

OFAC'S COMPLIANCE FOCUS STANDS OUT IN LATEST ENFORCEMENT ACTION

On February 7, 2019, OFAC announced its second settlement of 2019.¹ The settlement with Kollmorgen Corporation ("**Kollmorgen**") related to six apparent violations of the Iranian Transactions and Sanctions Regulations ("**ITSR**"),² committed by its Turkish affiliate, Elsim Elektrotechnik Sistemler Sanayi ve Ticaret Anonim Sirketi ("**Elsim**").³ Kollmorgen acquired Elsim in 2013, knowing that it historically did business with Iran, and took extensive steps to ensure that such business was terminated after its acquisition. Nevertheless, through allegedly deceptive means, Elsim continued to service machines and provide parts in Iran until 2015.

In its settlement, OFAC recognized Kollmorgen's voluntary disclosure of Elsim's activities and its extensive efforts to get Elsim to comply with the ITSR, but nonetheless imposed a penalty of \$13,381 (the value of the parts and services was \$14,867). OFAC found that Elsim's conduct was particularly egregious because of Elsim's efforts to obstruct Kollmorgen's internal investigation into the transactions. OFAC also took, in its words, the "unprecedented action" of also designating Elsim's manager primarily responsible for the apparent violations as a Foreign Sanctions Evader pursuant to Executive Order 13608.⁴

According to OFAC, the case highlights: "the importance of: (1) performing heightened due diligence, particularly with regard to affiliates, subsidiaries, or counter-parties known to transact with OFAC-sanctioned countries or persons, or that otherwise pose high-risks due to their geographic location, customers and/or suppliers, or products and services they offer; and (2) implementing proactive controls when U.S. persons, directly or indirectly, acquire companies with preexisting relationships with sanctioned persons and jurisdictions."⁵

¹ https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190207_kollmorgen.pdf.

² 31 C.F.R. part 560.

³ Although OFAC did not find any violation by Kollmorgen, in settlement, Kollmorgen agreed to make payment on behalf of its subsidiary, Elsim.

⁴ <https://home.treasury.gov/news/press-releases/sm606>. As OFAC notes in its press release the Foreign Sanctions Evaders list ("**FSE List**") is separate from OFAC's List of Specially Designated Nationals and Blocked Persons ("**SDN List**"), but the listing means that all transactions or dealings involving the individual, including payments through U.S. financial institutions, are prohibited.

⁵ https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190207_kollmorgen.pdf.

The Kollmorgen settlement also offers the following additional key lessons:

First, OFAC has emphasized the risks in a post-acquisition context. In outlining the pre- and post-acquisition compliance steps that Kollmorgen undertook in connection with Elsim, OFAC provided a roadmap of the average steps a company should take to control identified sanctions risks. (Notably, even the nine extensive steps outlined did not protect Kollmorgen entirely, although it did help mitigate the settlement amount.) Those steps included a review of customer databases, in-person training, and senior management certifications.

Second, a company's post-acquisition integration steps should include enhanced pro-active monitoring of those parts of an affiliate's business that are known to present higher OFAC risk controls due to their geographic location, customers, suppliers, or products/services. These risks can extend to the inherited employees and the risk of whether they will in fact change their practices under an acquirer's compliance regime.

The Kollmorgen settlement is the latest example of OFAC providing detailed guidance on its expectations for corporate compliance, especially in the context of international acquisitions, and also its increasing willingness to hold individuals, in addition to companies, accountable.

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