Red Notice

A monthly update on global investigations and prosecutions

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IN THIS ISSUE

ANTICORRUPTION DEVELOPMENTS

Additional Charges and Pleas in College Admissions Scandal

On December 9, 2019, the Department of Justice (DOJ) announced that Karen Littlefair, a California woman, was charged with and will plead guilty to one count of conspiracy to commit wire fraud in DOJ's widespread and ongoing investigation of alleged improper payments related to college admissions. Littlefair is accused of paying $9,000 so that an individual associated with scheme mastermind William "Rick" Singer could take online classes in place of her son, a student at a prominent U.S. university. Littlefair's case is pending in the U.S. District Court for the District of Massachusetts.

In total, at least 30 people have already pleaded or announced their intent to plead guilty for their roles in the college admissions scandal out of the 53 defendants charged thus far.

More information

- DOJ Information and Plea Agreement
- DOJ Press Release

Lebanese Shipbuilding Executive Acquitted in Mozambican Loan Fraud Case

On December 2, 2019, Jean Boustani, a Lebanese national and executive at Privinvest Group, a Middle East-based shipbuilding company, was acquitted of charges of fraud and conspiracy to commit money laundering by a federal jury in New York. Prosecutors had alleged a complex scheme orchestrated by Mozambican government officials, in coordination with Boustani and others, to divert more than $200 million in loan proceeds intended for public works in Mozambique to pay kickbacks to Mozambican officials and investment bankers. Boustani was also accused of defrauding investors regarding those loans. As covered previously by Red Notice, three investment bankers formerly employed by Credit Suisse, and Boustani's co-defendants in the case, previously pleaded guilty for their roles in the scheme.

More information

- *Wall Street Journal*
- *Law360*

Samsung Agrees to $75 Million Fine to Settle Corruption Case

On November 22, 2019, Samsung Heavy Industries (SHI), a Korea-based entity, entered into a three-year deferred prosecution agreement (DPA) with the DOJ for violations of the FCPA related to improper payments SHI made to officials at Brazil's state-owned oil company Petrobras. According to the DPA, between 2007 and 2013, SHI conspired with an intermediary to make over $20 million in improper payments to Petrobras officials in order to win a lucrative shipbuilding contract valued at over $600 million. The intermediary company invoiced SHI and after SHI made the payments, the payments were distributed to Petrobras officials.

Under the terms of the DPA, SHI agreed to continue cooperating with the DOJ in its ongoing investigations, including all prosecutions related to the scheme. SHI also agreed to enhance its cooperation program and to report to the DOJ on its implementation of an enhanced compliance program. SHI received cooperation credit for its remedial efforts, which included hiring additional compliance staff, implementing enhanced anticorruption polices, requiring mandatory anticorruption training for all employees and establishing enhanced controls over third-party efforts. SHI paid a fine of $75 million to settle the case, with Brazilian and U.S. authorities each receiving half of the penalty.

More information

- DOJ Press Release
- *Law360*

DOJ Revises FCPA Corporate Enforcement Policy for Clarity

On November 20, 2019, the DOJ made subtle changes to the language in its FCPA Corporate Enforcement Policy (the "Policy"). The Policy allows a company to receive reduced fines for self-reporting corruption, undertaking remediation efforts and engaging in full cooperation with the DOJ. The recent changes may be helpful in bringing explicit clarity to the factors that will be considered by the DOJ when declining to bring charges against a self-reporting company.

Previously, in evaluating the extent of a company's self-disclosure, the DOJ required that a company disclose relevant facts about "all individuals substantially involved or responsible for the violation of law." In the recent update, the DOJ revised this language, requiring instead that companies disclose information about "any" individuals involved in or responsible for "the misconduct at issue." In a footnote, the DOJ recognizes that companies may not be in possession of all relevant facts at the time of a voluntary self-disclosure, and so advises companies to make clear when their disclosure is based on a preliminary investigation or other assessment.

Another change to the Policy language provides clarity as to when a company is required to notify the DOJ of evidence outside its possession related to the misconduct at issue. Prior to the current revision, the Policy required a company to notify the DOJ when it "is or should be aware of" of "opportunities" for the DOJ to obtain evidence from other sources. However, in the recent update, a company is required to notify the DOJ only when it "is aware" of evidence from other parties.

