

Red Notice

A Monthly Update on Global Investigations and Prosecutions



December 2015

Introduction

Welcome to the December 2015 edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP.

This month on the anticorruption front, the United Kingdom's Serious Fraud Office (SFO) announces two enforcement actions, a Japanese company reaches a settlement agreement with a multinational development bank, three former executives of a broker-dealer are sentenced for their role in a bribery scheme, two companies disclose potential Foreign Corrupt Practices Act (FCPA)-related costs in recent securities filings, the U.S. Department of Justice (DOJ) announces sentences for individuals in two separate bribery-related probes, and the British Broadcasting Corporation (BBC) reports alleged improper activity in Africa involving a large tobacco company.

In export control and sanctions enforcement news, a California technology firm and its U.K. subsidiary settle allegations related to illicit exports to Middle Eastern countries, a British national is arraigned on conspiracy charges in connection with unlicensed exports to Syria, and three Chinese nationals are arrested and charged for attempts to export military equipment to China.

Finally, in developments in export control and sanctions law, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) issues a general license permitting certain ancillary exports to Burma, the US announces additional sanctions designations against six entities associated with North Korea, and OFAC issues a general license allowing activity in connection with the wind down of a Honduran bank.

Thank you as always for reading *Red Notice*.

ANTICORRUPTION DEVELOPMENTS

Corporate Bribery: Successful Prosecutions in the United Kingdom

In a busy month for SFO, the United Kingdom's antibribery prosecutor, it has announced its first-ever deferred prosecution agreement (DPA) for bribery offenses and the first guilty plea under the U.K. Bribery Act (UKBA). Both matters involved the application of the corporate offense of failure to prevent bribery by associated persons, under Section 7 of the UKBA, which has received much attention as a unique tool for U.K. prosecutors in the anticorruption arsenal, but has been infrequently used. Find a brief overview of the matters below and see Akin Gump's [client alert](#) for more details and to learn more about the potential implications of the SFO's recent actions.

TRANSLATIONS

中文 >

НА РУССКОМ ЯЗЫКЕ >

WRITING AND SPEAKING ENGAGEMENTS

Partners [Chuck Connolly](#) and [Jonathan Poling](#) and senior counsel [Nicole Sprinzen](#) will present "As the World (Bank) Turns: Compliance and Enforcement Principles in Contracting" in our Houston and Texas offices in the first quarter of 2016. For more info, contact jistuddard@akingump.com.

If you would like to invite Akin Gump lawyers to speak at your company or to your group about anticorruption law, compliance, cybersecurity, enforcement and policy or other international investigation and compliance topics, please contact Mandy Warfield at mwarfield@akingump.com or +1 202.887.4464.



The DPA: On November 30, 2015, the SFO announced that it had agreed to a DPA with ICBC Standard Bank plc in relation to US \$6 million in bribes paid by its Tanzanian subsidiaries in 2012 and 2013 to companies owned by Tanzanian public officials in order to obtain work from the Government of Tanzania that ultimately generated US \$8.4 million in transaction fees for the bank. Having self-reported to the SFO in April 2013, the bank faced charges under Section 7 of the UKBA for failing to prevent the corrupt activity of its staff and subsidiaries in Tanzania.

The UKBA Guilty Plea: On December 18, 2015, the SFO announced that the U.K.-listed Sweett Group, a construction industry project management company with operations across Europe, North America and the MENA region, had [pleaded guilty](#) to offenses under Section 7 of the UKBA, following an investigation that was opened in July 2014 in relation to Sweett Group's activities in the Middle East. The case marks the first guilty admission by a corporation in a Section 7 prosecution. The SFO investigation followed reports in the U.S. financial press that a former Sweett employee had attempted to induce a New York-based architecture firm to bribe a U.A.E. public official in order to obtain work for both the architect and Sweett on a US \$100 million health care project in North Africa. Sweett will be sentenced on February 12, 2016.

