduct in Mergers and Acquisitions](#)

On July 25, 2018, in a speech to the Ninth Global Forum on Anti-Corruption Compliance in High Risk Markets, Deputy Assistant Attorney General Matthew Miner announced that the Department of Justice (DOJ) will extend its Foreign Corrupt Practices Act (FCPA) Corporate Enforcement Policy to mergers and acquisitions (M&A). The announcement confirms that, in a merger or acquisition, an acquiring or successor company that discovers and subsequently voluntarily reports potential misconduct, cooperates with any resulting investigation and takes appropriate remedial measures the acquiring company will be entitled to a presumption of non-prosecution and potentially lower monetary penalties. Miner noted that application of the FCPA Corporate Enforcement Policy to the M&A space is designed to encourage successor company "leadership to take the steps outlined in the FCPA Policy, and . . . to reward them accordingly for stepping up, being transparent, and reporting and remediating the problems they inherited."

More information

- [Deputy Assistant General Matthew Miner's full remarks](#)

[Jury Convicts Coal Company Executive and Lawyer of Domestic Bribery in Alabama](#)

On July 20, 2018, a jury in Alabama convicted David Roberson, vice president for government and regulatory affairs at Drummond Co. Inc., and former Balch and Bingham partner Joel Gilbert of bribery, honest services wire fraud, conspiracy and concealment-money-laundering conspiracy for corrupt payments made to a former Alabama state legislator, Oliver Robinson, in order to avoid Environmental Protection Agency (EPA) cleanup penalties. Drummond, a coal company, was identified by the EPA in November 2013 for potential liability for pollution that migrated from an industrial area into residential

neighborhoods in North Birmingham, Alabama. Roberson and Gilbert allegedly created a contract to provide payments to a literacy foundation associated with Robinson, with the understanding that Robinson would use his influence to oppose EPA action against Drummond.

More information

- [DOJ press release](#)
 - [ABA Journal](#)
 - [Law 360](#)
-

Former PDVSA Executive Pleads Guilty

On July 16, 2018, Luis Carlos De Leon-Perez pleaded guilty to one count of conspiracy to violate the FCPA and one count of conspiracy to commit money laundering in connection with a scheme in which he was involved as an executive at the Venezuelan state-owned energy company Petroleos de Venezuela S.A. (PDVSA). DeLeon, a dual U.S.-Venezuelan citizen, is the 12th guilty plea in the DOJ's ongoing investigation related to PDVSA, where 15 former employees have been charged so far.

More information

- [DOJ Press Release](#)
 - [The FCPA Blog](#)
 - [Akin Gump's Red Notice - February 2018](#)
-

New Head of DOJ's Criminal Division

On July 11, 2018, the U.S. Senate confirmed Brian Benczkowski to lead DOJ's Criminal Division, which handles FCPA prosecutions through its Fraud Section. Benczkowski's confirmation as Assistant Secretary by a 51-48 vote came a year after he was nominated to the post.

More information

- [DOJ press release](#)
 - [The Wall Street Journal](#)
-

Guilty Plea and Non-Prosecution Agreement in Soccer Official Corruption Case

On July 10, 2018, a Florida-based media company, US Imagina LLC, pleaded guilty to two counts of wire fraud conspiracy for \$6.5 million in payments to officials of the Caribbean Football Union and four Central American national soccer federations in exchange for the media rights related to those countries' World Cup qualifier matches. US Imagina is a privately held Florida corporation that is majority-owned by Imagina Media Audiovisual SL, based in Barcelona, Spain. The Spanish parent company entered into a non prosecution agreement with DOJ for charges related to the same activities.

More information

- [DOJ press release](#)
 - [Reuters](#)
 - [Deadline](#)
-

EU Money Laundering Reform Comes into Effect

On July 9, 2018, the European Union's Fifth Money Laundering Directive came into force. Initially passed in April 2018, the directive seeks to tighten regulations across the EU,

following recent money laundering concerns centering around banks in Malta and Latvia. Banks subject to the regulations will be required to submit account ownership information to a central national source and enhance controls on digital currencies.

