

May 22, 2023

DOJ and OFAC Reach Historic Resolutions With British American Tobacco for North Korea Sanctions Violations

On April 25, 2023, the U.S. Department of Justice (“DOJ”) reached a resolution with British American Tobacco (“BAT”) and its subsidiary British American Tobacco Marketing Singapore (“BATMS”) to pay combined penalties and fines of \$629 million to resolve charges of bank fraud and sanctions violations.¹ The charges arose from an alleged scheme from 2009 until 2017 in which BAT and BATMS used front companies to cause U.S. banks to process at least 280 wire transfers, totaling \$341 million in transactions, with North Korean state-owned cigarette manufacturers. The DOJ alleged that funds obtained by North Korea pursuant to this scheme were ultimately used to advance North Korea’s Weapons of Mass Destruction programs. BATMS pleaded guilty to a criminal information filed in the District of Columbia charging conspiracy to commit bank fraud and conspiracy to violate sanctions, and BAT entered into a deferred prosecution agreement on the same charges. On the same day, the U.S. Department of Treasury Office of Foreign Assets Control (“OFAC”) announced a settlement with BAT related to the same scheme for \$508 million, \$503 million of which will be satisfied by their payment of the penalties and fines levied by the DOJ.² The settlement was the largest ever between OFAC and a non-financial institution and reflected the statutory maximum penalty.

Just one week after these enforcement actions were announced, Principal Deputy Attorney General Marshall Miller underscored the focus on corporate prosecutions and their importance to national security. He stated that “corporate crime presents a significant and growing threat to our national security. . . . as we pursue national security investigations, we are encountering corporate crime with disturbing frequency.”³

The Scheme

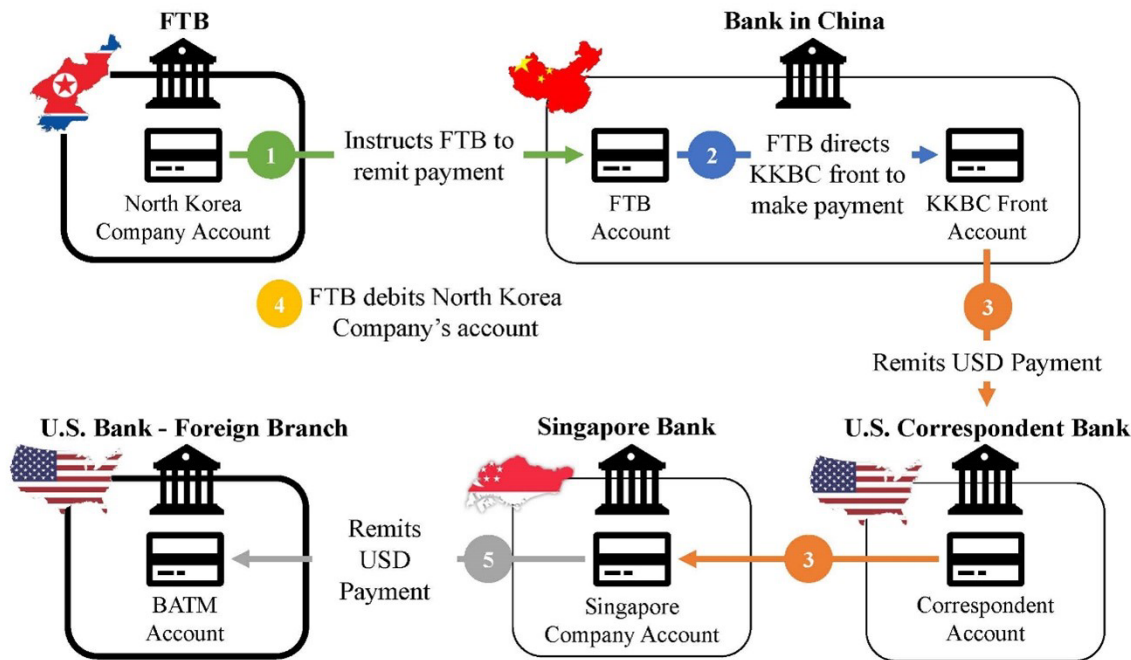
According to the papers filed by the government in this matter, in 2001, BATMS established a Joint Venture with a North Korean company located in North Korea (the “North Korean Company”) for the purpose of manufacturing and distributing BAT cigarettes.⁴ In 2007, BAT’s Standing Committee, which includes BAT senior executives in London, approved a plan whereby BATMS would sell its 60% stake in the Joint Venture to a company in Singapore (the “Singapore Company”) because of concerns over public associations with North Korea and the difficulty in extracting profits from that country. In a press release, BAT publicly represented this sale as a divestment of the portion of its business involved in North Korea tobacco sales. However, in reality, BATMS still held a controlling interest in the Joint Venture and used that control to continue tobacco sales in North Korea.

Under this scheme, payments for tobacco sold to North Korean entities would be run through the Singapore Company using several other front companies in China before the payments were remitted back to BATMS and BAT. Two entities that were concealed in the elaborate chain remitting payments were the Foreign Trade Bank (“FTB”) in North Korea and the Korea Kwangson Banking

Corporation (“KKBC”), both of which received a designation flagging ties to Weapons of Mass Destruction Proliferators from OFAC in 2013 and 2009, respectively.⁵ This scheme continued from 2009 until 2017, when BAT’s Standing Committee approved termination of BATMS’s business interest in the Joint Venture. Even after this termination, BATMS continued to export tobacco products to the Democratic People’s Republic of Korea Embassy in Singapore in partnership with the Singapore Company until September 2017.

