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Managing the Aggressive Enforcement of International Regulations by the Trump Administration

Compliance Best Practices for Companies that Source, Operate, or Sell Abroad

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Regulators within the Trump administration have sent a loud message to companies subject to U.S. jurisdiction: laws governing international activities continue to be the subject of intense enforcement activity, leading to record fines in such areas as U.S. economic sanctions administered by the Office of Foreign Assets Control (OFAC), export controls (the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR) administered by the Departments of State and Commerce, respectively), and the Foreign Corrupt Practices Act (FCPA) (administered by the Departments of Justice and the Securities and Exchange Commission). These large penalties demonstrate that the enforcement focus on international regulatory requirements under prior administrations is continuing unabated in the current regulatory environment.

Of most concern to multinational organizations, many of these laws present outsized risks for companies that source, operate, or sell abroad. Many multinational companies interact with countries where the respect for the rule of law is diminished, leading to an unusually high number of international regulatory enforcement actions. For global companies, countries in the Middle East, Africa, South America, and Asia are common areas of operation, and these countries present issues under the FCPA (frequent bribery requests), OFAC and other sanctions (limitations on dealings with Cuba, Iran, Syria, Russia, Venezuela, and other sanctioned countries), and export controls (controls on shipments of U.S.-origin goods to embargoed countries as well as restrictions on products that have defense or dual-use capabilities, such as being useful in chemical and biological weapons production). Further, actions in the economic sanctions realm, including the decision of the U.S. Government to withdraw withdrew from the Iranian Joint Comprehensive Plan of Action (JCPOA) and instead sharply increase sanctions on Iran, as well as stricter Russia and Venezuelan sanctions, have ratcheted up the enforcement risk under economic sanctions regulations as well.

Recent OFAC actions extend these concerns from the traditional areas of financial transactions, direct international operations, and sales to a previously lower risk area – the international supply chain. In a recent OFAC action (described below), OFAC imposed a seven-figure penalty on a company for failing to conduct sufficient supply chain due diligence, resulting in the company inadvertently importing goods from North Korea when it thought it was purchasing Chinese-origin goods. Three U.S. agencies also have issued a special advisory regarding the need for supply chain due diligence, with the Department of Homeland Security also separately providing practical advice regarding supply chain due diligence. The combination of these events demonstrates that companies need to pay greater attention to their international supply chains.

All these heightened risks make it essential that companies in organizations that sell, operate, or source abroad take steps to identify, manage, and minimize their international regulatory risk, including through the conduct of recommended compliance audits that extend to their supply chains. In light of these developments, this white paper summarizes the most recent enforcement activity of concern to multinational companies, including new activity on the supply side, while also providing a twelve-step program to help companies that operate, source, or sell abroad meet the new compliance expectations of U.S. regulators. This twelve-step program provides the steps that most multinational organizations should take to identify and mitigate the risk of costly enforcement actions under key U.S. international regulatory regimes.

At the end of this White Paper, you will find a sample risk-assessment questionnaire. If you complete this and return it to the authors, Foley & Lardner LLP will be able to help analyze the results to help determine the risk profile of your organization. Further information is available by contacting the authors at +1 202.945.6149 or ghusisian@foley.com or at +1 202.295.4001 or jcscott@foley.com. Similarly, please contact the authors if you would like a copy of the companion white paper to this one on international trade issues. Titled Managing the Trump Administration International Trade War: Coping with Section 232 and 301 Tariffs, International Trade Litigation, Heightened Customs Enforcement, and International Trade Uncertainty," this international trade paper presents a twelve-step program for managing the costs and uncertainties of the ongoing Trump administration international trade war.

A. RECENT ENFORCEMENT ACTIVITY SHOWS U.S. GOVERNMENT WILLINGNESS TO IMPOSE RECORD PENALTIES FOR VIOLATIONS OF INTERNATIONAL REGULATIONS

Under the Obama administration, enforcement of the FCPA, export controls, economic sanctions, AML, and FCPA regulations was steady and strong. Although the numbers varied year by year – mostly due to timing issues related to when large matters were settled – it was not uncommon to see large enforcement settlement that individually surpassed the $100 million level, with total annual penalties in many years reaching into the billions.

Any thought that the Trump administration might take a more lenient approach toward these international regulations has been laid to rest by its strong record of enforcement. Five of the top ten FCPA settlements – against Petrobras ($1.78 billion), Telia Company AB ($965 million), MTS ($850 million), Société Générale S.A. ($585 million), and Keppel Offshore & Marine Ltd. ($422 million) – occurred within the first two years of the Trump administration. Independently, the Department of Commerce's Bureau of Industry and Security (BIS) imposed penalties exceeding $2 billion and required the U.S. government to have unprecedented access to the inner workings and compliance monitoring of ZTE Corporation for violations of U.S. export control laws. And with OFAC also recently imposing the second-largest economic sanctions penalty – a $657 million penalty against Standard Chartered Bank, due to violations of current or former sanctions on Cuba, Sudan, Burma, Syria, and Zimbabwe (alongside coordinated sanctions with the UK regulators and regulators in New York State that brought the total penalties to over $1.1 billion) – the ongoing risk of large economic sanctions penalties continues to be high under the current administration.

These enforcement actions illustrate the ability of U.S. regulators to discover and punish violations of U.S. international regulations, as well as the willingness of the Trump administration to impose groundbreaking penalties. In light of the aggressive enforcement mentality of the U.S. government, this white paper outlines steps that multinational companies can take to help identify and manage their international regulatory risk, including the risk from international sourcing and supply chains. Careful consideration of each step will take the company from identifying the risks, through examining any deficiencies in dealing with those risks, to the goal of compliance as informed by appropriate procedures, internal controls, and training. For any multinational company that has not gone through such an exercise in the last few years, systematically working through the twelve-step program is likely to lead to a significant compliance payoff and reduction in regulatory risk.

B. U.S. Government Issues Coordinated Message that It Expects Supply Chain Due Diligence and Compliance

Regulators have sent several recent messages that the U.S. government expects companies to subject their entire supply chain to extensive due diligence, based on state-of-the-art compliance measures. These include the issuance of an unusual briefing by the Departments of State, Treasury, and Homeland Security on the need for supply chain due diligence, a special advisory from the Department of Homeland Security on supply chain due diligence and compliance best practices, and a seven-figure penalty for a company not engaging in "full spectrum" supply chain due diligence, even though OFAC did not find that the company had ignored any red flags of potential violations. Taken together, these measures underscore the importance of international due diligence and compliance for companies that operate, source, or sell abroad.

On January 31, 2019, OFAC announced a $996,080 settlement with a Californian cosmetics company, e.l.f. Cosmetics, Inc. (ELF), for alleged violations of the North Korean Sanctions Regulations. This settlement occurred after ELF voluntarily reported the "unknowing" importation of 156 shipments of false eyelash kits from two suppliers in China that contained materials independently sourced by these suppliers from North Korea. According to the settlement announcement, the total value of the shipments originally sourced from North Korea was approximately $4.4 million.[1]

OFAC determined that even though the apparent violations were self-disclosed, aggravating factors included that "ELF is a large and commercially sophisticated company that engages in a substantial volume of international trade" and that "ELF's compliance program was either non-existent or inadequate throughout the time period in question." In particular, OFAC was most concerned that while ELF was putting substantial efforts into international quality control, it was not putting equal efforts into its international regulatory compliance. As OFAC stated:

> Throughout the time period in which the apparent violations occurred, ELF's OFAC compliance program was either non-existent or inadequate. The company's production review efforts focused on quality assurance issues pertaining to the production process, raw materials, and end products of the goods it purchased and/or imported. Until January 2017, ELF's compliance program and its supplier audits failed to discover that approximately 80 percent of the false eyelash kits supplied by two of ELF's China-based suppliers contained materials from the DPRK [North Korea].[2]

What is notable about the settlement is that, unlike in most OFAC settlement announcements, there are no listed red flags. Instead, the allegations of violations premise culpability on two facts: (1) that the goods were procured from China (a known purchaser from North Korea); and (2) the lack of any supply chain compliance measures. Most problematic, from the perspective of OFAC, was that ELF had in place compliance measures related to product quality, but not designed to ensure supply chain economic sanctions integrity while sourcing products from a part of China known to use North Korean suppliers.

OFAC made clear that the lack of compliance and due diligence was a major driver of the enforcement action. As OFAC states:

[1] https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190131_elf.pdf.

[2] OFAC, "e.l.f. Cosmetics, Inc. Settles Potential Civil Liability for Apparent Violations of the North Korea Sanctions Regulations" *(Jan. 31, 2019), https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190131_elf.pdf.

> This enforcement action highlights the risks for companies that do not conduct full-spectrum supply chain due diligence when sourcing products from overseas, particularly in a region in which the DPRK, as well as other comprehensively sanctioned countries or regions, is known to export goods. OFAC encourages companies to develop, implement and maintain a risk-based approach to sanctions compliance and to implement processes and procedures to identify and mitigate areas of risks. Such steps could include, but are not limited to, implementing supply chain audits with country-of-origin verification; conducting mandatory OFAC sanctions training for suppliers; and routinely and frequently performing audits of suppliers.[3]

What is notable is that OFAC treats supply chain regulatory risk management, including comprehensive audits at both the company and at suppliers, and training at the suppliers, as being virtually mandatory, at least for companies sourcing from high-risk countries. Given that U.S. companies routinely operate in and source from countries that have caused repeated OFAC violations, such as Brazil, China, India, and Mexico, the grounding of the penalties in such broad risk factors is notable. OFAC in effect was treating the lack of supply chain due diligence and compliance measures as the equivalent of knowledge of the potential violations.

While the ELF settlement made new ground in terms of imposing a substantial penalty for supply chain compliance factors, the U.S. government has taken other steps to highlight "deceptive practices" put in place by North Korea, including the advisability of businesses implementing "effective due diligence policies, procedures, and internal controls to ensure compliance with applicable legal requirements across their entire supply chains." This occurred in the summer of 2018, when the Department of Treasury (which contains OFAC), the Department of State, and the Department of Homeland Security issued a special advisory titled "Risks for Businesses with Supply Chain Links to North Korea."[4]

According to the Advisory, the U.S. Government was taking the unusual step of highlighting supply chain risks because it possessed extensive information indicating that the North Korean government was securing hard currency by engaging in clandestine arrangements to supply products behind the scenes and through the use of forced labor in third countries. The Advisory states that the North Korean government often sends North Korean workers to other countries, forcing them to work long hours, and then send 80-90 percent of their wages back to the North Korean government. The third parties who engage in the illegal purchase of goods or the use of forced North Korean Labor may then sell to U.S. customers, often hiding the North Korean connections to the goods, including by mislabeling the goods or technology, operating through joint ventures with North Korean firms behind the scenes, working with North Korean companies to develop cut-rate intellectual property services and

[3] https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190131_elf.pdf.

[4] https://www.state.gov/documents/organization/284481.pdf.

products (such as website development and apps), or hiding the use of forced North Korean labor.

The U.S. Government highlighted "two primary risks" for international sourcing and supply chains: (1) the inadvertent sourcing of goods, services, or technology from North Korea; and (2) the presence of North Korean citizens or nationals in companies' supply chains, whose labor generates revenue for the North Korean government." To avoid these two types of violations, the U.S. Government concludes that "[b]usinesses should closely examine their entire supply chain(s) for North Korean laborers and goods, services, or technology, and adopt appropriate due diligence best practices."[5]

The U.S Government highlights the following key risk points:

Sub-Contracting/Consignment Firms: Third-country suppliers shift manufacturing or sub-contracting work to a North Korean factory without informing the customer or other relevant parties. For example, a Chinese factory sub-contracts with a North Korean firm to provide embroidery detailing on an order of garments.

Mislabeled Good/Services/Technology: North Korean exporters disguise the origin of goods produced in North Korea by affixing country-of-origin labels that identify a third country. For example, North Korean seafood is smuggled into third countries where it is processed, packaged, and sold without being identified as originating from North Korea. There are also cases in which garments manufactured in North Korea are affixed with "Made in China" labels.

Joint Ventures: North Korean firms have established hundreds of joint ventures with partners from China and other countries in various industries, such as apparel, construction, small electronics, hospitality, minerals, precious metals, seafood, and textiles. *See* Annex 2 for a list of known North Korean joint ventures.

Raw Materials or Goods Provided with Artificially Low Prices: North Korean exporters sell goods and raw materials well below market prices to intermediaries and other traders, which provides a commercial incentive for the purchase of North Korean goods. This practice has been documented in the export of minerals. For example, a close review of trade data on North Korea's export of anthracite coal to China from 2014-2017 reveals a consistent sub-market price for this export.

[5] Dep't of Treasury, Dep't of State, and Dep't of Homeland Security, "North Korea Sanctions & Enforcement Actions Advisory" (July 23, 2018), https://www.treasury.gov/resource-center/sanctions/Programs/Documents/dprk_supplychain_advisory_07232018.pdf.

> ***Information Technology (IT) Services:*** North Korea sells a range of IT services and products abroad, including website and app development, security software, and biometric identification software that have military and law enforcement applications. North Korean firms disguise their footprint through a variety of tactics including the use of front companies, aliases, and third country nationals who act as facilitators. For example, there are cases where North Korean companies exploit the anonymity provided by freelancing websites to sell their IT services to unwitting buyers.[6]

According to the advisory, 41 countries – including commonly used trading partners such as China, Kuwait, Poland, Russia, Taiwan, Thailand, and Vietnam – have been found to be using forced labor. Purchases from these countries accordingly need to be considered high risk.

Although the multi-agency advisory targets North Korea, the U.S. government maintains sanctions against multiple countries, including Cuba, Iran, Russia, Venezuela, and nearly a dozen other countries. It also targets dealings with Specially Designated Nationals and other embargoed persons. These designated persons increasingly have targeted target companies that are major worldwide suppliers of raw materials and goods, such as Rusal.

Goods associated with any sanctioned country, company, or person can result in economic sanctions issues, including blocked imports, potential penalties, and even personal liability. As a result, it is important for companies that source abroad to engage in systematic reviews of their supply chains. These companies should not assume that their sourcing from third parties, and not their own operations, will shield them from liability for violations of economic sanctions and other laws that target supply chains. With Customs now also taking actions to cut off imports from companies that benefit from forced labor or human trafficking, the regulatory and reputational stakes from a flawed supply chain have never been higher. Companies that source internationally accordingly need to take concrete steps to ensure that there are sourcing their inputs from clean sources.

C. SUPPLY CHAIN DUE DILIGENCE AND COMPLIANCE

Underscoring the importance that OFAC and other agencies are placing on supply chain due diligence and compliance, OFAC provided key details regarding the steps that ELF took to gain mitigating credit due to its compliance response. OFAC quoted the following steps approvingly in its announcement of its penalty:

[6] https://www.state.gov/e/eb/tfs/spi/northkorea/advisories/284241.htm.

> ELF stated the company has terminated the conduct which led to the apparent violations and has taken the following steps to minimize the risk of recurrence of similar conduct in the future:
>
> - Implemented supply chain audits that verify the country of origin of goods and services used in ELF's products;
> - Adopted new procedures to require suppliers to sign certificates of compliance stating that they will comply with all U.S. export controls and trade sanctions;
> - Conducted an enhanced supplier audit that included verification of payment information related to production materials and the review of supplier bank statements;
> - Engaged outside counsel to provide additional training for key employees in the United States and in China regarding U.S. sanctions regulations and other relevant U.S. laws and regulations; and
> - Held mandatory training on U.S. sanctions regulations for employees and suppliers in China and implemented additional mandatory trainings for new employees, as well as, regular refresher training for current employees and suppliers based in China.[7]

To underscore the compliance message, OFAC added a compliance warning, stating as follows:

> This enforcement action highlights the risks for companies that do not conduct full-spectrum supply chain due diligence when sourcing products from overseas, particularly in a region in which the DPRK, as well as other comprehensively sanctioned countries or regions, is known to export goods. OFAC encourages companies to develop, implement, and maintain a risk-based approach to sanctions compliance and to implement processes and procedures to identify and mitigate areas of risks. Such steps could include, but are not limited to, implementing supply chain audits with country-of-origin verification; conducting mandatory OFAC sanctions training for suppliers; and routinely and frequently performing audits of suppliers.[8]

Further fleshing out these guidelines, the Department of Homeland Security also has provided compliance guidelines for ensuring supply chain integrity. Although these practices are aimed at North Korean forced labor, they are equally relevant for any entity seeking to

[7] OFAC, "Enforcement Information for January 31, 2019," https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190131_elf.pdf.

