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Insights

OFAC TO COMPANIES: DON'T FORGET YOUR U.S. PERSONS

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On September 27, 2021, the Office of Foreign Assets Control ("OFAC") of the U.S. Department of Treasury announced a $1,423,766 settlement with Houston-based supplier, Cameron International Corporation ("Cameron") to resolve violations of Directive 4 issued pursuant to Executive Order ("E.O.") 13662 and implemented by the Ukraine-Related Sanctions Regulations ("URSR"). This settlement, the first published enforcement action related to violations of Directive 4 of the U.S. sectoral sanctions imposed against Russia, serves as an important reminder that companies must ensure that they have taken into account in their compliance programs all instances in which U.S. persons may participate in a transaction including in any activities that may only involve companies outside the United States.

Under U.S. sanctions regulations, a "U.S. person" is defined to include the following:

- United States citizens, wherever located;
- Permanent resident aliens of the United States, wherever located;
- Entities organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; and
- Any person or entity physically in the United States.

In the settlement, OFAC found that the review and approval by U.S. persons at Cameron of five contracts entered into by Cameron's Romanian subsidiary for the supply of goods to Gazprom-Neft Shelf for an oil-producing Russian Arctic offshore project was a prohibited service involving a person subject to Directive 4. Gazprom-Neft Shelf, while not specifically identified on the Sectoral Sanctions Identifications (SSI) List, was subject to those restrictions by virtue of being a wholly-owned subsidiary of OJSC Gazprom Neft, a Directive 4 entity.

While it is not a violation of U.S. sanctions laws for a non-U.S. company to engage in certain activities with SSIs, U.S. persons are prohibited from providing, exporting or reexporting, whether directly or indirectly, goods, services (except for financial services) or technology in support of the exploration or production for deep-water, Arctic offshore or shale projects that have the potential to produce oil in Russia and that involve persons subject to Directive 4.

Employers with employees located in the United States that are participating in activities outside of the United States, and U.S. person employees working at non-U.S. entities, must be cautious of directly or indirectly engaging in activities prohibited by U.S. sanctions laws, including with persons designated as SDNs or SSIs. While a non-U.S. company may not be prohibited from engaging in certain activities because they are outside of U.S. jurisdiction, U.S. persons, wherever located, are within U.S. sanctions jurisdiction. Non-U.S. employers should be vigilant regarding the circumstances in which U.S. persons may be involved in activities involving foreign entities, especially where such activities could involve parties designated by OFAC. This is particularly important given OFAC's broad interpretation of what constitutes the provision of a "service." As made clear in the settlement, the provision of any services (even indirectly) by U.S. persons in support of projects subject to Directive 4 comes within the prohibitions, even if such persons are not otherwise involved with the transaction and do not directly assist in the supply of goods or services to the designated person. It is likely that OFAC would apply a similarly broad interpretation of "services" in the context of dealings with SDNs.

This settlement also serves as a reminder that OFAC has not forgotten about Directive 4. Companies doing business with parties in Russia must ensure their compliance policies and procedures account for the SSI Directives. U.S. companies engaged in the supply of goods or services for the oil and gas industries must pay particular attention to those persons subject to the restrictions of Directive 4, including entities subject to Directive 4 by virtue of being owned 50% or more, directly or indirectly, by one or more Directive 4 entities.

The settlement underscores the need for Companies to understand what role U.S. persons have with regard to activities with companies outside the United States. Companies should review and update their compliance policies and procedures to ensure the programs effectively account for activities by U.S. persons, wherever located. Companies should ensure that their compliance processes take into account all instances in which their U.S. persons could be involved in activities (e.g., contract approval, issuing or processing invoices, providing technical support or services), and should consider creating appropriate policies and procedures for recusal by U.S. person employees from activities involving restricted parties designated by OFAC. We are happy to discuss and assist in creating effective compliance measures.

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- International Trade

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