More information

- [European Commission's press release](#)
 - [Reuters](#)
 - [Financial Times](#)
-

University of Maryland Releases Subpoenas for Records in FBI Hoops Probe

On July 6, 2018, the University of Maryland released two grand jury subpoenas that it had received in connection with an ongoing federal corruption investigation of college basketball. One subpoena sought all communications to an unnamed former Maryland athlete and his family; the personnel file of Orlando Ranson, men's basketball assistant coach; and communications to Christian Dawkins, an agent runner and one of 10 men originally charged in the case last fall. The other subpoena sought records tied to the recruitment, eligibility or amateur status of Kansas basketball player Silvio De Sousa. The ongoing investigation of college basketball programs involves thousands of dollars of alleged improper payments and kickbacks designed to influence recruits while they were choosing a school, agent or apparel company.

Maryland joins the list of universities already known to be under investigation, including North Carolina State University, the University of Kansas, the University of Louisville and the University of Miami, as well as executives of Adidas. In response to the investigation, the National Collegiate Athletic Association has created a commission led by former Secretary of State Condoleezza Rice, to address the government's concerns.

More information

- [Grand jury subpoenas](#)
 - [Associated Press](#)
 - [NBC](#)
 - [The Washington Post](#)
 - [Los Angeles Times](#)
-

Credit Suisse Fined \$77 Million over Hiring Practices in Asia

On July 5, 2018, the Securities and Exchange Commission (SEC) released details of a settlement with Credit Suisse Group AG regarding certain Credit Suisse hiring practices in Asia concerning potential violations of the FCPA. Under the settlement, Credit Suisse paid \$24.9 million in disgorged profits and more than \$4.8 million in prejudgment interest to the SEC. *Red Notice* previously covered Credit Suisse's disclosure of a \$47 million criminal penalty pursuant to a nonprosecution agreement with DOJ. Pursuant to the non-prosecution agreement with DOJ, Credit Suisse received cooperation credit and a reduction in monetary penalties while agreeing to further enhance its corporate compliance program.

More information

- [SEC settlement](#)
- [DOJ non-prosecution agreement](#)
- [Akin Gump's Red Notice - June 2018](#)
- [The New York Times](#)
- [The Wall Street Journal](#)
- [Bloomberg](#)
- [The FCPA Blog](#)

Glencore Discloses FCPA Subpoena and Cooperation with U.S. Authorities

On July 3, 2018, Glencore, a Swiss commodity trading and mining company, received a subpoena from DOJ related to compliance with the FCPA and U.S. money laundering laws. The subpoena seeks documents related to business dealings in Nigeria, the Democratic Republic of Congo and Venezuela from 2007 to the present. On July 11, Glencore announced that it will cooperate with authorities and set up a committee of board members to oversee its response.

More information

- [The Guardian](#)
 - [Reuters](#)
-

Beam Suntory Settles with the SEC over Corrupt Payments in India

On July 2, 2018, Beam Suntory Inc., the U.S.-based subsidiary of Japanese liquor company Suntory Holdings Ltd., announced that it had settled with the SEC over allegations that its Indian subsidiary had used third-party agents to make corrupt payments to government officials to secure increased sales, facilitate licensing and aid distribution. Beam Suntory is responsible for liquor brands such as Jim Beam and Maker's Mark, and it had voluntarily disclosed the misconduct in question to the SEC and DOJ in November 2012. Beam Suntory will pay just more than \$8 million in fines and disgorgement to the SEC.

More information

- [SEC's administrative order](#)
 - [The FCPA Blog](#)
-

Anticorruption Spotlight: World Bank Announces Debarment of Two Chinese Companies

On July 19, 2018, the World Bank announced that it was debarbing two Chinese construction companies affiliated with a Bank-financed energy efficiency project in Shandong, China. Shanghai-based China Nuclear Industry Fifth Construction Co., Ltd. was debarred for two years, and China Machinery Industry Construction Group, Inc. was debarred for four years. Both companies falsified documents indicating that they or their subcontractors had completed work that was not yet finished to receive advance payment.

