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NEWSLETTER

Volume 04 – March 2021

March has arrived and as it does, it reminds us all about how fast the time goes by. A year ago, we were not aware that on 23 March, our President would address the Nation and announce a national lockdown. There is no doubt that we all hold hope that this year will have more opportunities, less restrictions and greater success for everyone.

In this newsletter, you will find an article about an expert's viewpoint of the new law to ban shell companies in the US, an in depth article about the recent bombing. Ryan De Lange from Labour Matrix has also provided an insightful article about the dismissal of employees based purely on suspicion and how it is unlawful.

EXPERT VIEWPOINT: THE U.S.'S NEW LAW TO "BAN" SHELL COMPANIES

BY MARTIN KENNEY, CFE

https://www.acfe.com/fraud-examiner.aspx?id=4295013006&mkt_tok=eyJpIjoiTW1KbVpEaGtNVk1TkdOaCIsInQiOiJzOVVwZjRqYVJtbmNmcGxmcG5OemVhbkc2NHgxY2JlZkxSSkc2TERJaUNrZW55dVpiTDBQaElubUJEK1JDcUJteFlHZWUzT1B1cWxcL1haNDF4M2RMdTR1b2FBcHpud1NRdlNESHFtakxWUGtTZG1ZMnBwMGZGaFhNQnNEWWE1WWGRmIno%3D

The new U.S. Corporate Transparency Act (CTA), which passed in late 2020 as part of the National Defense Authorization Act, makes seemingly significant changes to the information required when incorporating a company in the U.S.

While the legislation is a significant step in the right direction and should be applauded, as somebody who has repeatedly criticized the U.S. incorporation systems, I view it more as a means of reducing the current level of money laundering, tax evasion and limiting the scope of debtor evasion of judgments, rather than a significant step toward extinguishing it.

This is partly because U.S. authorities are starting from such a low baseline that a significant improvement is easy to make. Like most ultimate beneficial owner (UBO) legislation, the devil is in the details, not just of the legislation, but in its practical implementation.

Purpose of the CTA

In many states within the U.S., it is all too easy to open a shell company to hold assets and pass through funds without informing the authorities of the true ownership structure behind it.



As noted in the legislation (sec. 6402, Sense of Congress), the aim is to prevent U.S. companies being used for nefarious purposes, such as:

“the financing of terrorism, proliferation financing, serious tax fraud, human and drug trafficking, counterfeiting, piracy, securities fraud, financial fraud, and acts of foreign corruption, harming the national security interests of the United States and allies of the United States.”

Now, those incorporating in the U.S. will largely need to provide details of true UBOs to certain agencies with supervisory duties, and to institutions with anti-money laundering obligations at the incorporation stage. If this ownership subsequently changes, there is an obligation to update these records. This duty to update information on a regular basis is important to ensure the register is kept up-to-date and that a nominee is not put forward initially, with the shares then transferred shortly thereafter to a true UBO.

BIDEN ORDERS AIRSTRIKES IN SYRIA, RETALIATING AGAINST IRAN-BACKED MILITIAS

BY DAN DE LUCE, MOSHEH GAINS, CHARLENE GUBASH AND KRISTEN WELKER (NBC NEWS)

<https://www.nbcnews.com/news/us-news/biden-airstrikes-syria-retaliating-against-iran-backed-militias-n1258912>

WASHINGTON — President Joe Biden on Thursday ordered airstrikes on buildings in Syria that the Pentagon said were used by Iranian-backed militias, in retaliation for rocket attacks on U.S. targets in neighboring Iraq.

The strikes killed at least 22 people, London-based Syrian Observatory for Human Rights said on Friday, citing unconfirmed local reports.

Pentagon press secretary John Kirby portrayed the bombing in eastern Syria as carefully calibrated, calling it “proportionate” and “defensive.”

Kirby told reporters Friday the bombing caused “casualties” but said it was too early to say precisely how many militia fighters might have been killed or wounded.