More information

- *Law360*
- U.S. Attorney's Manual – FCPA Corporate Enforcement Policy

Anti-Corruption Expert Charged With Money Laundering and Conspiracy

On November 18, 2019, Bruce Bagley, a University of Miami professor and oft-cited expert on money laundering and corruption in Latin America, was charged with money laundering and conspiracy to commit money laundering. The indictment alleges that since November 2017, Bagley has helped to launder more than $2.5 million in proceeds from corruption in Venezuela. Bagley is alleged to have received monthly deposits from overseas bank accounts and transferred 90 percent of the funds to an unnamed individual, keeping the remaining 10 percent as a kickback. According to the indictment, Bagley was aware that the money derived from an unnamed Colombian national and was generated from corruption and other criminal activity. Bagley's case is pending in the U.S. District Court for the Southern District of New York.

More information

- DOJ Press Release
- Indictment
- *The New York Times*
- *Wall Street Journal*

Former In-House Attorney Receives Probation for Role in Improper Payments Scheme

On November 15, 2019, Jeffrey Chow, former director of the in-house legal department at Singapore-based Keppel Offshore & Marine Ltd. ("Keppel") was sentenced to one year of probation and time-served for his involvement in making improper payments involving Brazilian state-owned oil company Petrobras. Chow admitted to turning a blind eye after learning in 2008 that Keppel was overpaying third-party agents so that those agents could make improper payments to individuals who would help Keppel obtain business from Petrobras. Chow—who was also ordered to pay a $75,000 fine—was sentenced after cooperating in the prosecution of other current and former Keppel executives alleged to be involved in the scheme. As previously covered by Red Notice, in December 2017, Keppel admitted to making $55 million in corrupt payments to Petrobras officials and the company previously agreed to pay $442 million in penalties to resolve corruption charges in the United States, Brazil and Singapore.

More information

- SFO press release
- *FCPA Blog*

Two Former Herbalife Executives Indicted on FCPA Charges

On November 14, 2019, the DOJ announced that two former executives of the Los Angeles-based company Herbalife had been charged with conspiracy to violate the FCPA's books and records provisions based on their activities involving Chinese government officials. Yanliang "Jerry" Li ("Li") and Hongwei "Mary" Yang ("Yang") held high-level positions at Herbalife's Chinese subsidiary, and are alleged to have made improper payments to Chinese officials to impact investigations of Herbalife's operations by Chinese authorities, and in exchange for licenses for Herbalife and to influence coverage in China's state-owned media outlets. The DOJ alleges that Li and Yang engaged in a scheme to make payments to officials at China's Ministry of Commerce and the State Administration for Industry and Commerce over ten years, beginning in 2007. These payments allegedly originated as false reimbursement claims made by Li and Yang for claimed entertainment expenses, with the intent to avoid triggering Herbalife's internal accounting controls. The SEC has also sued Li separately for alleged violations of the FCPA and of U.S. securities laws.

More information

- DOJ Indictment
- SEC Complaint
- *Wall Street Journal*
- *Reuters*
- *FCPA Blog*

Trace International Releases Anticorruption Rankings

On November 14, 2019, Trace International, Inc., an anticorruption compliance organization headquartered in the United States, released its annual ranking of countries based on their likelihood of risk of corruption. The report considers factors such as a country's anticorruption enforcement, government transparency and civil society oversight. New Zealand once again received the strongest ranking.

More information

- 2019 Trace International Rankings

Former Diplomat Sentenced for Role in U.N. Corruption Scandal

On November 8, 2019, U.S. District Judge Vernon S. Broderick for the Southern District of New York sentenced former deputy U.N. Ambassador for the Dominican Republic, Francis Lorenzo, to time served, 250 hours community service and $1.244 million in forfeiture and restitution for his role in the 2016-17 U.N. corruption scandal. Lorenzo initially pleaded guilty to funneling corrupt payments to John Ashe, former U.N. Ambassador to Antigua, during Ashe's tenure as president of the U.N. General Assembly and later admitted to accepting such payments himself from Chinese billionaire developer Ng Lap Seng ("Ng"). In exchange for more than $1.5 million in corrupt payments, Lorenzo helped procure the U.N.'s support for Ng's proposed multibillion-dollar convention center in Macau. Lorenzo received a monthly salary of $20,000 from Ng during Lorenzo's term as deputy ambassador for managing a media organization, which Ng later increased to $50,000 per month with the intent of hastening the U.N.'s approval of his convention center. Lorenzo pleaded guilty to charges of bribery, money laundering, violations of the FCPA and tax fraud. The sentence reflects Lorenzo's contributions as a witness in the trial of Ng, who was sentenced to four years in prison.

More information

- *Law360* (sentencing)
- AP News
- *Law360* (role in trial of Ng Lap Seng)

SEC Publishes Annual Enforcement Report

On November 6, 2019, the SEC published its Annual Enforcement Report (the "Report") for fiscal year 2019. The Report indicates that there was a small increase in FCPA cases compared to 2018, resulting in 18 enforcement actions this year against 15 entities and five individuals. The Report also touches on the SEC's efforts to better inform companies through "greater transparency into how the Commission considers and weighs cooperation credit" in an enforcement action.

