C L I F F O R D

C H A N C E

CAVEAT EMPTOR – OFAC FINES CREDITOR FOR BUYING SDN'S TROUBLED DEBT

On August 16, 2019, OFAC announced a settlement with Atradius Trade Credit Insurance, Inc. ("**ATCI**"), a US subsidiary of Netherlands-based Altradius N.V.[1] ATCI paid $345,316 to settle potential civil liability for two apparent violations of the Foreign Narcotics Kingpin Sanctions Regulations ("**FNKSR**") (31 C.F.R. Part 598) for receiving payments from the liquidation of a Panama-based shopping mall on the List of Specially Designated Nationals and Blocked Persons ("**SDN List**"). OFAC determined that ATCI did not voluntarily disclose the apparent violations, but that they were non-egregious.

OFAC found that ATCI dealt in property or interests in property of an SDN when it filed a claim and received payments in the liquidation of Grupo Wisa S.A., which was added to the SDN List in in May 2016. ATCI was assigned the right to collect on debts owed by Grupo Wisa to an unnamed US-based cosmetics company in October 2016, after Grupo Wisa's designation as an SDN. Under the liquidation in Panama, ATCI received payments of approximately $4 million collected from Grupo Wisa's assets. Under the FNKSR, property and property interests of SDNs are blocked when in the United States or in the control of a US person, like ATCI, and cannot be dealt in without an OFAC license.

Evaluating the aggravating factors pursuant to the General Factors under OFAC's Economic Sanctions Enforcement Guidelines (31 C.F.R. Part 501, app. A), OFAC noted that ATCI did not undertake any meaningful analysis or otherwise seek confirmation from OFAC that assignment of the SDN's debt and acceptance of payment was permissible under existing authorizations. Moreover, OFAC recognized that ATCI is a subsidiary of a sophisticated global trade credit insurance and collections conglomerate. OFAC considered as mitigating factors that: ATCI had not received a penalty notice or Finding of Violation from OFAC in the five years preceding the earliest date of the transactions; that ATCI voluntarily conducted a full internal review of the underlying facts and circumstances; that ATCI provided documents from its internal review to OFAC in the course of the investigation; and that ACTI took voluntary remedial action to address the cause

1 https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20190816.aspx

of the Apparent Violations. OFAC also noted that ATCI agreed to undertake "certain commitments" to ensure that its OFAC sanctions compliance program remains strong over the next several years, although did not provide details as to what those commitments entail.

As the key take away from the case , OFAC states that this "enforcement action draws particular attention to transactions related to the assignment of an SDN's debt and highlights the importance of obtaining a specific license before engaging in activity that is not otherwise authorized." In other words, any transaction involving an SDN should be treated as high risk, and appropriate care taken to ensure its legality. As demonstrated by recent enforcement cases, OFAC is aggressively pursuing cases outside of the traditional financial services sector. Pockets of risk can exist in any industry — even the retail sector — emphasizing the importance of staying current on changes in OFAC sanctions and implementing a risk-based compliance program tailored to jurisdictions where SDNs are known to operate — in this case, Panama.

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