

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

\_\_\_\_\_  
In the Matter of: )  
 )  
Underwater Surveys (Pty) Ltd. )  
Silverwood A1 )  
Steenberg Office Park )  
Constantia, Cape Town 78 )  
South Africa )  
 )  
Respondent )  
\_\_\_\_\_

ORDER

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Underwater Surveys (Pty) Ltd. (“Underwater Surveys”), of Cape Town, South Africa, as successor to Reson SA (Pty) Ltd. (“RESA”),<sup>1</sup> of its intention to initiate an administrative proceeding against Underwater Surveys pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2008)) (the “Regulations”),<sup>2</sup> and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),<sup>3</sup> through the issuance of a proposed charging letter to Underwater

<sup>1</sup> Until March 13, 2007, RESA was a wholly-owned subsidiary of Reson A/S (“RAS”), of Slangerup, Denmark. Effective March 14, 2007, RAS sold all of its interests in RESA to Mr. Ephan Potgieter, formerly General Manager of RESA, and currently Managing Director of Underwater Surveys, and RESA’s name was changed to Underwater Surveys.

<sup>2</sup> The violations charged occurred during 2003-2005. The Regulations governing the violations at issue are found in the 2003-2005 versions of the Code of Federal Regulations. 5 C.F.R. Parts 730-774 (2003-2005). The 2008 Regulations govern the procedural aspects of this case.

<sup>3</sup> Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by

Surveys that alleged that Underwater Surveys committed six violations of the Regulations, specifically:

**Charges 1-6                    15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct by Reexporting Sonar Systems to South Africa Without the Required License**

On six occasions between on or about September 12, 2003 and on or about October 5, 2005, Underwater Surveys engaged in conduct prohibited by the Regulations by reexporting multibeam bathymetry echosounders, items subject to the Regulations and classified under Export Control Classification Number (“ECCN”) 6A001, to Denmark, Mozambique, the United Arab Emirates, and the United Kingdom, without the Department of Commerce license required by Section 742.4 of the Regulations. In doing so, Underwater Surveys committed six violations of Section 764.2(a) of the Regulations.

WHEREAS, BIS and Underwater Surveys have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$29,700 is assessed against Underwater Surveys, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Underwater Surveys will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

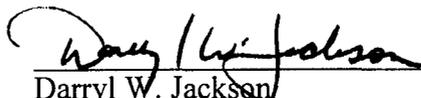
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successive Presidential Notices, the most recent being that of July 23, 2008, 73 Fed. Reg. 43,603 (Jul. 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“IEEPA”).

THIRD, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Underwater Surveys. Accordingly, if Underwater Surveys should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Underwater Surveys' export privileges under the Regulations for a period of one year from the date of entry of this Order.

FOURTH, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

  
\_\_\_\_\_  
Darryl W. Jackson  
Assistant Secretary of Commerce  
for Export Enforcement

Entered this 12<sup>th</sup> day of August, 2008.

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
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Constantia, Cape Town 78 )  
South Africa )  
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Respondent )  
)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Respondent, Underwater Surveys (Pty) Ltd. (“Underwater Surveys”), of Cape Town, South Africa, as successor to Reson SA (Pty) Ltd. (“RESA”),<sup>1</sup> and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively referred to as “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2008)) (“Regulations”),<sup>2</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”).<sup>3</sup>

<sup>1</sup> Until March 13, 2007, RESA was a wholly-owned subsidiary of Reson A/S (“RAS”), of Slangerup, Denmark. Effective March 14, 2007, RAS sold all of its interests in RESA to Mr. Ephan Potgieter, formerly General Manager of RESA, and currently Managing Director of Underwater Surveys, and RESA’s name was changed to Underwater Surveys.

<sup>2</sup> The violations charged occurred during 2003-2005. The Regulations governing the violations at issue are found in the 2003-2005 versions of the Code of Federal Regulations. 15 C.F.R. Parts 730-774 (2003-2005). The 2008 Regulations govern the procedural aspects of this case.