More information

- SEC Annual Enforcement Report
- SEC Press Release

U.S. Supreme Court Considers Challenge to SEC Seeking Disgorgement for

Securities Violations

On November 1, 2019, the U.S. Supreme Court granted certiorari in *Charles C. Liu, et al., v. Securities and Exchange Commission*. In this case, the Court will consider whether the SEC may obtain disgorgement from a court as equitable relief for securities law violations. Petitioners were convicted of violating the securities law for defrauding investors by misappropriating funds for personal use and funneling funds to overseas marketers. The district court ordered disgorgement to the SEC of all the funds petitioners raised from investors, injunctive relief and the maximum statutory civil monetary penalty. The Securities Act of 1933 authorizes the SEC to obtain injunctive relief, equitable relief or civil monetary penalties in cases involving securities law violations. Petitioners argue that disgorgement is a penalty not authorized by the Securities Act of 1933. The SEC argues that disgorgement constitutes "equitable relief."

This case follows *Kokesh v. SEC*, a 2017 Supreme Court decision previously covered by Red Notice, in which the Court unanimously held that the SEC's efforts to obtain disgorgement from defendants were bound by the five-year statute of limitations applicable to the underlying offenses. In that decision, Justice Sotomayor indicated a willingness to categorize disgorgement as a penalty, writing "SEC disgorgement thus bears all the hallmarks of a penalty: It is imposed as a consequence of violating a public law and it is intended to deter, not to compensate." Oral arguments in *Liu v. SEC* will occur in the spring of 2020.

More information

- *Wall Street Journal*
- Supreme Court Docket

EXPORTS, SANCTIONS AND CUSTOMS ENFORCEMENTS

OFAC Issues Finding of Violation to Aero Sky Aircraft Maintenance, Inc. for Dealings with Mahan Air in Violation of the Global Terrorism Sanctions Regulations

On December 12, 2019, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) issued a Finding of Violation to Aero Sky Aircraft Maintenance, Inc. ("Aero Sky"), a Texas company, for allegedly violating the Global Terrorism Sanctions Regulations (GTSR) by dealing with Mahan Air, which was added to OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List) in October 2011 for providing financial, material and technological support to the Islamic Revolutionary Guard Corps-Qods Force. OFAC noted that, had Aero Sky not subsequently entered into bankruptcy proceedings and dissolved, the activity would have justified a strong civil monetary penalty.

According to OFAC's web notice, Aero Sky violated the GTSR when, in December 2016, it negotiated and entered into a Memorandum of Understanding (MOU) with Mahan Air. The MOU related to future collaboration to provide maintenance and repair services to Mahan Air and a future joint venture. It was contingent, in part, on Mahan Air being removed from the SDN List.

Aero Sky was aware that Mahan Air was a SDN, as it had sought legal counsel before negotiating and executing the MOU. However, Aero Sky mistakenly determined that the activity was authorized under Iran-related General License I, which only covered activity involving persons blocked under the Iran Transactions and Sanctions Regulations, not GTSR or other OFAC blocking provisions. Aero Sky did not voluntarily self-disclose the violations.

OFAC considered the following to be aggravating factors in this case: (i) Aero Sky engaged in reckless violation of the law by failing to exercise a minimal degree of caution or care; (ii) a senior Aero Sky executive had actual knowledge of, and participated in, the conduct; and (iii) Aero Sky undermined the GTSR policy objectives by dealing with Mahan Air, which was described by OFAC as a high-profile entity on the SDN List. Mitigating factors included that Aero Sky: (i) had not been subject to a Finding of Violation or penalty

notice from OFAC in the preceding five years; and (ii) was a small company in poor financial condition that dissolved after the violations occurred.

More information

- OFAC Recent Actions Notice
- OFAC Web Notice

Indonesian Citizen and Three Indonesian Companies Charged with Violating U.S. Export Laws and Iran Sanctions

On December 10, 2019, Sunarko Kuntjoro ("Kuntjoro"), an Indonesian citizen, and three Indonesian companies, PT MS Aero Support (PTMS), PT Kandiyasa Energi Utama (PTKEU) and PT Antasena Kreasi (PTAK) (collectively, the "Companies"), were charged with conspiracy to violate U.S. export controls laws and sanctions against Iran and to defraud the United States. Additionally, Kuntjoro and PTMS were charged with five counts of attempted unlawful exports to Iran, false statements and, together with PTEKU, conspiracy to launder monetary instruments.