Hitachi Debarred by African Development Bank in Settlement of Bribery Allegations

On November 30, 2015, Japanese conglomerate Hitachi, Ltd. and the African Development Bank (AfDB) reached a settlement agreement that calls for Hitachi's conditional debarment for one year in connection with certain improper payments related to the AfDB-financed Medupi Power Station Boiler Works Contract in the Republic of South Africa. Hitachi sold a 25% stake in its South African subsidiary to a company serving as a front for the African National Congress (ANC). Hitachi then paid \$5 million to the company as dividends based on profits from the contracts and an additional \$1 million "success fee" that was improperly accounted for as a consulting fee.

The settlement provides that Hitachi's conditional debarment may be lifted as soon as the company enhances its integrity compliance program to meet the standards set by the AfDB's Integrity Compliance Guidelines, and makes a "substantial financial contribution" to the AfDB to be used to support anti-corruption efforts across Africa. Anna Bossman, the Director of AfDB's Integrity and Anti-Corruption Department, explained that the settlement reflected credit for Hitachi's sincerity and cooperation during the investigation. Upon announcement of the settlement, members of the ANC have also called for an investigation of the party's investment wing, Chancellor House, for its alleged role in the scheme.

The AfDB settlement concludes a three-year investigation of Hitachi and comes after Hitachi previously settled FCPA-related allegations with the SEC as covered in the [October 2015 edition](#) of the *Red Notice*.

To learn more, see the AfDB's [press release](#). Hitachi's [press release](#) and coverage in [The WSJ](#) and [Times Live](#).

Three Additional Executives of US Broker-Dealer Direct Access Partners Sentenced for Participation in South American Bribery Scheme

On December 15, 2015, Jose Alejandro Hurtado, a Miami-based broker formerly with New York's Direct Access Partners (DAP), was sentenced to three years in prison for acting as an intermediary in a scheme to bribe Venezuelan bank official Maria de los Angeles Gonzales of the state-owned Banco de Desarrollo Económico y Social de Venezuela (Bandes) in exchange for bond-trading business referrals. Additionally, Hurtado, who pleaded guilty in 2013 to

conspiracy and substantive violations of the FCPA, the Travel Act, and money laundering laws, was ordered to serve three years of supervised release and forfeit \$11.9 million.

Earlier this month, two other former DAP executives also received prison terms after pleading guilty to FCPA-related charges. Ernesto Lujan, former DAP managing partner, and Thomas Clarke, former DAP senior vice president, were both sentenced to two years in prison after they each pleaded guilty to conspiracy and violations of the FCPA. The men were also ordered to forfeit an amount equal to the commission and bonus payments that they received as a result of the bribes—Clark must turn over \$5.8 million, and Lujan must forfeit \$18.5 million. As part of his sentence, Lujan was ordered to sell the family home that Lujan co-owns with his wife and forfeit those proceeds.

In total, five DAP employees were charged when a U.S. investigation into bribery of state-owned development banks in Venezuela uncovered the Bandes scheme. As Red Notice reported in [March 2015](#), the two other DAP executives, Benito Chinea, former CEO, and Joseph DeMeneses, former managing director, were each previously sentenced to four years imprisonment for their roles in the arrangement. To date, theirs are the longest prison terms issued for violations of the FCPA.

As previously noted in the [May 2014](#) issue of Red Notice, DAP amassed more than \$60 million in fees by engaging in bond trading work that Gonzalez received in return for \$5 million in bribes paid between 2008 and 2012.

To learn more, see [Reuters](#) and *WSJ* coverage [here](#) and [here](#).

Imaging Company May Pay up to \$15 Million to Conclude FCPA Investigations

Massachusetts-based Analogic Corporation disclosed in a December 9 [securities filing](#) that it may be facing a combined \$15 million payment in response to separate settlement proposals made by the SEC and the DOJ in connection with their investigation of potential FCPA violations. As we reported in [September 2015](#), Analogic offered \$1.6 million to the SEC to end the probe, but according to the most recent 10-Q, the agency rejected this proposal.

Analogic previously revealed that in 2011 it disclosed potential irregularities related to transactions by its Danish subsidiary, BK Medical ApS, to Danish and U.S. authorities. In this most recent quarterly filing, Analogic indicates that it is “uncertain whether the Danish Government will seek to impose sanctions or penalties against us” but asserts that Danish law would dictate that any penalties demanded by Danish authorities would take into consideration the sum paid to the SEC and the DOJ.

