

ENFORCEMENT INFORMATION FOR FEBRUARY 7, 2019

Information concerning the civil penalties process can be found in the Office of Foreign Assets Control (OFAC) regulations governing each sanctions program; the Reporting, Procedures, and Penalties Regulations, 31 C.F.R. part 501; and the Economic Sanctions Enforcement Guidelines, 31 C.F.R. part 501, app. A. These references, as well as recent final civil penalties and enforcement information, can be found on OFAC's Web site at www.treasury.gov/ofac/enforcement.

ENTITIES – 31 CFR 501.805(d)(1)(i)

Kollmorgen Corporation Settles Potential Civil Liability for Apparent Violations of the Iranian Transactions and Sanctions Regulations: Kollmorgen Corporation (“Kollmorgen”), a company based in Radford, Virginia, on behalf of its Turkish affiliate, Elsim Elektroteknik Sistemler Sanayi ve Ticaret Anonim Sirketi (“Elsim”), has paid \$13,381 to settle potential civil liability for six apparent violations of the Iranian Transactions and Sanctions Regulations, 31 C.F.R. part 560 (ITSR). Specifically, between July 2013 and July 2015, Elsim appears to have violated § 560.215 of the ITSR when, on six occasions, Elsim serviced machines containing Elsim products located in Iran and provided products, parts, or services valued at \$14,867 with knowledge they were destined for Iranian end-users (collectively referred to hereafter as the “Apparent Violations”).¹

Kollmorgen acquired control of Elsim in early 2013, thereby making Elsim subject to the ITSR's prohibitions for any activity or conduct engaged in by Elsim, including conduct or activity occurring outside of the United States. Prior to the acquisition, Kollmorgen hired an external law firm and an external auditing and consulting company to perform sanctions due diligence on Elsim. The due diligence results demonstrated that Elsim made sales to, and had customers in, Iran prior to its acquisition by Kollmorgen. Based on these results, Kollmorgen determined it would need to take steps to prevent such sales from occurring in the future and educate Elsim on the applicability of U.S. sanctions.

Kollmorgen subsequently implemented a wide range of pre- and post-acquisition compliance measures designed to ensure Elsim complied with U.S. sanctions, which included but were not limited to the following:

- (i) conducting a comprehensive review of Elsim's customer database in order to identify any sales or customers located in, or with connections to, countries or regions subject to U.S. economic and trade sanctions;

¹ Pursuant to § 560.215(a) of the ITSR — which implements § 218(b) of the Iran Threat Reduction and Syria Human Rights Act of 2012 (Pub. L. 112-158) (TRA) and § 4 of Executive Order 13628 — “an entity that is owned or controlled by a United States person and established or maintained outside the United States is prohibited from knowingly engaging in any transaction, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran that would be prohibited pursuant to this part if engaged in by a United States person or in the United States.” Section 560.701(a)(3) further states that “a civil penalty . . . may be imposed on a United States person if an entity owned or controlled by the United States person and established or maintained outside the United States violates . . . the prohibition set forth in § 560.215.”

- (ii) identifying Elsim's Iran-related customers and applying controls to block those customers from making future orders;
- (iii) drafting and circulating a memorandum to all Elsim employees notifying them of U.S. sanctions against Iran, the legal requirement for Elsim to comply with the ITSR, and Elsim's obligation to not sell products or services to Iran;
- (iv) conducting in-person trainings for Elsim's employees regarding Kollmorgen's trade compliance policies (specifically including Iran), which included a requirement that employees promptly report any and all violations of the law;
- (v) on a proactive and continuing basis, performing additional manual reviews of Elsim's customer database to identify any sanctions-related customers;
- (vi) requiring Elsim customers to agree to modified terms and conditions of sale prohibiting the resale of any Elsim products, directly or indirectly, to Iran;
- (vii) requiring Elsim's senior management to certify, on a quarterly basis, that no Elsim products or services were being sent or provided to Iran;
- (viii) ordering Elsim's senior management to immediately cease transactions with Iran, including any technical support; and
- (ix) implementing an ethics hotline for reporting violations of law.

