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4 KEY TAKEAWAYS

OFAC Enforcement Actions From June to September 2020

From June through mid-September of 2020, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") published six settlements of apparent sanctions violations (Check out our previous Four Key Takeaways from OFAC Enforcement Actions to Date in 2020 covering enforcement actions up to May of 2020). Although enforcement actions are down in numbers compared to last year, those that have been published, however, are noteworthy nonetheless.

The following are four key takeaways from the enforcement activity:

1

Cannot contract away obligations for OFAC compliance. A September enforcement action involving U.S. company Comtech Telecommunications Corp. ("Comtech") and its U.S. subsidiary Comtech EF Data Corp. ("EF Data") pertained to apparent violations of the Sudanese Sanctions Regulations as a result of indirect exports of warrantied satellite equipment, including related services and training, to the Sudan Civil Aviation Authority ("SCAA"). EF Data and its Canadian-based wholly owned subsidiary Memotec, Inc. ("Memotec") sold the satellite equipment to an unnamed Canadian company. The unnamed Canadian company incorporated the items into an Aeronautical V-SAT Network, which it sold and shipped to SCAA. Memotec and EF Data knew that the end user was SCAA, and Memotec had also trained SCAA employees on how to use the satellite technology. Prior to shipping the equipment to Canada, EF Data received a warning from its third-party screening software alerting EF Data of OFAC's export restrictions with regard to Sudan. After learning of the end user, EF Data attempted to contract away its OFAC compliance obligations by requiring the unnamed Canadian company to complete an acknowledgement letter indicating that it was responsible for compliance with any applicable regulations, including obtaining any necessary licenses or authorizations. OFAC indicated that companies cannot shift their obligations under OFAC regulations to their foreign customers or counterparties. OFAC also noted this enforcement action highlights the importance of developing internal checks and balances so individual employees are not able to override internal controls aimed at identifying, prohibiting or escalating prohibited transactions.

2

Any U.S. financial system connection can trigger an enforcement action. In July, the U.S. Department of Justice ("DOJ") and OFAC announced parallel resolutions with Essentra FZE Co. Ltd. ("Essentra"), incorporated in the United Arab Emirates. Essentra is a global supplier of cigarette products. OFAC found that two Essentra employees sold cigarette filters that they knew were destined for North Korea and used false documentation reflecting front companies as the nominal purchasers and the ultimate destination as China. Payments to Essentra also involved front companies and a non-U.S. branch of a U.S. financial institution. OFAC indicated that Essentra "caused" sanctions violations by receiving payments that flowed through the U.S. financial system from sanctioned-country transactions. This appears to be the first DOJ criminal resolution with a non-U.S. company, that is not a financial institution, for selling products and services to a sanctioned jurisdiction where the only U.S. nexus was use of the U.S. financial system (through a non-U.S. branch).

3

OFAC regulations frequently undergo change; Real-time adaptation of your company's compliance program is critical, particularly when operating in higher risk jurisdictions. A July enforcement action involved a U.S. cookware manufacturer including two of its foreign subsidiaries that were selling coatings to Iran even after OFAC had expanded its Iran Sanctions program to essentially prohibit the transactions. The U.S. company's regulatory affairs manager (who did not specialize in sanctions compliance) had incorrectly advised that the foreign subsidiaries could legally continue to sell to Iran so long as there were no direct connections between the subsidiaries and Iran. The U.S. company had historically sold the coatings to Iran. OFAC noted that the U.S. company failed to understand the full scope of the changes to the Iran-related regulations and to react quickly and correctly--critically important when operating in higher risk jurisdictions such as Iran. The resolution of this apparent sanctions violation resulted in, among other things, a commitment by the U.S. company to the appointment of two independent monitors: one external monitor responsible for auditing compliance with U.S. sanctions and export controls, and one internal compliance monitor with responsibility for executing implementation of the recommendations made by the external compliance monitor, including corrective actions.

4

Don't rely on representations by an interested party. A September enforcement action involving a major European bank ("Bank") pertained, in part, to the processing by the Bank of a $28.8 million funds transfer through the U.S. related to fuel oil purchases. IPP Oil Products (Cyprus) Limited ("IPP"), an entity designed on OFAC's Specially Designated Nationals and Blocked Persons List ("SDN List") was one of the parties "involved" in the fuel oil purchases. One of the attorneys involved in the transaction told the Bank that IPP no longer had an interest in the transaction--which happened to coincide with when OFAC designated IPP on the SDN List. OFAC found that IPP indeed had an interest in the transaction and that the Bank failed to exercise a minimal degree of caution or care to conduct additional due diligence in order to corroborate the attorney's representation.

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