[8] *Id.*

shore up its supply chain compliance. The Homeland Security recommendations are as follows:

> *What steps should my company take to ensure North Korean workers are not in our supply chain?*
>
> Your company should review due diligence best practices and closely reexamine your entire supply chain with the knowledge of high risk countries and sectors for North Korean workers.
>
> Due diligence will likely vary based on the size of the company and industry. Generally, human rights due diligence and related practices identify, prevent, and mitigate actual and potential adverse impacts, as well as account for how these impacts are addressed. The below steps are merely examples of actions that may be taken to ensure due diligence as it is a flexible, risk-based process and not a specific formula for companies to follow; additional steps may be required:
>
> - a high-level statement of policy demonstrating the company's commitment to respect human rights and labor rights;
> - a rigorous continuous risk assessment of actual and potential human rights and labor impacts or risks of company activities and relationships, which is undertaken in consultation with stakeholders;
> - integrating these commitments and assessments into internal control and oversight systems of company operations and supply chains; and,
> - tracking and reporting on areas of risk.
>
> In addition, importers have the responsibility to exercise reasonable care and provide CBP with such information as is necessary to enable CBP to determine if the merchandise may be released from CBP custody. To demonstrate reasonable care, an importer may present any material that it chooses to, which may include comprehensive due diligence efforts that may have been undertaken, such as:
>
> - Information demonstrating that your company engaged meaningfully with affected stakeholders, including workers and trade unions, as part of the due diligence process;
> - Workforce composition at the location in question;
> - Training materials on North Korean forced labor prohibitions that have been provided to suppliers and sub-contractors;
> - Company policies, and evidence of implementation, on using North Korean laborers;

- Contracts with suppliers and sub-contractors that state your policy on North Korean forced labor;
- Publishing the full names of all authorized production units and processing facilities, the worksite addresses, the parent company of the business at the worksite, the types of products made, and the number of workers at each worksite;
- Information on how and to whom wages are paid at the location;
- Information demonstrating that recruitment agencies are within the scope of any third-party audit with your suppliers;
- Documents verifying the use of authorized recruitment agencies and brokers or that you use direct recruitment;
- Documents verifying that the fee structure presented by the recruitment agency is transparent and has been verified through worker interviews;
- If you have reimbursed any fees paid, verification of such reimbursement,
- Demonstrated commitment to human rights and labor due diligence at the highest levels of your company; and,
- Results of your human rights and labor impact assessments.[9]

With OFAC also maintaining strict sanctions regimes against other countries and regions (Cuba, Iran, and the Crimean region), governments (Syria, Russia, and Venezuela), and a host of specialty sanctions against designated persons and entities associated with numerous governments, countries, and organizations, any country that relies on an international supply chain needs to incorporate the types of supply chain best practices highlighted by the Homeland Security FAQs, the three-agency Advisory, and by OFAC in the ELF settlement. Anything less risks the type of substantial penalties, investigation costs, and bad publicity that always accompany announcements of substantial penalties in OFAC cases.

D. A TWELVE-STEP PROGRAM FOR INTERNATIONAL COMPLIANCE

As illustrated by the record penalties, the risk of severe enforcement actions under the Trump administration for violations of international regulations continues to be high. Yet many multinational companies find themselves in a quandary regarding how best to implement their international regulatory risk management. They may well know they face heightened risk, but are not clear regarding the best way to proceed.

To help manage this quandary, this white paper summarizes the typical steps that most multinational companies should consider when evaluating their international regulatory risk

[9] Dep't of Homeland Security, "CAATSA Title III Section 321(b) FAQs," https://www.dhs.gov/news/2018/03/30/caatsa-title-iii-section-321b-faqs.

management procedures and internal controls. Through careful implementation of these measures, most multinational organizations should be able to implement the kinds of compliance that U.S. regulators would consider to be industry best practices, including in what for many companies will be the new area of supply chain due diligence and compliance.

1. Step 1: Secure Buy-In at the Top

Many companies looking to implement an international regulatory compliance program start by drafting a written compliance policy. But long before it comes time to draft the policy, a well-thought-out compliance strategy will look to put in place the underpinnings of the compliance program. Chief among these is the need for consistent management support for compliance initiatives.

Although the phrase "tone at the top" encapsulates management support, the concept requires more than just support from the CEO and other top management officials. When properly executed, the idea of tone at the top is a pyramid, with the concept of "doing the right thing" and respect for compliance flowing down from the CEO to personnel at all levels. Senior management must ensure it is known that compliance has full support at the top, and that compliance has the resources to function properly, while also trying to ensure that respect for compliance with legal and company mandates flows through the company.

Management support is especially important for companies with international operations or that source from abroad. The connection between the sales and operational activities of international subsidiaries, on the one hand, and regulatory risk management and adhering to the requirements of U.S. law, on the other, can appear tenuous when viewed by far-flung actors. The reality, however, is these far-off operations often represent the highest regulatory risk. This may mean that the organization must pay special attention to foreign affiliates so it can reinforce the compliance message and its importance to the overall organization.

In establishing the tone at the top, senior management must understand the importance of a consistent and reinforced message. Too often, the role of senior management seems confined to issuing "the compliance letter" (*i.e.*, a letter from the CEO stating that compliance is important). Thereafter, the topic is put on the back burner and left to the legal or compliance department to implement, often with inadequate resources to back up the compliance mission.

While there is nothing wrong with issuing such a letter, the compliance message should be reinforced so it becomes part of the internal DNA of the corporation. The importance of compliance to the company cannot be communicated by a one-time effort; rather, it should be a part of the day-to-day management of the organization.

With that goal in mind, senior management should take advantage of "non-training" training opportunities, such as integrating mentions of compliance missteps or accomplishments into quarterly calls, including compliance topics in sales meetings, and mentioning the topic frequently in company newsletters. Further, when teachable moments occur, such as compliance missteps by competitors, it is a good idea to bring this to the attention of relevant personnel, such as through a mass email from a senior manager or the general counsel's office.

Senior management must set a strong example. It should be common knowledge that compliance rules apply across the entire organization, including for senior personnel; that the company promptly follows up on credible red flags; and that the company is willing to walk away from business that requires stepping too close to the risk threshold. People throughout the organization, whether in the United States or elsewhere, should realize there are consequences for compliance missteps. Through these means, senior management can communicate respect for compliance throughout the organization.

2. Step 2: Perform a Risk Assessment

The compliance obligations of multinational corporations are more complicated than for domestic organization. A corporation that operates internationally automatically takes on additional compliance responsibilities under laws and regulations that target international conduct, as well as new sets of foreign laws, all while shedding none of its domestic compliance obligations. Multinational companies tend to be larger, which increases the importance of establishing systematic compliance procedures. Multinational corporations often have magnified logistical difficulties, such as coordinating compliance standards and training across disparate divisions and affiliates, dealing with employees with cultural and language differences, and dealing with general skepticism regarding the application of U.S. law outside the United States. These and other factors can increase the difficulty of creating and maintaining multinational compliance standards.

To help control these issues, the second step for most organizations is to perform a risk assessment to determine how these factors impact its many compliance obligations. A risk assessment is a survey of the company's operations to determine the exposure of the organization to various forms of regulatory risk, considering both the likelihood and the severity of possible violations and current enforcement priorities.

The importance of the risk assessment lies in the recognition that it is not possible to eliminate all regulatory risk. Since organizations need to minimize the risk of violations, while coping with the reality that they have limited resources to put into risk mitigation, they need guidelines for allocating their scarce compliance resources. The risk assessment provides this guidance by assembling data needed to create an organization-wide risk profile.

Compliance at international organizations should be tailored to the organization, taking into account all factors that bear on the risk profile of the organization. For multinational companies, items to consider include U.S. government enforcement priorities, prior compliance issues within the organization, risks and trends in the industry, and recent changes in the scope of operations of the organization. Frequent interactions with Customs require special scrutiny, since any payments made to such officials to enter goods can raise issues under the FCPA. In areas of the world where the company must deal with foreign state-owned entities, it needs to realize that even though these companies operate in a commercial fashion, the FCPA still treats all employees of these companies as foreign officials. Such changes are frequent sources of weakness if they are not mirrored by changes in compliance oversight.

It also is common for multinational companies to rely on agents, consultants, joint venture partners, and other third parties. The outsized risks posed by these third-party intermediaries is explored in detail below.

A typical way for multinational companies to proceed with a risk assessment is to survey business units that represent areas of high regulatory risk, using the types of questions found at the conclusion of this white paper. Questions for an anti-corruption survey, for example, might examine whether the relevant stakeholders often deal with state-owned companies, whether they have frequent interactions with government regulators, whether there is significant entertaining of non-U.S. persons, whether the organization does significant business in countries known to have a reputation for corruption, and whether the company does significant business in the United Kingdom (which can draw the UK Bribery Act into play). For export controls, the relevant topics to explore would include whether the organization deals with controlled items or controlled technologies; whether the company deals with items on the U.S. Munitions List (USML) or modifies commercial items for military use or to meet military specifications; whether the company has recently conducted a classification review; the degree to which non-U.S. nationals potentially have access to controlled technical data; whether the organization sells products that rely on encryption; and whether there are sales to known diversion points (the Middle East, Mexico, Russia, Pakistan, and so forth). For economic sanctions, relevant topics to cover would include whether there are sales by non-U.S. subsidiaries to sanctioned countries or specially designated nationals, whether there are sales to known diversion points, and whether the organization as a whole maintains adequate screening for SDNs (Specially Designated Nationals, or persons who have been sanctioned under U.S. law as being off-limits for business transactions and financial dealings). Finally, an anti-boycott risk assessment would examine the extent of dealings with Middle Eastern countries and with firms operating out of that region.

The risk assessment should consider both risks on the sell side (sales to customers, through distributors, and so forth) and on the input side (supply chain). As the unusual joint announcement from the Departments of Homeland Security, State, and Treasury underscore, the U.S. Government is increasing its pressure on U.S. companies to conduct due diligence on their entire supply chain, or risk the type of penalties imposed on ELF Cosmetics. If your

organization has not audited its supply chain recently, it should consider this to be a risk point and consider the various ways in which it can shore up its due diligence and compliance measures for even unrelated international suppliers, particularly those that operate in the high-risk countries highlighted by the three-agency Advisory.

One thing to remember is that the conduct of a risk assessment can lead to the discovery of potential regulatory violations. The company accordingly should have the risk assessment process conducted in a way that stresses confidentiality. If possible, it also is preferable that the risk assessment be overseen by an attorney. This is so the exercise can be conducted under the rubric of attorney-client privilege. Doing so could be important if the investigation uncovers evidence of apparent violations.

Once the risk assessment is complete, the results should be carefully evaluated to determine where the areas of greatest compliance concern lie. The results can be distilled down to a company-wide risk profile, which can guide the allocation of compliance resources. The results can then be used for such useful exercises as determining which areas merit the greatest attention, which areas likely need additional internal controls, whether there are patterns of deficient compliance (based on geography, product lines, subsidiaries/divisions, etc.), and whether the basic knowledge of the relevant legal requirements appears to be in place. By formalizing the results in a risk profile, the corporation can determine the appropriate way to manage the identified risk.

To help conduct a risk assessment, a sample risk-assessment questionnaire is provided at the conclusion of this white paper.

3. Step 3: Survey Current Controls

Step 3 involves surveying current compliance procedures and internal controls. Most larger multinational corporations already have some kind of compliance procedures in place, whether in a formal compliance program or at least ethics provisions in the code of conduct. In determining how to proceed, these procedures are the best starting point. The company should assess the current compliance program to see if its compliance measures and internal controls line up with its risk profile.

The evaluation should consider whether the plan properly covers the following aspects of the company's risk model:

- Does the plan reflect all of the circumstances that may put the organization at risk of a violation? Is it based upon a realistic risk assessment that is up to date and consistent with the company's current circumstances?

- Does the program cover all aspects of the business that operate or sell overseas? Does it cover vendors and suppliers?
- Does the plan extend to any business units that might have dealings with non-U.S. officials, whether in a procurement, regulatory, or other role?
- Does the plan include model procedures and training for non-U.S. consultants and business partners with whom the organization does business?
- Does the compliance program reflect the nature of the firm's foreign business operations and the extent to which they are subject to government control or influence?
- Does the compliance program contain adequate procedures to ensure that the firm can monitor disbursements and reimbursements?
- Does the plan contain adequate internal controls to help buttress the compliance procedures?
- Does the plan compare well with codes of ethics and compliance policies used by comparable businesses in the industry and in the countries where the firm operates?

In making these determinations, the company should consider its general risk profile, not just those related to the specific legal regime. Problems in multiple areas may indicate a careless corporate culture toward compliance issues.

Another key issue that should be covered in the compliance survey is whether the program covers the identified outside actors who can expose the organization to the risk of a regulatory violation. The U.S. government considers all affiliates, joint ventures, agents, distributors, suppliers, subcontractors, and other third parties to be extensions of the organization.[10] The organization should evaluate whether the controls and compliance procedures extend appropriately to any person or entity with which it is affiliated and whether that entity may cause third-party liability. In light of the recent emphasis on supply chain due diligence, the survey should also evaluate whether the organization has sufficient due diligence and compliance measures in place to minimize the risk arising from an international supply chain.

Where anti-corruption is concerned, organizations operating abroad need to assess whether the current plan adequately covers the regulatory risk posed by resellers, vendors, consultants/agents, sales representatives, joint venture partners, and any other third party that could

[10] For example, in the settlement of the ENI FCPA investigation, the SEC premised its claims, in part, on its view that ENI had "failed to ensure that Snamprogetti [a subsidiary] conducted due diligence on agents hired through joint ventures in which Snamprogetti participated." Securities and Exchange Commission v. ENI, Civ. Action No. 4:10-cv-2414 (Jul. 7, 2010), http://www.sec.gov/litigation/complaints/2010/comp-pr2010-119.pdf. It is true that in this particular case, the subsidiary was covered by ENI's FCPA compliance procedures. Nonetheless, this case underscores the view of the U.S. government that it is the responsibility of companies to ensure that close affiliates, including joint venture partners, are taking actions to ensure there is reasonable due diligence for anyone acting on behalf of the affiliated companies.

be viewed as being a source of bribes while representing the interests or carrying on the business of the U.S.-based company. Where exports and sanctions are concerned, the organization must consider not only its own affiliates (joint ventures, agents, distributors, and so forth), but also the risk profile raised by its own customers who might be diversion risk points or suppliers who might be sourcing from embargoed sources. Where anti-boycott is concerned, the organization should consider whether it has agents who might be viewed as providing information on behalf of the organization, and therefore might provide boycott-related information to countries cooperating with the Arab League boycott of Israel.

4. Step 4: Identify Available Resources

Compliance is an exercise in identifying and managing risk. Appropriate risk management requires matching compliance promises and expectations to the available resources, and vice versa.

After the compliance procedures have been identified and catalogued, a key next step is to ensure that the organization has not fallen into the classic compliance trap of over-promising and under-delivering. It is a classic mistake, from a risk-management standpoint, to impose compliance requirements and then fail to implement them. Yet this is often what many organizations do, either due to institutional drift or a lack of resources to implement the promised compliance tasks.

No compliance initiatives will work without adequate support. This issue is covered in the McNulty Memorandum that was issued by the Department of Justice. As the McNulty Memorandum states:

> Prosecutors should … attempt to determine whether a corporation's compliance program is merely a "paper program" or whether it was designed and implemented in an effective manner. In addition, prosecutors should determine whether the corporation has provided for a staff sufficient to audit, document, analyze, and utilize the results of the corporation's compliance efforts.

Once the company has identified the risk and necessary controls relating to those risks, it should develop a realistic sense of the cost of a program and the resources needed to run it. Senior management should sign off on the budgeting, with the understanding that the company will need to invest time and resources to maintain the program on an ongoing basis.

Without proper resources, a corporation risks certain failure. Compliance can be expensive, so a company should decide at the outset that it will budget adequate funds and employ sufficient resources to follow through on its compliance initiatives. In determining whether sufficient resources are available, the company needs to consider that success in compliance efforts takes a commitment of both tangible company resources (hiring people and spending

money on due diligence) and intangible ones (setting aside employee time for training). The resource identification should take a candid look at whether the company is adequately funding current compliance efforts, including for areas where the U.S. government seems to be focusing attention. If the company has put in place a program that demands substantial due diligence of every foreign agent hired, for example, but has not adequately funded such activities, then the company should view this as a compliance failure. Viewed in an enforcement context, the corporation would look like it has failed to meet its own compliance standards.[11]

In the international realm, some of the most common areas where compliance resources tend to lag include:

- ***Anti-corruption.*** Promises of systematic due diligence for vetting agents, distributors, joint ventures, and other third-party entities; adequate oversight of the activities of third-party intermediaries; resources to conduct compliance audits; adequate training of overseas actors.
- ***Economic Sanctions.*** Resources for systematically checking the SDN and other blocked lists; allocating adequate resources for "know your customer" diligence; adequate training of overseas actors; failure to reflect new rules regarding what subsidiaries of U.S. companies can and cannot do.
- ***Export Controls.*** Inadequate classification of controlled items and technical data; failure to implement "know your customer" guidelines for end-use and end-user controls; failure to take into account potential diversion risks; failure to check the SDN and other blocked lists.
- ***Anti-boycott.*** Resources for reviewing contracts, purchase orders, letters of credit, certificates of origin, bills of lading, and other commercial documents.

