Compliance Convergence: The New Normal

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Presenter and Contact Information

- Thomas R. Fox
  ph: 832-744-0264
  www.tfoxlaw.com
  tfox@tfoxlaw.com

- Follow me at www.twitter.com/tfoxlaw.
- Follow my blog at http://tfoxlaw.wordpress.com/
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Export and Reexport Controls

General

- Many countries have export and reexport controls
- Export and reexport controls are generally licensing programs.
  - The relevant government may require that a company obtain a license for:
    - Actual exports and reexports
    - Deemed exports and reexports
Money Laundering

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

- Facilitation is
  - An expansive and indefinable legal term that has a meaning similar to “enable”.
What prohibited dealings are the most relevant to the energy industry?

- Cuba
  - U.S. and non-U.S. persons must not engage in or facilitate transactions in Cuba or with its government, companies, residents or citizens

- Iran and Sudan
  - U.S. persons must not engage in or facilitate transactions in Iran, in Sudan (energy sector) or with their governments, including government-controlled companies.

- Targeted Programs
  - U.S. persons must not engage in or facilitate transactions involving specific activities, persons or governments, including:
    - the provision of financial services or new investment in or to Burma/Myanmar (certain exceptions for subcontracting arrangements),
    - parties on the Specially Designated Nationals List or transactions that could support terrorism or the proliferation of weapons of mass destruction

- Imports
  - All imports into the United States of goods, software or technology of Cuban, Iranian, Myanmar/Burma or North Korean origin

What / Who are U.S. persons?

Companies
- Entities legally organized in the United States (Examples: Delaware corporations, Texas LLP)

Non-U.S. branches of U.S. banks
- Almost always U.S. persons

Individuals
- U.S. citizens and U.S. legal residents
- Persons physically present in the U.S.
- Employees or other representatives of other U.S. persons
Foreign Corrupt Practices Act

FCPA Enforcement
Top 10

1. Siemens-$1.6 billion
2. Halliburton-$557 million
3. BAE-$400 million
4. ENI-$365 million
5. Technip-$338 million
6. JGC-$218 million
7. Daimler-$137 million
8. Alcatel-Lucent-$181 million
9. Magyar Telekom/Deutsche Telekom -$95 million
10. Panalpina-$81 million
**FCPA Compliance Program**

- 1. Code of Conduct
- 2. Tone at the Top
- 3. Anti-Corruption Policies and Procedures
- 4. Use of Risk Assessment
- 5. Annual Review
- 6. Senior Management Oversight and Reporting
- 7. Internal Controls
- 8. Training
- 9. Ongoing Advice and Guidance
- 10. Discipline
- 11. Use of Agents and Other Business Partners
- 12. Contractual Compliance Terms and Conditions
- 13. Ongoing Assessment

**Export Control Compliance Program**

- 1. Top and Middle Management Committee.
- 3. A written policy back up by a procedures manual.
- 4. Ongoing training of employees.
- 5. Ongoing screening of employees, contractors, customers, products and transactions.
- 6. Record Keeping.
- 7. Period Audits.
- 8. An internal program for the reporting of violations and appropriate mechanism for escalation of any export violations.
- 9. Appropriate corrective actions to hold employees accountable under a progressive disciplinary program and voluntary self-disclosure.
AML Program

- 1. Communications and Training – specific communications and training for the high-risk market should be designed and implemented with a country-specific approach which identifies the risks and the compliance response to the risk.

- 2. Enhanced Controls and Review – additional controls for each policy should be implemented with greater scrutiny of auditing of expenditures.

- 3. Due Diligence – the hiring of third parties should be subject to even greater scrutiny than typical in the high-risk country. A conservative compliance response to any red flags is imperative.

- 4. Monitoring and Auditing – the monitoring of activities in a high-risk country is a key aspect of any high-risk program. Auditing of every aspect of the operation should be conducted on a regular basis.

Red Flags

- Named as a Designated Party, SDN or on any similar list.
- Connections to countries identified as non-cooperative with international efforts against money laundering.
- Providing false or misleading information.
- Refusal to disclose the nature and source of assets.
- Refusal to identify a beneficial owner.
- Acting as the agent for an undisclosed principal.
- Company address is not a physical site but a PO box.
- Use of a shell company.
- Lack of concern regarding risks or transaction costs.
- Structuring transactions to avoid reporting requirements.
- Offering to engage in transaction with no or little business justification.
- A request that funds be transferred to an undisclosed third party or in another jurisdiction.
- Any transaction designed to evade taxes.
Third Party Relationship Check Up

- Do you have a list or database of all your third parties and their information?
- Have you done a risk assessment of your third parties and prioritized them by level of risk?
- Do you have a due diligence process for the selection of third parties, based on the risk assessment?
- Once the risk categories have been determined, create a written due diligence process.
- One the third party has been selected based on the due diligence process, do you have a contract with the third party stating all the expectations?
- Is there someone in your organization who is responsible for the management of each of your third parties?
- What are “red flags” regarding a third party?

To Self Disclose or Not Self Disclose?

- Public or Private?
- Is it Material?
- Impact of Dodd-Frank?
- Credibility-can you make a comeback?
Settlement

- What is a final Settlement?
  - UK Bribery Act
  - China
  - Nigeria makes its claim
  - Haiti Telco-the little case that could?

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- Contact me via email tfox@tfoxlaw.com for copy of article this presentation is based upon.
Questions?