



COMMENTARY  
FEBRUARY 2019

## Sanctions Enforcement Action Provides Incentives for Companies and a Warning for Individuals

### IN SHORT

**The Situation:** Using a novel approach, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") concurrently designated a non-U.S. individual to the Foreign Sanctions Evaders ("FSE") List in connection with settling a civil enforcement action with a U.S. company.

**The Result:** The modest financial settlement combined with the severe action against the individual reflects the importance of compliance measures and effective diligence.

**Looking Ahead:** This recent action signals that OFAC may be willing to separate the conduct of companies from individuals when a company demonstrates effective compliance and remedial measures. At the same time, OFAC is sending a warning that it is willing to designate non-U.S. person officers, directors, and other employees of companies that engage in egregious conduct prohibited by the U.S. sanctions to the FSE List.

In an "unprecedented action," OFAC recently [announced](#) that it was concurrently naming a non-U.S. company's manager to the FSE List and imposing a civil penalty against the U.S. parent company. On February 7, 2019, Virginia-based Kollmorgen Corporation ("Kollmorgen") entered into a [settlement agreement](#) with OFAC on behalf of its Turkish affiliate, Elsim Elektrotechnik Sistemler Sanayi ve Ticaret Anonim Sirketi ("Elsim"), for six apparent violations of the Iranian Transactions and Sanctions Regulations (31 C.F.R. Part 560). The decision to designate Evren Kayakiran, an Elsim manager, to the FSE List represents a potential significant shift in OFAC's enforcement efforts. This settlement could serve as a model for companies in designing compliance and diligence programs and a potential harbinger of additional risk for non-U.S. person officers, directors, and other employees.

According to OFAC, Elsim serviced machines located in Iran and provided products, parts, or services with knowledge that they were destined for Iranian end-users. After Kollmorgen acquired Elsim in 2013, Kollmorgen identified such activities and implemented measures to ensure ongoing compliance with U.S. sanctions. Nevertheless, Elsim continued willfully to send employees to Iran, threaten to fire employees if they refused to travel to Iran, and direct employees to falsify corporate records to conceal their travel to Iran, all while certifying to Kollmorgen that no Elsim products or services were being sent to Iran.



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According to OFAC, after an internal complaint alerted Kollmorgen to these activities and Kollmorgen launched an internal investigation, Elsim managers "attempted to obstruct the investigation by instructing Elsim employees to delete references to Iran in company records," "misleading Kollmorgen's attorneys," and "delet[ing] emails related to Iran." OFAC determined that, in light of Elsim's egregious conduct, a civil penalty of \$13,381 was appropriate. OFAC

noted that this was a significant reduction from the statutory maximum civil penalty, pointing to Kollmorgen's implementation of an extensive compliance efforts after acquiring Elsim and its cooperation.

A notable departure from previous settlements, however, was OFAC's decision to designate Mr. Kayakiran, the Elsim manager who was "primarily responsible for the conduct" that led to the violations, to the FSE List. OFAC did so pursuant to Executive Order 13608, which targets foreign persons who evade U.S. economic and financial sanctions. As a result, all transactions or dealings, whether direct or indirect, involving Mr. Kayakiran, in or related to: (i) any goods, services, or technology in or intended for the United States, or (ii) any goods, services, or technology provided by or to U.S. persons, wherever located, are prohibited. Moreover, U.S. financial institutions must reject payments involving Mr. Kayakiran.

Prior OFAC enforcement actions generally imposed penalties at the corporate level. Individuals previously have entered into settlement agreements involving the payment of civil penalties concurrently with their company or have pled to criminal violations for willfully engaging in sanctions violations. However, no individual has ever been named to the FSE List concurrently with the imposition of a civil penalty against the individual's company. Indeed, according to an OFAC press release, this was "the first time that OFAC has designated an individual as a Foreign Sanctions Evader while resolving an enforcement matter, and is a marked change in how [OFAC] will counter these acts of deception." Moreover, OFAC explained that "[t]his action is a clear warning that anyone in supervisory or managerial positions who directs staff to provide services, falsify records, commit fraud, or obstruct an investigation into sanctions violations exposes themselves to serious personal risk."

As made clear in its press release, OFAC intends to pursue similar actions against officers and directors who engage in deceptive behavior to conceal sanctions violations. While such conduct could be considered "willful" and, thus, punishable criminally, this shift in OFAC policy indicates a potential expanded use of enforcement options, especially in situations involving individuals who may not be immediately subject to arrest in the United States.

## FOUR KEY TAKEAWAYS

1. This recent settlement involving a measured approach to a company combined with a severe penalty for an individual may signal a shift in OFAC enforcement.
2. OFAC specifically identified the company's compliance program, diligence efforts, and cooperation as support for a reduced penalty.
3. At the same time, OFAC named the individual who it believed was primarily responsible for the company's violations of U.S. economic sanctions to the FSE List.
4. This action serves as incentive to companies for effective compliance and diligence and a warning to employees that OFAC will seek to punish individuals' actions.



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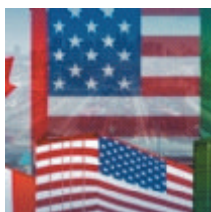
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