“We have preliminary indications of casualties on site, I’m not going to go any further than that,” Kirby said.

The operation was the first known use of military force by the Biden administration, which has for weeks emphasized plans to focus more on challenges posed by China.

The president’s decision appeared aimed at sending a signal to Iran and its proxies in the region that Washington would not tolerate attacks on its personnel in Iraq, even at a sensitive diplomatic moment.

Three rocket attacks in one week in Iraq, including a deadly strike that hit a U.S.-led coalition base in the northern Iraqi town of Irbil, presented a test for Biden only weeks after assuming the presidency. The rocket assaults coincided with a diplomatic initiative launched by the administration to try to revive a 2015 nuclear agreement between Iran and world powers.

Kirby said two F-15 fighter jets dropped seven precision guided munitions on buildings used by the Iranian-backed militias, totally destroying nine structures and partially destroying two. The buildings were located in Abu Kamal, near the Iraqi border, a location known as a hub for the Iraqi Shiite militias supported by Iran, he said.

“This location is known to facilitate Iranian-aligned militia group activity,” Kirby said.

The airstrikes were ordered in response to a series of rocket attacks against American and coalition personnel in Iraq, “and to ongoing threats to those personnel,” the Pentagon said in a statement on Thursday evening.

The buildings near the border were used by militias including Kataib Hezbollah and Kataib Sayyid al-Shuhada, according to the Pentagon.

Iranian officials did not immediately react to the strikes.

The Syrian government condemned the attack Friday, calling it “cowardly U.S. aggression” in a statement from



the country's foreign ministry that was published by state media.

The strikes violate international law and “will lead to consequences that will escalate the situation in the region,” the foreign ministry said, according to state news agency SANA.

Russia, one of Syrian President Bashar Assad's chief backers, said it was given just four or five minutes' warning before the strikes.

“This kind of notification does nothing when the strike is literally already on its way,” Foreign Minister Sergey Lavrov told reporters in Moscow.

The U.S. was operating in Syria “illegally,” he said, and called for better communication with the Biden administration.

The Pentagon defended the legality of the strikes, arguing Article II of the Constitution grants the president powers as commander in chief, and citing article 51 of the U.N. charter, providing countries the right to “self-defense” in response to an attack.

“I would tell you that the president acted well within his constitutional authorities under Article II as commander in chief of the United States to protect American service members involved in operations. Clearly, there is a constitutional authority here,” Kirby told NBC News' Andrea Mitchell on Friday.

The Biden administration did inform Russia in advance of the air raid, Kirby said, but indicated it could not do so too far in advance without jeopardizing “operational security.”

The strikes provoked criticism from some Democrats in Congress, who questioned the legal rationale and demanded to know why the White House did not consult with lawmakers more closely beforehand.

“The American people deserve to hear the Administration's rationale for these strikes and its legal justification for acting without coming to Congress,” said Sen. Tim Kaine of Virginia, a member of the Senate Armed Services and Foreign Relations Committees.

“Offensive military action without congressional approval is not constitutional absent extraordinary circumstances,” he said. “Congress must be fully briefed on this matter expeditiously.”

The administration said officials did brief congressional leadership before the air strikes.

The Syrian Observatory for Human Rights said most of the 22 people killed in the bombings were members of

Iraqi militias. The monitoring group did not provide details about how it obtained that figure but Rami Abdulrahman, head of the rights organization, told NBC News it was based on speaking to sources inside Syria.

He added that the death toll was expected to rise, due to the number of people seriously wounded.

Iran's state broadcaster IRIB news, meanwhile, said 17 “resistance fighters” were killed in the strikes, but also didn't provide detail about the source of that figure other than citing “reports.”

A senior U.S. defense official told NBC News on Thursday evening that the target was a transit hub near the Iraqi-Syrian border used by the militia fighters, and it was too early to say what casualties might have been inflicted on the militants.

“The operation sends an unambiguous message: President Biden will act to protect American and coalition personnel. At the same time, we have acted in a deliberate manner that aims to de-escalate the overall situation in both eastern Syria and Iraq,” the Pentagon said on Thursday.

