CLIFFORD CHANCE

NOT USING THE RIGHT TOOLS IN POST-ACQUISITION DUE DILIGENCE

On March 27, 2019, OFAC announced its fifth settlement of 2019 and continued its theme of providing guidance to companies on the need for more than minimal acquisition and post-acquisition due diligence and compliance monitoring.

OFAC settled with Stanley Black and Decker, Inc. ("Stanley") and its China-based subsidiary, Jiangsu Guoqiang Tools Co. Ltd. ("GQ") for $1,869,144 in connection with 23 apparent violations of the Iranian Transactions and Sanctions Regulations (31 C.F.R. part 560) involving exports or attempted exports of powers tools and spare parts between 2013 and 2014 to Iran or to a third country with transshipment to Iran.[1]

OFAC determined that Stanley voluntarily self-disclosed the violations on behalf of GQ to OFAC, but that the case constituted an egregious case, resulting in a base civil monetary penalty of approximately $3.4 million. The additional reduction in the civil penalty is attributed by OFAC to several mitigating factors including no prior violations, immediate and substantive remedial efforts by Stanley including an investigation, and cooperation with OFAC.

Stanley had acquired a 60% interest in GQ and created a joint venture in 2013. OFAC notes that during the negotiations, Stanley made ceasing GQ's sales to Iran a prerequisite to closing, which GQ agreed to. And while Stanley provided training to employees on trade compliance post-closing, OFAC notes that Stanley failed to implement procedures to monitor or audit GQ's operations. As such, GC's sales and transactions with Iran continued post-closing, including with the participation of GQ's senior management and board members, and included business practices designed to conceal the Iran connection including fictious bills of lading and use of trading companies in the UAE and China.

OFAC uses this settlement to again highlight the importance of auditing, testing, monitoring, and verifying the business and compliance activities of newly acquired counterparties, especially foreign entities, and with a civil monetary penalty of almost $2 million, the cost of failing to do so proactively and effectively.

1 https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190327_decker.pdf.

CONTACTS

David DiBari
Partner

T +1 202 912 5098
E david.dibari@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

Ali Burney
Counsel

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

Jacqueline Landells
Counsel

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

Nicholas Turner
Registered Foreign Lawyer

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