

OFAC SENDS MESSAGE REGARDING POST ACQUISITION COMPLIANCE INTEGRATION AND RISK MANAGEMENT

On September 24, 2020, OFAC announced a settlement with California-based Keysight Technologies Inc. ("Keysight") with respect to apparent violations of the Iranian Transactions and Sanctions Regulations committed by its then Finland-based subsidiary, Anite Finland OY ("Anite"), shortly after Anite had been acquired by Keysight. The case carries the lesson that acquiring companies in the face of known OFAC risk in their targets, should take affirmative steps post-acquisition to ensure and to verify that those risks are properly managed. OFAC determined that Keysight voluntarily disclosed the apparent violations, that they were egregious, and assessed a base penalty of \$1,051,460. OFAC then reduced the final penalty to \$473,157 based on a number of mitigating factors including Keysight's cooperation with OFAC, remedial measures and compliance enhancements.

In August 2015, Keysight acquired Anite, plc (the UK parent of Anite). At the time of the acquisition, Keysight's pre-acquisition due diligence identified that Anite conducted business with OFAC sanctioned countries, including Iran. After the acquisition, Keysight directed Anite to cease all business with sanctioned countries and Anite committed to doing so. Nevertheless, certain Anite employees decided to continue Anite's business with end-users in Iran and took affirmative steps to conceal the ongoing business from Keysight. The settlement related to six sales in 2016 of export-controlled US-origin wireless testing equipment to intermediaries in the U.A.E. where Anite had actual knowledge that the end-user was MTN Irancell, a telecommunications company in Iran.

In connection with the settlement, Keysight also agreed to a number of "Compliance Commitments" with accompanying certifications to OFAC for the next five years.

While Keysight undertook pre-acquisition due diligence and sought assurances that Anite would comply with Keysight's policies with respect to business involving sanctioned countries, the settlement reflects that more is required, including auditing of sales records, employee training, testing whether sanctions compliance policies are being followed, and confirming that a culture of compliance has permeated through the newly acquired company. This is especially prudent where the pre-acquisition due diligence identified OFAC risk in the acquired business.

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