These 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.

More information

- [Agreement of Mutual Recognition of Debarments](#)
 - [List of all World Bank debarred entities and individuals](#)
 - [World Bank's press release](#)
 - [The FCPA Blog](#)
-

EXPORTS, SANCTIONS AND CUSTOMS ENFORCEMENTS

Commerce Issues Order Terminating Denial Order Against ZTE

On July 13, 2018, the Department of Commerce terminated its denial order against China-based Zhongxing Telecommunications Equipment Corporation ("ZTE Corporation") and

ZTE Kangxun Telecommunications Ltd. (“ZTE Kangxun”) (collectively, “ZTE”). The termination came as a result of ZTE fulfilling the terms of a settlement agreement reached between Commerce and ZTE on June 7, 2018, under which ZTE agreed to pay a \$1 billion penalty and place a further \$400 million in escrow. ZTE is subject to a 10-year probationary period during which it must continue to comply with the terms of the June 7 settlement agreement, including, but not limited to, retention of compliance officers that are answerable to Commerce, implementation of a comprehensive export control compliance program with annual audit reports, replacement of certain senior leadership, and cooperation with U.S. government investigations pertaining to ZTE’s historical conduct and potential violations of U.S. export control laws during the probationary period.

In response to the June 7 agreement, Congress had been debating reimposing the denial order in the National Defense Authorization Act for fiscal year 2019, but members of the House and Senate announced on July 23, 2018, that they would not do so. Instead, the pending legislation would prohibit the Secretary of Defense from procuring ZTE equipment or services and from contracting with entities that use ZTE equipment or services in a substantial way.

More information

- [Commerce announcement of termination of Denial Order](#)
- [Akin Gump Client Alert regarding June 7th superseding settlement agreement](#)
- [The Hill](#)

Owner of Russian Trading Company Charged with Export Control Violations

On July 25, 2018, the Department of Justice (DOJ) announced that Alexander Brazhnikov Sr., a Russian citizen and resident, was indicted by a federal grand jury on charges of conspiracy to commit money laundering, conspiracy to smuggle goods from the United States, and conspiracy to violate the International Emergency Economic Powers Act (IEEPA). The charges are in connection with Brazhnikov’s alleged role in an international procurement network that smuggled more than \$65 million in export-controlled electronic components to Russian defense contractors. The charges follow the June 2016 sentencing of his son, Alexander Brazhnikov Jr. to 70 months in prison for his role in the scheme. Brazhnikov Sr. is at large.

According to court documents, Brazhnikov Sr. ran ABN Universal, a microelectronics import/export company in Moscow. His son simultaneously operated four New Jersey-based microelectronics export companies. Through these companies, the Brazhnikovs fulfilled requests from various Russian entities by purchasing components from U.S. businesses through the New Jersey companies and later repackaging the goods and shipping them to Russia. The Brazhnikovs avoided completing required export paperwork by falsifying the value and end users of the components and by sending the shipments to numerous false addresses or shell locations in Moscow. The products were then sent to a warehouse controlled by Brazhnikov Sr. to be distributed to Russian defense contractors. To further conceal the scheme, Brazhnikov Sr. used foreign shell accounts to manage payments.

More information

- [DOJ press release](#)
- [Akin Gump’s Red Notice - July 2016](#)

Business Owners Sentenced in Connection with Unlicensed Exports of EAR-Controlled Items to Pakistan

On July 18, 2018, DOJ announced that Muhammad Ismail and his son, Kamran Khan, were sentenced to 18 months’ imprisonment followed by three years of supervised release for their roles in a money laundering and illegal export scheme. Ismail and Khan had each pleaded guilty to one count of international money laundering for transferring funds from Pakistan to the United States in connection with the unlawful export of items subject to the

Export Administration Regulations (EAR). Imran Khan, another son of Ismail, pled guilty last June to one count of violating IEEPA in connection with the same scheme and has not yet been sentenced. The men are Pakistani citizens and lawful permanent residents of the United States residing in Connecticut.

