ISO 37001: FCPA PROGRAM LEVERAGE OPPORTUNITIES

SCCE Utilities & Energy Compliance & Ethics Conference – Washington DC
February 5, 2018

Worth D. MacMurray
Principal, Governance & Compliance Initiatives

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 “EFFECIVE” 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
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
  • Includes - 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
  • ROI REVEALS GENERATION CASE STUDIES

• STRATEGICALLY – TAKE THE REPUTATIONAL “HIGH GROUND”
  • Particularly valuable for companies under investigation or monitorship in sectors where competitors are under investigation, in other high-bribery risk sectors or geographic regions, 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

• LSAM-47.120 3. c. - “TIMELY AND APPROPRIATE REMEDIATION IN FCPA MATTERS”
  o KEY COMPONENTS
    • “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 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
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://webstore.ansi.org/RecordDetail.aspx?sku=ISO%2037001%20-2016&gclid=CPkwkFZOG9wJlNDRg._7Kxv-wbLiGQAgUPKvpmz/zShQSwXQ0NMM99pqGdMaOHUs6MV5hVuy_E6fl4Azu1e6PHlAQ
- www.iso37001compliance.com

CONTACT INFORMATION

Worth D. MacMurray
wdmacm@iso37001compliance.com
703-300-6345
iso37001compliance.com