Through this concealment scheme, BAT caused U.S. financial institutions to process transactions that would have been frozen, blocked, investigated or declined had the banks known the connection to North Korea. As a result, the DOJ alleged conspiracy to commit bank fraud⁶ and conspiracy to violate the IEEPA.⁷ Under its allegations of bank fraud, the DOJ identified 280 wire transfers made by the North Korea Company during the relevant time period, totaling \$341,297,848, a portion of which was ultimately intended for BATMS. These transfers were made in the name of companies other than the North Korea Company to obscure the connection to North Korea and BAT and BATMS knew that those companies were not true purchasers. Because these payments were routed through FTB and KKBC, which were sanctioned at the time of the payments, a license from OFAC was required but not obtained. The DOJ further found that this same scheme caused U.S. financial institutions to export financial services for the benefit of KKBC, FTB, North Korea and North Korean entities without prior authorization or a license from the Department of Treasury in violation of the IEEPA.

The Department of Treasury’s OFAC found apparent violations of the Weapons of Mass Destruction Proliferators Sanctions Regulations⁸ and the North Korea Sanctions Regulations.⁹ OFAC alleges that the conspiracy between BAT and its subsidiaries, the North Korea Company and the Singapore company caused U.S. financial institutions to process 228 payments, totaling approximately \$251,631,903, in which the blocked entities KKBC and FTB had an interest.



OFAC provided the above graphic summarizing the scheme.

Key Takeaways

Corporate Crime as National Security Crime: As PDAG Miller recently explained, “companies in the private sector are on the front lines of the geopolitical and national security challenges that mark today’s global environment. From money laundering and cyber- and crypto-enabled crime to sanctions and export control evasion and even funneled payments to terrorist groups, corporate crime increasingly — now almost routinely — intersects with national security concerns.” The BAT/BATMS prosecution and enforcement action highlight this new normal, with DOJ and OFAC emphasizing that the alleged corporate crime generated extensive revenue for North Korea’s Weapons of Mass Destruction programs. As a result, companies that do not traditionally think of themselves as having exposure to national security risks should re-examine their exposure and consider taking additional measures to guard against being the focus of a national security-related investigation.

Continued Focus on “Causing” Violations: OFAC continues to target non-U.S. companies for violations of U.S. sanctions under the theory that the non-U.S. company had “caused” U.S. persons (here U.S.-headquartered financial institutions) to violate sanctions, making clear once again that non-U.S. companies can be held to account in the United States for violating U.S. sanctions.¹⁰ Here, for example, both DOJ and OFAC found that BAT caused U.S. financial institutions to violate sanctions rules as the basis of their allegations.

Continued Focus on Use of Front Companies and Intermediaries: These enforcement actions also make clear that companies cannot escape sanctions liability by layering non-U.S. intermediaries in the payment flows between themselves and sanctioned entities, particularly where they have knowledge that the payments are originating from sanctioned parties or comprehensively sanctioned jurisdictions. In this case, OFAC faulted BAT for not regularly re-evaluating its sanctions risk exposure, despite OFAC’s finding that in 2007, before two of the North Korean banks at issue had been designated on the SDN List, BAT internal memoranda noted that changing or additional U.S. sanctions against North Korea could create liability for BAT in the future. OFAC particularly faulted BAT for failing to maintain a culture of compliance as shown by, among other things, OFAC’s determination that senior BAT leadership had knowledge of the apparent violations of U.S. sanctions and the complex scheme to avoid potential detection of the North Korea interests in the payments that were ultimately routed to BAT. As a result, companies may wish to consider performing comprehensive reviews of any potential direct or indirect exposure they or their subsidiaries may have to sanctioned parties and comprehensively sanctioned jurisdictions.

We will continue to monitor developments in this space and provide further updates as appropriate.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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¹ U.S. Dep't of Justice, *United States Obtains \$629 Million Settlement with British American Tobacco to Resolve Illegal Sales to North Korea, Charges Facilitators in Illicit Tobacco Trade* (April 25, 2023), available [here](#).

² U.S. Dep't of Treasury, *Treasury Announces \$508 Million Settlement with British American Tobacco Largest Ever Against Non-Financial Institution* (April 25, 2023), available [here](#).

³ U.S. Dep't of Justice, *Principal Associate Deputy Attorney General Marshall Miller Delivers Remarks at the Ethics and Compliance Initiative IMPACT Conference* (May 3, 2023), available [here](#).

⁴ U.S. Dep't of Treasury, *OFAC Settles with British American Tobacco p.l.c. for \$508,612,492 Related to Apparent Violations of the North Korea and Weapons of Mass Destruction Proliferators Sanctions Regulations* (April 25, 2023), available [here](#).

⁵ Designation under E.O. 13382 freezes the assets of proliferators of Weapons of Mass Destruction and their supporters and prohibits U.S. persons from engaging in transactions with them. U.S. Dep't of Treasury, *Treasury Designates Financial Institution Tied to North Korea's WMD Proliferation* (August 11, 2009), available [here](#).

⁶ 18 USC § 144(a) & (2), 1349

⁷ 50 USC § 1705

⁸ 31 C.F.R. § 544.205(b)

⁹ 31 C.F.R. § 510.212

¹⁰ See, e.g., U.S. Dep't of Treasury, *Office of Foreign Assets Control OFAC Settles with Danfoss A/S for \$4,379,810 Related to Apparent Violations of the Iran, Syria, and Sudan Sanctions Programs* (Dec. 30, 2022), available [here](#).