Emerging Compliance Risks Overseas
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Agenda

• US Sanctions and Export Controls
• *Worldwide* Anti-corruption
• Third party Risk
• Some solutions
U.S. Sanctions and Export Controls Issues

U.S. economic sanctions forbid:
- Directly engaging in or
- Facilitating others engaging in
  Prohibited dealings with sanctioned countries, governments, persons or activities

Deemed Export Risk:
- Facility visitors
- Intra-company networks
- International training
- International work environments
Key Element 1: Management Commitment

Key Element 2: Risk Assessment

Key Element 3: A Written Export Management and Compliance Program

Key Element 4: Compliance Training

Key Element 5: Cradle to the Grave Export Compliance Security and Screening

Key Element 6: Record Keeping

Key Element 7: Export Compliance Monitoring and Auditing/Assessing

Key Elements 8 and 9: Handling and Reporting Export Compliance Problems and Violations and Taking Corrective Actions

Best Practices:
- Export controls noted in the Code of Conduct and robust policies to address export control, sanctions, and anti-boycott risk
- Ongoing internal assessment and control reviews for business units
- Annual training on export control issues with a log documenting formal training
- A technology control plan to control releases of technology to foreign nationals
- An export control record keeping management system including all transactions (description of export, ECCN, end use, end user, quantity shipped, and destination), red flag checklist documentation and screening records
- Annual audits on the overall export management and compliance program by (1) interviewing export related personnel; (2) analyzing screening procedures, internal controls, and record retention; (3) review of training programs and disciplinary actions; (4) review of order processing system and export authorization process; and (5) review of current policies and procedures and management commitment to export control.

Nine DOC-BIS Key Elements in Practice

Red Flags:
- Customer: (1) evasive about end-use or exportation; (2) asks for payment in cash or is willing to pay cash for an expensive item that is ordinarily financed; (3) rejects normal post-sales services; (4) makes excessive requests for confidentiality; (5) has little or no business background or is unfamiliar with the product’s characteristics but still desires the product; or (6) the products capabilities do not fit the customer’s line of business.

- Destination: (1) shipping route or freight forwarder is abnormal or obscure; (2) delivery dates are vague or planned for out of the way destinations; (3) equipment configurations are incompatible with stated destination/end-use; (4) packaging is inconsistent with the stated method of shipment or destination or identifying marks or labels have been removed (e.g., made in the USA); (5) freight forwarding firm is listed as the product’s final destination or (6) the item ordered is incompatible with the technical level of the country to which it is being shipped.
Recent Corporate U.S. Trade Criminal Prosecutions

• Banking - Credit Suisse ($536 m) and ABN Amro ($500 m): Deliberately removed material information for customers in Iran, Libya, the Sudan, Cuba, such as customer names, bank names and addresses, from payment messages so that the wire transfers would pass undetected through filters at U.S. financial institutions.

• Oilfield Services - Agar Corporation ($2 m): Facilitated the export of multi-phase flow meters by an affiliate in Venezuela to the Sudan for use in the Melut Basin oilfield. Recent Weatherford, 10Q disclosed that company had spent over $10 million on investigation costs for FCPA and sanctions investigation involving sales in Iran, Cuba, Sudan, and Syria and had incurred $53 million in costs related to its exit from sanctioned countries.

• Defense Industry– BAE ($400 m): admitted to making false statements and failing to make required disclosures to the U.S. government, as required by the AECA and ITAR. As part of the licensing scheme, applicants are required to identify associated commissions to the State Department- whether they are legitimate commissions or bribes - paid to anyone who helps secure the sales of defense materials. BAE admitted that, as part of the conspiracy, it knowingly and willfully failed to identify commissions paid to third parties for assistance in soliciting, promoting or otherwise securing sales of defense items.

Deemed Exports

• Deemed export – release of controlled technology to foreign person in U.S. deemed to be an export to person's country or countries of nationality – must get a license before releasing controlled technology

• 60% of licensees processed by BIS are for PRC nationals followed by India (13%), Iran (8%), Russia and Germany (2%) and UK (1%)

• Most applications processed in 36 days

• Voluntary Self-Disclosures FY2005-FY2009
  • Civil penalty resulting from settlement agreement is an average of 44% of the maximum fine (average over the 7 cases)
  • 4 of 7 cases (over half) involved information released to foreign national from the People's Republic of China
  • 2 of 7 cases involved information released to Ukrainian foreign nationals
  • 2 of 7 cases involved information released to Russian foreign nationals
  • 4 of 7 cases (over half) involve companies in the semiconductor industry
Anti-Corruption
The FCPA is no longer the lone voice in the woods...

The FCPA still is the most significant anti-corruption risk that organizations face.

Hundreds of cases currently under investigation between DOJ and SEC.

But no one wants to be the test case for a new enforcer...

Lloyds of London defines an emerging risk as "an issue that is perceived to be potentially significant but which may not be fully understood.

World Involvement isn’t New...

• United Nations Convention
• Council of Europe Convention
• Organization for Economic Co-operation and Development (OECD) Anti-Bribery Convention
World Enforcement is New

• UK Bribery Act in force
• Expansion of Chinese Bribery Law
• Russia now a signatory to OECD and has changed law
• Indian bribery laws expanded
• All in 2011… what will 2012 bring?

Worldwide Anti-Corruption Enforcement

Where are we exactly?

New enforcers with familiar standards…

Common elements include:
• A focus on payments to government officials
• Targeting foreign and domestic organizations
• Broad jurisdiction
• Focus on local laws
• Focus on development of compliance & ethics program
• Focus on supply chain oversight
Common Elements to Focus on

Reinventing the wheel is optional...

- Gifts & promotional expenses
- Travel & entertainment
- Facilitation payments
- Relationships with commercial partners
- Charitable donations
- Political contributions
- Employment of former government officials
- Due diligence for third parties
- Robustness of your ethics and compliance program

Third Parties

What have you done to me lately?

- 93% of FCPA-related enforcement actions from 2010 were due to a third party
- Third parties present companies with significant risks, including:
  - Reputational
  - Legal
  - Safety and Quality
- Third parties represent the perfect storm – they are indispensable and logistically hard to monitor
- Third parties are the common thread to multi-national exposure to anti-corruption, export, environmental issues and many more risks.
Some Solutions for Organizations

What do your Code and risk policies look like?

Do you have a supplier code or other guidelines for third parties?

Do you train on risk topics? Who do you train and how often?

Do you train third parties?

How do you conduct due diligence on partners, agents and other third parties?

What sort of auditing and monitoring do you engage in?

What systems do you use to identify or track issues?

Moving forward your solutions for handling many risks are the same. Standards. Training. Communication. Auditing. Monitoring.

What Are the Other Guys Doing About Third Parties?
Your Peer Companies are Conducting Due Diligence on Third-Party Agents and Business Partners

Source: 2011 ACC/Corpedia Survey

Third Party Vetting by Peer Organizations

Source: 2011 ACC/Corpedia Survey
How do Peer Organizations Manage Ongoing Relationships with Third Parties?

- Explicit contract provisions for compliance: 90%
- Train employees to spot red flags: 84%
- Conduct due diligence in selection: 84%
- Make hotline available to 3rd parties: 81%
- Written Code applicable to 3rd parties: 71%
- Require Code acknowledgement: 66%
- Ongoing compliance monitoring: 64%
- Targeted communications to 3rd party: 54%
- Provide compliance training: 54%
- Categorize agents by risk level: 45%
- Periodic audits: 45%
- Encourage 3rd party to maintain a hotline: 25%
- Encourage 3rd party certifications: 18%

Source: 2011 Ethisphere EQ Data

Questions?