

DEEP DIVE: OFAC CITES PE SUB IN OFFSHORE SERVICES SETTLEMENT

On April 11, 2019, OFAC announced two settlements with Acteon Group Ltd. ("Acteon"), a UK-based subsea services company, majority-owned by a US-based private equity company, relating to conduct by its subsidiaries.

The first settlement relates to the conduct of two Malaysian affiliates of Acteon's UK subsidiary, 2H Offshore Engineering Ltd. ("2H Offshore"), which were involved in the production of analytical reports and employee travel to Cuba in 2011 and 2012 in connection with oil exploration projects in Cuban territorial waters in violation of the Cuban Assets Control Regulations, 31 C.F.R. part 515 (CACR). Since Acteon was majority-owned by a US-based company, it was subject to the CACR. Further, OFAC found that 2H Offshore's services related to projects managed by Venezuelan interests, including Petróleos de Venezuela, S.A. Cuba S.A.¹

In penalizing Acteon and 2H Offshore \$227,500 for the seven apparent violations, OFAC determined that Acteon made a voluntary self-disclosure of the apparent violations but that the apparent violations constituted an egregious case. In reaching the final settlement and civil penalty amount, OFAC found that 2H Offshore senior personnel willfully violated US sanctions and deliberately concealed dealings with Cuba. OFAC further found that the company had an ineffective compliance program at the time of the apparent violations. OFAC considered as mitigating factors, that Acteon took disciplinary actions, adopted new policies, procedures, and training, and appointed a Head of Trade Compliance and a Group General Counsel to provide oversight of the compliance monitoring function.

The second settlement relates to the conduct of three Acteon subsidiaries, Seatronics Ltd. (UK), Seatronics, Inc. (US), and Seatronics Pte. Ltd. (Singapore),

¹ On January 28, 2019, OFAC designated Petróleos de Venezuela, S.A. (PdVSA), pursuant to E.O. 13850 of November 1, 2018, "Blocking Property of Additional Persons Contributing to the Situation in Venezuela," as amended, for operating in the oil sector of the Venezuelan economy. OFAC administers and enforces an economic sanctions program targeting individuals and entities contributing to the situation in Venezuela, as set forth in Executive orders (E.O.), issued under the authority of the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, other statutes, and the Venezuela Sanctions Regulations, 31 C.F.R. part 591.

(collectively "Seatronics") and involves violation of both the Cuban and Iranian sanctions.²

In October 2007, Acteon issued sanctions compliance guidance to all of its Seatronics locations that instructed them not to engage in transactions with Cuba. OFAC notes that despite receiving this guidance, Seatronics appears to have violated § 515.201 of the CACR when, between 2010 and 2012, it rented, sold, or received a commission for referring shipments of equipment for projects in Cuban territorial waters on ten occasions, and sent company engineers to service this equipment in Cuban territorial waters on three occasions.

In December 2013, Acteon issued updated sanctions compliance guidance to all Seatronics locations that instructed them not to engage in transactions with Iran. OFAC found that despite receiving this updated guidance, Seatronics appears to have violated § 560.215 of the ITSR on three occasions when Seatronics UAE branch in 2014 rented or sold equipment to customers who appear to have shipped the equipment on vessels that operated in Iranian territorial waters.³ As a foreign subsidiary of a US parent company, Seatronics was subject to the ITSR.

In penalizing Acteon \$213,866 for the 13 apparent violations, OFAC determined that Acteon voluntarily disclosed the apparent violations and that the violations were non-egregious. OFAC noted that the aggravating factors included a reckless disregard for US sanctions, senior management's actual awareness of the Cuban business activity and that it should have known about the Iranian business activity, and Acteon's lack of an effective compliance program. OFAC noted the same mitigating factors as referenced in the first Acteon settlement.

OFAC highlighted that these enforcement actions continue to demonstrate that it is critically important for US-based private equity companies to implement risk-based controls to ensure that foreign subsidiaries are complying with their obligations under OFAC's sanctions regulations. This is especially necessary for the CACR and ITSR, which apply to foreign subsidiaries of US persons. Recommended controls include regular audits, and where warranted, due diligence, taking into account risks associated with certain geographies, customers, or markets.

² The settlement also included KKR & Co. Inc. ("KKR"), who acquired a majority stake in Acteon in November 2012. OFAC noted that the apparent violations involving Cuba pre-dated the acquisition, when Acteon was owned by a different US-based private equity company, and that KKR was not directly involved in the apparent violations involving Iran.

³ One of these transactions appears to have violated § 560.204 of the ITSR because the equipment was exported from the United States.

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