

July 24, 2020

Enforcement of Economic Sanctions

U.S. Government Takes Civil and Criminal Enforcement Actions Against Non-U.S. Company for Violation of North Korea Sanctions Based on Use of U.S. Financial System

SUMMARY

On July 16, 2020, the U.S. government announced civil and criminal enforcement actions against Essentra Fze Company Limited (“Essentra”), a U.A.E. incorporated entity, for North Korea Sanctions violations. In the criminal enforcement action, Essentra entered into a deferred prosecution agreement (“DPA”) with the U.S. Department of Justice (“DOJ”) for conspiring to violate the International Emergency Economic Powers Act (“IEEPA”) and defrauding the United States in connection with evading sanctions on North Korea.¹ This DPA marks the DOJ’s first ever corporate enforcement action for violations of sanctions on North Korea.² In the civil enforcement action, Essentra entered into a settlement agreement with the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”).³ Under the agreements, Essentra admitted that it received payments in bank accounts operated by the foreign branch of a U.S. financial institution that were for the sale of cigarette components that Essentra knew were destined for the Democratic People’s Republic of Korea (“DPRK” or “North Korea”).

Under the agreements, Essentra must pay \$666,543.88, approximately double the total amount of payments received in the transactions giving rise to the violations, and comply with multi-year reporting and compliance obligations. These enforcement actions reflect U.S. authorities’ continued willingness to exercise all of their available jurisdictional tools to reach non-U.S. corporations, and underscores the role that U.S. financial institutions play in those enforcement efforts.

DISCUSSION

A. BACKGROUND

Essentra is incorporated in the United Arab Emirates and is a global manufacturer and seller of cigarette products.⁴ Essentra is wholly owned by a U.K. company, and was previously owned by a joint venture between that U.K. company and another non-U.S.-based tobacco company.⁵ Between September 2018 and December 2018, Essentra received three wire transfers for payments totaling approximately \$333,272 in its bank accounts at the Dubai, U.A.E. branch of a U.S. financial institution.⁶ Only one of the three payments was in U.S. dollars and transited through the United States; the other two payments were in Emirati dirham, but deposited in an account held at the Dubai branch of the U.S. institution.⁷ The payments were made for the sale of cigarette filters that Essentra knew were destined for the DPRK.⁸ Essentra conducted the sale through multiple layers of front companies and falsified shipping records to conceal the fact that the cigarette filters would be exported to the DPRK, for example by indicating a shipment would be going to nearby Dalian, China.⁹ OFAC stated that, through this concealment, Essentra appears to have violated § 510.212 of the North Korea Sanctions Regulations, 31 C.F.R. part 510 (“NKS”), when it caused U.S. persons to export, directly or indirectly, financial services to the DPRK or otherwise facilitate export transactions that would have been prohibited if engaged in by U.S. persons in apparent violation of §§ 510.206 and 510.211 of the NKS.¹⁰

B. OFAC SETTLEMENT AGREEMENT

Under Essentra’s settlement agreement with OFAC, Essentra must pay \$665,112, almost double the amount involved in the transactions at issue but less than the applicable statutory maximum civil monetary penalty OFAC could have imposed, which was \$923,766.¹¹ OFAC determined that this penalty would be deemed satisfied by the payment of a greater amount in satisfaction of penalties assessed by DOJ arising out of the same conduct.¹² In applying its Economic Sanctions Enforcement Guidelines,¹³ OFAC determined that Essentra did not voluntarily self-disclose the apparent violations giving rise to the settlement and that the apparent violations constituted an egregious case.¹⁴ In its agreement with OFAC, Essentra committed to detailed compliance obligations for five years aimed at minimizing the risk of the recurrence of similar conduct in the future.¹⁵ The reduced penalty is in part due to Essentra’s agreement to providing ongoing cooperation as a term of settlement.¹⁶

Essentra’s settlement terms with OFAC contain substantial ongoing compliance commitments. Those obligations generally align with [OFAC's May 2019 Compliance Framework](#), and involve management oversight, OFAC risk-related assessments, enhancements to its internal controls, testing and audit procedures, and OFAC-related training for its employees.¹⁷

