ISO 37001: FCPA PROGRAM LEVERAGE OPPORTUNITIES

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AGENDA

• WHY?
  o ELEVATOR SPEECH
  o THE SIGNIFICANCE OF ISO 37001 – ANTI-BRIBERY MANAGEMENT SYSTEMS
  o ISO 37001 – KEY PRINCIPLES
  o WHAT IS THE ISO 37001 OPPORTUNITY FOR US BUSINESSES?

• WHAT’S NEW?
  o DOJ FCPA POLICY
  o US ATTORNEYS MANUAL
  o MAKING THE TRANSITION

• WHAT’S NEXT?
  o 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
  • PROCEDURAL, 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:
    o FACILITATION PAYMENTS
    o PERIODIC DUE DILIGENCE
    o ALL BRIBERY FORMS

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
    o INTERNAL BENEFITS: IMPROVED CLARITY, TRANSPARENCY AND ALIGNMENT WITH COMPANY’S BUSINESS GOALS
    o EXTERNAL BENEFITS: CONSISTENCY & COMPLIANCE COST REDUCTIONS
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

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
THE NEW DOJ FCPA POLICY

• SIGNIFICANT CHANGES FROM THE 2016 FCPA PILOT PROGRAM
  o PRESUMPTION OF DECLINATION
  o 50% CREDIT
  o INTERNAL COMMUNICATIONS

• USAM9-47.120 3. c. - “TIMELY AND APPROPRIATE REMEDIATION IN FCPA MATTERS”
  o KEY COMPONENTS
  o “EFFECTIVE COMPLIANCE AND ETHICS PROGRAM” - FROM AN OVERALL PERSPECTIVE
  o TIES TO ISO 37001 THEMES:
    • CULTURE
    • OPERATIONALIZATION
    • RECORDS AND RECORD-KEEPING

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:
  o AN AUDIT, NOT AN EVALUATION
  o 3 YEAR CERTIFICATION SHELF-LIFE, SUPPORTED BY PERIODIC AUDITOR SYSTEM CHECKS
• OPPORTUNITY PERSPECTIVE: EFFECT CHANGE
STATUS OF ISO 37001 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

APPENDIX: ISO 37001 BASICS & BACKGROUND

- [https://www.iso.org/iso-37001-anti-bribery-management.html](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.0001atvc6whkqeue3wob2p70w7bzgy](https://blogs.microsoft.com/on-the-issues/2017/05/17/microsoft-adopting-new-international-anti-bribery-standard/#sm.0001atvc6whkqeue3wob2p70w7bzgy)
- [https://webstore.ansi.org/RecordDetail.aspx?sku=ISO%2037001:2016&gclid=Cj0KEQjwmIrJBRCRml_x7KDo-9oBEiOAuUPKMP6ZyS-6ZSwXG0NMMoVxqpGBOI16Us6MW5Prrvy_zsEaAu7e8P8HAQ](https://webstore.ansi.org/RecordDetail.aspx?sku=ISO%2037001:2016&gclid=Cj0KEQjwmIrJBRCRml_x7KDo-9oBEiOAuUPKMP6ZyS-6ZSwXG0NMMoVxqpGBOI16Us6MW5Prrvy_zsEaAu7e8P8HAQ)
- [www.iso37001compliance.com](http://www.iso37001compliance.com)
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