

## Marika De Rosa

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**From:** Brinley Salzmann  
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Dear All,

### **R. Slack: "Distributor Danger: OFAC Case Highlights Sanctions Liability for Bad Acts by Distributors and Foreign Subsidiaries"**

(Source: [Trade and Manufacturing Monitor](#), 15 Dec 2017.)

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Many companies supply goods and services through third party distributors. When well-structured, the use of distributors can shift some of the cost and compliance risk of selling products outside of your home territory. But distributors can also create sanctions liability for companies, especially when foreign subsidiaries or others within the company are in on the bad acts.

A recent [enforcement action by OFAC](#) highlights some of these risks. OFAC fined a U.S.-based dental supply company over \$1.2 million for shipments from foreign subsidiaries to third party distributors for ultimate end use in Iran. The sales continued after the foreign subsidiaries confirmed that the distributors had shipped their products to Iran in the past. OFAC also indicated that company personnel knew that some of the sales were destined for Iran and took steps to conceal the end use of these sales from the U.S.-based parent company.

Foreign subsidiaries of U.S. companies cannot shield their U.S. parent companies from liability under OFAC's regulations simply by lying to the parent company or concealing evidence of the end use of a sale. Under OFAC's Iran rules, parent companies are liable for the actions of their foreign subsidiaries. OFAC's rules also generally operate under the principle of strict liability, which means that the U.S. parent is liable even if it did not know that shipments were ultimately destined for Iran. Under other provisions of the rules, OFAC could have also charged the non-U.S. actors in the case - including the distributors and foreign subsidiaries - for illegal transactions involving Iran.

To avoid these kinds of pitfalls, U.S. companies need to exercise oversight over non-U.S. sales channels, including those managed by foreign subsidiaries. Compliance steps like sanctions policies and procedures, written agreements with distributors, training, due diligence on third parties, and auditing or monitoring rights (with actual follow-up) can also help strengthen oversight of non-U.S. subsidiaries and distributors and reduce the risk of sanctions violations for the U.S. company.

### **Fine for Keppel**

The US Department of Justice (DOJ) has announced that Keppel Offshore & Marine Ltd. (KOM), a Singapore-based company that operates shipyards and repairs and upgrades shipping vessels, and its wholly-owned US subsidiary, Keppel Offshore & Marine USA Inc. (KOM USA), have agreed to pay a combined total penalty of more than US\$422m to resolve charges with authorities in the United States, Brazil, and Singapore arising out of a decade-long scheme to pay millions of dollars in bribes to officials in Brazil. KOM USA has pleaded guilty in connection with the resolution. In addition, a guilty plea by a former senior member of KOM's legal department was unsealed. According to admissions and court documents, beginning by at least 2001 and continuing until at least 2014, KOM conspired to violate the FCPA by paying approximately US\$55m in bribes to officials at the Brazilian state-owned oil company Petrobras and to the then-governing political party in Brazil, in order to win 13 contracts with Petrobras and another Brazilian entity. KOM effectuated and concealed the bribe payments by paying outsized commissions to an intermediary, under the guise of legitimate consulting agreements, who then made payments for the benefit of the Brazilian officials and the Brazilian political party. In reaching the resolutions with the Department, KOM and KOM USA received credit for their substantial cooperation with the Department's investigation and for taking extensive remedial measures. For example, KOM has terminated and otherwise disciplined employees involved in the criminal conduct, and it has implemented an enhanced system of compliance and internal controls to address and mitigate corruption risks. Accordingly, the criminal penalty reflects a 25% reduction off the bottom of the applicable US Sentencing Guidelines fine range. Further details are to be found at: <https://www.justice.gov/opa/pr/keppel-offshore-marine-ltd-and-us-based-subsiary-agree-pay-422-million-global-penalties>.

## **UK citizen pleads guilty to FCPA violations**

The US Department of Justice (DOJ) has announced that Colin Steven, 61, a UK citizen residing in the United Arab Emirates and a former sales executive of Embraer S.A., has pleaded guilty to one count of violating the Foreign Corrupt Practices Act (FCPA), one count of conspiracy to violate the FCPA, one count of wire fraud, one count of conspiracy to commit wire fraud, one count of money laundering, one count of conspiracy to launder money and one count of making a false statement in connection with a scheme to pay bribes to a high-level foreign government official in exchange for assistance in securing Embraer's sale of aircraft to Saudi Arabia's national oil company. Further details are to be found at: <https://www.justice.gov/opa/pr/former-embraer-sales-executive-pleads-guilty-foreign-bribery-and-related-charges>.