To learn more, see the [FCPA Blog](#).

PTC, Inc. Discloses Possible Settlement with SEC and DOJ

PTC, Inc., a Massachusetts-based technology company, disclosed that it has set aside \$28.2 million dollars to facilitate a possible settlement with the DOJ and the SEC in connection with alleged FCPA violations.

In its recently filed Annual Report with the SEC, PTC’s Form 10-K noted the inclusion of “an accrual of \$28.2 million related to a previously disclosed matter in China.” That previously disclosed matter refers to the DOJ and SEC’s FCPA investigation into payments and expenses by Chinese business partners and employees of PTC to employees of state-owned companies that were also customers of PTC.

For more information, read the post at the [FCPA Blog](#) and the company's [Form-10K](#).

Former Software Executive Sentenced for Bribery Conspiracy

After pleading guilty in August 2015, Vicente Eduardo Garcia, the former Latin America regional director for German-based enterprise software company SAP International Inc., was [sentenced](#) to 22 months in prison for conspiracy to violate the FCPA in connection with his role in bribing Panamanian officials to secure a multimillion dollar contract for his company. Garcia previously entered into a civil settlement with the SEC, pursuant to which he agreed to pay \$92,000 in disgorgement. Because of the previous disgorgement, the DOJ did not seek forfeiture in the criminal action. To learn more about this case, see the [August 2015 Red Notice](#).

Former Russian Nuclear Energy Official Sentenced to Two Years for Money Laundering Conspiracy Involving FCPA Violations

In a follow-up to our [September 2015](#) coverage, former Russian official and Maryland resident Vadim Mikerin, 56, was [sentenced](#) on December 15, 2015 to 48 months in prison for conspiracy to commit money laundering in connection with his acceptance of more than \$2 million in bribes in exchange for awarding uranium transportation contracts. He was also ordered to forfeit the bribe money. As the director of the Pan American Department of JSC Techsnabexport (TENEX), a subsidiary of Russia's State Atomic Energy Corporation, and the president of TENAM Corporation, a Maryland-based subsidiary of TENEX and its official U.S. representative, Mikerin was in a position to influence the award of competitive contracts with his employer. According to court documents, Mr. Mikerin admitted to conspiring with several others between 2004 and 2014, including two other U.S. residents, Daren Condrey of Maryland and Boris Rubizhevsky of New Jersey, to transmit payments from Maryland and other U.S. locations to offshore shell company bank accounts in Cyprus, Latvia and Switzerland. These illicitly transferred payments were intended to influence Mikerin in awarding certain uranium contracts. Co-conspirators Condrey and Rubizhevsky, who both pleaded guilty in June 2015, currently await sentencing.

Allegations of Bribery and Corruption Against British American Tobacco

According to a BBC investigative report, former employees of Britain's fifth largest company, British American Tobacco (BAT), have accused the company of bribery and corruption in Africa that could potentially violate the UK Bribery Act and the FCPA. Former employee Paul Hopkins, who worked for BAT in Kenya for 13 years running security and anti-smuggling operations, admitted to facilitating illegal bribes in an interview with the BBC. Hopkins turned over emails and secret recordings to the BBC allegedly revealing bribes paid to officials in Uganda, Burundi, Kenya and Rwanda. Hopkins alleges BAT also paid over \$300,000 in bribes to rival tobacco company Mastermind Tobacco for internal files.

The BBC further states that BAT allegedly paid \$3,000 to a Burundian ministry of health official to undermine anti-smoking legislation. Julie-Adell-Owino, a BAT lobbyist in Kenya, allegedly arranged bribes between representatives from African countries to undermine the World Health Organization's (WHO) Framework Convention on Tobacco Control (FCTC). Former FCTC representatives from Burundi, Rwanda and the Comoros Islands were allegedly paid thousands of dollars for their support. Adell-Owino is also accused of facilitating payments and trips for the former minister of trade in Kenya. Solomon Muyita, another former employee who worked for BAT in Uganda as a corporate and regulatory affairs coordinator until losing his job in 2013, accused the company of bribing local officials in Uganda to misreport the impact of a fire at

one of its Uganda warehouses and paying off victims who suffered from chemical poisoning in Uganda in another incident.

