



Company Incurs \$7,772,102 Penalty for Dealing With Specially Designated National

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A U.S. company was recently charged with major sanctions violations when its foreign subsidiary entered business transactions with a party listed on the Specially Designated Nationals List. This is a reminder of the importance of understanding and complying with the U.S. sanctions laws in international business transactions.

According to the recent OFAC release, Zoltek Companies, Inc. (Zoltek), a U.S. manufacturer, entered multiple transactions to purchase chemical products from a supplier in Belarus. The purchases were of acrylonitrile, a chemical used in Zoltek's manufacturing process, and were made through Zoltek's subsidiary in Hungary. The party that supplied the product, J.S.C. Jaftan (Jaftan), had previously been designated by OFAC on the List of Specially Designated Nationals and Blocked Persons (the SDN List) in August 2011 and was on the list throughout the period in which the purchases were made. According to OFAC, the Zoltek U.S. parent company was aware that its subsidiary was purchasing products from a party listed on the SDN List and actually approved the transactions on multiple occasions.

Under the U.S. sanctions laws, if a party is listed on the SDN List U.S. persons are prohibited from entering business transactions with such party and are required to block and not deal in assets of such party. In addition, if an entity such as a corporation or a limited liability company is owned 50% or more by parties listed on the SDN List, that entity is also treated as if it is on the SDN List and subject to blocking and asset freezes, even if it is not itself named on the list. U.S. persons are also prohibited from the facilitation of foreign parties entering into such transactions. While under a number of the sanctions programs requirements may not apply to a U.S. company's foreign subsidiary in certain circumstances, personnel from the U.S. parent company are not permitted to be involved in or otherwise facilitate the foreign subsidiary entering such transactions.

Penalties for violations of the U.S. sanctions laws include civil and criminal penalties of up to \$1,000,000 per transaction and 20 years imprisonment.

Foreign companies can also have exposure for violations of the U.S. sanctions laws including for providing material assistance and support to certain parties designated for sanctions and knowingly facilitating a "significant" transaction with such parties.

In the current case, OFAC learned of the transactions, conducted an investigation and concluded that Zoltek violated §548.201 of the Belarus Sanctions Regulations, 31 CFR Part 548. Zoltek agreed to a penalty of \$7,772,102. The statutory maximum civil monetary penalty for Zoltek's alleged violations was \$37,824,392 - mitigating factors that OFAC considered in reducing the penalty included that Zoltek cooperated with OFAC in its investigation, agreed to toll the statute of limitations pending the investigation and agreed to adopt various compliance measures as a condition of the settlement. A copy of the OFAC release regarding the case is available [here](#).

Many companies have been taking multiple compliance steps to avoid violations under the U.S. sanctions laws including the following:

- Regularly screening customers and other parties with whom they conduct business (such as marketing agents, transportation companies and banks) against the SDN List and other OFAC restricted party lists either through automated or manual screening searches^[1]
- Conducting due diligence reviews to verify that foreign companies with which they are dealing are not owned or controlled by parties listed on the SDN List and for other sanctions compliance issues;
- Using a heightened level of care when entering transactions in countries with increased sanctions regulation including Russia and Eastern Europe, the Middle East, Asia and Latin America;
- Updating their Export Compliance Programs to cover the latest sanctions legal requirements.

Complying with the U.S. sanctions laws is only one step that companies can take in their export compliance activities. Other steps, which have been discussed previously in these articles but bear repeating, include: (i) proper classification of products, technologies, software and services being exported; (ii) compliance with licensing requirements (including licensing conditions and provisos); (iii) screening against prohibited parties, prohibited countries and prohibited end-uses; (iv) controls to limit disclosure of export-controlled technical data and software, including controls in the company's data system; (v) adoption of an Export Compliance Program with written policies and procedures; (vi) employee training; (vii); proper agreement administration for TAA's, MLA's and other authorizations; and (viii) compliance with export recordkeeping requirements.

The sanctions laws have become a major focal point for the United States in dealing with some of its most important foreign policy issues including anti-terrorist activity, nuclear negotiations, anticorruption and cyber-security. As a result, OFAC takes enforcement of these laws extremely seriously.

Companies should use care to understand and comply with these requirements so they do not get caught in the cross-fire.

This article contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. Readers with

particular needs on specific issues should retain the services of competent counsel. For more information, please visit our website at www.williamsmullen.com or contact Thomas B. McVey, 202.293.8118 or tmcvey@williamsmullen.com.

[1] Parties also typically screen against the Bureau of Industry and Security's Denied Persons List, Entity List and Unverified List, the State Department's Nonproliferation Sanctions List and AECA Debarred Parties List, and OFAC's other restricted party lists including the Foreign Sanctions Evaders List, Sectoral Sanctions Identifications (SSI) List, Palestinian Legislative Council (PLC) List, The List of Foreign Financial Institutions Subject to Part 561 (the Part 561 List): and Persons Identified as Blocked (PIB) Solely Pursuant to E.O. 13599.

Related People

- Thomas B. McVey ? 202.293.8118 ? tmcvey@williamsmullen.com

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