

ISO 37001: FCPA PROGRAM LEVERAGE OPPORTUNITIES

SCCE Utilities & Energy Compliance & Ethics
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AGENDA

- **WHY?**
 - ELEVATOR SPEECH
 - THE SIGNIFICANCE OF ISO 37001 – ANTI-BRIBERY MANAGEMENT SYSTEMS
 - ISO 37001 – KEY PRINCIPLES
 - WHAT IS THE ISO 37001 OPPORTUNITY FOR US BUSINESSES?
- **WHAT'S NEW?**
 - DOJ FCPA POLICY
 - US ATTORNEYS MANUAL
 - MAKING THE TRANSITION
- **WHAT'S NEXT?**
 - STATUS OF ISO 37001 IN THE US & OVERSEAS
- **APPENDIX: ISO 37001 BASICS & BACKGROUND**

COMPARING ISO 37001 TO THE FCPA

- EXISTING FCPA ANTI-CORRUPTION PROGRAM = NO CERTAINTY AS TO WHETHER OR NOT PROGRAM IS “EFFECTIVE” UNTIL BACK-END TESTED IN WORST-CASE DOJ/SEC INVESTIGATION SCENARIO
- ISO 37001 ANTI-BRIBERY MANAGEMENT SYSTEM CERTIFICATION = TANGIBLE AND POSITIVE FRONT-END GLOBAL STANDARD-BASED ACHIEVEMENT W/ ASSOCIATED BUSINESS BENEFITS
 - PROCEDURALLY, ISO 37001 SYSTEMS APPROACH ALIGNS WITH DOJ EMPHASIS ON “OPERATIONALIZING COMPLIANCE” – PLACING CONTROLS WHERE RISK EXISTS
 - EMPHASIZES “HERE’S WHAT IT IS” AND “HERE’S HOW TO DO IT” INSTEAD OF “THOU SHALT NOT”
 - PRIMARY SUBSTANTIVE DIFFERENCES WITH FCPA ARE MANAGEABLE:
 - FACILITATION PAYMENTS
 - PERIODIC DUE DILIGENCE
 - ALL BRIBERY FORMS

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THE SIGNIFICANCE OF ISO 37001 - (ANTI-BRIBERY MANAGEMENT SYSTEMS)

- CERTIFICATION
 - TANGIBLE AND POSITIVE RECOGNITION FROM INTERNATIONAL ORG. FOR STANDARDIZATION (ISO - WIDELY RESPECTED GLOBAL STANDARDS BODY)
 - BASED ON VOLUNTARY AUDIT FROM INDEPENDENT AND ACCREDITED 3RD PARTY
 - BUILDS ON EXISTING WIDELY-USED ISO “COMMON LANGUAGE” STANDARDS: 9001 (QUALITY), 14001 (ENVIRONMENTAL) AND 27001 (INFORMATION SECURITY)
- A BUSINESS (NOT A LEGAL) STANDARD
 - ISO 37001 – ANTI-BRIBERY MANAGEMENT SYSTEM - *TO HELP AN ORGANIZATION ESTABLISH, IMPLEMENT, MAINTAIN, REVIEW AND CONTINUOUSLY IMPROVE AN ANTI-BRIBERY MANAGEMENT SYSTEM*
 - CONSISTS OF LEADING BUSINESS AND LEGAL (“EFFECTIVE” COMPLIANCE PROGRAM”) PRACTICES
 - BUSINESS LANGUAGE, TOOLS AND METHODOLOGIES
 - INTERNAL BENEFITS: IMPROVED CLARITY, TRANSPARENCY AND ALIGNMENT WITH COMPANY’S BUSINESS GOALS
 - EXTERNAL BENEFITS: CONSISTENCY & COMPLIANCE COST REDUCTIONS

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ISO 37001 - KEY PRINCIPLES

- RISK BASED, REASONABLE, AND PROPORTIONATE
- ORGANIZATION CONDUCTED RISK ASSESSMENT SERVES AS THE CORNERSTONE
- REQUIREMENTS STANDARD WITH GUIDANCE - CERTIFICATION IS OPTIONAL
- STANDARD CAN BE APPLIED TO A PORTION OF AN ORGANIZATION
- REFLECTS THE ELEMENTS OF AN EFFECTIVE COMPLIANCE & ETHICS PROGRAM (US SENTENCING GUIDELINES, DOJ/SEC FCPA GUIDANCE)
- IF A REQUIREMENT CONFLICTS WITH APPLICABLE LAW, APPLICABLE LAW PREVAILS

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WHAT IS THE ISO 37001 OPPORTUNITY FOR US BUSINESSES?