## **House of Lords Committee Report on UK Sanctions and Anti-Money Laundering**

The Select Committee on the Constitution of the U.K. House of Lords has published its report on the U.K. Sanctions and Anti-Money Laundering Bill – a copy is to be found at: <https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/39/39.pdf>. Among other things, the Committee's report states that it considers constitutionally inappropriate for ministers to have the power, by regulations, to create new forms of sanctions.

## **Russian Nuclear Money Laundering**

The US Department of Justice (DOJ) has announced that Boris Rubizhevsky, of Closter, New Jersey has been sentenced to a year and one day in prison for Conspiracy to Commit Money Laundering in connection with his role in arranging corrupt payments to influence the awarding of contracts with the Russian state-owned nuclear energy corporation. According to court documents, Rubizhevsky acted as an intermediary in connection with corrupt payments to co-conspirator Vadim Mikerin, the former director of the Pan American Department of JSC Techsnabexport (TENEX), a subsidiary of Russia's State Atomic Energy Corporation and the sole supplier and exporter of Russian Federation uranium and uranium enrichment services to nuclear power companies worldwide. According to court documents, between October 2011 and February 2013, Rubizhevsky and Mikerin agreed to conceal corrupt payments being made from the United States to overseas bank accounts for the benefit of Mikerin, including a payment to a foreign bank account located in Latvia. Rubizhevsky admitted that the conspirators used sham consulting agreements to disguise the corrupt payments. Further details are available at: <https://www.justice.gov/opa/pr/intermediary-who-facilitated-corrupt-payments-russian-nuclear-energy-official-sentenced-money>.

## **SBM Offshore fined for FCPA Breach**

The US Department of Justice (DOJ) has announced that SBM Offshore N.V. (SBM), a Netherlands-based company specializing in the manufacture and design of offshore oil drilling equipment, and its wholly owned US subsidiary, SBM Offshore USA Inc. (SBM USA), have agreed to resolve criminal charges and pay a criminal penalty of US\$238 million in connection with schemes involving the bribery of foreign officials in Brazil, Angola, Equatorial Guinea, Kazakhstan and Iraq in violation of the Foreign Corrupt Practices Act (FCPA). SBM entered into a deferred prosecution agreement in connection with a criminal information filed in the Southern District of Texas charging the company with conspiracy to violate the anti-bribery provisions of the FCPA. In addition, SBM USA pleaded guilty and was sentenced on a one-count criminal information charging the company with conspiracy to violate the anti-bribery provisions of the FCPA. Pursuant to its agreement with the Department, SBM agreed to pay a total criminal penalty of US\$238 million to the United States, including a US\$500,000 criminal fine and US\$13.2 million in criminal forfeiture that SBM agreed to pay on behalf of SBM USA. According to the companies' admissions and court documents, beginning by at least 1996 and continuing until at least 2012, SBM conspired to violate the FCPA by paying more than US\$180 million in commissions to intermediaries, knowing that a portion of those commissions would be used to bribe foreign officials in Brazil, Angola, Equatorial Guinea, Kazakhstan and Iraq. SBM made these payments in order to influence those officials, for the purpose of securing improper advantages and obtaining or retaining business with state-owned oil companies in the five named countries. SBM acknowledged that it gained at least US\$2.8 billion from projects it obtained from these state-owned oil companies. The Justice Department resolution follows guilty pleas by two former SBM executives.

## **Chinese Energy Firm Allegations**

The US Department of Justice (DOJ) has announced that a criminal complaint has been unsealed charging the head of a non-governmental organization based in Hong Kong and Virginia and the former Foreign Minister of Senegal with participating in a multi-year, multimillion-dollar scheme to bribe high-level officials in Chad and Uganda in exchange for business advantages for a Chinese oil and gas company (the "Energy Company") in violation of the Foreign Corrupt Practices Act (FCPA). Chi Ping Patrick Ho aka Patrick C.P. Ho, 68, of Hong Kong, China, and Cheikh Gadio, 61, of Senegal, are each charged with conspiring to violate the FCPA, violating the FCPA, conspiring to commit international money laundering, and committing international money laundering. Further details are available at: <https://www.justice.gov/opa/pr/head-organization-backed-chinese-energy-conglomerate-and-former-foreign-minister-senegal-0>.

Regards,

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