In spite of Kollmorgen's extensive efforts to ensure Elsim complied with the ITSR, for two years after acquisition, Elsim willfully, and with full knowledge of the applicable prohibitions, dispatched employees to Iran to fulfill service agreements and engaged in other transactions related to Iran. Elsim management threatened to fire employees if they refused to travel to Iran. Upon returning from the service trips in Iran, Elsim employees were directed by Elsim management to falsify corporate records by listing the travel as vacation rather than business related.

Over the two years the transactions took place, Elsim management regularly and fraudulently certified to Kollmorgen that no Elsim products or services were being sent to Iran. It was only after an Elsim employee filed an internal complaint with Kollmorgen via the company's ethics hotline in late October 2015 that the violative conduct came to light. Kollmorgen then retained outside counsel to investigate the matter.

Upon being notified of Kollmorgen's investigation, Elsim managers attempted to obstruct the investigation by instructing Elsim employees to delete references to Iran in company records and misleading Kollmorgen's attorneys. Finally, Elsim managers also attempted to delete emails related to Iran. Despite this obstruction, Kollmorgen uncovered the Apparent Violations, conducted a full investigation, and disclosed its findings to OFAC in a comprehensive report.

After the Apparent Violations were uncovered, Kollmorgen took a series of remedial actions designed to rectify the situation and discourage ongoing violative conduct, which included:

- (i) terminating the Elsim managers responsible for, and involved in, the Apparent Violations;
- (ii) implementing new procedures to educate Elsim employees on compliance with U.S. economic and trade sanctions;
- (iii) requiring Elsim to seek pre-approval from an officer based outside of Turkey for all foreign after-sales service trips; and
- (iv) requiring Elsim to inform its major Turkish customers that Elsim cannot provide goods or services to Iran.

Notwithstanding Kollmorgen's extensive compliance efforts, OFAC determined a penalty was the appropriate administrative response to the Apparent Violations due to Elsim's egregious conduct and specific risk profile, including that Elsim had previously engaged in business with Iran. Additionally, as described in detail below, the conduct of Elsim management and their subsequent attempts to impede Kollmorgen's internal investigation warranted further action by OFAC.

OFAC determined that Kollmorgen voluntarily self-disclosed the Apparent Violations and that the Apparent Violations constitute a non-egregious case. The statutory maximum civil monetary penalty applicable in this matter is \$1,500,000. The base civil monetary penalty amount for the Apparent Violations is \$7,434.

The settlement amount reflects OFAC's consideration of the General Factors under OFAC's Economic Sanctions Enforcement Guidelines, 31 C.F.R. part 501, app. A. OFAC determined the following to be aggravating factors: (1) Elsim willfully provided goods and services to Iran in violation of the ITSR; (2) Elsim management knew its employees were traveling to Iran to provide services and directed them to do so; (3) Elsim management concealed the Apparent Violations from Kollmorgen and others by deleting and falsifying records as well as directing their subordinates to do so; and (4) the Apparent Violations conferred economic benefit to Iran.

OFAC determined the following to be mitigating factors: (1) neither Kollmorgen nor Elsim have received a penalty notice or finding of violation from OFAC in the five years preceding the earliest apparent violation; (2) Kollmorgen cooperated with OFAC by conducting an effective and extensive internal investigation and submitting a comprehensive voluntary self-disclosure to OFAC; and, as described in detail above, (3) Kollmorgen's extensive preventative and remedial conduct. If OFAC had determined this case was egregious, the base civil monetary penalty amount for the Apparent Violations would have been \$750,000.

This 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.

In conjunction with this enforcement action, OFAC is sanctioning Evren Kayakiran, the Elsim manager primarily responsible for the conduct that led to the Apparent Violations, pursuant to Executive Order 13608, “Prohibiting Certain Transactions With and Suspending Entry Into the United States of Foreign Sanctions Evaders With Respect to Iran and Syria” (“E.O. 13608”). E.O. 13608 authorizes the Secretary of the Treasury to sanction any foreign person determined to have “violated, attempted to violate, conspired to violate, or caused a violation” of the ITSR.

For more information regarding OFAC regulations, please go to: www.treasury.gov/ofac.