As a U.K. company, BAT is subject to the requirements of the U.K. Bribery Act. BAT also is subject to the U.S. FCPA because its stock trades on the New York Stock Exchange. The Campaign for Tobacco-Free Kids, Cancer Research U.K. and WHO official Dr. Vera Da Costa e Silva have called on the U.S., the U.K. and various African governments to open investigations. BAT denies the allegations.

To learn more, see reports at the [BBC](#), [Forbes](#) and [The Guardian](#).

EXPORT CONTROL AND SANCTIONS ENFORCEMENT

California Firm Reaches \$1.5 Million Settlement with BIS and \$39K Settlement with OFAC for Alleged Violations of Iran, Sudan and Syria Sanctions

On November 26, 2015, Barracuda Networks, Inc. (Barracuda), a California-based technology firm, and its U.K. subsidiary agreed to a \$1.5 million settlement with the Commerce Department's Bureau of Industry and Security (BIS) and a related \$39,000 settlement with OFAC. The settlements involve allegations that Barracuda committed violations of the Export Administration Regulations (EAR) and U.S. sanctions regulations through the export of controlled technology to persons on OFAC's Specially Designated Nationals and Blocked Persons List ("SDN List") under Syria-related sanctions regulations and to individuals and entities in Iran and Sudan.

BIS alleged that on 26 occasions between April 2009 and May 2012, Barracuda exported U.S.-origin web filters, firewall products, link balances, internet security products, and related software subscriptions to Iran, Sudan and Syria without the required BIS license. Such items can be used to block or censor Internet activity and are controlled for national security and/or antiterrorism purposes as encryption items. Similarly, OFAC alleged that between August 2009 and April 2012, Barracuda and its U.K. subsidiary sold these items to individuals and entities in Iran and Sudan and to SDNs blocked under Syrian and Sudanese sanctions regulations without authorization. OFAC further alleged that Barracuda provided firmware and software updates for the software subscriptions through May 2012.

BIS sought a "strong penalty" in this case because (1) the alleged violations were continuous over a period of four years; (2) Barracuda had reason to know the transactions were restricted; and (3) the transactions involved Iran, Sudan and Syria. The OFAC settlement agreement stated that Barracuda employees acted with "reckless disregard" for sanctions regulations by permitting distributors and resellers to sell to SDNs even though the employees had reason to know that such transactions were in potential violation of U.S. sanctions. Nonetheless, the settlement agreements both reflect substantial mitigation given Barracuda's voluntary self-disclosure.

For additional information, see the OFAC [enforcement notice](#), BIS [press release](#), and coverage in [Law360](#) (subscription required) and [The WSJ](#).

British National Arraigned on Conspiracy to Export Controlled Chemical Lab Equipment to Syria

In mid-November 2015, Ahmad Feras Diri, a British National, was arraigned in a U.S. federal district court on charges that he conspired to illegally export laboratory equipment from the United States to Syria. The arraignment followed Diri's extradition from the United Kingdom to the United States on November 12, 2015 in connection with a 2012 grand jury indictment alleging criminal conspiracy, wire

fraud, money laundering and the illegal export of goods. According to the indictment, from 2003 to November 2012, Diri and two others conspired to export items from the United States through third party countries to customers in Syria without required BIS licenses. The items involved material for the detection, classification and handling of chemical compounds, including chemical agents used in warfare. The indictment alleges that Diri and his co-conspirators prepared false invoices that undervalued and mislabeled goods and listed false information regarding buyer identity and geographic location.

For additional information, see the DOJ [press release](#) and coverage in [The Guardian](#).

