

CHEMISTRY LESSON: OFAC REACTS TO POST-ACQUISITION CUBA BUSINESS IN LATEST SETTLEMENT

On February 14, 2019, OFAC announced a settlement with Germany-based AppliChem GmbH ("AppliChem") for 304 violations of the Cuban Assets Control Regulations (31 C.F.R. part 515). This is OFAC's third settlement of 2019, and largest financial penalty imposed this year (\$5,512,564). Once again, OFAC reminds companies of the cost of inadequate post-acquisition due diligence and internal controls.

AppliChem's violations related to sales of chemical reagents to Cuba between 2012-2016 following Illinois Tool Works, Inc. ("ITW"), an Illinois-based company, acquiring AppliChem.¹ ITW acquired AppliChem in January 2012 and incorporated AppliChem within its larger business, which would require adherence to its OFAC compliance guidelines, including cessation of all Cuban transactions after the acquisition.

OFAC notes that ITW had previously voluntarily disclosed to OFAC AppliChem's Cuban business in January 2013. Based on representations that the Cuban business had ceased, OFAC resolved the matter with just a cautionary letter. However, in 2016, an ethics helpline complaint alerted ITW that AppliChem's Cuban business had not terminated but in fact had continued through intentionally deceptive measures, e.g., referencing "Caribbean" instead of "Cuban" and implementing written procedures and training to continue and conceal the business through intermediaries especially engaged to do so.

Like OFAC's recent settlement with Kollmorgen,² this case provides another reminder of the importance of conducting adequate post-acquisition due diligence and remaining vigilant in auditing and verifying post-integration compliance measures, especially with acquisitions that are known to engage in higher risk business. These two cases highlight that due diligence should not be viewed as a "one and done" activity but a continuing obligation.

¹ https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190214_applichem.pdf.

² https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190207_kollmorgen.pdf

OFAC also stressed that companies must have strong internal mechanisms to respond to reports of compliance-related concerns. We expect to see this theme more fully articulated in the agency's forthcoming compliance guidance. Although OFAC noted that the company responded proactively to the ethics helpline report, a manager had received at least two earlier reports of the ongoing Cuban activity but a full investigation was not undertaken at that time to ensure its cessation. It is critical for effective OFAC compliance programs that managers at every level appreciate the seriousness of reports of potential OFAC violations and have internal mechanisms to escalate investigate, and effectively address such concerns.

CONTACTS

David DiBari
Partner

T +1 202 912 5098
E david.dibari
@cliffordchance.com

George Kleinfeld
Partner

T +1 202 912 5126
E george.kleinfeld
@cliffordchance.com

Wendy Wysong
Foreign Legal
Consultant (Hong Kong)
Partner (Washington,
DC)

T +852 2826 3460
+1 202 912 5030
E wendy.wysong
@cliffordchance.com

Michelle Williams
Counsel

T +1 202 912 5011
E michelle.williams
@cliffordchance.com

Jacqueline Landells
Counsel

T +1 202 912 5061
E jacqueline.landells
@cliffordchance.com

Ali Burney
Counsel

T +65 6506 1964
E ali.burney
@cliffordchance.com

Nicholas Turner
Registered Foreign
Lawyer

T +852 2825 8854
E nicholas.turner
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 2001 K Street NW,
Washington, DC 20006-1001, USA

© Clifford Chance 2019

Clifford Chance US LLP

Abu Dhabi • Amsterdam • Barcelona • Beijing •
Brussels • Bucharest • Casablanca • Dubai •
Düsseldorf • Frankfurt • Hong Kong • Istanbul •
London • Luxembourg • Madrid • Milan •
Moscow • Munich • Newcastle • New York •
Paris • Perth • Prague • Rome • São Paulo •
Seoul • Shanghai • Singapore • Sydney •
Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement
with Abuhimed Alsheikh Alhagbani Law Firm
in Riyadh.

Clifford Chance has a best friends relationship
with Redcliffe Partners in Ukraine.