For many organizations, a focus on the customer side for such things as OFAC screening has led the organization to overlook due diligence and compliance for suppliers. As noted above, in the ELF enforcement action this was a red flag for OFAC, which highlighted the difference in the resources spent on quality assurance and those spent on vetting the sourcing of goods for suppliers. If this describes your organization, then a round of supply side due diligence and a compliance audit of your supply chain may be in order.

To avoid these and other promise-resource mismatches, the organization should, with a clear and open mind, compare its identified risk profile with the inventory of current policies and internal controls, to determine whether there are any gaps between the two. Once such gaps

[11] In the Siemens case, the DOJ alleged that Siemens provided only limited internal audit resources to support its compliance efforts in comparison to the breadth of the company's operations. *See* United States v. Siemens Aktiengesellschaft, No. 08-CR-367 (D.D.C., Dec. 12, 2008) (information at ¶ 135), http://www.justice.gov/criminal/fraud/fcpa/cases/docs/siemensakt-info.pdf.

are identified, the organization can, using normal risk-based principles, determine the best order and way to remedy the resource misallocation, whether by reallocating existing compliance resources, finding new sources of funding, or readjusting the compliance procedures.

Another key funding mistake in the international realm is failing to allocate sufficient resources to local compliance oversight. This topic is covered in Step 5.

5. Step 5: Assess Local Oversight

One of the key compliance considerations for organizations that operate in multiple countries is how the organization will oversee compliance outside the United States. The state of compliance, as envisioned at corporate headquarters, and the actual state of compliance, as implemented in the field, far too often diverge. This natural tendency is exacerbated when the organization operates in numerous countries, which makes Step 5 a key stop on the path to effective international compliance.

It often is a mistake to assume compliance can be managed solely from a central location. While compliance initiatives can originate from a central legal or compliance department, and often are best managed in a centralized fashion, implementation and oversight require on-the-ground attention. It accordingly is often necessary to set up a compliance infrastructure that includes local compliance liaisons.

Establishing compliance liaisons has multiple advantages. First, managing full compliance centrally can be difficult. There are just too many things to take care of (conducting training, monitoring red flags like those found in Appendices A-C of this white paper, conducting investigations, and so forth). Second, local personnel often have a better understanding of the regional or local environment and culture. Third, by being closer to operations, local personnel often are in a better position to identify and monitor red flags. Fourth, language issues often make local compliance issues a better direct interface for local employees. For all these reasons, it is a good idea to have compliance liaisons in place, at least where the organization is dealing with substantial, non-U.S. operations.

In assessing the adequacy of local oversight, it is necessary to consider areas of risk that may lie outside the organization. Relevant considerations include the state of oversight for non-entity risk points, including foreign subsidiaries, joint ventures, agents, distributors, consultants, and others. Recent U.S. government priorities indicate that oversight of supply chains often should be part of the local oversight. The review should be multifaceted and include a review of relevant contractual arrangements (to ensure the appropriate compliance-related provisions are in place), review of compliance certifications and updates to same, and consideration of any known red flags that have arisen regarding these third-entity risk points.

At most organizations, there are a variety of good options for compliance liaisons. Relevant local actors, who often are already in place and who can be harnessed for compliance oversight, include divisional or regional HR personnel, in-house attorneys, and auditors. If the compliance need is great enough, the organization can hire a new person dedicated solely to compliance. What is essential is that the compliance liaison be someone who is independent of business pressures. It should be someone who has the respect of local business people and who has the institutional authority and independence to follow up on potential compliance lapses, regardless of who is involved.

One item that should be assessed is the completeness of the local compliance oversight. The assessment should cover both the impact of U.S. and non-U.S. laws. However the oversight is locally managed, the organization should consider both the operation of extraterritorial U.S. laws and such local laws as local work rules, data protection and privacy laws (particularly in the European Union), competition laws, and laws regarding labor rights. The aim is to have local oversight of all potential sources of significant regulatory risk, regardless of the governmental entity imposing the underlying legal obligations.

6. Step 6: Create a Written Compliance Policy

It is unfortunate that Step 6 – the drafting of the compliance manual – is often Step 1 for many companies. As shown, however, there is considerable groundwork to cover before the organization should begin the actual drafting of the compliance manual. The goal is not just to have a written compliance policy; it is to have an effective policy that, through tailoring to the risk profile, operational needs, and culture, represents a workable compliance solution for the organization.

Although the actual contents of the compliance program should be tailored to the organization, usually the written program will include:

- ***A Written Policy Statement.*** A policy statement is just as the name implies. It succinctly sets out the company's commitment to comply with the law. The organization should draft the policy statement in clear, straightforward language, and should state that it is the responsibility of each employee to abide by the company's compliance policies.
- ***A Written Compliance Program.*** One of the most important elements of a good compliance program is a well-constructed written manual. The written manual should accurately summarize the regulations, using plain language that employees without legal training can readily follow. Many companies require that their employees sign certifications stating they have read the program and understand their compliance responsibilities, that they understand the law and the company's compliance procedures, and that they have communicated to the compliance department any information regarding any potential violations of the law or company

policy. These certifications serve the purpose of reminding personnel about the legal standards and the company's compliance policies. They represent useful evidence of the importance of compliance in any enforcement action, and could become important if a disgruntled employee blows the whistle regarding information or actions he previously certified he did not know about.

- ***Supplemental Materials.*** Depending on the risk-informed view of the area, it may be appropriate to distribute supplemental compliance materials to individuals either at high risk of potential violations or who need specialized training to oversee or comply with the relevant legal regime. All of the major international compliance areas (anticorruption, export controls, economic sanctions, international antitrust, anti-money laundering, and even anti-boycott) may warrant this treatment, depending upon the company's risk profile. Items to include in such materials include in-depth lists of red flags (like those found in Appendices A-C of this white paper), lists of sample contractual language to use when hiring third-party intermediaries, in-depth summaries of the relevant legal requirements, frequently asked questions, descriptions of compliance missteps that have occurred at the organization (including how they were handled), and other compliance-related materials. Such in-depth compliance resources should be distributed as needed, rather than to the organization as a whole.
- ***Internal Controls.*** Any internal controls that are implemented to help serve compliance goals should be memorialized. This topic is covered in Step 7.

Companies should give careful thought as well to the length of the written program. Some companies undermine the effectiveness of their program by establishing a drawn-out policy that covers every nuance in applying the law. This is a mistake, because employees will ignore a long and cumbersome compliance program. Instead of taking this approach, the program should focus on providing key points from the regulations, informed by useful examples relevant to the company and its industry. The goal is not to turn the workforce into law professors who fully understand every nuance of the law; rather, it is to give people enough knowledge so they can recognize a potential problem and notify the appropriate compliance personnel of the potential issue. If desired, supplemental guidance can be distributed to persons most likely to need more detailed compliance information on a need-to-know basis.

The end goal is to have a coordinated and effective compliance system. The organization's code of conduct/ethics, its compliance policies, its internal controls and standard operating procedures, its employee handbook, and its vendor/supplier code of conduct (the typical elements of compliance at most larger organizations) should all form an integrated whole. Consistent and tailored training then can reinforce the compliance measures in place at the organization. Through these integrated and thought-out compliance measures, the company will not only minimize the risk of compliance missteps but also will be able to demonstrate to regulators, in the event of an enforcement action, that the company had a serious compliance effort in place that is worthy of receiving substantial mitigating credit.

7. Step 7: Establish Internal Controls

Although internal controls are one of the three pillars of compliance (along with the written policy and training), they often are neglected. This neglect can be costly. Internal controls often are one of the main mechanisms by which the compliance policy is implemented. They accordingly merit as much attention as the written compliance policy.

The purpose of internal controls (sometimes referred to as standard operating procedures) is both to provide procedures that implement the dictates of the compliance program, to create consistent and repeatable methods of implementing compliance dictates, and to create a self-reinforcing cycle of compliance improvement. Compliance policies set the standard, while internal controls implement and reinforce those standards. Through this mechanism, it is possible to enhance compliance in a positive fashion and to strengthen it over time.

In creating internal controls, it often is possible to harness existing processes. A good example of this lies in the anti-corruption realm. It is common for companies to take existing internal controls, such as those governing disbursements and reimbursements, and graft on procedures intended to track potential payments to foreign officials and personnel who work at state-owned companies. Similarly, some companies use customer-intake and credit-check procedures as mechanisms to screen new customers against OFAC and EU lists of blocked persons. Doing so minimizes the time necessary to implement a functioning set of internal controls and the effort needed to oversee its operation.

Some specific internal controls that multinational corporations should consider involve the following high-risk international areas:

- ***FCPA.*** Using existing disbursement and reimbursement policies to ensure notification to compliance personnel of potentially troublesome payments; creating special trigger mechanisms for entertaining foreign officials (including people who work for state-owned entities), and gifts, meals, entertainment, and travel expenses that exceed pre-defined limits.
- ***Export Controls and Sanctions.*** Creating internal controls to ensure routine scanning of Specially-Designated Nationals (SDNs and Denied Persons) for all new customers, and the entire customer list and transaction parties on a pre-determined basis; establishing internal controls regarding placing appropriate export control notices on outbound electronic paperwork and shipping documents; developing controls to ensure accurate reporting of information for the Automated Export System and communication of information regarding same to any Customs broker or freight forwarder involved; implementing controls to automatically flag any transactions involving controlled items or defense White Papers; mandating controls designed to restrict access of non-U.S. nationals to controlled technical data, wherever it may be found at the company.

- ***Anti-boycott.*** Designing controls to ensure that relevant front-line personnel, whether personnel involved in the contracting, procurement, accounting, or line of credit functions, or other functions that are likely to encounter boycott-related activity, monitor and report boycott-related requests; implementing controls designed to ensure that all contracts have superseding language stating the company's policy of rejecting any requests to participate in the Arab League boycott of Israel.

In light of the recent U.S. government focus on international supply chains, companies that purchase from third parties abroad should consider implementing controls to create a consistent approach to supply chain risk management. These controls should include procedures for when and how to conduct supplier due diligence, how to track country of origin, procedures to get and verify country of origin certifications, potential training of suppliers, and when and how supply chain compliance audits should occur.

8. Step 8: Training, Training, Training

The importance of training as the foundation of compliance is widely acknowledged. The Sentencing Guidelines, which concisely focus on the basics of an effective compliance program, call out training for special attention. The Sentencing Guidelines commentary states that the "organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program, to the [relevant] individuals...by conducting effective training programs and otherwise disseminating information appropriate to such individuals' respective roles and responsibilities."[12]

The basic task of training is to ensure, in conjunction with a well-written compliance program and appropriate internal controls, that employees and agents have sufficient knowledge to recognize red flags (like those found in Appendices A-C of this white paper) and other problematic situations, and understand what they need to do to comply. The goal is not to create legal experts all across the company; rather, it is to sensitize people to the law so they know when to seek counsel from the appropriate compliance or legal personnel.

The importance of conducting training appropriately is magnified in the international realm. Besides the normal problem of adequately communicating the compliance requirements, the training often will need to address local practices and different cultural norms that may prove contrary to the compliance needs of the organization. Equally important is finding the best way to stress the importance of compliance with U.S. law, which may seem to many foreign

[12] U.S. Sentencing Guidelines Manual § 8B2.1(b)(4). The individuals in subdivision B are "members of the governing authority, high-level personnel, substantial authority personnel, the organization's employees and, as appropriate, the organization's agents." U.S. Sentencing Guidelines Manual § 8B2(1)(b)(4)(B).

nationals to be of limited concern because they are outside U.S. territory. Language difficulties, too, complicate things, making it essential to consider presenting compliance materials and training in languages other than English.

Training should occur for all new employees and annually for appropriate longtime employees.[13] Because no firm's work force is static, the program should include automatic steps to ensure compliance materials are distributed to personnel at the time of hire or when personnel are transferred or promoted into relevant positions that require training. The same is true whenever the company is making acquisitions, setting up new agent relationships, bringing on new distributors, or establishing joint ventures.

When preparing training materials, companies typically use a mix of written and training materials that summarize the law, frequently asked questions and answers about the law, training slides, and prepared oral presentations (which are best given in an interactive presentation with audience feedback and participation). The program should use real-world examples whenever possible, such as case studies drawn from actual problems confronted by the company in the past. The educational material should also reiterate the importance of compliance to the company's culture and provide other useful information, such as recent enforcement actions against similarly situated companies.

Companies also should consider how they can use technology to enhance their compliance programs, including using intranets and establishing a "compliance corner" on company internal sites. Best uses of intranets for compliance include: posting basic training online; publishing the company's compliance program and internal controls; providing plain-language summaries of applicable laws; providing real-world examples and frequently asked questions; consolidating and presenting model contract provisions; quickly disseminating updates to the compliance program and internal controls; establishing links to allow ready reporting of potential problems; and informing employees regarding how the company has resolved tricky issues it has encountered. The company can use its intranet as a mechanism to identify problems quickly, to report potential issues, and to coordinate all of the company's compliance initiatives. Using these tools can make compliance an ongoing process and give new employees ready access to company procedures at the outset of their employment.

Another growing best practice is using automated training software. This software communicates compliance information and can be used to test the user's knowledge of both the substantive laws and the company's compliance procedures. Companies can place automated training software on the intranet and make completion of the training a required task for

[13] *See*, *e.g.*, Hollis v. City of Buffalo, 28 F. Supp. 2d 812, 821 (W.D.N.Y. 1998) (rejecting a company defense based on good faith compliance efforts, due to failure of company to conduct ongoing education or to recirculate compliance materials).

employees, allowing the company to develop a set of standards that employees must meet in a variety of substantive areas.

The company should maintain an attendance log to track all compliance training. Each employee should sign an acknowledgment form showing he or she has reviewed the compliance materials, understands his or her responsibility to comply with the company's program, is not aware of any violations of applicable law or company policies, and will not commit such violations going forward.

9. Step 9: Integrate Outsiders

Outsiders – third parties who act (or could be construed as acting) for the organization – are often a key source of risk. Here, what could be known as the First Law of International Compliance comes into play: The farther you get from your headquarters, the lower your degree of knowledge and control, and the greater the risk of a violation. This means that controlling the risk of a regulatory misstep requires paying close attention to the incremental risk added by third parties, including business partners, joint ventures, agents, sub-agents, consultants, and other third parties. In light of the U.S. government's expectations for supplier due diligence and compliance, the focus should also be on the international supply chain as well.

Despite the operation of the First Law of International Compliance, the normal approach of most companies relies heavily – and often exclusively – on contractual protections for third-party protection. Such measures are essential. The U.S. government will consider any third-party arrangements that do not include such protections to be deficient. Yet by themselves, such contractual provisions generally offer limited protection that might be appropriate for low-risk actors, but not for other scenarios, as illustrated by the ELF Cosmetics settlement.

One example of this is in the FCPA realm. It has become common in recent years for third-party intermediary contracts to contain audit provisions, which allow the U.S. party the right to audit the third party, either as a general manner upon notice or based upon specific knowledge of a potential red flag. The U.S. government, however, has recently expressed skepticism regarding the value of such provisions if they are not regularly exercised. These types of contractual provisions lose their *in terrorem* impact once the third party discovers the provisions are seldom or never applied.

Depending on the risk profile of the company, it may make sense to integrate outsiders into the risk management plan. This type of integration requires several common-sense solutions, including explicitly incorporating outsiders into the compliance program (where this is possible), providing them with training materials, conducting training for them, and exercising auditing rights on a risk-adjusted basis.

Such procedures are of use not only in the anti-corruption area, but also in the realms of economic sanctions and export controls. The rule is that U.S. jurisdiction follows the goods, services, or technologies, including through third parties, where the U.S. person "knew" that diversion was possible. Providing no such knowledge existed after the fact can be a difficult exercise. The importance of "knowing your customer" does not lose importance just because a third party is involved. If the U.S. government takes the view the third party was brought in to hide the nature of the transaction, then the risk profile of a transaction involving an affiliated third party can be even higher than for a direct transaction.