According to the indictment, between March 2011 and July 2018, Kuntjoro, the majority owner of PTMS, and the Companies conspired with Mahan Air, Mustafa Oveici ("Oveici"), and an American person and company to ship used and damaged U.S.-origin airplane parts from Mahan Air in Iran to the United States for repair and subsequent export back to Iran without required licenses from OFAC or the U.S. Department of Commerce (DOC). Mahan Air is an SDN and party listed on the DOC's Denied Persons List, and Oveici, a Mahan Air executive, has been listed on the DOC's Entity List since December 2013 for developing and operating a procurement scheme for Mahan Air. To conceal that the parts were destined for Mahan Air in Iran, the parties allegedly transshipped the parts to and from the United States through third countries such as Thailand, Hong Kong, and Singapore and made false statements on BIS filings regarding the ultimate end-user.

Kuntjoro faces a maximum sentence of five years in prison and a $250,000 fine for the conspiracy charge, a maximum of 20 years in prison and a $1 million fine for each count of attempted unlawful exports to Iran, a maximum sentence of five years in prison and a $250,000 fine for the charge of false statements, and a maximum of 20 years in prison and a $500,000 fine for conspiracy to launder monetary instruments.

More information

- DOJ Press Release
- Indictment

Insurance Companies Settle Apparent Violations of the Cuban Assets Control Regulations with OFAC

On December 9, 2019, OFAC announced settlements with two insurance providers related to travel insurance provided in apparent violation of the Cuban Assets Control Regulations (CACR). Chicago-based Allianz Global Risks U.S. Insurance Company (AGR US) settled 6,474 apparent violations for $170,535 and Switzerland-based Chubb Limited settled 20,291 apparent violations for $66,212. OFAC determined that both companies voluntarily self-disclosed the apparent violations, which constituted non-egregious cases.

AGR US is a subsidiary of German-based Allianz SE and operates a Canadian branch office in Toronto, Canada ("AGR Canada"). From August 2010 to January 2015, AGR Canada allegedly issued travel insurance policies including occasional coverage for Canadian residents travelling to Cuba. Neither AGR Canada nor its underwriting manager collected travel destination information when issuing a policy. This practice continued for several years after AGR US was put on notice on at least one occasion that AGR Canada was issuing insurance policies related to travel to Cuba. The policies resulted in the processing and reimbursement of 864 Cuba-related claims totaling approximately $518,092 and the collection of approximately $23,289 in premiums.

OFAC considered aggravating factors to include that: (i) AGR US failed to exercise a minimal degree of caution or care; (ii) AGR US and Canada failed in 2010 to address or investigate notifications that AGR Canada was providing prohibited coverage; (iii) AGR US and Canada continued the pattern of conduct for several more years; (iv) AGR US and Canada had actual knowledge of the Cuba-related coverage as early as 2010; (v) AGR Canada conferred economic benefit upon Cuba, harming the CACR policy objectives; and (vi) AGR US and Canada failed to maintain OFAC compliance procedures that covered these specific circumstances. Mitigating factors included that: (i) no supervisory or managerial level staff were aware of the conduct; (ii) AGR US had no OFAC enforcement history in the preceding five years; (iii) AGR US undertook steps to enhance its OFAC compliance program; and (iv) AGR US cooperated with OFAC.

Chubb Limited, a Swiss holding company and successor legal entity of Switzerland-based ACE Limited, is the ultimate parent company of United Kingdom-based ACE Europe through a series of intermediate corporate entities, including U.S.-based ACE Group Holdings, Inc. According to OFAC's web notice, from January 2010 to December 2014, ACE Europe provided Cuba-related travel insurance on account of an apparent misunderstanding of the applicability of U.S. sanctions to its activity. ACE Europe issued global travel policies to a European online travel agency through master agreements and authorized certain subsidiaries of that travel agency to issue individual policies. Both the group and individual policies provided global travel coverage and, based on erroneous legal conclusions by the regional compliance team, did not contain explicit exclusionary clauses for risks that would violate U.S. sanctions. ACE Europe processed and reimbursed $80,555 in claims and received premium payments totaling $287,292 for Cuba-related travel insurance coverage.

OFAC considered aggravating factors to include that: (i) ACE Limited failed to implement adequate internal controls; (ii) ACE Europe's business leaders and regional compliance team had knowledge and reason to know of the activity; (iii) it was a pattern or practice spanning several years; (iv) ACE Limited conferred economic benefit upon Cuba, harming the CACR policy objectives; and (v) ACE Limited is a large and commercially sophisticated financial institution. Mitigating factors included that: (i) many of the transactions would have been authorized by a general license had they occurred after the license was issued in January 2015; (ii) ACE Limited had no OFAC enforcement history in the preceding five years; (iii) ACE Limited cooperated with OFAC; (iv) the compliance deficiency was concentrated within a single ACE Limited subsidiary; and (v) ACE Limited implemented remedial actions and compliance enhancements.

