

White Collar Defense & Investigations



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U.S. Government Enters into Deferred Prosecution Agreement with Indonesian Paper Producer for Violations of U.S. Sanctions Regime

PT Bukit Muria Jaya (“BMJ”), an Indonesian corporation, recently agreed to pay a criminal fine of more than \$1.5 million and to strengthen its compliance program after violating the U.S. sanctions regime. Similarly-situated foreign companies that might do business with individuals, companies, and countries listed by the U.S. Department of the Treasury’s Office of Foreign Asset Control (“OFAC”) should ensure that they have compliance programs to avoid similar enforcement actions.

On January 14, 2021, the U.S. government entered into a deferred prosecution agreement (“DPA”) with BMJ, an Indonesian paper goods company, which sold paper products to a North Korean state-owned company. As part of the settlement, BMJ paid a fine of \$1,561,570 to the U.S. government and signed a DPA.

The DPA and criminal fine stem from violations of the Bank Secrecy Act and the sanctions program administered by OFAC. The DPA was notable because it involved actions taken by a foreign company, the individuals who acted illegally were not officers or directors, and the amount of the illegal transactions was relatively small compared to the company’s overall revenue. The DPA and attached statement of facts repeatedly emphasized that these actions were taken by “certain non-executive sales employees” of BMJ, and that BMJ was being held legally responsible under the doctrine of *respondet superior*. Thus, the

U.S. government did not even allege that the company’s senior officers knew about the violations.

Under OFAC’s regulations, the entire North Korean financial sector has been identified as a jurisdiction of primary money laundering concern. Under OFAC’s rules, U.S. financial institutions are prohibited from maintaining a correspondent account for any North Korean financial institution or any party acting on its behalf. This regulation has effectively cut all North Korean financial institutions and entities acting on their behalf off from any trade in U.S. dollar transactions.

The statement of facts identifies two “schemes” that were used by BMJ to avoid the U.S. sanctions regime, thereby allowing the North Korean company to conduct business in dollar-denominated transactions. According to the statement of facts, since before May 2016 (when North Korea

was identified as a primary money laundering concern), BMJ had sold paper products to a state-owned North Korean company which manufactured cigarettes. After May 2016, BMJ engaged in actions to hinder its obligations under OFAC's sanctions program. For example:

- It provided its product to "Chinese Trading Company 1," which sold the product on consignment to the North Korean state-owned company.
- Various shipping documents originally listed a North Korean company as the "ship to" entity or the "consignee," but these were changed to list businesses in China and South Korea (which were not subject to sanctions).
- The state-owned North Korean cigarette manufacturer also used other South Korean and Chinese companies as consignees. These consignees operated as "front companies" and directed payments from the North Korean cigarette manufacturer to BMJ.

The DPA identified transactions, which in the aggregate totaled less than \$850,000. As noted above, BMJ paid a criminal fine of more than \$1.5 million even though there was no allegation that its corporate officers were involved in or condoned the illegal conduct. There was also no allegation that BMJ provided false or misleading information to U.S. banks that handled these financial transactions. Further, the sales, which occurred between March 2016 and May 2018, were less than 0.3 percent of BMJ's total sales revenue.

As a result of the DPA, BMJ will take the following steps:

- Continue to complete global sanctions training, covering U.S. sanctions and trade control laws for all relevant employees, including, but not limited to, personnel within the sanctions compliance function, as well as relevant gatekeepers and business units; and

- Continue to apply and implement compliance procedures and training designed to ensure that the company's compliance officer in charge of sanctions is made aware in a timely manner of attempts by any person or entity (including, but not limited to, the company's employees, customers, financial institutions, companies, organizations, groups, or persons) to circumvent or evade U.S. sanctions laws.

The U.S. government's enforcement action against an Indonesian company whose sales department participated in a scheme to evade U.S. sanctions is a warning to foreign companies. The substantial financial penalty meted out despite the absence of a strong U.S. nexus suggests that the U.S. government will bring enforcement actions for any potential violation of its sanctions regime. Companies that have historically engaged in trade with individuals, companies, and countries that have been identified by OFAC must ensure that their sales staff are not circumventing the U.S. government's sanctions regime. This includes developing a two-pronged approach of developing a global sanctions training program for all relevant employees and conducting due diligence on select transactions.

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