10. Step 10: Auditing and Checkups

It is difficult to have a strong compliance program unless it is regularly tested, probed, and analyzed. Stated differently, it is not enough to create a good compliance program and then let it run unattended, at least for high-risk areas. Companies should monitor compliance by direct observation, by supervising the program, and by testing the controls. One increasingly common way of ensuring the last element is to conduct regular compliance audits.

Checking on the operations of compliance programs and internal controls is increasingly common. Companies should use risk-based auditing principles to determine the countries, divisions, subsidiaries, and third parties that should be monitored through audits and compliance check-ups. Further, as noted in Step 9, companies also should consider extending such check-ups and audits to third parties as well.

Additionally, as noted above, three U.S. government agencies are now on record as recommending supply chain audits. For many organizations, this risk point has been neglected in favor of checks on the company's own affiliates and joint ventures. Now that the U.S. Government is both recommending such supply chain audits, and now has begun issuing penalties for supply chain failures, it is important for companies in general to consider conducting such audits on a risk-based basis, especially for key components or those that are sourced from areas of the world highlighted as being repeat offenders for such problems, as listed in the advisories quoted above.

A recent trend for accomplishing the goal of constant compliance self-improvement is for companies to benchmark their compliance policies against those of other companies in their industry to ensure they are keeping up with evolving compliance standards and industry best practices. A proper review, however, will go beyond ensuring the terms of the compliance program are state of the art. Companies also need to check the implementation of the program by making certain that people know of the policies and are following the requirements. Special emphasis, too, needs to be put on any changes in the organization that have occurred since implementation of the policy, including modifications to laws or changes in the company and its scope of operations. Examples include the establishment of new subsidiaries or

the hiring of new agents, distributors, and so forth. It is also useful to consult any risk assessment previously performed to determine whether the compliance measures in operation are addressing these identified risks.

11. Step 11: Monitor Red Flags

The identification of red flags and appropriate follow up are the keystones to well-functioning compliance in all of the common international compliance areas. It is for this reason that one of the most important tasks when implementing international compliance is to train relevant stakeholders regarding the transactions and conduct that are suspicious given the regulatory requirements.

Identifying red flags is not a static process. The type of red flags to identify depend on the company's profile, whether it uses controlled technology or sells/exports controlled goods, its interactions with international regulators, the industry in which it is engaged, its method of operation, and other unique factors. It is a good idea for an organization to tailor such red flags to its own risk profile and then distribute them to company personnel.

In recent years it has become common to establish whistleblower hotlines and other reporting mechanisms. The goal is to empower one of the company's greatest compliance resources – the collective intelligence of its own work force – to help identify suspicious circumstances before they grow into all-encompassing problems. An easily available hotline, well-publicized and known both in the United States and abroad, is an important compliance resource. Companies that operate in the European Union will need to tailor their hotline, and how information is gathered from the hotline, to local data privacy and work force rules, at least in those markets.

It does little good to set up a helpline and then not to follow through on credible red flags raised. Once a credible report from the helpline is received, the compliance department should: (1) report the concern to relevant management actors; (2) evaluate the surface merit of the claim and develop a plan to deal with it; (3) follow up with an inquiry (if the report continues to seem credible); (4) log the investigatory steps taken; and (5) report the information up the compliance chain. The company should also give thought regarding steps to take to ensure the preservation of relevant evidence. The compliance department should record the results of every inquiry to allow the company to track reported concerns to see if they exhibit a pattern.

In following up on credible reports, the steps to consider include such things as interviewing the employee who made the complaint and attempting to determine the circumstances behind the complaint to decide if there is any valid basis for it. The company should inform the employee that a confidential investigation will occur and that investigators may pass on the report to members of senior management. The investigator should instruct the employee that

the company will conduct the investigation through normal channels and that the employee should not attempt to conduct his or her own investigation. The investigator also should inform the employee that the company forbids retaliation and instruct the employee that if retaliatory behavior occurs, the employee should notify the compliance or legal department. The company should thoroughly investigate any complaints of retaliation.

During any investigation, the company should treat the complaining employee like any other. The company should continue to evaluate the employee's work using normal procedures and standards and should both document any positive actions taken by the company toward the complaining employee (such as awards, promotions, or raises) and the full reasons for any discipline or reprimands in case the employee later raises claims of retaliation. At the end of the investigation, the company should inform the complaining party of the results of the investigation and what corrective steps the company took to address the substance of the complaint. Studies show that employees who believe their concerns were addressed in a thoughtful way are less likely to consider taking outside action, such as becoming a whistleblower. Due to confidentiality concerns, the company often should provide only general summaries of what occurred and how it was handled.

Sample red flags for the anti-corruption, export controls/economic sanctions, and antiboycott regimes are found in Appendices A-C.

12. Step 12: Communicate with Board & Senior Management

In corporations that set the proper compliance tone, board-level involvement is regular and institutionalized. The key areas for board-level involvement include thorough oversight of compliance initiatives, quarterly reports of compliance activities, and special communications for potentially serious matters.

Board members should receive regular reports detailing the number and type of reports of potentially serious compliance violations, interpretations of the meaning of this data, and recommendations regarding how the company should update compliance procedures to address areas of concern and potential changes to the organization's risk profile. The report should include the results of any investigations of serious possible violations and the results of any compliance audits. The report also might benchmark compliance efforts against those of competitors. Written materials should be accompanied by direct and personal briefing by the Chief Compliance Officer or General Counsel, as appropriate.

Based on these reports and other information, board members, or the compliance or audit committee, should consider whether the company is devoting sufficient resources to the compliance program and whether compliance personnel have a direct conduit to the board

or appropriate board committee.[14] They also should consider whether the compliance plan appropriately covers all areas of the company and third-party risk points, including the international supply chain.

Boards or committee members that receive compliance reports also need to probe beyond the four corners of the reports. They should assure themselves that the reports are complete, accurate, and do not present a whitewashed version of compliance issues. If a high-level person who has oversight of compliance presents the report, this may require additional reports from the person who has day-to-day responsibility for the compliance program, as called for by the Commentary to the Sentencing Guidelines.[15] Sometimes, it may be appropriate for the board to meet with the internal auditor or compliance personnel.

A final consideration is communications with shareholders, if a publicly traded company is involved. The board, or the compliance or audit committee, needs to determine when a potential compliance situation is important enough to require disclosure as a material fact. This can involve any situation where the potential costs of investigation are high (and therefore material), where the conduct could jeopardize important rights due to the conduct (such as the right to export), where the problem appears to be systemic, where senior management is involved, or where there is the potential for a serious penalty. Another consideration is whether the conduct might require disclosure for another reason, such as the need to disclose the nature of a transaction involving the Government of Iran under SEC disclosure requirements related to such conduct.

E. CONCLUDING THOUGHTS

With the Trump administration continuing to impose hefty penalties for violations of U.S. regulations of exports and international conduct, regulatory risk management continues to be essential for all multinational companies. But a well-run compliance program is not something that comes about by accident, particularly in the international realm. Creating such a system requires a thorough understanding of the company's risk profile, as informed by the systematic evaluation of the regulatory risk points, company's scope of operations, and use of third parties that so often create compliance conundrums. Further, even if the goal of an effective compliance system is realized, that happy state is unlikely to be a permanent one. Natural changes in the organization's footprint, its evolving methods of operation, changes in the law, and changes in the enforcement aims of the enforcement authorities, all conspire

[14] As the Sentencing Guidelines note, a corporation should support the person running a compliance program with "adequate resources, appropriate authority, and direct access to the governing authority or an appropriate subgroup." U.S. Sentencing Guidelines Manual § 8B2.1(b)(2)(C).

[15] U.S. Sentencing Guidelines Manual § 8B2.1 (commentary note 3) (discussing annual reports from the person with day-to-day responsibility).

to make even the best compliance program and related internal controls obsolete in a surprisingly short time.

Above all, an organization's compliance efforts should never be one and done. Compliance processes are never completed, and the goal is not to perfect the system of risk management. Rather, it is to maintain a system of process improvement in which the changing risk profile of the firm is addressed through evolving procedures and systems. Through a self-reinforcing compliance system, the firm can maintain compliance policies, internal controls, and training that provides reasonable controls to protect the organization from regulatory risk in its many forms.

* * *

Compliance is an exercise in identifying and managing regulatory risk. The starting basis for such a compliance exercise is the conduct of a full risk assessment. Appended to this White Paper, you will find a sample risk-assessment questionnaire. If you complete this and return it to the authors, Foley & Lardner LLP will be able to analyze the results to help determine the risk profile of your organization.

Further information is available by contacting the authors at +1 202.945.6149 or ghusisian@foley.com or at +1 202.295.4001 or jcscott@foley.com. In addition, please contact the authors if you would like to receive an International Compliance Guide (guide to international compliance best practices), a guide to conducting internal investigations (should compliance break down), or our guide to navigating the international trade war.

APPENDIX A
FCPA "RED FLAGS"

The concept of "red flags"—troublesome fact patterns that should rouse reasonable suspicion—is a common one in the field of FCPA compliance. Red flags primarily serve a screening function—that is, they merely indicate fact patterns that likely merit further investigation. Their identification does not mean that a transaction should not occur, and their absence does not mean that a transaction is free of FCPA issues. Rather, the concept of red flags is one that serves the helpful function of identifying some common situations where further inquiry is needed. Once the red flags have been resolved—whether through determination that they are not relevant, gathering of additional facts that indicate that the situation does not raise FCPA concerns, or through other means—then they have served their purpose of sensitizing the relevant employees to the types of situations where further inquiry is needed.

General Red Flags

The concept of red flags has been in place for more than two decades, with observers augmenting their lists as new FCPA risk patterns arise. As noted above, red flags do not, in and of themselves, indicate specific liability risks with respect to a particular transaction. Nonetheless, the following examples all indicate the need for heightened vigilance in general.

Flag 1: Your company has received an "improper payment" audit request in the past five years.

Flag 2: Payment in a country with widespread corruption and/or history of FCPA violations occurring in that country. Countries fitting this category include some African, Asian, and Middle Eastern nations, as well as much of the former Soviet Union.

Flag 3: Widespread news accounts of payoffs, bribes, or kickbacks.

Flag 4: The industry involved has a history of FCPA violations. Examples include defense, aircraft, energy, pharmaceutical/life sciences, and construction services.

Transaction-Specific Red Flags for Intermediaries

Flag 5: An agent, distributor, or joint venture partner refuses to provide confirmation of their willingness to abide by the FCPA.

Flag 6: An intermediary has family or business ties with a government official.

Flag 7: The intermediary has a bad reputation of the agent or rumors of prior improper payments or other unethical business practices. This is a key flag, and parties should document the good reputation and experience of the intermediaries they hire.

Flag 8: An intermediary appears in databases listing known corruption risks such as the World Bank List of Debarred Firms.

Flag 9: The intermediary requires that its identity not be disclosed.

Flag 10: The potential foreign government customer recommends the intermediary. This could suggest a coordinated scheme to divide a payoff.

Flag 11: The intermediary lacks the facilities and staff to perform the required services. This could suggest that the intermediary may be performing its job through corrupt payments rather than hard work.

Flag 12: The intermediary is new to the business.

Flag 13: The intermediary does not have much experience in the particular industry at issue.

Flag 14: The intermediary has violated local law, even if the violation is not related to bribery.

Flag 15: The intermediary wants or plans to use anonymous subcontractors.

Flag 16: The intermediary makes unusually large or frequent political contributions to a person or political party, which could suggest an arrangement to direct business to the intermediary.

Flag 17: The intermediary insists on the involvement of third parties who appear to be unnecessary for the work required.

Flag 18: A proposed foreign partner is owned by a key government official or a close relative.

Flag 19: There are rumors of a silent partner in a joint venture, distributor, or agent that is not disclosed by the intermediary.

Flag 20: The intermediary insists on having sole control over meetings with or approvals by a foreign government or government official.

Flag 21: The intermediary has an opaque structure or refuses to reveal its structure.

Flag 22: The intermediary is reportedly associated with criminals or criminal activity.

Flag 23: The proposed relationship is not in accordance with local laws or regulations, including rules dictating when a government official can be involved in a business relationship.

Flag 24: The intermediary attempts to assign its rights or obligations to another party.

Flag 25: The intermediary has an unexplained breakup with another company, which could suggest the discovery of illegal conduct in that relationship.

Flag 26: The intermediary has been investigated for, charged with, or convicted of corruption allegations.

Control-Based Red Flags for Intermediaries

Flag 27: A joint venture partner refuses to agree to reasonable financial controls.

Flag 28: A joint venture partner values assets contributed to the joint venture at an improper rate.

Flag 29: A joint venture partner insists on maintaining two sets of books for tax or other purposes.

Flag 30: An intermediary refuses to allow others to audit its books.

Flag 31: An intermediary requests payment of inadequately documented or entirely undocumented expenses.

Flag 32: Any other unusual request by an intermediary that reasonably arouses suspicion. For example, if an agent asks that certain invoices he backdated or altered, further inquiry is warranted.

Payment Requests by Intermediaries

Flag 33: Payment of a commission that is at a level substantially above the going rate for agency work in a particular country. An excessive commission might suggest that some portion of the funds is going to a foreign official. Then again, your agent might just be greedy.

Flag 34: Requests to work on a contingency or bonus basis. Although such arrangements can be perfectly legitimate, they often are associated with suspicious activity.

Flag 35: Payment through convoluted means. If your agent asks for payment to a numbered account in the Bahamas, the DOJ or SEC could consider this failure to investigate culpable conduct under the FCPA.

Flag 36: Over-invoicing (*i.e.*, the intermediary asks you to cut a check for more than the actual amount of expenses).

Flag 37: Requests that checks be made out to "cash" or "bearer," that payments be made in cash, or that bills be paid in some other anonymous form.

Flag 38: Requests that payments be made to a third party.

Flag 39: Payment in a third country, which suggests a plan to divide the commission outside government scrutiny.

Flag 40: The agent or distributor requests for an unusually large credit line for a customer, especially if the customer is new.

Flag 41: Requests for unusual bonuses, one-time success fees, or extraordinary payments.

Flag 42: Requests for an unorthodox or substantial up-front payments.

Flag 43: Requests for an increased level of compensation to the intermediary, without a commensurate increase in the amount of work to be performed.

Flag 44: Unexpected requests for reimbursement of entertainment expenses relating to foreign officials.

Flag 45: Any unusual payment requests, such as asking that invoices be backdated or altered.

APPENDIX B
EXPORT CONTROL AND SANCTIONS "RED FLAGS" FOR EXPORTERS

Appendix B contains common export control and sanctions red flags for exporters. When evaluating these risks, companies should remember that the following are the most commonly cited violations of the export-control regulations:

- Improperly classifying products;
- Exporting or re-exporting without appropriate export authorization;
- Furnishing a defense service without proper authorization;
- Permitting access to computer networks without sufficient controls;
- Making false statements to the U.S. Government in connection with a transaction;
- Exporting in violation of a denial order;
- Exporting or re-exporting to embargoed destinations or to prohibited end users;
- Violating the conditions of an approved license;
- Failure to sufficiently investigate customers and avoid obvious problems; and
- Dealing with non-U.S. employees.

If any of the following scenarios arise, a company should investigate and resolve the underlying concerns before entering into, or completing, a transaction.

Shipment-Related Concerns

- The final consignee is a trading company, freight forwarder, export company, or other entity with no apparent connection to the purchaser.
- Delivery dates are vague, or deliveries are planned for out-of-the-way destinations.
- A freight forwarding firm is listed as the product's final destination.
- The shipping route is abnormal for the product and destination.
- Packaging is inconsistent with the stated method of shipment or destination.

Order-Related Concerns

- The customer is willing to pay cash for a high value order rather than using a standard method of payment.
- The item ordered is incompatible with the technical level of the country to which it is being shipped, such as semiconductor manufacturing equipment being shipped to a country that has no electronics industry.
- The end-use information provided is incompatible with the customary purpose for which the product is designed.

- The product is inappropriately or unprofessionally packaged.