Of particular note is Essentra’s commitment to a Sanctions Compliance Program with new and enhanced policies and procedures for OFAC compliance, which is part of a “Compliance Transformation” approved by the Audit and Risk Committee of Essentra’s U.K. parent that applies to its entire cigarette Filters

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Division.¹⁸ The commitments also include structural changes: the appointment of a Global Compliance Director; the inclusion of the “full spectrum of business functions” on the parent company’s Group Compliance Company (including legal, assurance, compliance, finance, human resources, and information technology); and the appointment of personnel to integrate sanctions compliance policies and procedures into daily operations.¹⁹ Essentra’s commitments include periodic review and reporting obligations as well, such as: annual sanctions risk reviews; quarterly sanctions compliance reporting obligations; and an annual review—either by Essentra’s parent or by external auditors—of the effectiveness of Essentra’s sanctions compliance program.²⁰ Consistent with the terms of other recent OFAC settlement agreements, Essentra must certify annually for the next five years that it has implemented and continues to maintain the sanctions compliance measures under the agreement.²¹

C. DEFERRED PROSECUTION AGREEMENT WITH DOJ

Under the DPA, Essentra admitted to criminal liability for conspiring to violate IEEPA and defrauding the United States in connection with evading sanctions on the DPRK.²² DOJ noted in its press release that Essentra’s DPA marks the first corporate enforcement for violations of North Korea sanctions.²³ Under the DPA, Essentra agreed to pay a fine of \$666,543.88, which also satisfies Essentra’s penalty under its OFAC settlement agreement.²⁴ Among other relevant considerations in reaching the resolution, the DPA cited Essentra’s comprehensive improvement of its U.S. sanctions compliance program, Essentra’s willingness to take disciplinary action against employees who were involved in the conduct, and Essentra having voluntarily made foreign employees available for interviews with DOJ.²⁵

Similar to its obligations under the OFAC settlement agreement, as part of the DPA Essentra agreed to implement changes to its corporate compliance program, and to take on reporting obligations for the three-year period of the DPA.²⁶ These obligations specifically include quarterly reports that record both improvements to its sanctions compliance program and any violations of U.S. sanctions laws that it discovers, as well as the completion of global sanctions training covering the sanctions regimes of the United States, the United Nations, the United Kingdom, and the European Union.²⁷ Essentra also agreed to future cooperation and disclosure requirements, and assured the DOJ that as of the date of the DPA, it disclosed to the DOJ all potential U.S. sanctions violations, “no matter how preliminary the evidence.”²⁸

IMPLICATIONS

The criminal and civil actions against Essentra illustrate the continued use by the DOJ and OFAC of all available jurisdictional tools to reach transactions in furtherance of the enforcement of U.S. sanction laws, in this case against a non-U.S. entity primarily by virtue of the unwitting involvement in processing-related payments by a foreign branch of a U.S. financial institution.²⁹ OFAC’s enforcement announcement referenced its own May 2019 Compliance Framework, and noted that even when commercial activity is between foreign persons and corporations who are not otherwise subject to U.S. jurisdiction, those foreign

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persons and corporations can commit a violation of OFAC's sanctions regulations when they use a U.S. financial institution to process a payment associated with that commercial activity.³⁰

Moreover, inasmuch as Essentra's violation was based on causing U.S. financial institutions, including the foreign branch of such an institution, to participate in funds transfers, this resolution also underscores customer risk faced by financial institutions and the need for those financial institutions to conduct "know your customer" due diligence that is appropriately tailored to the geography, industry, and other risk factors present for a given customer.

Essentra agreed to substantial compliance commitments as part of the DPA and settlement agreement with OFAC. Those commitments were acknowledged in reaching the resolutions and appear to have resulted in a reduced monetary penalty. Implementing those ongoing compliance commitments, however, is likely to be costly in terms of personnel appointments, restructuring the company's compliance function, periodic reporting, and enhanced training, among other aspects. While the operations of many non-U.S. companies may not come within U.S. jurisdiction (in particular where they engage in commercial activity that does not involve the United States), this enforcement action illustrates the risk of sanctions violations arising from the use of the U.S. financial system, whether in the form of U.S. dollar payments transiting the United States or the involvement of U.S. financial institutions located outside the United States. This risk may give rise to a need for non-U.S. companies' compliance function to be evaluated under, and ultimately conformed to, [compliance guidance issued by the DOJ](#) and OFAC's Compliance Framework.