Chinese Nationals Arrested for Allegations of Export Violations

Daofu Zhang, Jiang Guanghou Yan and Xianfeng Zuo, all Chinese nationals, were arrested earlier this month in Connecticut. The defendants have been charged with conspiring to obtain stolen semiconductors from the U.S. military and to export these items to China. In 2012, U.S. law enforcement started an investigation into HK Potential, a Chinese company, for trafficking counterfeit semiconductors. According to the allegations, in late 2014 and early 2015, Yan sold 45 counterfeit microprocessors to an undercover agent who had advised Yan that the items would be used for a U.S. Navy contract involving submarines. In July 2015, Yan allegedly inquired of the agent whether the agent could obtain Xilinx military-grade semiconductors. The agent responded that the items could be stolen from the Navy, and Yan offered to substitute counterfeit semiconductors to disguise the theft. According to the U.S. government, Yan shipped fake semiconductors to the agent last month.

The three defendants traveled to the United States earlier this month and were arrested while trying to accept delivery of the semiconductors from the agent. The criminal complaint includes: International Emergency Economic Powers Act (IEEPA) and receipt of stolen government property charges against all three defendants; charges of trafficking in counterfeit goods and mail fraud against Zhang and Yan; and conspiracy charges against Zhang and Zuo.

For additional information, see the DOJ [press release](#).

EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

Issuance of General License Regarding Certain Transactions Incident to Exports to or from Burma

On December 7, 2015, OFAC issued a six-month general license authorizing certain trade-related transactions otherwise prohibited under the Burmese Sanctions Regulations. The general license permits certain transactions “ordinarily incident to” the exportation to or from Burma of goods, technology or nonfinancial services—such as finance transactions, payment of port fees, and shipping and handling charges—involving certain SDNs and SDN-owned entities. According to the State Department, the general license is intended to eliminate “unintended interruptions in Burmese trade” at the main port in Yangon arising from the designation of Asia World Co., a company owned by an SDN that provides extensive services at the port. The State Department called the general license a “technical fix,” while OFAC stated that the license is intended to support U.S. and Burmese exporters and to facilitate trade and economic development with Burma.

The general license does not authorize transactions to, from or on behalf of an SDN, or any other person whose property or interests in property are blocked (including entities owned 50 percent or more, directly or indirectly, by an SDN). The general license also does not

affect the current ban on new investment involving the Ministry of Defense, state or non-state armed groups, or any entity owned 50 percent or more by such persons. Additionally, financial institutions are not authorized to advise or confirm any financing by SDNs or blocked persons.

For additional information, see the [OFAC](#) and [State Department](#) press releases and coverage in [The WSJ](#), [The New York Times](#) and [Bloomberg](#).

Six Individuals and Three Shipping Companies Designated as SDNs under North Korea Sanctions Regulations

On December 8, 2015, OFAC announced that it was adding six individuals and three shipping companies to the SDN List under North Korea sanctions regulations. Five of the individuals targeted for sanctions are representatives of Tanchon Commercial Bank based in Syria and Vietnam. Tanchon is currently an SDN, and the individuals in question facilitated the movement of funds linked to Korea Mining Development Corp., another SDN. The sixth individual is a representative of North Korea's Foreign Trade Bank, listed as an SDN in 2013. OFAC also designated three shipping companies used as aliases for Ocean Maritime Management Co., a company targeted by U.S. sanctions in 2014.

For additional information, see the OFAC [press release](#) and coverage in [The WSJ](#).

Issuance of General License Authorizing Certain Transactions to Liquidate and Wind Down Honduran Bank

On December 8, 2015, OFAC issued a general license authorizing all transactions and activities relating to the liquidation and wind down of Banco Continental, S.A., a Honduran bank sanctioned under the Foreign Narcotics Kingpin Sanctions Regulations. OFAC is issuing this general license to permit the preparation and submission of bids to acquire the assets of Banco Continental. The general license does not authorize the unblocking of property blocked under the regulations or transactions with SDNs. Persons engaging in transactions must file a report with OFAC within 10 days after the activities are concluded.

For additional information, see the OFAC [General License](#).

CONTACT INFORMATION

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The "Anticorruption Developments" section of *Red Notice* is edited by [Jonathan Vukicevich](#). The "Export Control and Sanctions Developments and Enforcement" sections are edited by [Annie Schlappizzi](#).

Translations of *Red Notice* into Chinese and Russian are available on a delayed basis. Please check via the links above or archived editions links below to view past translated editions.

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