User-Related Concerns

- The customer appears on one of the blocked person lists: the BIS Denied Persons list, the BIS Unverified list, the BIS Entity list, the OFAC SDN list, the DDTC Debarred list, or the DDTC Nonproliferation list. The updated lists can be found online at www.bis.doc.gov/ComplianceAndEnforcement/ListsToCheck.htm.
- The customer or ultimate end user is unknown.
- Financial information about the customer is unavailable.
- The customer is willing to pay well in excess of market value for the shipment.
- When questioned, the buyer is evasive and especially unclear about whether the purchased product is for domestic use, for export, or for re-export.
- The purchaser is reluctant to provide information on the product's end use or end user.
- The customer appears unfamiliar with the product, its application, its performance, on related support equipment.
- The customer orders products or options that do not correspond with its line of business.
- The customer has little or no business background.
- Firms or individuals from countries other than the stated end user's country place the order.
- The customer declines routine installation, training, or maintenance services.
- The product's capabilities do not fit the buyer's line of business, such as an order for sophisticated computers for a small bakery.
- The customer's order seems inappropriate, such as an order for a replacement part for an item that the customer never ordered.
- The customer is willing to pay cash for a very expensive item when the terms of sale would normally call for financing.
- The customer is unfamiliar with the product's performance characteristics but still wants the product.

Destination-Related Concerns

- The order is being shipped using circuitous or economically illogical routing.
- The customer requests special markings on the package that are inconsistent with the commodity described.
- The customer or its address is similar to one of the parties found on a blocked list of denied persons.

- The end-destination is Iran, Sudan, North Korea, Cuba, Syria, or another country with OFAC or BIS restrictions.

APPENDIX C
ANTIBOYCOTT EXAMPLES

Following are examples of boycott requests that have been reported to the BIS, as reported at one time or another on the BIS/BIS website at https://www.bis.doc.gov/index.php/enforcement/oac/7-enforcement/578-examples-of-boycott-requests. Comparison of anti-boycott requests with these provisions, as well as the examples provided in the BIS anti-boycott regulations, should help clarify the legality of requests received by U.S. persons.

Bahrain (Prohibited Boycott Condition in a Purchase Order): "In the case of overseas suppliers, this order is placed subject to the suppliers being not on the Israel boycott list published by the central Arab League."

Bahrain (Reportable Boycott Condition in an Importer's Purchase Order): "Goods of Israeli origin not acceptable."

Bahrain (Reportable Boycott Condition in a Letter of Credit): "A signed statement from the shipping company, or its agent, stating the name, flag and nationality of the carrying vessel and confirming ... that it is permitted to enter Arab ports."

Bahrain (Prohibited Boycott Condition in a Contract): "The Seller shall not supply goods or materials which have been manufactured or processed in Israel nor shall the services of any Israeli organization be used in handling or transporting the goods or materials."

Bahrain (Prohibited Condition in a Contract): "The Contractor shall comply in all respects with the requirements of the laws of the State of Bahrain relating to the boycott of Israel. Goods manufactured by companies blacklisted by the Arab Boycott of Israel Office may not be imported into the State of Bahrain and must not be supplied against this Contract. For information concerning the Boycott List, the Contractor can approach the nearest Arab Consulate."

Bahrain (Prohibited Condition in a Letter of Credit): "Buyer shall in no way contravene the regulations issued by Bahrain Government and or Israel Boycott Office. Buyer shall not nominate a vessel blacklisted by the said office."

Bangladesh (Prohibited Boycott Condition in Instructions to Bidders on a Contract): "No produced commodity shall be eligible for ... financing if such commodity contains any component or components which were imported into the producing country from Israel and countries not eligible to trade with ... the People's Republic of Bangladesh. The equipment and materials must not be of Israeli origin. The supplier/bidder who are not black listed by Arab boycott of Israel will be allowed to participate in this bid."

Prohibited Boycott Condition in Instructions to Bidders on a Contract: "No produced commodity shall be eligible for ... financing if such commodity contains any component or components which were imported into the producing country from Israel and countries not eligible to trade with ... the People's Republic of Bangladesh. The equipment and materials must not be of Israeli origin. The supplier/bidder who are not black listed by Arab boycott of Israel will be allowed to participate in this bid."

Iraq (Prohibited Boycott Condition in a Questionnaire): "1. Do you have or ever have had a branch or main company, factory or assembly plant in Israel or have sold to an Israeli?"; 2. Do you have or ever have had general agencies or offices in Israel for your Middle Eastern or international operations?; 3. Have you ever granted the right of using your name, trademarks royalty, patent, copyright or that of any of your subsidiaries to Israeli persons or firms?; 4. Do you participate or ever participated or owned shares in an Israeli firm or business?"; 5. Do you render now or ever have rendered any consultative service or technical assistance to any Israeli firm or business?"; 6. Do you represent now or ever have represented any Israeli firm or business or abroad?' 7. What companies in whose capital are your shareholders?" Please state the name and nationality of each company and the percentage of share of their total capital"; 8. What companies or shareholders in your capital? Please state the name and nationality of each company and the percentage of share of their total capital. N.B. The above questions should be answered on behalf of the company itself and all of its branch companies, if any."

Iraq (Prohibited Condition in a Contract): The Contractor shall, throughout the continuance of the Contract, abide by and comply in all respects with the rules and instructions issued from time to time by the Israel Boycott Office in Iraq."

Iraq (Prohibited Condition in a Trademark Application): "Requirement for the registration of pharmaceutical companies: Certification letter regarding the boycott of Israel (*i.e.*, do not comprise any parts, raw materials, labor or capital of Israeli origin); requirement for the Registration of Medical Appliances, Disposables producing companies, and Laboratory diagnostic kit manufacturers; certification letter regarding boycott of Israel."

Iraq (Prohibited Condition in a Purchase Order): Supplies of our purchase order should never be consigned or shipped by steamers included on Israel Boycott list."

Iraq (Prohibited Condition in a Contract): "The bill of lading shall bear a note that the vessel delivering the cargo is not on the "Black List" and does not call at Israeli ports."

Kuwait (Prohibited Boycott Condition in a Custom's document): "[The vessel entry document asks the ship's captain to certify that,] no goods, dry cargo, or personal effects listed on the document of Israeli origin or manufactured by a blacklisted firm or company are to be landed as they will be subject to confiscation."

Kuwait (Prohibited Boycott Condition in Letter of Credit): "We hereby certify that the beneficiaries, manufacturers, exporters and transferees of this credit are neither blacklisted nor have any connection with Israel, and that the terms and conditions of this credit in no way contravenes the law pertaining to the boycott of Israel and the decisions issued by the Israel Boycott Office."

Kuwait (Reportable Boycott Condition in Letter of Credit): "Importation of goods from Israel is strictly prohibited by Kuwait import regulations; therefore, certificate of origin covering goods originating in Israel is not acceptable."

Kuwait (Prohibited Condition in a Purchase Order): "All shipments under this order shall comply with Israel Boycott Office Rules and Regulations."

Kuwait (Prohibited Condition in a Purchase Order): "Goods must not be shipped on vessels/carriers included in the Israeli Boycott list."

Kuwait (Prohibited Condition in a Contract): "The vendor (as person or organization) or his representatives should not be an Israeli national. So the vendor should not be owned, managed, or represented by any companies that carry an Israeli nationality and there should not be any sub-contractors that carry Israeli nationality. The vendor should not involve any person or representatives that carries the Israeli nationality in importing or exporting the software or hardware mentioned in this contract and its appendices and the vendor should provide all documents that support the above information."

Lebanon (Prohibited Boycott Condition in Power of Attorney from Lebanese firm): A Lebanese firm sent a power of attorney affidavit to appoint a local agent in Iraq to a U.S. firm. The affidavit asked that U.S. firm answer a series of questions concerning the Arab boycott. These questions included whether the firm had a plant in Israel, has sold to Israel, had offices in Israel, owned shares in an Israeli firm, had provided services for an Israeli firm, or had granted any trademarks, copy or patent rights to Israeli persons of firms.

Lebanon (Reportable Boycott Condition in Letter of Credit): "Certificate issued by the shipping company or its agent testifying that the carrying vessel is allowed to enter the Lebanese port."

Libya (Prohibited Condition in a Letter of Credit): "Original commercial invoice signed and certified by the beneficiary that the goods supplied are not manufactured by either a company or one of its subsidiary branches who are blacklisted by the Arab boycott of Israel or in which Israeli capital is invested."

Libya (Prohibited Condition in a Contract): "The Second Party shall observe the provisions of the Law for Boycott of Israel or any other State which the provisions for Boycott are

applicable and shall ensure such observation from any other sub-contractor. In case of contravening this condition, the First Party shall have the right to cancel the contract and confiscate the deposit by mere notice by registered letter without prejudice to his right of compensation."

Libya (Prohibited Condition in a Contract): "Boycott Provisions: The Contractor shall observe and comply with all the provisions and decisions concerning the boycott to Israel or any other country the same is valid. The Contractor shall secure the respect of such boycott by any other party he might have subcontracted with him."

Libya (Prohibited Condition in a Certificate of Origin): "The goods being exported are of national origin of the producing country and the goods do not contain any components of Israeli origin, whatever the proportion of such component is. We, the exporter, declare that the company producing the respective commodity is not an affiliate to or mother of any company that appears on the Israeli boycott blacklist and also, we the exporter, have no direct or indirect connection with Israel and shall act in compliance with the principles and regulations of the Arab boycott of Israel."

Oman (Prohibited Condition in a Tender): "The supplier must comply with the Israel boycott conditions."

Oman (Prohibited Condition in a Tender): "All goods to be supplied as a part of this order must comply with the Israel boycott rules stipulated by the Royal Oman Police."

Oman (Prohibited Condition in Purchase Order): "The vendor must ensure that all products supplied do not contravene the regulations in force with regard to the boycott of Israel."

Oman (Prohibited Condition in a Contract): "The certificate of origin must contain the following statement: 'We certify that the goods are neither of Israeli origin no do they contain any Israeli materials."

Oman (Prohibited Condition in a Purchase Order): "Commercial invoice, duly signed by shipper covering value of the goods and containing statement 'The goods are neither Israeli origin, nor do they contain any Israeli material."

Oman (Prohibited Condition in a Letter of Credit): "Certificate issued by the air company/agent that it is not blacklisted by the Arab League boycott committee."

Qatar (Prohibited Boycott Conditions in a Contract): "The (tenders) committee may also exclude any bid that does not abide by the provisions of the commercial and economic laws and the provisions of the law of boycott of Israel applicable in the state…. [A certificate is required stating] that the items have not been manufactured in Israel and that any of the components thereof have not been manufactured in Israel."

Qatar (Prohibited Condition in a Contract): "Certificate issued by the manufacturer or exporter stating that the goods are not of Israeli origin, have not been exported from Israel, and do not contain any Israeli materials."

Qatar (Prohibited Boycott Condition in a Purchase Order): "Goods/equipment subject to Israeli Boycott terms, must not be quoted."

Qatar (Prohibited Boycott Condition in a Letter of Credit): "Under no circumstances may a bank listed in the Arab Israeli Boycott Black List be permitted to negotiate this Documentary Credit."

Saudi Arabia (Prohibited Boycott Condition in a Contract): "Vendor shall comply with the Israel boycott laws in performing his contractual obligations."

Saudi Arabia (Prohibited Boycott Condition in a Contract): "The seller warrants that no supplier or manufacturer or any part of the product is precluded from doing business with Saudi Arabia under the terms of the Arab boycott regulations."

Saudi Arabia (Reportable Boycott Condition in List of Documents Required by a Freight Forwarder): "Certificate from insurance company stating that they are not blacklisted."

Saudi Arabia (Prohibited Boycott Condition in a Purchase Order): "Following statement should appear at foot of invoice: 'We hereby certify that these goods are not of Israeli Origin nor do they contain materials of Israeli origin and they are manufactured by….'"

Saudi Arabia (Prohibited Boycott Condition in a Contract): "The Contractor whether an Establishment or Company, National or Foreign, shall not import or enter into Agreement with any Foreign Company or Establishment as Sub-Contractor particularly if such Company did not have previous dealing in the Kingdom of Saudi Arabia, except after contacting the Regional office of the Arab Boycott to Israel, or one of the two Sub-Offices of the Ministry of Commerce at Jeddah or Dammam, to ensure of the status of the said Foreign Company, in light of the Rules and orders issued by the office of the Arab Boycott of Israel."

Saudi Arabia (Prohibited Boycott Condition in a Contract): "Israeli Boycott: The Contractor shall apply all rules of the Israeli Boycott."

Saudi Arabia (Prohibited Boycott Condition in a Boycott Questionnaire): "Company/Corporation Background: a. Has the company/corporation engaged in or conducted business in Israel?; b. Does the company/corporation or its subsidiary have an office, facility or business operation in Israel?"

Saudi Arabia (Prohibited Boycott Condition in a Tender): "The quotation should not include any material manufactured or exported by Boycotted companies as per the Kingdom of Saudi Arabia regulations."

Saudi Arabia (Prohibited Boycott Condition in a Tender): "Eligible Bidders: The bidder/supplier who are not subject to the Boycott regulations of the League of Arab States or of the Kingdom of Saudi Arabia will only be considered."

Syria (Prohibited Boycott Conditions (Requests for Information) in a Trademark Application Form): "Do you or any of your subsidiaries now or ever had a branch of main company factory or assembly plant in Israel? .... do you have or any of your subsidiaries now or ever had general agencies or offices in Israel for your middle eastern or international operations? .... what companies are you shareholders in their capital? State the name of each company and the percentage of share to their total capital---and the nationality of each one? ....

Syria (Prohibited Condition in a Tender): "Offeror must not be included by the provisions of Arab Boycott of Israel."

Syria (Prohibited Condition in a Tender): "Declaration showing that the bidder doesn't own any factory, establishment, or a branch office in Israel, neither he is a partner in any establishment or organization, nor a party in any contract for manufacturing, assembling, licensing or technical assistance with any organization or establishment in Israel and he should not practice such activity in Israel whether personally or through any mediator. He should not participate in any way in supporting Israel or its military efforts."

Syria (Prohibited Condition in a Purchase Order): "A declaration that the goods contracted upon have no Israeli origin and that no Israeli raw materials is used in its producing manufacturing or preparing of the goods."

United Arab Emirates (Prohibited Boycott Condition in a Contract): "Tenderer shall verify on his own responsibility the laws and regulations in Abu Dhabi which apply to the performance of the services, including the boycott of Israel."

United Arab Emirates (Prohibited Boycott Condition in an Invitation to Bid): "Documents to accompany tenders [include] the declaration and Israel boycott certificate. It states the tenderer must accompany his offer with the following, written signed declaration. We declare that we are a company which is not owned by any companies that have violated the approved rules of the boycott and that we do not own or participate in companies that are in violation of the approved rules of the boycott. Further, we do not have, nor does any of the companies that are considered to be a parent company or a branch of ours, any dealings with any Israeli party, whether directly or indirectly. Furthermore, a certificate issued by the Israel boycott office in UAE confirming that neither the supplier nor the manufacturer are blacklisted, should also be accompanied."

United Arab Emirates (Prohibited Boycott Condition in a Tender): "Declaration and Israel Boycott Certificate: We _____ (Name of Company) on behalf of all branches, declare that we are a company which is not owned by any companies that have violated the approved rules of the Boycott and that we do not own or participate in companies that are in violation of the approved rules of the Boycott. Further, we do not have nor does any of the companies that are considered to be a parent company or branch of ours, any dealings with any Israeli Party whether directly or indirectly. Furthermore, a Certificate issued by the Israel Boycott office in the UAE, confirming that neither the supplier nor the manufacturer are blacklisted, should also be accompanied."

United Arab Emirates (Prohibited Boycott Condition in a Tender): "Certificate of Origin:

The Contractor shall undertake to furnish the Purchaser with a Certificate of Origin, to accompany each invoice. This shall certify that the equipment is not of Israeli origin."

United Arab Emirates (Prohibited Boycott Condition in a Tender): "Boycott of Israel:

Seller and his assignees shall abide by and strictly observe all regulations and instructions in force from time to time by the League of Arab States regarding the Boycott of Israel especially those related to blacklisted companies, ships and persons. No materials shall be procured which has been wholly or partially manufactured by the blacklisted company."

United Arab Emirates (Prohibited Boycott Condition in a Letter of Credit): "On no conditions may a bank listed on the Arab Israeli Boycott list be permitted to negotiate this credit."

United Arab Emirates (Prohibited Boycott Condition in a Letter of Credit Application): "We certify that neither the beneficiaries nor the suppliers of goods and services are subject to boycott."

United Arab Emirates (Prohibited Boycott Condition in a Letter of Credit Application): "We also certify that to the best of our knowledge the beneficiaries have no connection with Israel and that the terms of this credit in no way contravene the regulations issued by the Israel Boycott Office or local government regulations."

United Arab Emirates (Prohibited Boycott Condition in a Contract): "Buyer shall adhere to and implement the Arab Embargo and Boycott Regulations issued and revised from time to time by the Government of the United Arab Emirates."

United Arab Emirates (Prohibited Boycott Condition in a Tender): "Tenders shall include the following statement in their tenders: 'We certify that neither our principle manufacturers Messrs: _____ nor any of the components' manufacturers, is blacklisted by the Arab Boycott Office."