More information

- OFAC Recent Actions Notice
- OFAC Web Notice – Chubb Limited
- OFAC Web Notice – Allianz Global Risk U.S. Insurance Company

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Three Russian Persons, Three Italian Persons and Two U.S. Persons Charged with Attempting to Violate U.S. Export Control Regulations

On December 2, 2019, the U.S. Department of Justice (DOJ) unsealed an October 2019 superseding indictment charging three Russian persons—Oleg Vladislavovich Nikitin ("Nikitin"), Anton Cheremukhin ("Cheremukhin") and Nikitin's Russian-based company, KS Engineering (collectively, the "Russian defendants")—and three Italian persons—Gabriele Villone ("Villone"), Bruno Caparini ("Caparini") and Villone's Italian-based company, GVA International Oil and Gas Services (collectively, the "Italian defendants")—with violating and conspiring to violate the International Emergency Economic Powers Act (IEEPA) and Export Control Reform Act of 2018 (ECRA). Additionally and together with U.S. persons Dali Bagrou ("Bagrou") and Bagrou's U.S.-based company, World Mining and Oil Supply (collectively, the "U.S. defendants"), the defendants were charged with conspiracy to commit wire fraud and conspiracy to commit money laundering.

According to the indictment, an unnamed Russian government-controlled business that was added to the Entity List in September 2014 contracted with the Russian defendants to purchase a U.S.-origin Vectra 40G power turbine designed for integration with gas

generators to enable direct drive of high-power gas compressors. As the intended end-use for the power turbine was on a Russian Arctic deepwater (greater than 500 feet) drilling platform, a DOC export license was required for that purpose. However, the Russian defendants hired the Italian defendants to obtain the Vectra on their behalf, who in turn employed the U.S. defendants to procure and export the Vectra. To conceal the true end-user and end-use from the U.S. manufacturer, the parties submitted false documentation, including a fictitious affidavit and business plan stating that the power turbine was for end-use by a U.S. company within the United States. Nikitin, Villone and Bagrou were arrested in the United States while attempting to complete the purchase.

Nikitin, Cheremukhin, Villone and Caparini face a maximum sentence of 20 years in prison and a $1 million fine for violating IEEPA/ECRA and a maximum of five years in prison and a $250,000 fine for conspiracy to violate IEEPA/ECRA and to defraud the United States. Together with Bagrou, they also face a maximum sentence of 20 years in prison and a $500,000 fine for conspiracy to commit wire fraud and conspiracy to launder monetary instruments.

More information

- DOJ Press Release
- Superseding Indictment

U.S. Citizen Charged for Unlawfully Providing Services to North Korea in Violation of U.S. Sanctions

On December 2, 2019, the DOJ unsealed a criminal complaint charging Virgil Griffith ("Griffith"), a 36-year-old U.S. citizen residing in Singapore, with conspiring to violate IEEPA by traveling to North Korea and transferring technical knowledge regarding how North Korean entities could use blockchain and cryptocurrency to evade U.S. sanctions.

According to the complaint, Griffith holds a doctorate in computational and neural systems and, as of the date of the complaint, was employed by an entity that functions as an open-source platform for the development of blockchain and cryptocurrency technologies. Despite being denied permission to travel to North Korea by the U.S. Department of State, Griffith allegedly traveled to North Korea via China in April 2019 to deliver a presentation at a blockchain and cryptocurrency conference. According to the complaint, Griffith's presentation was pre-approved by North Korean officials and, at the request of a conference organizer, discussed how blockchain and cryptocurrency technologies could be used to launder money and evade sanctions for the benefit of North Korea. After the conference, Griffith allegedly began making plans to facilitate the exchange of cryptocurrency between South Korea to North Korea.

Griffith was arrested at Los Angeles International Airport on November 28, 2019 and faces a maximum sentence of 20 years in prison for conspiring to violate the IEEPA.

More information

- DOJ Press Release
- Complaint

Apple, Inc. Settles Alleged Foreign Narcotics Kingpin Sanctions Regulations Violations with OFAC for $466,912

On November 25, 2019, OFAC announced a $466,912 settlement with Apple, Inc. ("Apple") related to potential civil liability stemming from apparent violations of the Foreign Narcotics Kingpin Sanctions Regulations (FNKSR). Apple allegedly violated the FNKSR when it hosted, sold and facilitated the transfer of software applications and associated content ("apps") owned by SIS, d.o.o. (SIS), a Slovenian software company previously listed on the SDN List as a significant foreign narcotics trafficker.