Shortly after the strike, Defense Secretary Lloyd Austin told reporters travelling with him that the administration had been “very deliberate about our approach.”

“We're confident that target was being used by the same Shia militia that conducted the strikes,” Austin said, referring to the recent rocket attacks in Iraq on U.S. and coalition personnel.

The Pentagon had said previously that it was awaiting the results of an Iraqi investigation into the Irbil rocket attack.

“We allowed and encouraged the Iraqis to investigate and develop intelligence and that was very helpful to us in refining the target,” said Austin, who spoke en route to Washington after a visit to California and Colorado.

Biden had approved the operation on Thursday morning, he said.

A civilian contractor was killed in the Irbil rocket assault, and a U.S. service member and others were wounded. At least two 107mm rockets landed on the base, which also hosts Irbil's civilian international airport.

NBC News had previously reported that Iranian-backed militias were most likely behind the Irbil rocket attack, and that the weapons and tactics resembled previous attacks by the Iranian-linked militias. However, it was unclear if Iran had encouraged or ordered the rocket attack.



An obscure group called Saraya Awliya al-Dam, or Custodians of the Blood, claimed responsibility for the Irbil attack. But former diplomats and regional analysts said the group was merely a front organization created by the main Shiite militias in Iraq.

Following the rocket attack on the Irbil base, Iraq's Balad air base came under rocket fire days later, where a U.S. defense firm services the country's fighter jets, and then two rockets landed near the U.S. Embassy compound in Baghdad.

Iran has rejected any connection to the rocket attacks.

In a phone call Tuesday between Biden and Iraqi Prime Minister Mustafa al-Kadhimi, the two leaders agreed that "that those responsible for such attacks must be held fully to account," according to a White House readout of the conversation.

Dennis Ross, a former senior U.S. diplomat who worked on Middle East policy under several presidents, said the administration had lowered the risk of causing friction with the Iraqi government by hitting targets in Syria.

"By striking facilities used by the militias just across the border in Syria, the risk of blowback against the Iraqi gov is reduced," Ross tweeted.

Dan De Luce, Mosheh Gains and Kristen Welker reported from Washington; Ali Arouzi and Adela Suliman reported from London; Amin Hossein Khodadadi reported from Tehran; and Charlene Gubash reported from Cairo.

The Associated Press contributed.

INVESTIGATOR OF THE MONTH:

Ryan De Lange– Labour Matrix (Pty) Ltd

Dismissal on Pure Suspicion is Unlawful

Please see a recent case law development below;

The Commission for Conciliation, Mediation and Arbitration has found that the dismissal of a security guard who apparently failed a lie detector test breaches the Labour Relations Act and the Constitution.

The test followed a number of incidents of theft at the supermarket where the guard worked along with 20 other security personnel.

The Commissioner found that the test alone could not justify the termination of one's employment.

Commissioner Naidoo ruled that the guard's dismissal was both procedurally and substantively unfair.

He ordered the company to pay him 12 months' pay (R56,400) plus interest.

A security company's decision to dismiss one of its guards after he failed a lie detector test breached the Labour Relations Act and the Constitution, the Commission for Conciliation, Mediation and Arbitration (CCMA) has ruled.

The company, Corporate Investigating and Veracity Assessment Pty Ltd, relied on a provision in the employment contract. But the arbitrator found this to be unlawful and suggested that the guard should instead have been given a hearing with corroborating evidence to prove his guilt or exonerate him.

Security guard Aaron Mlangeni started working for the company in 2012. In 2019 Mlangeni was assigned to work at a supermarket. As part of his employment contract, he was obliged to undergo random voice analysis examinations.



In January 2020, he was informed that he had “failed” his recent test and was found to have been deceptive and untruthful. During the test Mlangeni was asked if he had stolen from the supermarket, had helped someone else steal, if he knew of anyone stealing and if he had accepted a bribe to keep quiet about the theft.