United Arab Emirates (Prohibited Boycott Condition in a Contract): "Boycott of Israel: "The Contractor shall observe and abide by all rules and regulations concerning the boycotting of Israel in Dubai and the UAE."

United Arab Emirates (Prohibited Boycott Condition in a Tender): "Quotation should not include items manufactured by firms who are under Israeli Boycott list."

United Arab Emirates (Prohibited Boycott Condition in a Purchase Order): "Applicable Laws/Boycott of Israel: "All relevant laws, rules and regulation of all duly constituted government authorities of Abu Dhabi and the UAE, including laws with respect to boycott of Israel shall apply in the performance of this purchase order."

United Arab Emirates (Prohibited Boycott Condition in a Contract): "He shall not be boycotted whether in his personal capacity or as a company or establishment because of the violation of the Israeli Boycott Provisions in respect of establishments and companies operating abroad or contracts concluded through correspondence."

United Arab Emirates (Prohibited Boycott Condition in a Tender): "Engineer shall at its own expense and at all times comply with all laws, rules, regulations or requirements of the Government of Abu Dhabi and the UAE and any bodies having jurisdiction over the site and the access thereto and there from including, but not limited to, the Boycott of Israel Regulations."

Yemen (Prohibited Boycott Condition in a Repair Order): "Invoices must be endorsed with a certificate of origin that goods are not of Israeli origin and do not contain any Israeli material and are not shipped from any Israeli port."

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Compliance Best Practices for Companies that Source, Operate, or Sell Abroad

A Risk-Assessment Questionnaire

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U.S. Antiboycott Regulations: What Multinational Companies Need to Know

Antiboycott Regulations Target Companies Doing Business in the Middle East

» Commerce Department regulations prohibit U.S. persons and corporations from cooperating with, or otherwise participating in, the Arab League boycott of Israel. These prohibitions extend to "controlled in fact" subsidiaries. IRS tax regulations also prohibit participation in the Arab League Boycott. Violations can result in significant penalties or the loss of valuable tax credits.

Responding to Boycott-Related Requests is Prohibited

» Requests may include questions regarding Jewish or Israeli employees or officers, Israeli-origin goods or services, and even the nationality of the aircraft of ship delivering goods. Honoring such requests can result in significant penalties and the loss of valuable foreign tax credits.

Boycott-Related Requests Must Be Reported

» Providing information in support of the Arab League Boycott violates the antiboycott regulations, even if there is no agreement to honor the boycott. Companies that receive inquires related to the Arab League boycott must report them to the U.S. Commerce Department, even if the underlying transaction never occurs.

Signing or Presenting Documents Can Constitute Violations

» Merely signing or presenting documents containing prohibited boycott language can constitute an antiboycott violation.

» Such statements can appear in contracts, invoices, shipping documents, letters of credit, applications to secure patent rights, and other instruments and must be reported, even if the statement is rejected.

Third Parties Pose Special Risks of Antiboycott Violations

» Agents, freight forwarders, chambers of commerce, and other third parties operating in or near the Middle East routinely issue documents with prohibited boycott language, thereby creating violations when these documents are used as a basis for completing transactions.

Antiboycott Compliance Presents Unique Challenges

» Because boycott-related requests and associated certifications often appear in the fine print, personnel processing documents where such requests are likely to appear, such as persons in the sales, accounting, and legal departments, and persons who review purchase orders and letters of credit, require special training and awareness to ensure compliance.

Foley Can Help

» Foley's International Trade & National Security lawyers can help you identify risks and implement cost-effective compliance programs. We also represent companies in internal investigations, voluntary disclosures, and government enforcement actions. For further information, please contact Foley partner Greg Husisian at 202.945.6149 or ghusisian@foley.com or Jenlain Scott at jcscott@foley.com or 202.295.4001.

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Antitrust and Fair Competition: What Multinational Companies Need to Know

Antitrust and Fair Competition Laws Are of Special Concern to Multinational Companies

» U.S. and foreign antitrust laws prohibit a variety of anticompetitive practices. Commonly prohibited conduct includes price fixing, bid rigging and market allocation agreements among competitors. Such conduct is prosecuted criminally in the United States, even if the agreements are formed outside the United States, where the agreement has an effect on U.S. commerce.

» There is wide range of other business practices, including vertical agreements between companies and their customers and suppliers, which may also be subject to antitrust scrutiny. More than 100 countries have in place some form of a merger review and control regime.

» Multinational companies must comply with the antitrust and fair competition laws in place wherever those companies are doing business. As the requirements of these laws vary by jurisdiction, conduct permissible in one country (or even state) may not be permissible elsewhere. Mergers often must be notified in multiple jurisdictions.

Antitrust and Fair Competition Law Pose Special Risks for Companies in Concentrated Industries or with High Market Shares

» Companies in concentrated industries must take special care to monitor their business activities, as high concentration can facilitate opportunities for companies to engage in collusive conduct.

» Companies with significant market shares must also take special care to avoid conduct that could be challenged as monopolistic or an abuse of a dominant position.

Antitrust Violations Are Punished Harshly

» Depending on the jurisdiction, antitrust violations can result in substantial criminal fines and the imprisonment of company personnel involved in prohibited conduct; civil penalties may include fines and injunctions; and civil judgments (including the award of treble damages and attorney's fees in the U.S.) may be imposed in private antitrust lawsuits.

Participation in Industry Organizations Pose Special Risks

» While participation in trade associations and similar industry organizations is common, such participation may provide opportunities for competitors to engage in inappropriate discussions, agreements and information exchanges. Company representatives attending meetings of such organizations—or any meetings involving competitors—must be aware of and observe the antitrust limitations imposed.

Antitrust Compliance Presents Unique Challenges

» Antitrust compliance efforts within multinational companies is complicated by a number of factors, including differences in antitrust requirements between countries; cultural differences regarding the scope of permissible collaboration; and historical differences in the level of antitrust enforcement. There is a general trend internationally towards antitrust law "harmonization," although significant substantive and procedural differences remain.

Foley Can Help

» Foley's Antitrust Practice Group lawyers can help you identify risks and implement cost-effective antitrust compliance programs. We also represent companies in internal investigations, government enforcement actions, collaboration formations, merger approval efforts and private antitrust litigation. For further information, please contact Foley partner at gneppl@foley.com or 202.672.5451, Foley partner Greg Husisian at ghusisian@foley.com or 202.945.6149 or Jenlain Scott at 202.295.4001 or jcscott@foley.com.

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U.S. Export Controls: What Companies That Sell or Operate Abroad Need to Know

Aggressive Enforcement is the Norm

» The Trump administration has imposed record penalties for U.S. export control violations, including the first $1 billion-plus penalty against ZTE Communications. Companies that violate U.S. export controls face civil and criminal penalties, debarments, and the loss of export privileges.

Export Controls Have Broad Reach

» U.S. export control laws cover the export of any controlled articles, the knowing export of even uncontrolled goods if it is known that they will be used by a prohibited end-user or for a prohibited end use, and the sharing of controlled technical data with a non-U.S. national, even if the sharing occurs within the United States. Even downstream products manufactured outside the United States can be covered by U.S. export control laws if those products incorporate U.S.-origin goods.

» Under the export control laws, liability is incurred by outside parties that help facilitate the violation, such as by providing insurance, freight forwarding, or other services that help complete the transaction.

Export Controls Can Apply Outside the United States

» The U.S. Justice, Commerce, and State Departments assert jurisdiction on U.S.-origin goods, information, software, services, and technologies anywhere in the world. This includes U.S.-origin items re-exported by foreign parties in foreign countries.

» Export controls also govern foreign dual-use products with certain levels of U.S. origin content, generally over 10% for sanctioned destinations or 25% elsewhere. In the case of defense articles, the presence of any controlled U.S. content triggers U.S. jurisdiction.

» Third-party shipments of U.S.-origin goods can implicate U.S. export controls if the U.S. company knew or had reason to know that the customer would transfer or re-export the goods to a prohibited place, person, or for a prohibited use. The U.S. Government expects that any person subject to U.S. export controls will take steps to "know its customer" and take reasonable steps to ensure compliance.

Third Parties Increase Risk Exposure

» Numerous enforcement actions have been premised on the actions of third parties, such as agents, joint ventures, distributors, or franchise operations. Failure to implement compliance measures and internal controls for these parties increases the risk of a violation, especially in countries such as the UAE, Mexico, China, Pakistan, Russia, and others that are known to be diversion points for shipments to banned destinations.

Risk Assessment

» The U.S. Government has endorsed the use of a risk-based approach to export controls compliance. This means the best way to combat the prospect of large penalties is a careful examination of the risk posed by the organization based upon its unique business profile and manner in which it does business.

Foley Can Help

» Foley's International Trade & National Security lawyers can help you identify risks and implement cost-effective compliance programs. We also represent companies in internal investigations, voluntary disclosures, and government enforcement actions. For further information, please contact Foley partner Greg Husisian at 202.945.6149 or ghusisian@foley.com or Jenlain Scott at jcsott@foley.com or 202.295.4001.

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The Foreign Corrupt Practices Act: What Multinational Companies Need to Know

Aggressive Enforcement is the Norm

» Most years, the U.S. Government imposes between $500 million and more than $1 billion in FCPA penalties. The Trump administration has imposed 3 of the 10 largest FCPA penalties of all time.

Publicly Traded Companies Face Additional Regulatory Scrutiny

» The FCPA's books and records provisions require publicly traded companies to maintain effective internal controls or else face civil penalties from the Securities and Exchange Commission.

FCPA Risk is Highest in Emerging Economies

» Although rapidly growing economies like Brazil, Russia, India, and China (the "BRICs") present opportunities for multinational companies, they also present significant bribery and corruption risks.

» The presence of many State-Owned Enterprises (SOEs) in BRIC and developing countries raises FCPA concerns, as every employee is considered a foreign official under the FCPA, regardless of role or rank.

Anti-Corruption Laws in Other Jurisdictions Increases Risk

» In recent years, numerous companies have strengthened their anti-corruption laws or the enforcement of them. Laws like the UK Bribery Act, which extends beyond the FCPA to cover commercial bribery, increase the risk of operating abroad.

Third Parties May Expose Multinational Companies to FCPA Violations

» U.S. regulators impose penalties for both direct bribes and those provided through third parties, such as foreign agents and distributors. Companies that rely on a distribution or franchise model, maintain non-U.S. joint ventures, or rely on agents/consultants, are at especially high risk. Companies that sell through agents, employ consultants, or otherwise rely on third-party intermediaries face heightened scrutiny by the U.S. Government, especially in countries known for official corruption and those with a large number of SOEs.

Risk Assessment

» The expectation of the U.S. Government is that every multinational company will maintain anti-corruption compliance policies and internal controls. FCPA best practice guidelines published by the U.S. Department of Justice and the Securities and Exchange Commission set a baseline for corporate conduct, raising the stakes for multinational insurance companies without adequate compliance policies.

» The U.S. Government has endorsed a risk-based approach to anti-corruption compliance. This means that the best way to combat the prospect of large penalties is a careful examination of the risk posed by the organization based upon its unique business profile and manner in which it does business. By identifying high-risk conduct, the organization can put in place reasonable, tailored compliance measures to minimize the risk of violations.

Foley Can Help

» Foley's International Trade & National Security lawyers can help you identify risks and implement cost-effective compliance programs. We also represent companies in internal investigations, voluntary disclosures, and government enforcement actions. For further information, please contact Foley partner Greg Husisian at 202.945.6149 or ghusisian@foley.com or Jenlain Scott at jcscott@foley.com or 202.295.4001.

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U.S. Sanctions: What Companies That Sell or Operate Abroad Need to Know

Aggressive Enforcement is the Norm

» U.S. sanctions are a key foreign policy tool for the Trump administration, which has instituted record use of sanctions to advance its foreign policy goals. Even foreign companies face asset seizures, travel bans, and restrictions on accessing the U.S. financial system.

U.S. Sanctions Target Companies that Sell or Operate Abroad

» Comprehensive sanctions imposed on Cuba, Iran, and the Crimean region, and strong sanctions on Russia, North Korea, Syria, and Venezuela, prohibit companies from engaging in or facilitating business transactions with comprehensively sanctioned countries or severely restrict such activities.

» Other sanctions prohibit dealings with prohibited persons and companies that have engaged in actions that are contrary to U.S. national security and foreign policy aims (engaging in terrorism, proliferation narcotics or weapons of mass destruction, or undermining human rights).

» The withdrawal of the United States from the Joint Comprehensive Plan of Action, and the implementation of strong secondary sanctions, increase the risks of dealing with Iran.

» The expectation of the U.S. Government is that companies that sell or operate abroad will put in place comprehensive compliance policies and internal controls that are designed to ensure that there are no knowing transactions with countries, governments, or persons who are subject to these sanctions.

Sanctions Can Apply Outside the U.S.

» The U.S. Justice, Treasury, and State Departments assert jurisdiction over foreign companies through U.S. persons, U.S. territory, U.S.-origin goods, and even the use of the U.S. financial system.

» Sanctions imposed under the Iran Threat Reduction Act (TRA) make U.S. companies liable for their foreign affiliates' dealings with Iran, no matter where it is incorporated or the nature of the U.S. ownership.

» The TRA requires public companies to disclose their foreign affiliates' Iranian business activities in quarterly and annual SEC filings. This increases the risk of reputational harm, shareholder lawsuits, and government enforcement actions.

» Significant sanctions penalties have been imposed on U.S. companies that rely on foreign partners to carry out business across the world. This increases the risk profile of companies that rely on outside actors to conduct their global business.

Risk Assessment

» The U.S. Government has endorsed the use of a risk-based approach to economic sanctions. By identifying high-risk conduct, the organization can put in place reasonable, tailored compliance measures to minimize the risk of violations.

Foley Can Help

» Foley's International Trade & National Security lawyers can help identify risks and implement cost-effective compliance programs and conduct internal investigations. For further information, please contact Foley partner Greg Husisian at 202.945.6149 or ghusisian@foley.com or Jenlain Scott at jcscott@foley.com or 202.295.4001.

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U.S. Regulation of Companies that Export, Sell, and Operate Abroad: A Risk-Assessment Questionnaire

U.S. regulators have stepped up enforcement of laws governing exports, international conduct, and international financial transactions. These laws—including Economic Sanctions, Anti-Money Laundering Laws (AML), the Foreign Corrupt Practices Act (FCPA), Export Controls, Anti-trust, and Antiboycott laws—are enforced through substantial civil and potentially criminal penalties.

Large fines have been imposed on U.S. and non-U.S. companies, including for actions taken by subsidiaries and affiliates. With governments outside the United States imposing similar measures, including increasingly strict EU sanctions and the UK Bribery Act, companies that are subject to these laws should assess their exposure and determine how best to manage the associated risks.

This survey highlights leading risk areas for most multinational companies that operate, export, source from, or sell abroad. Completing this survey will allow Foley & Lardner LLP to create a company risk profile, identify areas of concern, and help you compare your existing compliance practices with industry best practices. If you need help with this questionnaire, please contact Foley partner Greg Husisian at 202.945.6149 or ghusisian@foley.com or Jenlain Scott at 202.295.4001 or jcscott@foley.com.

General Questions

1. Does your company operate outside the United States?
   - ☐ No.
   - ☐ Yes.

2. If so, please indicate the countries of operation

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3. Does your company have joint ventures or subsidiaries outside the United States?
   - ☐ No.
   - ☐ Yes.

4. If so, please indicate the countries where joint ventures or subsidiaries operate

5. Does your company engage in cooperative arrangements with affiliates or other independent companies located outside the United States?
   - ☐ No.
   - ☐ Yes.

6. If so, please indicate the partner companies and countries where the cooperation occurs.

7. Are you aware of any investigations of U.S. regulations governing exports or international conduct occurring within your industry?
   - ☐ No.
   - ☐ Yes.

8. If your answer is yes, please provide details.

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9. Is your organization, or any of its affiliates, publicly listed in the United States or traded through American Depository Receipts (ADRs)?
   - ☐ No.
   - ☐ Yes.

10. Do your company and its affiliates maintain a whistleblower hotline for reporting potential compliance lapses?
    - ☐ No.
    - ☐ Yes.

11. If you have a hotline and also operate in the EU, do you maintain separate hotlines for the EU to comply with special EU privacy requirements?
    - ☐ No.
    - ☐ Yes.

12. Do your company and its affiliates maintain other mechanisms for reporting compliance issues? Please check all that apply.
    - ☐ Referral to business persons/superiors.
    - ☐ Referral to Compliance Department.
    - ☐ Referral to Designated/Regional Compliance Personnel.
    - ☐ Referral to Legal Department.
    - ☐ Reporting to Management & Board.
    - ☐ No reporting mechanism.

