

EVERYTHING BUT THE KITCHEN SINK: OFAC'S LATEST SETTLEMENT PROVIDES AN IMPORTANT REMINDER ON STRENGTHENING COMPLIANCE PROGRAMS

On July 28, 2020, OFAC announced a settlement with Whitford Worldwide Company, LLC ("**Whitford**"), a cookware coating manufacturer based in the United States, relating to sales by its non-U.S. subsidiaries to Iran that occurred between 2012 and 2015, allegedly caused by the company's failure to identify and adequately manage its OFAC risk.

While the conduct is more than five years old, the settlement provides important reminders for those focused on OFAC compliance and managing related compliance risks.

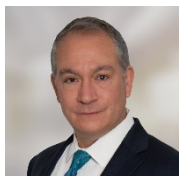
- Importance of Monitoring Conduct and Compliance at Subsidiaries: Here the conduct involved two Whitford subsidiaries, one based in Italy and the other in Turkey, far away from the company's headquarters in Pennsylvania, USA. OFAC highlighted that these non-US subsidiaries had a long history of sales to Iran and that Whitford failed to consider the increased risks that these subsidiaries presented given their historical business in Iran. OFAC also indicated that Whitford was not proactive in understanding those risks and was not dedicating sufficient compliance attention and resources to mitigating the potential risks at its subsidiaries outside the United States.
- Knowing the Risks for U.S. Person Involvement: Generally, U.S. persons must comply with OFAC's "primary" sanctions (such as the Iranian Transactions and Sanctions Regulations implicated in the Whitford settlement) and non-US companies must comply whenever engaged in a transaction involving the U.S. financial system or U.S. persons, including U.S. persons employed at a non-U.S. company. Companies like Whitford must familiarize themselves with relevant OFAC regulations and incorporate risk-based approaches in their compliance mechanism to manage potential OFAC exposure arising from U.S. elements, including U.S. person employees.

- Adapting Your Compliance Program as the Regulations Change:
Perhaps the most critical and timely reminder is to review and adapt your existing compliance program. Here, Whitford failed to understand changes to the Iran-related OFAC regulations and to react quickly and correctly. OFAC frequently changes regulations and issues guidance – companies must be able to both timely monitor those developments and assess how and where those changes could create risks for their business. When needed, companies should update compliance policies and procedures in real time to prevent potential violations. A further important component which often gets overlooked is making sure there is a mechanism in place to track whether any such updates are effective in practice and are understood throughout the company.

Whitford agreed to pay approximately \$800,000 in connection with the settlement. Apparently for effect, OFAC noted that the possible statutory maximum civil monetary penalty was almost \$20 million. OFAC found, however, that Whitford had voluntarily self-disclosed the conduct and that the apparent violations were non-egregious, resulting in an actual base civil monetary penalty of approximately \$1.5 million. Through its consideration of the General Factors under the Enforcement Guidelines (including cooperation and significant remedial measures), OFAC further reduced the settlement amount to \$824,314.

OFAC continues through its public settlements to reinforce the proactive, sustainable and risk-based approach that all companies should apply in addressing potential OFAC exposure. The Whitford settlement is an important reminder that this work is never done.

CONTACTS



David DiBari
Managing Partner

T +1 202 912 5098
E david.dibari
@cliffordchance.com



Michelle Williams
Partner

T +1 202 912 5011
E michelle.williams
@cliffordchance.com



Jacqueline Landells
Counsel

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



Carol Lee
Associate

T +1 202 912 5194
E carol.p.lee
@cliffordchance.com



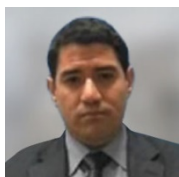
Laurence Hull
Associate

T +1 202 912 5560
E laurence.hull
@cliffordchance.com



Holly Bauer
Associate

T +1 202 912 5132
E holly.bauer
@cliffordchance.com



Michael Press
Law Clerk

T +1 202 912 5214
E michael.press
@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, 31 West 52nd Street, New York, NY 10019-6131, USA

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