The company told CCMA Commissioner Frank Naidoo that at that time, the supermarket was experiencing stock theft. Mlangeni was one of 20 guards at that site who were subjected to the lie detector test.

His site manager, John Mauku, told the hearing that he believed Mlangeni to be an honest person and believed that the only other guard who failed the test, “Douglas”, was the culprit.

However, Mlangeni was fired because of the employment contract which stated that “to be successful in the test is an inherent requirement” of the conditions of employment. And it was a “pledge” that Mlangeni had signed.

Mlangeni protested his innocence. He refused to sign a “go quietly” mutual separation agreement in which he was offered an ex gratia payment of more than R10,000.

In evidence, a company employee admitted that Mlangeni had not been subject to a misconduct inquiry because voice analysis examinations results would not have been sufficient to make a finding of guilt.

Commenting on the test itself, Commissioner Naidoo said it was materially flawed. Mlangeni had been asked 11 pointed questions, and no deception was indicated in seven of them, including the question “did anyone approach you and ask you to help them steal?”. And yet, it was concluded that he had “failed” and should be fired, which amounted to termination based on suspicion.

“Suspicion, no matter how justified, cannot be a fair reason for the termination of one’s employment,” said Naidoo, noting that even the company had conceded that the test alone would not have stood the test for a misconduct dismissal (after a hearing).

The belief by some of his direct bosses that he was an honest person appeared to have no bearing on the company’s decision to dismiss him.

Naidoo said Mlangeni was entitled to a fair process in terms of the Labour Relations Act. “Much more is required in terms of our standard of proof... the company bore the onus to establish these rather serious allegations clearly and distinctly, on a balance of probabilities and it failed to do so.”

Naidoo said, “particularly appalling” was the company’s “enticement to go off quietly”.

He ruled that Mlangeni’s dismissal was both procedurally and substantively unfair and ordered the company to pay him 12 months’ pay (R56,400) plus interest.



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Level 4 BEE contributor



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BIRTHDAYS

We here at Ferlio wish you have a wonderful birthday and a prosperous year ahead.

- Heinrich Van Wyk – 18 March
- Corrie Jangschloger – 10 April
- Jacques Smith – 14 April



MOTIVATION FOR THE MONTH:

Leadership is an action, not a position.

Donald McGannon

www.idlehearts.com



HUMAN RIGHTS DAY

We here at Ferlio wish you a happy Human Rights Day on 22 March 2021.



Do what is right, not what is easy.

quoteseed.com





CHARITY OF THE MONTH

WETNOSE ANIMAL RESCUE CENTRE

Wet Nose Animal Rescue was started in 1999 with the dream of giving animals a second chance to love and be loved. For over 20 years we have been rescuing, rehabilitating and then rehoming abused, neglected and abandoned animals. We uphold a Right to Life Policy which means that no animal is put to sleep unless it is in the best interest of that animal and the animal is suffering. Wet Nose provides temporary shelter for over 500 animals, where they receive everything they may need. Wet Nose consists of: Dog and Cat Rescue Centre, Equestrian Rescue Centre, Animal Clinic. When visiting the shelter, you can also visit the coffee shop.

How is Wet Nose funded?

Wet Nose does not get any municipal or government funding and relies on the generosity of the animal loving public. For more information about how you can help, see details below:

Tel: (013) 932 3941

Web: www.wetnose.co.za

Email: md@wetnose.co.za

Address: Plot 75, Vaalbank, R104 (Old Pretoria / Bronkhorstpruit Rd)



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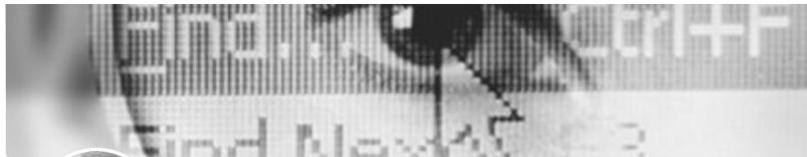
Security Vulnerability Assessment

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