13. Does your company have a centralized compliance function for the following areas?
    - ☐ Compliance in all forms.
    - ☐ Compliance oversight.
    - ☐ Internal Audits – Financial.
    - ☐ Internal Audits – Compliance.
    - ☐ Legal Department.
    - ☐ Human Resources.
    - ☐ Compliance responsibilities are distributed.
    - ☐ None.

14. How does your company handle compliance for international operations?
    - ☐ Compliance liaisons at the local level.
    - ☐ Compliance liaisons at the regional level.
    - ☐ No compliance liaisons.

15. How does your company sell abroad (check all that apply)?
    - ☐ Only sales through/by company itself.
    - ☐ Sales through independent agents.
    - ☐ Sales through distributors/franchise operations.
    - ☐ Different sales models for different countries.

16. Do your company and its affiliates operate through foreign entities? Please check all that apply.
    - ☐ Branch Offices.
    - ☐ Subsidiaries.
    - ☐ Joint Venture Companies.
    - ☐ Agents or Other Affiliates.
    - ☐ No foreign entities.

17. Do your company and its affiliates maintain risk-based compliance programs or internal controls tailored to each of the issues described in this survey? Please check all that apply and provide copies of the relevant policies and controls.
    - ☐ Antiboycott.
    - ☐ Anti-corruption/FCPA.
    - ☐ AML.
    - ☐ Antitrust/Fair Competition.
    - ☐ Customs.
    - ☐ Economic Sanctions.
    - ☐ Export Controls.
    - ☐ Gifts, Meals, Entertainment & Travel.
    - ☐ SDN Screening.
    - ☐ No policies.

18. Does each of the compliance areas highlighted above have an independent compliance supervisor who is responsible for overseeing the program?
    - ☐ No.
    - ☐ Yes.

19. How often do your company and its affiliates review and update the compliance policies identified above?
    - ☐ Quarterly.
    - ☐ Annually.
    - ☐ Every two years.
    - ☐ After significant regulatory change.
    - ☐ Only when there is a problem.
    - ☐ Never.

20. Does your company maintain procedures to ensure the rapid identification and dissemination of changes to the laws discussed above?
    - ☐ No.
    - ☐ Yes.

21. How often do your company and its affiliates conduct training on the issues described above?
    - ☐ Quarterly.
    - ☐ Annually.
    - ☐ Every Two Years.
    - ☐ Only to new hires.
    - ☐ Only when there is a problem.
    - ☐ Never.

22. Who receives this compliance training? Please check all that apply.
    - ☐ New hires.
    - ☐ All employees.
    - ☐ Employees in high-risk areas.
    - ☐ Management.
    - ☐ Audit/accounting personnel.
    - ☐ No training.

23. Does your company maintain records of compliance training sessions?
    - ☐ No.
    - ☐ Yes.

24. Does your company maintain procedures to maintain records related to any internal investigations or the resolution of any red flags, including the retention of any information that is required to be maintained by law?
    - ☐ No.
    - ☐ Yes.

25. Does your company maintain procedures to deal with dawn raids or government investigations?
    - ☐ No.
    - ☐ Yes.

26. Does your company maintain procedures for the retention of written and electronic evidence in the event that there is the need for an internal investigation?
    - ☐ No.
    - ☐ Yes.

27. Does your company maintain an independent audit function?
    - ☐ No.
    - ☐ Yes.

28. If so, does it incorporate compliance-related audits/check-ups into its audit regime?
    - ☐ No.
    - ☐ Yes.

29. Has your company, or its affiliates, ever received audit information indicating that your internal controls are inadequate?
    - ☐ No.
    - ☐ Yes.

30. Does your company maintain compliance policies for the following areas considered to be of interest to non-U.S. governments?
    - ☐ Environmental laws.
    - ☐ Labor law.
    - ☐ Privacy laws.
    - ☐ Worker protection/guild rules.
    - ☐ Whistleblower restrictions.

31. What divisions/regions have the highest turnover by sales volume?

32. Has your company conducted a systematic compliance audit in the last three years?
    - ☐ No.
    - ☐ Yes.

33. Were any areas of internal control or compliance deficiencies found?
    - ☐ No.
    - ☐ Yes.

34. If so, please identify.

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Corporate Governance

35. Does your organization maintain a compliance committee?
    - ☐ No.
    - ☐ Yes.

36. If not, does your audit committee have a compliance subcommittee or otherwise maintain compliance oversight?
    - ☐ No.
    - ☐ Yes.

37. Does your organization have a compliance charter?
    - ☐ No.
    - ☐ Yes.

38. Do the compliance personnel at your company have direct or dotted-line access to senior management?
    - ☐ No.
    - ☐ Yes.

39. Do the compliance personnel at your company have direct or dotted-line access to the compliance oversight committee?
    - ☐ No.
    - ☐ Yes.

40. Do your compliance personnel regularly brief senior management and compliance oversight committee regarding compliance issues?
    - ☐ No.
    - ☐ Yes.

41. Does your organization give adequate resources to run its compliance function?
    - ☐ No.
    - ☐ Yes.

42. Does your organization maintain a whistleblower and reporting mechanism?
    - ☐ No.
    - ☐ Yes.

43. Does your organization maintain procedures for dealing with potential violations of law that implicate senior management or directors?
    - ☐ No.
    - ☐ Yes.

Third-Party Intermediary Issues

44. In which countries do you rely on distributors or franchisees?

45. In which countries do you rely on agents and consultant?

46. In which countries do you rely on joint ventures?

47. Do your company and its affiliates conduct due diligence on third parties (agents, consultants, distributors, and so forth)?
    - ☐ All third parties.
    - ☐ Third parties that represent high volumes of sales.
    - ☐ Third parties in high-risk countries.
    - ☐ None.

48. Do your company and its affiliates provide compliance training for third parties with whom it does business? Please check all that apply.
    - ☐ Agents.
    - ☐ Consultants.
    - ☐ Representatives.
    - ☐ Other Affiliates.
    - ☐ No third-party training.

49. Does your company have exclusive selling areas for its distributors or joint ventures?
    - ☐ No.
    - ☐ Yes.

50. Does your company consistently put compliance provisions into contracts with third-party intermediaries for the following laws? Please check all that apply.
    - ☐ Antiboycott.
    - ☐ Antitrust/Fair Competition.
    - ☐ Anti-money laundering.
    - ☐ Export controls (ITAR).
    - ☐ Export controls (EAR).
    - ☐ Economic sanctions.
    - ☐ FCPA/anti-corruption.
    - ☐ General warrant of lawful behavior and compliance with law.

51. Does your company require certifications of compliance from third-party intermediaries? Please check all that apply.
    - ☐ Antiboycott.
    - ☐ Antitrust/Fair Competition.
    - ☐ Anti-money laundering.
    - ☐ Export controls (ITAR).

- ☐ Export controls (EAR).
- ☐ Economic sanctions.
- ☐ FCPA/anti-corruption.
- ☐ General warrant of lawful behavior.

52. Does your company integrate third-party intermediaries into its compliance program in the following areas (please check all that apply)?
    - ☐ Full integration into compliance.
    - ☐ Integration into compliance for high-risk areas.
    - ☐ Full integration into training.
    - ☐ Full integration into audits.
    - ☐ Compliance is undertaken independently at the distributor level.

53. If compliance with third parties is not integrated, how is it handled at the third-party intermediary level?
    - ☐ Contractual provisions requiring that the third party maintains compliance measures.
    - ☐ Third parties are required to given annual updates/certifications regarding compliance.
    - ☐ Annual updates/certifications for high-risk areas (FCPA and so forth).
    - ☐ It varies by third party.
    - ☐ Compliance is not coordinated or overseen in any way.

54. Do your contracts with third-party intermediaries uniformly grant audit rights?
    - ☐ No.
    - ☐ Yes.

55. Do your contracts with third-party intermediaries grant you the right to investigate for potential violations?
    - ☐ In any circumstances.
    - ☐ On reasonable suspicion.
    - ☐ After provision of prior notice.
    - ☐ No.

56. Does your company conduct compliance audits on third-party intermediaries?
    - ☐ Regularly.
    - ☐ Only where suspicious circumstances arise.
    - ☐ Only for high-risk regulations.
    - ☐ Rarely.
    - ☐ Never.

57. Have there been any known compliance lapses at third-party intermediaries in the last five years?
    - ☐ No.
    - ☐ Yes.

58. If so, please provide details.

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Sanctioned Countries

The U.S. Government maintains economic sanctions against countries, governments, and persons deemed to have taken actions that undermine U.S. national security and foreign policy interests. These economic sanctions include bans on dealing with pariah nations (Cuba, Iran, Sudan, and Syria), with sanctioned governments and high-ranking government officials (North Korea and others), and banned persons (those associated with terrorism, proliferation or narcotics or weapons of mass destruction). The expectation of the U.S. Government is that companies that sell or operate abroad will take measures to ensure compliance with these regulations.

59. Does your company have legal restrictions on the areas where third parties can sell/parties with whom they can deal, which reflect OFAC restrictions?
    - ☐ Yes, for comprehensively sanctioned countries (Cuba, Iran, Sudan, and Syria).
    - ☐ Yes, for Specially Designated Nationals.
    - ☐ Yes, for sales of U.S.-origin goods to restricted parties.
    - ☐ No restrictions.

60. Do your company, or its affiliates, sell to any of the following countries? Please check all that apply.
    - ☐ Cuba.
    - ☐ Iran.
    - ☐ North Korea.
    - ☐ The Crimean region.
    - ☐ Syria.

61. Does your company, or its non-U.S. affiliates, operate in any of the following countries? Please check all that apply.
    - ☐ Cuba.
    - ☐ Iran.
    - ☐ North Korea.
    - ☐ The Crimean region.
    - ☐ Syria.

62. Do your company and its affiliates conduct screening or other measures to ensure that there are no sales to the following countries? Please check all that apply.
    - ☐ Cuba.
    - ☐ Iran.
    - ☐ North Korea.
    - ☐ The Crimean region.
    - ☐ Syria.

63. Does your company conduct audits of its third-party intermediaries to ensure that these companies do not sell to sanctioned persons, governments, and countries?
    - ☐ No.
    - ☐ Yes.

64. Has your company updated its compliance procedures to reflect recent changes in OFAC regulations and US government economic sanctions requirements, including the ending of the Joint Comprehensive Plan of Action (for Iran), the imposition of enhanced sanctions on Russia, and sanctions on Venezuela?
    - ☐ No.
    - ☐ Yes.

Sanctioned Governments and Persons

65. Does your company, or its affiliates, conduct business in any of the following countries? Please check all that apply.
    - ☐ Balkans
    - ☐ Belarus.
    - ☐ Burundi
    - ☐ Burma.
    - ☐ Central African Republic
    - ☐ Cuba.
    - ☐ Democratic Republic of the Congo
    - ☐ Iran.
    - ☐ Iraq
    - ☐ Lebanon
    - ☐ Libya
    - ☐ North Korea.
    - ☐ Russia.

- ☐ Somalia
- ☐ Sudan
- ☐ South Sudan
- ☐ Syria.
- ☐ Ukraine.
- ☐ Venezuela
- ☐ Yemen
- ☐ Zimbabwe
- ☐ The Crimean region.

66. Does your company, or its affiliates, provide any sort of services or sell to government institutions, state-owned entities, or deal with government officials in any of the following countries? Please check all that apply.
    - ☐ Balkans
    - ☐ Belarus.
    - ☐ Burundi
    - ☐ Burma.
    - ☐ Central African Republic
    - ☐ Cuba.
    - ☐ Democratic Republic of the Congo
    - ☐ Iran.
    - ☐ Iraq
    - ☐ Lebanon
    - ☐ Libya
    - ☐ North Korea.
    - ☐ Russia.
    - ☐ Somalia
    - ☐ Sudan
    - ☐ South Sudan
    - ☐ Syria.
    - ☐ Ukraine.
    - ☐ Venezuela
    - ☐ Yemen
    - ☐ Zimbabwe
    - ☐ The Crimean region.

67. Do your company and its affiliates screen all new and existing customers against the U.S. Treasury Department's list of Specially Designated Nationals (SDNs)?
    - ☐ No.
    - ☐ Yes.

68. If so, how does your company conduct this screening? Please check all that apply.
    - ☐ Automated Software/System.
    - ☐ Outside Vendor.
    - ☐ Trade / Media Databases.
    - ☐ Legal Counsel Advice.
    - ☐ OFAC SDN search tool.
    - ☐ In-House Research.

69. Does your company screen for SDNs in connection with the following sanctions programs? Please check all that apply.
    - ☐ Counter-Narcotics Sanctions.
    - ☐ Counter-Terrorism Sanctions.
    - ☐ Magnitsky Sanctions (Russia).
    - ☐ Non-Proliferation Sanctions.
    - ☐ Rough Diamond Trade Controls
    - ☐ Transnational Criminal Organization Sanctions.

70. Do your company and its affiliates screen foreign financial institutions that your company insures or with whom your company conducts business against the U.S. Treasury Department's Part 561 List?
    - ☐ No.
    - ☐ Yes.

71. If the type of screening inquired about above is conducted, how often does it occur?
    - ☐ Only for new customers.
    - ☐ For new customers and annually.
    - ☐ For new customers and quarterly.
    - ☐ For new customers and weekly.
    - ☐ Whenever OFAC updates the SDN list.

72. Do your company and its affiliates integrate scanning against entities subject to European Union or United Nations sanctions?
    - ☐ No.
    - ☐ Yes.

73. Do your company and its affiliates conduct due diligence on new and existing customers to

determine whether they are owned or controlled by SDNs, sanctioned governments, or other blacklisted entities?

- ☐ No.
- ☐ Yes.

74. Does your company have a set of internal controls or written compliance policies governing the conduct of screening and the clearance of any matches?
    - ☐ No.
    - ☐ Yes.

75. Has your organization received any reports in the last five years regarding the receipt of any economic sanctions violations or any government inquiries regarding same?
    - ☐ No.
    - ☐ Yes.

If so, please indicate what types of reports have been received on the form at the end of this survey.

76. Does your organization maintain any blocked accounts related to assets of sanctioned persons?
    - ☐ No.
    - ☐ Yes.

Export Controls: General Considerations

The U.S. Government maintains controls on the export of U.S.-origin, goods, information, software, and technology. The stringency of these rules depends upon the type of article or technical data at issue, the destination, and the end use and end user at issue. Notably, the controls can extend to even transactions that occur in the United States, such as the sharing of controlled technical data to a non-U.S. national. These controls are primarily maintained under two sets of regulations: The International Traffic in Arms Regulations (ITAR) (which govern the export of munitions/military articles and the performance of defense services, including the sharing of controlled technical data) and the Export Administration Regulations (EAR) (which govern the export of dual-use/commercial articles). The expectation of the U.S. Government is that companies that sell or operate abroad, and companies that produce controlled items or technical data, will take appropriate steps to identity their controlled items and protect them through comprehensive compliance measures.

77. Does your company, or its affiliates, export U.S.-origin goods, services, technical data, or technologies?
    - ☐ No.
    - ☐ Yes.

78. Do your company and its affiliates include provisions in contracts requiring counterparties to identify the export classification, end-use, end-users, and end destination of U.S.-origin goods, technologies and services? Please check all that apply
    - ☐ Export Classification.
    - ☐ End Use.
    - ☐ End Users.
    - ☐ End Destination.
    - ☐ No such provisions.

79. Do your company and its affiliates include policy provisions to clearly allocate responsibility to parties to take care of all export licenses and other related requirements?
    - ☐ No.
    - ☐ Yes.

80. Does your organization have in place a system to track the requirements/provisos of any issued licenses?
    - ☐ No.
    - ☐ Yes.

81. Does your organization have in place a recordkeeping system that complies with the EAR and ITAR recordkeeping requirements?
    - ☐ No.
    - ☐ Yes.

82. In the last five years, has your organization received any inquiries from the Departments of Commerce or State regarding potential violations

or engaged in a voluntary self-disclosure of potential export controls violations?

- ☐ No.
- ☐ Yes.