<sup>3</sup> Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 Fed. Reg. 46,137, Aug. 16, 2007), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“IEEPA”).



WHEREAS, Underwater Surveys' parent company at the time, Reson A/S, of Slangerup, Denmark,<sup>4</sup> filed a voluntary self-disclosure on September 6, 2006, and a supplemental voluntary self-disclosure dated October 9, 2006, with BIS's Office of Export Enforcement in accordance with Section 764.5 of the Regulations concerning the transactions at issue herein

WHEREAS, BIS has notified Underwater Surveys of its intention to initiate an administrative proceeding against Underwater Surveys, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a proposed charging letter to Underwater Surveys that alleged that Underwater Surveys committed six violations of the Regulations, specifically:

**Charges 1-6                    15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct by Reexporting Sonar Systems to Various Destinations Without the Required License**

On six occasions between on or about September 12, 2003 and on or about October 5, 2005, Underwater Surveys engaged in conduct prohibited by the Regulations by reexporting multibeam bathymetry echosounders, items subject to the Regulations and classified under Export Control Classification Number ("ECCN") 6A001, to Denmark, Mozambique, the United Arab Emirates, and the United Kingdom, without the Department of Commerce license required by Section 742.4 of the Regulations. In doing so, Underwater Surveys committed six violations of Section 764.2(a) of the Regulations.

WHEREAS, Underwater Surveys has reviewed the proposed charging letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true;

WHEREAS, Underwater Surveys fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter;

WHEREAS, Underwater Surveys enters into this Agreement voluntarily and with full knowledge of its rights;

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<sup>4</sup> See note 1, supra.

WHEREAS, Underwater Surveys states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, Underwater Surveys neither admits nor denies the allegations contained in the proposed charging letter;

WHEREAS, Underwater Surveys wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Agreement; and

WHEREAS, Underwater Surveys agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Underwater Surveys, under the Regulations, in connection with the matters alleged in the proposed charging letter.
2. The following sanction shall be imposed against Underwater Surveys in complete settlement of the alleged violations of the Regulations relating to the transactions specifically detailed in the September 6, 2006 voluntary self-disclosure, October 9, 2006 supplemental voluntary self-disclosure, and proposed charging letter:
  - a. Underwater Surveys shall be assessed a civil penalty in the amount of \$29,700, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order.
  - b. The timely payment of the civil penalty agreed to in paragraph 2.a is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Underwater Surveys. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Underwater Surveys' 

export privileges for a period of one year from the date of imposition of the penalty.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Underwater Surveys hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

4. Upon entry of the Order, BIS will not initiate any further administrative proceeding against Underwater Surveys in connection with any violation of the Act or the Regulations arising out of the transactions specifically detailed in the September 6, 2006 voluntary self-disclosure, October 9, 2006 supplemental voluntary self-disclosure, and proposed charging letter.

5. BIS will make the proposed charging letter, this Agreement, and the Order, if entered, available to the public.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order.

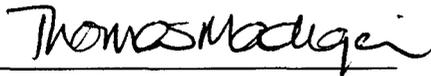


if entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND SECURITY  
U.S. DEPARTMENT OF COMMERCE



Thomas Madigan  
Director  
Office of Export Enforcement

UNDERWATER SURVEYS (PTY)  
LTD.