Finally, the DPA's requirement that Essentra directly report possible sanctions violations to the DOJ aligns with the [DOJ's recent self-reporting policy](#) aimed at encouraging companies to report possible criminal sanctions violations directly to the DOJ, without giving credit for reporting the same misconduct to other enforcement agencies as possible civil sanctions violations.

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ENDNOTES

- 1 Dkt. 2 (Deferred Prosecution Agreement), *U.S. v. Essentra Fze Co.*, 20-cr-00112-RC (Jul. 16, 2020) at 1, <https://www.justice.gov/opa/press-release/file/1294801/download>.
- 2 U.S. Dep't of Justice, National Security Division, "Essentra Fze Admits to North Korean Sanctions and Fraud Violations, Agrees to Pay Fine" (Jul. 16, 2020), <https://www.justice.gov/opa/pr/essentra-fze-admits-north-korean-sanctions-and-fraud-violations-agrees-pay-fine>.
- 3 OFAC Settlement Agreement, (Jul. 16, 2020) at 1, https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20200716_essentra_fze_settlement.pdf.
- 4 OFAC Settlement Agreement at 1.
- 5 OFAC Settlement Agreement at 1.
- 6 OFAC Settlement Agreement at 1-2.
- 7 Deferred Prosecution Agreement, Attachment A (Statement of Facts) at 10.
- 8 OFAC Settlement Agreement at 1-2.
- 9 OFAC Settlement Agreement at 2.
- 10 OFAC Settlement Agreement at 1.
- 11 U.S. Dep't of the Treasury, "OFAC Settles with Essentra FZE Company Limited with Respect to Potential Civil Liability for Apparent Violations of the North Korea Sanctions Regulations" (Jul. 16, 2020), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20200716_essentra_fze.pdf ("OFAC Web Notice") at 2.
- 12 OFAC Settlement Agreement at 3.
- 13 See App. A. to 31 C.F.R. part 501.
- 14 OFAC Web Notice at 2.
- 15 OFAC Settlement Agreement at 4.
- 16 OFAC Web Notice at 1.
- 17 OFAC Settlement Agreement at 4-9.
- 18 OFAC Settlement Agreement at 4.
- 19 OFAC Settlement Agreement at 5, 7.
- 20 OFAC Settlement Agreement at 5, 8.
- 21 OFAC Settlement Agreement at 9.
- 22 Deferred Prosecution Agreement at 1.
- 23 U.S. Dep't of Justice, National Security Division, "Essentra Fze Admits to North Korean Sanctions and Fraud Violations, Agrees to Pay Fine" (Jul. 16, 2020), <https://www.justice.gov/opa/pr/essentra-fze-admits-north-korean-sanctions-and-fraud-violations-agrees-pay-fine>.
- 24 Deferred Prosecution Agreement at 7; OFAC Settlement Agreement at 3.
- 25 Deferred Prosecution Agreement at 3-4.
- 26 Deferred Prosecution Agreement at 9-12.
- 27 Deferred Prosecution Agreement at 9-11.
- 28 Deferred Prosecution Agreement at 4.
- 29 Courts have upheld enforcement theories involving liability for non-U.S. persons—who are not otherwise subject to U.S. jurisdiction—as a result of their conduct that involved other entities or

ENDNOTES (CONTINUED)

persons who are subject to U.S. jurisdiction. *United States v. Zarrab*, No. 15 Cr 867 (RMB), 2016 WL 6820737, at *9-10 (S.D.N.Y. Oct. 17, 2016); *United States v. Tajideen*, 319 F. Supp. 3d 445, 456-58 (D.D.C. 2018).

³⁰ OFAC Web Notice at 3.

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