According to OFAC's web notice, Apple entered into an app development agreement with SIS in July 2008. In February 2015, on the same day OFAC designated SIS and its

majority owner, Savo Stjepanovic ("Stjepanovic"), Apple used its sanctions screening tool to screen the new SDNs against its list of app developers. However, on that day and for over two years following, Apple did not identify SIS as a sanctioned party because its screening software failed to match the name "SIS DOO" in its system to "SIS d.o.o." on the SDN List, even though SIS's address as collected by Apple matched the address published on the SDN List. Additionally, although Stjepanovic was listed as the Apple "account administrator," Apple's practice was to only screen persons listed as "developers." As such, Apple continued to host and allow downloads and sales of SIS apps, as well as to remit funds directly to SIS, after its designation. In the months following, Apple also allegedly facilitated the transfer of some of SIS's apps to other software companies without personnel oversight or additional screening. In total, Apple made 47 payments associated with the blocked apps and collected approximately $1.2 million from customers who downloaded them.

OFAC determined that Apple voluntarily self-disclosed the apparent violations and that the apparent violations constitute a non-egregious case. OFAC considered aggravating and mitigating factors when evaluating this case. Aggravating factors included that Apple: (i) is a large and sophisticated organization with experience and expertise in international transactions; (ii) demonstrated reckless disregard based on the number of apparent violations, length of time over which they occurred and multiple points of failure within Apple's compliance program; (iii) conferred significant economic benefit to SIS and its owner; and (iv) for three apparent violations, failed to take timely corrective actions upon identifying SIS as a blocked person. Mitigating factors included that: (i) the volume and total amount of payments was not significant compared to Apple's total volume of transactions; (ii) Apple had no sanctions violation history in the preceding five years; (iii) Apple promptly responded to numerous request for information; and (iv) Apple has undertaken various compliance measures, including reconfiguring and expanding the scope of its sanctions screening, updating procedures and implementing mandatory training.

OFAC highlighted the benefits of comprehensive SDN List screening and that companies should screen names, addresses and other identifying information to identify SDN entities and individuals that name-based screening would otherwise fail to capture.

More information

- OFAC Recent Actions Notice
- OFAC Web Notice

Iranian Businessman Sentenced to 46 Months in Prison for Illegally Exporting Goods to Iran

On November 14, 2019, the DOJ announced that Behzad Pourghannad ("Pourghannad"), an Iranian citizen, was sentenced to 46 months in prison after pleading guilty to conspiring to export controlled goods from the United States to Iran in violation of IEEPA.

According to the indictment, from 2008 to 2013, Pourghannad and two co-defendants worked to procure and ship large quantities of carbon fiber, which has various military and aerospace applications, from the United States to Iran via third countries. Over this five-year period, Pourghannad and the co-defendants engaged with other individuals to move or attempt to move the carbon fiber through Europe, the United Arab Emirates and finally to Iran. Pourghannad allegedly served as a financial guarantor for these transactions and, in an effort to conceal the transactions, falsified shipping documents and operated through front companies.

More information

- DOJ Press Release
- Indictment

Aventura Technologies, Inc. and Senior Management Charged with Fraud,

Money Laundering and Illegally Importing Chinese-Origin Equipment

On November 7, 2019, the DOJ unsealed a criminal complaint against Aventura Technologies, Inc. ("Aventura") and seven of its current and former employees in relation to a scheme to sell Chinese-made equipment to the U.S. government and private customers while falsely representing that the equipment was made in the United States and concealing the fact that the products were actually manufactured in the China.

According to the complaint, from August 2006 to November 2019, Aventura conspired with China-based manufacturers of security and surveillance equipment to defraud customers by claiming that Aventura manufactured its own products in the United States when the products were, in fact, imported from China, among other countries. Aventura allegedly smuggled the goods into the United States with false labels indicating the goods were U.S.-origin or without required country-of-origin markings. According to the complaint, some of the imported equipment used firmware with known cybersecurity vulnerabilities that could allow hackers to remotely control or access recorded data. Aventura allegedly sold tens of millions of dollars-worth of the equipment, some of which has been used to safeguard sensitive U.S. government facilities and assets, including military bases and Department of Energy facilities.

The complaint charged all the defendants with conspiracy to commit wire fraud and mail fraud and unlawful importation, and it charged two defendants with conspiracy to launder money. Each charge carries a maximum sentence of 20 years in prison.

More information

- DOJ Press Release
- Complaint

U.S. Aviation Company Settles Apparent Violations of Sudanese Sanctions Regulations

On November 7, 2019, OFAC announced a $210,600 settlement with Apollo Aviation Group, LLC (AAG), a Florida-based company, related to potential civil liability for 12 apparent violations of the Sudanese Sanctions Regulations.