- OPERATIONALLY – LEVERAGE EXISTING FCPA AND ANTI-CORRUPTION COMPLIANCE PROGRAM ACTIVITIES
 - FOR MOST COMPANIES W/ AN ACTIVE, SERIOUS PROGRAM – 75% OR MORE OF ISO 37001 REQUIREMENTS LIKELY SUBSTANTIALLY COMPLETED
- FINANCIALLY – REDUCE OR OFFSET ANTI-BRIBERY COMPLIANCE COSTS
 - “SPEAKING” ISO 37001 COMMON ANTI-BRIBERY LANGUAGE ELIMINATES “ONE-OFFS AND “BATTLE OF FORMS”
 - DRIVE ISO 37001 CERTIFICATION THROUGH PRIMARY SUPPLY CHAIN PARTICIPANTS
 - 9001 REVENUE GENERATION CASE STUDIES
- STRATEGICALLY – TAKE THE REPUTATIONAL “HIGH GROUND”
 - PARTICULAR VALUE FOR COMPANIES UNDER INVESTIGATION OR MONITORSHIP, IN SECTORS WHERE COMPETITORS ARE UNDER INVESTIGATION, IN OTHER HIGH-BRIBERY-RISK SECTORS OR GEOGRAPHIES, OR WHERE BRIBERY ALLEGATIONS OR ISSUES MAY HAVE EXISTED IN THE PAST

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THE NEW DOJ FCPA POLICY

- SIGNIFICANT CHANGES FROM THE 2016 FCPA PILOT PROGRAM
 - PRESUMPTION OF DECLINATION
 - 50% CREDIT
 - INTERNAL COMMUNICATIONS
- USAM9-47.120 3. c. - “TIMELY AND APPROPRIATE REMEDIATION IN FCPA MATTERS”
 - KEY COMPONENTS
 - “EFFECTIVE COMPLIANCE AND ETHICS PROGRAM” - FROM AN OVERALL PERSPECTIVE
 - TIES TO ISO 37001 THEMES:
 - CULTURE
 - OPERATIONALIZATION
 - RECORDS AND RECORD-KEEPING

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MAKING THE TRANSITION: “PROGRAM” TO “SYSTEM”

- PROGRAM: GENERAL – COMPONENT PRESENCE
- ISO “REQUIREMENTS STANDARD: EXPLICIT (AND IMPLICIT) REQUIREMENTS – ALL OF WHICH MUST BE PRESENT FOR A SUCCESSFUL INDEPENDENT 3RD PARTY AUDIT/CERTIFICATION
- CONTENT PERSPECTIVE: GAP ANALYSIS AND INFILL
- PROCESS PERSPECTIVE:
 - AN AUDIT, NOT AN EVALUATION
 - 3 YEAR CERTIFICATION SHELF-LIFE, SUPPORTED BY PERIODIC AUDITOR SYSTEM CHECKS
- OPPORTUNITY PERSPECTIVE: EFFECT CHANGE

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STATUS OF ISO 3700 IN THE US & OVERSEAS

- OVERSEAS:
 - CERTIFICATIONS IN ITALY, FRANCE AND GERMANY TO DATE
 - GOVERNMENTS OF INDONESIA, PERU, SINGAPORE AND UAE HAVE ADOPTED ISO 37001
- US:
 - ACCREDITATION OF CERTIFYING BODIES IN PROCESS
 - ANAB –ANSI/ASQ NATIONAL ACCREDITATION BOARD
 - UKAS
 - SUBSTANTIAL CERTIFICATION ACTIVITY IN 2H 2018
 - TO DATE, TWO SIGNIFICANT US-BASED GLOBAL COMPANY ANNOUNCEMENTS RE: ISO 37001
 - MICROSOFT
 - WALMART

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APPENDIX: ISO 37001 BASICS & BACKGROUND

- <https://www.iso.org/iso-37001-anti-bribery-management.html>
- <https://blogs.microsoft.com/on-the-issues/2017/05/17/microsoft-adopting-new-international-anti-bribery-standard/#sm.0001atvc6wkhqeu3wob2p70w7bzgy>
- https://webstore.ansi.org/RecordDetail.aspx?sku=ISO%2037001:2016&gclid=Cj0KEQjwmIrJBRCRmJ_x7KDo-9oBEiQAuUPKMp6ZyS-6ZSwXG0NMM0VxqpGBOI16Us6MW5Prrvy_zsEaAu7e8P8HAQ
- www.iso37001compliance.com
- <http://ethisphere.com/wp-content/uploads/A-New-Standard.pdf>
- <http://www.fcablog.com/blog/2017/5/8/macmurray-and-lazzarini-why-iso-37001-is-the-next-big-thing.html>
- <http://www.corporatecomplianceinsights.com/author/worth-macmurray/>

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