CLIFFORD

CHANCE

LATEST OFAC SETTLEMENT CEMENTS FOCUS ON RISK-BASED COMPLIANCE PROGRAMS

On February 21, 2019, OFAC announced a $506,250 settlement with ZAG IP, LLC ("ZAG") relating to five apparent violations of the Iranian Transactions and Sanctions Regulations (31 C.F.R. part 560).[1]

In 2014 and 2015, ZAG, a U.S.-based cement supplier and construction consulting firm, purchased a total of 263,563 metric tons of Iranian-origin clinker, a coal residue used as a binder in cement, from a company located in the UAE, for onward sale to a customer in Africa. A ZAG managing director knew the clinker was sourced from Iran and had been shipped from an Iranian port, but relied on an evidently false "misrepresentation" from the UAE supplier that the clinker was not subject to U.S. sanctions on Iran. ZAG voluntarily disclosed the violations to OFAC.

The statutory maximum civil penalty in this case was $28.9 million, and OFAC found the following aggravating factors: ZAG's reckless disregard for sanctions requirements, senior management awareness of the transactions, a significant economic benefit conferred to Iran, ZAG's status as a commercially sophisticated company with global operations, and ZAG's lack of an effective OFAC compliance program. Nevertheless, OFAC reduced the base penalty a whopping 98% after determining that ZAG voluntarily disclosed the five transactions and that the conduct was non-egregious. OFAC also recognized several mitigating factors, including that ZAG had not had a prior OFAC violation in the last five years, that ZAG was a "small business entity," and that it cooperated with OFAC's investigation and undertook significant remedial measures.

The public facts in the case are sparse, but it would appear that ZAG's ability to pay the penalty may have factored into the total reduction of the base penalty, which may encourage other small business entities to make similar voluntary disclosures that provide OFAC with useful information on "middleman" trading companies. This information can further OFAC's broader mission of restricting Iranian trade with subsidiaries of U.S. companies and the diversion of Iranian trade through third countries such as the UAE.

[1] https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190221_zag.pdf.

Like other recent cases, OFAC also used this case to remind companies of the importance of basic compliance steps, including recognizing potential OFAC risks, *i.e.*, high-risk industries and high-risk activities that involve transporting goods through well-known transshipment hubs. Companies are well-advised to heed this guidance.

CLIFFORD CHANCE

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