According to the DOJ press release, from 2012 through 2013, the defendants received orders from a Pakistani company to export various U.S.-origin, EAR-controlled products to Pakistan. The products included bagging film used for advanced composite fabrication and a spectrometer. The defendants obtained the products from U.S. manufacturers to whom they identified that the items would not be exported from the United States. The defendants subsequently shipped the products to Pakistan on behalf of either the National Institute of Lasers & Optronics, the Pakistan Atomic Energy Commission, or the Pakistan Space & Upper Atmosphere Research Commission, all three of which are named on Commerce's Entity List. The defendants knew that they were required to obtain a license for the exported items, but failed to do so.

More information

- [DOJ press release](#)
-

New York Jewelry Importer Settles Civil Fraud Suit on Customs Valuation, Smuggling

On June 27, 2018, DOJ settled civil fraud claims initiated by a whistleblower under the False Claims Act against Temple St. Clair LLC, a New York-based jewelry designer, manufacturer, and importer. Temple St. Clair admitted to undervaluing imported merchandise, improperly claiming duty-free treatment pursuant to the Generalized System of Preferences (GSP), failing to declare imported items and failing to mark certain imported jewelry with the country of origin. As a result, Temple St. Clair underpaid customs duties on imported jewelry and caused a significant loss of revenue to the U.S. government. The company agreed to pay \$796,000 to the United States and to implement corrective measures.

DOJ alleged that, between 2011 and 2016, Temple St. Clair unlawfully avoided the payment of customs duties that it owed on goods imported from Italy, Sri Lanka and Thailand by substantially undervaluing the goods at import. During this time, Temple St. Clair also claimed duty-free treatment under the GSP by misrepresenting to Customs and Border Protection (CBP) that at least 35 percent of the jewelry's value was added in Sri Lanka or Thailand. Meanwhile, Temple St. Clair's senior executives hand-carried various jewelry items—including a pendant worth \$83,000—into the United States for commercial purposes without declaring those items to CBP, thereby further avoiding customs duties. Additionally, in 2017, Temple St. Clair violated CBP regulations by failing to properly affix permanent country-of-origin markings to jewelry that was manufactured in Sri Lanka and Thailand.

The settlement agreement requires Temple St. Clair to pay \$796,000 in owed duties and to implement procedures by which the company can properly mark its jewelry with the country of origin prior to importation.

More information

- [DOJ press release](#)
-

Freight Forwarder Executives Arrested and Charged with Price-Fixing Scheme

The owner/CEO and manager of a freight-forwarding company that operates in ports throughout the United States were arrested on July 3, 2018, on charges of conspiring to fix prices for international freight-forwarding services.

According to the criminal complaint, from 2014 through at least 2015, the executives conspired with other freight-forwarding companies to raise prices charged to U.S. customers by establishing "commissions" in U.S. port cities that were to coordinate the

rates to charge customers at each port in violation of U.S.-antitrust laws. The conspirators met at several locations in Honduras and the United States, including New Orleans. An affidavit filed in support of the complaint contains emails that show that the executives were aware that their conduct violated U.S. antitrust laws and that they instructed co-conspirators to avoid leaving written evidence of their conduct.

More information

- [DOJ press release](#)

EXPORTS, SANCTIONS AND CUSTOMS DEVELOPMENTS

OFAC Publishes North Korea Supply Chain Advisory

On July 23, 2018, the Department of the Treasury's Office of Foreign Assets Control (OFAC), acting with CBP and Immigration and Customs Enforcement, issued an advisory to manufacturers, buyers and service providers with supply chain links to North Korea. The advisory alerts these businesses to possible deceptive practices used by the North Korean government to operate a system of forced labor that contributes revenue to its weapons programs. The advisory is intended to assist businesses in complying with obligations under the Countering American's Adversaries Through Sanctions Act, as well as other U.S. and U.N. sanctions programs relating to North Korean trade and labor.