Ephan Potgieter  
Managing Director

Date: 8/8/8

Date: 29 JULY 2008

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Underwater Surveys (Pty) Ltd.  
Silverwood A1  
Steenberg Office Park  
Constantia, Cape Town 78  
South Africa

*Attention:* Ephan Potgieter

Dear Mr. Potgieter:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Underwater Surveys (Pty) Ltd. (“Underwater Surveys”), of Cape Town, South Africa, has committed six violations of the Export Administration Regulations (the “Regulations”),<sup>1</sup> which are issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).<sup>2</sup> Specifically, BIS charges that Underwater Surveys committed the following violations:

**Charges 1-6                    15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct by Reexporting Sonar Systems to Various Destinations Without the Required License**

As described in greater detail in Schedule A, which is enclosed herewith and incorporated herein by reference, on two occasions between on or about December 15, 2003 and on or about October 5, 2005, Underwater Surveys engaged in conduct prohibited by the Regulations by reexporting multibeam bathymetry echosounders, items subject to the Regulations and classified under Export Control Classification Number (“ECCN”) 6A001, to Denmark,

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<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2008). The violations charged occurred during 2003-2005. The Regulations governing the violations at issue are found in the 2003-2005 versions of the Code of Federal Regulations. 15 C.F.R. Parts 730-774 (2003-2005). The 2008 Regulations govern the procedural aspects of this case.

<sup>2</sup> 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended most recently by the Notice of August 15, 2007 (72 Fed. Reg. 46,137 (Aug. 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).

Mozambique, the United Arab Emirates, and the United Kingdom, without the Department of Commerce license required by Section 742.4 of the Regulations. In doing so, Underwater Surveys committed six violations of Section 764.2(a) of the Regulations.

\* \* \* \* \*

Accordingly, Underwater Surveys is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$250,000 per violation or twice the value of the transaction that is the basis of the violation;<sup>3</sup>
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

If Underwater Surveys fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7. If Underwater Surveys defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Underwater Surveys. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

Underwater Surveys is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. Underwater Surveys is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should Underwater Surveys have a proposal to settle this case, Underwater Surveys should transmit it to the attorney representing BIS named below.

Underwater Surveys is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Underwater Surveys may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

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<sup>3</sup> 50 U.S.C. § 1705(b) (2007).

Underwater Surveys (Pty) Ltd.  
Proposed Charging Letter  
Page 3

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Underwater Surveys' answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center  
40 S. Gay Street  
Baltimore, Maryland 21202-4022

In addition, a copy of Underwater Surveys' answer must be served on BIS at the following address:

Chief Counsel for Industry and Security  
Attention: Thea D. R. Kendler, Esq.  
Room H-3839  
United States Department of Commerce  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Thea D. R. Kendler is the attorney representing BIS in this case; any communications that Underwater Surveys may wish to have concerning this matter should occur through her. Ms. Kendler may be contacted by telephone at (202) 482-5301.

Sincerely,

Thomas Madigan  
Acting Director  
Office of Export Enforcement

Underwater Surveys (Pty) Ltd.  
Proposed Charging Letter

**Schedule A**

<b>Charge No.</b>	<b>Date</b>	<b>Destination</b>	<b>Item</b>	<b>ECCN</b>	<b>Value (USD)</b>	<b>Violation</b>
1	9/12/2003	Mozambique	SeaBat 8125 1500-meter multibeam bathymetry echosounder	6A001	\$132,000	15 C.F.R. § 764.2(a)
2	12/15/2003	Denmark	SeaBat 8125 1500-meter multibeam bathymetry echosounder	6A001	\$176,314	15 C.F.R. § 764.2(a)
3	7/5/2005	U.A.E.	SeaBat 8101 1500-meter multibeam bathymetry echosounder	6A001	\$92,006	15 C.F.R. § 764.2(a)
4	7/8/2004	Mozambique	SeaBat 8125 1500-meter multibeam bathymetry echosounder	6A001	\$132,000	15 C.F.R. § 764.2(a)
5	9/15/2005	U.A.E.	SeaBat 8125 1500-meter multibeam bathymetry echosounder	6A001	\$176,314	15 C.F.R. § 764.2(a)
6	10/5/2005	United Kingdom	SeaBat 8101 1500-meter multibeam bathymetry echosounder	6A001	approx. \$92,000	15 C.F.R. § 764.2(a)