

STORMY WATERS: OFAC SETTLEMENT FLAGS SHIPPING FIRM'S "CULTURE OF COMPLIANCE"

On May 2, 2019, OFAC announced a settlement with MID-SHIP Group LLC ("MID-SHIP"), a New York-headquartered shipping and logistics company, relating to five apparent violations of the Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 C.F.R. part 544 (WMDPSR).¹ OFAC found that MID-SHIP, in 2011, made five electronic funds transfers totaling \$472,861, relating to Islamic Republic of Iran Shipping Lines ("IRISL") vessels identified on OFAC's SDN List. The funds transfers related to charter party agreements negotiated by MID-SHIP's non-US subsidiaries located in China and Turkey. At the time the agreements were negotiated, the involvement of the IRISL-related vessels was not known. However, OFAC determined that MID-SHIP had documents that would have allowed it to identify the blocked vessels prior to making the payments.

In assessing its \$871,837 penalty, OFAC determined that MID-SHIP did not voluntarily self-disclose the apparent violations to OFAC, as they were identified in response to an OFAC administrative subpoena issued to MID-SHIP. Moreover, OFAC deemed the apparent violations to be egregious.

OFAC specifically called MID-SHIP's "culture of compliance," deficient, pointing to several examples, including that MID-SHIP's senior management were aware that banks had rejected or held payments due to the inclusion of the vessels' names in payment instructions. Senior managers also discussed the possibility of making payments in non-US currencies to avoid the payment restrictions. "Culture of compliance" is one of the elements highlighted by OFAC in its "Framework for OFAC Compliance Commitments" guidance, also released on May 2, 2019.

¹ https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190502_midship.pdf;
https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190502_midship_settlement.pdf.

Other aggravating factors identified by OFAC included MID-SHIP's reckless disregard of its sanctions compliance obligations and MID-SHIP's position as a global, commercially sophisticated shipping and logistics company operating in a high-risk industry. With respect to mitigating factors, OFAC noted that MID-SHIP had not received a prior Penalty Notice or Finding of Violation, had undertaken remedial actions, and had cooperated with OFAC in its investigation of the violations.

OFAC noted MID-SHIP's remedial actions in now screening every vessel and party to a wire transfer against OFAC's SDN List and including OFAC compliance clauses in each of its charter party agreements. OFAC stated that this settlement illustrates the benefits of implementing risk-based compliance measures by companies operating in high-risk industries such as shipping and logistics.

Finally, OFAC continued its trend of requiring significant on-going compliance undertakings as part of a settlement, along with an annual compliance certification requirement for five years. The annual certification requirement effectively adds personal liability risk for the individuals involved in ensuring its accuracy.

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