According to OFAC's web notice, AAG leased three aircraft engines to an entity incorporated in the United Arab Emirates (UAE), which subleased the engines to a Ukrainian airline. The Ukrainian airline installed the engines on an aircraft that it "wet leased" to Sudan Airways ("Sudan Air"), an entity identified on the SDN List as meeting the definition of "Government of Sudan." Under this arrangement, the Ukrainian airline operated the aircraft on behalf of Sudan Air. AAG discovered that two of the engines had been used by Sudan Air and in Sudan during a post-lease review of engine records. AAG then discovered and demanded removal of the third engine that had been wet leased to Sudan Air.

Although AAG's lease agreement with the UAE entity included a clause requiring sanctions compliance, OFAC stated that AAG did not ensure the engines were used in a manner that complied with U.S. sanctions regulations. For example, OFAC noted that AAG did not obtain U.S. export compliance certificates from lessees or sublessees. AAG also did not periodically monitor or otherwise verify the lessees/sub-lessees' compliance with sanctions during the life of the lease.

OFAC determined that AAG voluntarily self-disclosed the apparent violations and that the apparent violations constitute a non-egregious case. OFAC considered aggravating and mitigating factors when evaluating this case. Aggravating factors included that: (i) the activity harmed U.S. sanctions program objectives; (ii) AAG is a large, sophisticated entity; and (iii) although the UAE entity violated the terms of its lease, AAG failed to monitor or otherwise verify the engines' actual whereabouts during the leases. Mitigating factors included that: (i) no AAG personnel had actual knowledge of the conduct; (ii) AAG had not received a penalty notice or Finding of Violation in the preceding five years; (iii) AAG implemented remedial measures such as investing in additional compliance personnel and systems; and (iv) AAG provided information to OFAC in a clear, concise, and well-organized manner.

More information

- OFAC Recent Actions Notice
- OFAC Web Notice

U.S. Navy Officer, His Wife and Two Chinese Nationals Charged with Conspiring to Smuggle Goods to China

On October 31, 2019, a grand jury indicted Fan Yang, a U.S. Navy officer, and his wife Yang Yang, both naturalized U.S. citizens residing in Florida, as well as Ge Songtao and Zheng Yan, both Chinese citizens residing in China, on charges of conspiring and attempting to smuggle dual-use goods to China and conspiring to cause and causing the submission of false and misleading export information.

According to the indictment, the defendants attempted to smuggle seven military-style boats with eight Evinrude MFE military-use outboard motors from the United States to China for use in mainland China. Additionally, the defendants conspired to submit and caused the submission of false information into Customs and Border Protection's Automated Export System (AES) to mask the sale of the boats and engines. The false information entered into AES listed the purchaser and end-user as fictitious companies located in Hong Kong, when the true purchaser was Shanghai Breeze Technology Co. Ltd., a Chinese entity owned by Ge Songtao.

The charges of conspiracy, submission of false export information and attempted smuggling carry maximum sentences of 5 and 10 years in prison, respectively.

More information

- DOJ Press Release
- Indictment

EXPORTS, SANCTIONS AND CUSTOMS DEVELOPMENTS

Client Alert: DDTC Publishes ITAR Carve-out for Encrypted Technical Data and Software, and Further Harmonizes Definitions Common to the ITAR and the EAR

On December 26, 2019, the U.S. Department of State's Directorate of Defense Trade Controls (DDTC) published an interim final rule that would allow, under certain conditions, encrypted technical data and software that is subject to the ITAR to be sent, shipped or stored outside the United States without the need for a DDTC license or other authorization.

Although DDTC's planned amendments to the ITAR contain subtle differences to the corresponding provisions in the EAR that BIS published in 2016, DDTC's rule would nonetheless allow for the common international cloud-based storage and handling of properly encrypted technology/technical data and software subject to either the ITAR or the EAR.

The rule is a continuation of efforts begun in 2015 to harmonize the definition of core terms in the EAR and the ITAR to reduce unnecessary regulatory burdens. Although it does not complete the effort, it nonetheless harmonizes additional provisions pertaining to the sharing of technology/technical data and software between U.S. persons, shipments within the United States and space launches.

Comments must be submitted by January 27, 2020. The rule will become effective on March 25, 2020, unless DDTC decides to publish a new rule.

More information

- Akin Gump Client Alert

- Federal Register Interim Final Rule

Client Alert: DOJ Provides Additional Incentives for Voluntary Self-Disclosures of Criminal Export Controls and Sanctions Violations

On December 13, 2019, the DOJ revised and re-issued its "Export Controls and Sanctions Policy for Business Organizations" to "provide greater clarity for companies faced with a voluntary disclosure decision, and . . . encourage more organizations to report to [DOJ]."

