

OFAC Announces Its First “50 Percent Rule” Penalty

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Yesterday, the U.S. Department of the Treasury’s Office of Foreign Assets Control [announced](#) the first settlement of apparent violations based on its “[50 Percent Rule](#).” This interpretive guidance, first articulated in February 2008, was expanded in August 2014. Under the current guidance, entities that are 50 percent or greater directly or indirectly owned by one or more blocked persons^[1] in the aggregate are considered to be blocked. U.S. companies are therefore generally prohibited from any dealings with entities owned by blocked persons, even if those entities are not specifically listed by OFAC.

This penalty highlights the fundamental due diligence aspect of sanctions compliance, which requires assessments beyond screening against the Specially Designated Nationals (SDN) List, the Sectoral Sanctions Identification (SSI) List and the countries against which the United States maintains partial or comprehensive sanctions programs.

Violations of the Zimbabwe Sanctions Regulations

Barclays Bank Plc agreed to pay \$2,485,890 to resolve apparent violations of the Zimbabwe Sanctions Regulations (31 C.F.R. Part 541), arising from the provision of financial services through the United States. Barclays New York branch, and other U.S. banks processed transactions between July 2008 and September 13 for three corporate customers of Barclays Bank of Zimbabwe Limited. Although not specifically listed, these entities are blocked as a matter of law, because they are owned 50 percent or more by the Industrial Development Corporation of Zimbabwe (IDCZ). OFAC designated IDCZ pursuant to Executive Order 2008 on July 25, 2008. As of that date, all property IDCZ owned 50 percent or more was also blocked.

OFAC determined that Barclays did not voluntarily self-disclose the violations. It appears that other financial institutions blocked and reported some of the transactions. These reports would have notified OFAC of “substantially similar apparent violation[s],” thereby precluding Barclays of receiving credit for voluntary self-disclosure.

50 Percent Rule Enforcement Factors

The settlement announcement sets forth three factors that may determine whether a civil penalty is appropriate for violations arising from the 50 Percent Rule.

1. A direct customer relationship with the entities that are not listed, but blocked as a matter of law;
2. Failure to act on records that demonstrate ownership by a blocked person; and
3. Publically available information about ownership by one or more blocked persons.

The availability of public information will likely weigh heavily toward a civil penalty if the peers of the violating business act on that information.

We will continue to monitor OFAC enforcement actions and publish updates as significant developments arise.

[1] The 50 Percent Rule also applies to entities owned by persons on the Sectoral Sanctions Identification (SSI) List. Sectoral Sanctions restrictions apply to entities owned 50 percent or more in the aggregate by one or more persons on the SSI List.

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