Possible deceptive practices identified by OFAC include subcontracting without notification to the customer, mislabeled country of origin, the establishment of joint ventures with businesses in third countries, the sale of goods below market price and the use of front companies to provide information technology services.

OFAC also lists jurisdictions with heightened risk of North Korean labor entering the supply chain, as well as a number of potential indicators that North Korean overseas labor could be involved. These indicators include employers withholding wages, employers agreeing to multiyear labor contracts that require up-front payments to North Korea, workers living in unsafe or collective housing isolated from other workers, workers having little control over bank accounts and a general lack of transparency about contract work. OFAC recommends that businesses "closely examine their entire supply chain(s)" and "adopt appropriate due diligence best practices."

More information

- [OFAC advisory](#)
- [OFAC press release](#)

OFAC Issues New Venezuela General License and FAQs

On July 19, 2018, OFAC issued Venezuela General License 5, which authorizes certain U.S. persons to engage in dealings in the Petroleos de Venezuela SA 2020 8.5 Percent Bond to enforce bondholder rights in the shares that serve as collateral. These transactions would otherwise be prohibited by Executive Order (E.O.) 13835, which prohibits U.S. person involvement in certain equity transfers by the Government of Venezuela.

OFAC also published two new FAQs regarding General License 5. FAQ 595 explains the rationale behind the general license, which is to prevent the Maduro regime from defaulting on bond obligations without consequences. FAQ 596 explains that, with certain exceptions, E.O. 13835 does not prohibit a person from attaching and executing against Venezuelan government assets if that person has a legal judgment against the government of Venezuela.

More information

- [OFAC press release](#)

- [Venezuela General License No. 5](#)
 - [New Venezuela General License 5 FAQs](#)
-

Annual Blocked-Property Report Due September 30

On July 2, 2018, OFAC issued a reminder for persons holding blocked property to file an Annual Report of Blocked Property with OFAC by September 30, 2018. OFAC regulations require holders of property blocked pursuant to OFAC sanctions to submit a list of all such property held as of June 30, 2018. The list should not include property that has been unblocked by a general or specific license but has not been returned to its owner. OFAC considers failure to submit the report by the deadline to be a violation of 31 C.F.R. Part 501.

The annual report must be filed using Form TD F 90-22.50, which is available [here](#).

More information

- [OFAC Reminder](#)
 - [OFAC Guidance on filing the report](#)
-

U.S. May Consider Iran Oil Sanctions Waivers

During a July 10, 2018, interview, Secretary of State Mike Pompeo said that the United States “will consider” granting waivers from Iran oil sanctions to a “handful of countries” that request relief. On July 13, Treasury Secretary Steven Mnuchin echoed that statement when he told reporters in Mexico that the administration would “consider exceptions” to the oil ban, which is expected to take effect on November 4, 2018. Mnuchin said that, while the United States would not issue blanket waivers, it will be flexible in certain situations “to make sure that people have the time” to fully comply with the sanctions without suffering major economic harm.

More information

- [Reuters](#)
- [The Hill](#)

GLOBAL INVESTIGATIONS RESOURCES

- [EU Trade Update: Trade Aspects of the July 2018 U.K. Government White Paper on the Future U.K. EU Relationship](#)
- [New U.K. National Security Powers to Call in Investments and Other Transactions](#)
- [English Court of Appeal Lowers the Bar for Arbitrator Disclosure](#)

WRITING AND SPEAKING ENGAGEMENTS

On September 17 [Kevin Wolf](#) will present on the topic, “Recent Developments in Export Controls: University Focus,” at the Export Compliance Training Institute's 3rd Annual University Export Controls seminar in Columbus, OH.

On September 26 [Hamish Lal](#) will be speaking at the 8th International Society of Construction Law Conference on “Penalty Clauses Around the World” in Chicago.

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 Jaime Sheldon at +1 212.407.3026 or [email](#).

[More information](#) for lawyers in the global investigations and compliance practice.

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