The revised policy makes several important changes to the DOJ's previous guidance issued on October 2, 2016. These changes are designed to encourage companies to take advantage of the self-disclosure process by more clearly defining the benefits of disclosure and the entities to whom these benefits may apply. The new policy also clarifies that disclosures involving potentially willful violations must be submitted to the DOJ—not just regulatory agencies—in order to obtain the benefits under the policy.

It is unclear whether this will drive a meaningful increase in the number of voluntary disclosures to the DOJ for export controls and sanctions violations as there are a number of additional factors a company must consider when deciding whether and to which agency to disclose.

More information

- Akin Gump Client Alert
- DOJ Press Release

Client Alert: Commerce Issues Proposed Rule Implementing "Supply Chain Executive Order"

On November 26, 2019, the DOC issued a proposed rule to implement Executive Order 13873 of May 15, 2019, on "Securing the Information and Communications Technology and Services Supply Chain" ("Supply Chain EO"). The Supply Chain EO and proposed rule seek to create a broad framework to mitigate, prohibit and unwind information and communications technology and services (ICTS) transactions involving "foreign adversaries."

The proposed rule does not designate specific governments or entities as "foreign adversaries." Nor does it identify any specific categories of transactions that are, or are not, subject to the regime. Rather, through the proposed rule, Commerce adopts a case-by-case, fact-specific approach to determine those transactions that meet the requirements set forth in the Supply Chain EO. While the proposed rule would establish certain procedural elements, it would not provide a pre-clearance or licensing mechanism to clear proposed transactions.

If adopted as drafted, the proposed regulations could create significant uncertainty for companies operating in the ICTS sector. In particular, transactions with a nexus to China or Russia, which have informally been identified as "adversaries" in statements by U.S. government officials, would be at risk of intervention under this framework.

Commerce announced an extension of the comments deadline on December 23. Comments on the proposed rule are now due by Friday, January 10, 2019. Interested parties, including any company or organization involved in the ICTS sector, should carefully review the draft rules to assess their potential effect on any current or pending ICTS transactions and submit comments accordingly.

More information

- Akin Gump Client Alert
- Executive Order 13873
- Federal Register Proposed Rule
- Federal Register Extension of Comment Period

Commerce Extends Temporary General License Authorizing Specified Transactions with Huawei and its Affiliates; Grants Individual Licenses Authorizing Specific Exports to Huawei

On November 18, 2019, the DOC's Bureau of Industry and Security (BIS) extended through February 16, 2020, the temporary general license (TGL) to Huawei Technologies Co., Ltd. ("Huawei") and 114 of its non-U.S. affiliates on the Entity List. This TGL authorizes certain activities such as those necessary for the continued operations of existing networks and equipment as well as the support of existing mobile services, including cybersecurity research critical to maintaining the integrity and reliability of existing and fully-operational networks and equipment. Exporters, reexporters and transferors are still required to maintain recipient certifications and other records regarding their use of the TGL, which are to be made available to BIS upon request.

Concurrently, BIS began issuing individual licenses to some companies authorizing certain exports to Huawei. According to news outlets including *Reuters* and the *Wall Street Journal*, as of November 20, 2019, BIS had received approximately 300 license applications and had issued denial notifications to a quarter, taken no action on half, and approved a quarter as authorizing only "limited and specific activities which do not pose a significant risk to the national security or foreign policy interests of the United States." These license approvals related mostly to consumer products, whereas the remaining license denials involved companies that manufacture communication network equipment, such as 5G, radio or other components. Companies that received intent to deny letters have 20 days to appeal the denial before it becomes official.

More information

- Federal Register Final Rule
- DOC Press Release
- *Reuters*
- *The Wall Street Journal*
- *The Washington Post*
- *Nikkei Asian Review*

GLOBAL INVESTIGATIONS RESOURCES

- USTR Proposes Additional Duties on $2.4 Billion in French Imports
- The 2019 Miscellaneous Tariff Bill Petition Process Is Now Open

FCPA RESOURCES

For a complete record of all FCPA-related enforcement actions, please visit the following websites maintained by U.S. Regulators:

- DOJ Enforcement Actions (2019)
- DOJ Declinations
- SEC Enforcement Actions

WRITING AND SPEAKING ENGAGEMENTS

On January 10, 2020, Stephen S. Kho will moderate a USCBC panel titled "Government Procurement in China: Challenges and Opportunities for Foreign Companies" at the Akin Gump offices 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 Jaime Sheldon at +1 212.407.3026 or email.

More information for lawyers in the global investigations and compliance practice.

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