83. Please provide copies of any export controls-related correspondence within the last three years with the State or the Commerce Departments, including registration, licenses, and other communications.
84. In the last three years, has your organization conducted a classification review to update the classification of its potentially controlled goods (for both the EAR and the ITAR)?
    - ☐ No.
    - ☐ Yes.
85. If your organization deals in controlled goods, does it maintain a technology control plan to prevent the unauthorized sharing of controlled technical data?
    - ☐ No.
    - ☐ Yes.
86. If your organization deals in controlled goods, does it maintain a technology transfer control plan to prevent the unauthorized sharing of controlled technical data when sharing controlled technical data outside the company?
    - ☐ No.
    - ☐ Yes.
87. If your organization deals in controlled goods, does it maintain a technology control plan to prevent the unauthorized sharing of controlled technical data?
    - ☐ No.
    - ☐ Yes.
88. Does your organization maintain a visitor security plan?
    - ☐ No.
    - ☐ Yes.
89. Does your organization maintain a physical security plan?
    - ☐ No.
    - ☐ Yes.
90. If your organization has ITAR or EAR licenses, does it maintain procedures to ensure that the requirements of these licenses are faithfully followed and that they are renewed on time?
    - ☐ No.
    - ☐ Yes.

Export Controls: ITAR

The International Traffic in Arms Regulations (ITAR) regulate defense articles (munitions). These regulations apply to articles that are listed on the U.S. Munitions List, to commercial articles that are created or specially modified to meet military specifications, or the provision of defense services (a category that includes the sharing of technical data related to a controlled defense article). If the answer to the first two questions below are "no," please proceed to the non-ITAR portions of this risk-assessment questionnaire.

91. Is your company, or any of its affiliates, registered with the State Department as a defense contractor?
    - ☐ No.
    - ☐ Yes.
92. Does your company, or its affiliates, produce, export, or sell any products that are covered by the ITAR?
    - ☐ No.
    - ☐ Yes.

93. If so, please indicate the Category of the products (choose all that apply)?
    - ☐ Category I.
    - ☐ Category II.
    - ☐ Category III.
    - ☐ Category IV.
    - ☐ Category V.
    - ☐ Category VI.
    - ☐ Category VII.
    - ☐ Category VIII.
    - ☐ Category IX.
    - ☐ Category X.
    - ☐ Category XI.
    - ☐ Category XII.
    - ☐ Category XIII.
    - ☐ Category XIV.
    - ☐ Category XV.
    - ☐ Category XVI.
    - ☐ Category XVII.
    - ☐ Category XVIII.
    - ☐ Category XIX.
    - ☐ Category XX.
    - ☐ Category XXI.
    - ☐ Category not known.

94. Does your company have in place a Technical Assistance Agreements (TAAs), Manufacturing License Agreements (MLAs), DSP-5 licenses, or any other licenses issued by the Department of State?
    - ☐ No.
    - ☐ Yes.

95. Do your company and its affiliates screen insured entities, underwriters, and related third parties against the U.S. State Department's Debarred List?
    - ☐ No.
    - ☐ Yes.

96. Has your organization investigated any potential ITAR violations in the last five years?
    - ☐ No.
    - ☐ Yes.

97. Has your organization received any reports in the last five years of governmental inquiries regarding any potential ITAR violations?
    - ☐ No.
    - ☐ Yes.

If so, please indicate what types of investigations or inquiries have occurred or been received on the form at the end of this survey.

Export Controls: EAR

The Export Administration Regulations (EAR) regulate all items that are not controlled under other export controls regimes, including the ITAR. These regulations apply to all forms of commercial products. The level of controls, however, varies based upon the sensitivity of the particular good, information, software, or technology at issue.

98. Please indicate whether your company has performed a classification review to determine whether any of its products are controlled under the EAR.
    - ☐ No.
    - ☐ Yes.

99. Please indicate whether your company manufactures, produces, exports, or sells any products or technologies that are controlled under the EAR (i.e., have an Export Controls Classification Number or ECCN).
    - ☐ No.
    - ☐ Yes.

100. Do your company and its affiliates screen insured entities, underwriters, and related third parties, as well as known consignees/end users, against the following Commerce Department lists? Please check all that apply.
    - ☐ Denied Persons List.
    - ☐ Unverified List.
    - ☐ Entity List.
    - ☐ Combined Entity/SDN List
    - ☐ Do not screen.

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Export Controls: Controlled Technical Data/Physical Security

101. Has your organization conducted a survey to determine whether it maintains controlled technical data under either the ITAR or the EAR?
- ☐ No.
- ☐ Yes.

102. Does your organization maintain segregated servers to store all technical data that can only be accessed by licensed persons or U.S. nationals?
- ☐ No.
- ☐ Yes.

103. Does your organization maintain procedures to ensure that there are no inadvertent exports of controlled technical data to foreign national employees or visitors (i.e., a Technology Control Plan or a Visitor Access Plan (please check all that apply)?
- ☐ Technology Control Plan
- ☐ Clean Desk Policy.
- ☐ Technology Transfer Control Plan for sharing information outside the company.
- ☐ Visitor Access Plan.
- ☐ Non-Disclosure Agreements.
- ☐ No such plans.

104. Does your organization maintain special protocols for the sharing of controlled technical data with outside companies?
- ☐ No.
- ☐ Yes.

105. Does your organization maintain procedures to control access to areas with controlled technical data or articles?
- ☐ No.
- ☐ Yes.

106. Does your organization have access to classified information?
- ☐ No.
- ☐ Yes.

107. If so, does it maintain procedures designed to meet the requirements in the NISPOM for the protection of such information?
- ☐ No.
- ☐ Yes.

Antiboycott

108. Do your company and its affiliates operate in or sell into the Middle East and the surrounding region?
- ☐ No.
- ☐ Yes.

109. Has your organization, or its affiliates, received any requests to avoid the use of Israeli-origin goods, services, technology, shipments, or vessels?
- ☐ No.
- ☐ Yes.

110. Has your organization, or any of its affiliates, received any other formal or informal inquiries regarding any connections between your organization and Jewish or Israeli officers, directors, or other personnel?
- ☐ No.
- ☐ Yes.

111. Has your organization, or any of its affiliates, signed any certifications or transmitted any document indicating compliance with any of the foregoing requests?
- ☐ No.
- ☐ Yes.

112. Have your organization and its controlled-in-fact subsidiaries reported all boycott-related requests to the Department of Commerce?
- ☐ No.
- ☐ Yes.

113. Do your company and its affiliates maintain an antiboycott compliance program?
- ☐ No.
- ☐ Yes.

114. Do your company and its affiliates maintain procedures designed to educate persons in high-risk areas (sales, contracting, purchasing, persons who review purchase orders and letters of credit) regarding the types of inquiries that implicate antiboycott concerns?
- ☐ No.
- ☐ Yes.

115. Has your organization received any reports in the last five years or governmental inquiries regarding any potential antiboycott violations?
- ☐ No.
- ☐ Yes.

If so, please indicate what types of reports have been received on the form at the end of this survey.

Antitrust

116. Do your company and its affiliates participate in collaborative arrangements (joint production, joint product development, joint marketing, teaming, etc.) with other companies?
- ☐ No.
- ☐ Yes.

117. Do your company and its affiliates participate in any information-sharing organizations, such as trade associations?
- ☐ No.
- ☐ Yes.

118. Do your company and its affiliates have rules addressing the following practices? Please check all that apply.
- ☐ Market Allocations.
- ☐ Customer Allocations.
- ☐ Bid Rigging with Competitors.
- ☐ Price Fixing with Competitors.
- ☐ Resale Price Agreements with Dealers/Distributors.
- ☐ Joint Refusals to Deal.
- ☐ Tying of Products or Services.
- ☐ Bundling of Products or Services.
- ☐ Price Discrimination.
- ☐ Exchanging Competitively Sensitive Information.
- ☐ No such rules.

119. Do your company and its affiliates maintain an antitrust/fair trust compliance policy and associated internal controls?
- ☐ No.
- ☐ Yes.

120. Does your organization have a process for vetting M&A and collaborative business activities for antitrust/fair trust concerns?
- ☐ No.
- ☐ Yes.

121. Do any directors or officers in your organization serve on the boards of any competing companies?
- ☐ No.
- ☐ Yes.

122. Has your organization reviewed the antitrust/fair competition guidelines employed by any industry groups in which you participate and does it follow such guidelines?
- ☐ No.
- ☐ Yes.

123. Does your organization offer tailored antitrust/fair competition training to senior management, sales and marketing personnel, procurement personnel, and supply chain management personnel?
- ☐ No.
- ☐ Yes.

124. Does your organization maintain trade association guidelines for meetings that potential competitors might attend?
- ☐ No.
- ☐ Yes.

125. Has your organization (or other organizations in your industry) received in the last five years any governmental inquiries regarding any potential antitrust/fair competition violations?
- ☐ No.
- ☐ Yes.

If so, please indicate what types of reports have been received on the form at the end of this survey.

FCPA / Anti-corruption

126. Do your company and its affiliates do business in countries or regions with a reputation for corruption? Please check all that apply.
- ☐ Africa.
- ☐ Brazil.
- ☐ China.
- ☐ Greece.
- ☐ India.
- ☐ Italy.
- ☐ Latin America.
- ☐ Pakistan.
- ☐ Russia and former Soviet Union.
- ☐ Southeast Asia.
- ☐ Other.

127. Do your company and its affiliates have frequent dealings with foreign governments or state-owned entities?
- ☐ No.
- ☐ Yes.

128. Does your company have frequent need for government approvals or interactions with government officials?
- ☐ No.
- ☐ Yes.

129. If so, please identify in which areas.
- ☐ Customs.
- ☐ Audits.
- ☐ Tax matters.
- ☐ Labor and Employment.
- ☐ Regulatory approvals.
- ☐ Building/expansion approvals.
- ☐ Business licenses.
- ☐ Other (please specify).

130. Do your company and its affiliates allow the payment of facilitating payments (payments for routine governmental action, such as hooking up a telephone)?
- ☐ No.
- ☐ Yes.

131. Do your company and its affiliates conduct substantial business within the United Kingdom?
- ☐ No.
- ☐ Yes.

132. Does your organization engage in frequent entertaining that is paid for by your organization?
- ☐ No.
- ☐ Yes.

133. Does your company employ any government officials?
- ☐ No.
- ☐ Yes.

134. Does your organization ever make political contributions or provide in-kind political contributions or favors?
- ☐ No.
- ☐ Yes.

135. Do your company and its affiliates maintain an anti-corruption/FCPA compliance program?
- ☐ No.
- ☐ Yes. `

136. Does the anticorruption policy provide procedures for determining when charitable donations can occur?
- ☐ No.
- ☐ Yes.

137. Does your company maintain a gift, meals, entertainment & travel program requiring the reporting and tracking of expenses over $250?
- ☐ No.
- ☐ Yes.

138. Does your organization, or its affiliates, allow the use of cash gifts or gift cards as business courtesies?
- ☐ No.
- ☐ Yes.

139. Does your company include internal controls intended to ensure the accurate recording of any gifts/gift cards/payments to counterparties or government officials?
- ☐ No.
- ☐ Yes.

140. Do your company and its affiliates maintain policies designed to ensure that books and records accurately and completely reflect the full details regarding any disbursements and reimbursements?
- ☐ No.
- ☐ Yes.

141. Has your organization received any reports in the last five years regarding the receipt of any bribery-related requests?
- ☐ No.
- ☐ Yes.

If so, please indicate what types of reports have been received on the form at the end of this survey.

Anti-Money Laundering/Know-Your-Customer Procedures

U.S. anti-money laundering procedures apply in full force to certain types of financial institutions and companies that offer certain types of covered products that are susceptible to the layering and hiding of the proceeds of illegitimate activities. Companies that do not provide covered products or services may not be directly subject to these AML laws. Nonetheless, even for such companies the U.S. Government often has "know your customer" expectations for engaging in financial transactions, particularly in the international realm. Thus, the following questions are relevant even for companies that are not financial institutions.

142. Does your organization, or any of its affiliates, issue "covered products" that trigger AML requirements due to their cash value or investment features?
- ☐ No.
- ☐ Yes.

143. Does your organization have policies designed to gather information to determine the true identities of customers with which it does business?
- ☐ No.
- ☐ Yes.

144. Does your organization have procedures to separately identify and track each customer and related records?
- ☐ No.
- ☐ Yes.

145. Does your organization participate in information sharing arrangements pursuant to the USA PATRIOT Act and FinCEN regulations?
- ☐ No.
- ☐ Yes.

146. Does your organization have policies to reasonably ensure that it will not conduct transactions with shell organizations?
- ☐ No.
- ☐ Yes.

147. Does your organization have policies covering relationships with Politically Exposed Persons, their families, and close associates?
- ☐ No.
- ☐ Yes.

148. Does your organization train employees on suspicious activity, reporting requirements, different forms of money laundering, and the organization's AML policies?
- ☐ No.
- ☐ Yes.

149. Does your organization integrate agents and other third parties into your AML/know-your-customer procedures?
- ☐ No.
- ☐ Yes.

150. Has your organization received any reports in the last five years regarding any AML violations or any government inquiries regarding same?
- ☐ No.
- ☐ Yes.

Government Contracts

Companies that sell goods or services to federal, state, local, and foreign governments are subject to special compliance obligations that arise pursuant to regulations and contractual provisions governing these contracting activities. The special compliance obligations imposed are often not required of non-government contractors. Contracting with these governments can also impose flow-down compliance obligations, which need to be reflected throughout the company's supply chain.

151. Does your company have government contracts / agreements at any tier? If not, skip to the next section
- ☐ State procurement.
- ☐ Local procurement.
- ☐ Federal procurement.
- ☐ Federal grants.
- ☐ Federal cooperative agreements.
- ☐ Federal other transaction agreements.
- ☐ Other federal funding instruments.
- ☐ Foreign procurement.

152. If your company has federal agreements, is your company a prime contractor/grantee/awardee (*i.e.*, agreements are directly with the federal government), a lower-tiered subcontractor/subgrantee/subawardee, or both?

☐ Prime Contractor / Grantee / Awardee.
☐ Subcontractor / Subgrantee / Subawardee.
☐ Both.

153. What types of federal procurement contracts does your company have (check all that apply)?

☐ FAR Part 12 Commercial item.
☐ FAR Part 14 Sealed Bid.
☐ FAR Part 15 Negotiated.
☐ Firm-fixed price.
☐ Cost-reimbursement.
☐ Labor-hour.
☐ Time-and-materials.
☐ GSA or VA multiple award schedule contract.

154. Does your company maintain government contracting policies in the following areas?

YES N/A

☐ ☐ Anti-kickback procedures.
☐ ☐ Anti-trafficking in persons.
☐ ☐ Buy American Act.
☐ ☐ Berry Amendment.
☐ ☐ Restrictions on sale or use of specialty metals.
☐ ☐ Cancellation, rescission, and recovery of funds for illegal or improper activity.
☐ ☐ Avoiding improper personal conflicts of interest.
☐ ☐ Organizational conflicts of interest.
☐ ☐ Mandatory disclosures.
☐ ☐ Covenant against contingent fees.
☐ ☐ Drug-free workplace.
☐ ☐ Equal employment opportunity and affirmative action.
☐ ☐ Equal employment opportunity and affirmative action for veterans.
☐ ☐ Equal employment opportunity and affirmative action for workers with disabilities.
☐ ☐ Intellectual Property Protection.
☐ ☐ Gratuities.
☐ ☐ Limitation on payments to influence certain federal transactions (*e.g.*, lobbying, etc.).
☐ ☐ Notification of employee rights under the National Labor Relations Act.
☐ ☐ Procurement Integrity Act.
☐ ☐ Restrictions on recruiting and hiring former government employees.
☐ ☐ Service Contract Act.
☐ ☐ Davis Bacon Act
☐ ☐ Trade Agreements Act.
☐ ☐ Truth in Negotiations Act.
☐ ☐ Cost Accounting Standards (CAS) – Full Coverage.
☐ ☐ Cost Accounting Standards (CAS) – Modified Coverage.
☐ ☐ Privacy Act.
☐ ☐ Handling federal government property.
☐ ☐ Intellectual property protection in government contracts.
☐ ☐ Defense priorities & allocations system (DPAS) requirements.

Please provide copies of any of the compliance policies listed above that are maintained by your organization.

155. Have there been any red flags or investigations that have arisen in any of the foregoing compliance areas? If so, please provide details.

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156. Does your company participate in the E-Verify program?
- ☐ No.
- ☐ Yes.

157. Does your company have an affirmative action plan on file?
- ☐ No.
- ☐ Yes.

158. Does your company have a small business contracting plan?
- ☐ No.
- ☐ Yes – Individual Plan.
- ☐ Yes – Commercial Plan.
- ☐ Yes – Master Plan.

159. Does your company transport supplies by sea in its performance of federal government contracts?
- ☐ No.
- ☐ Yes.

160. Does your company flowdown required FAR, DFARS, and other agency supplemental clauses in its purchase orders or contracts with subcontractors, vendors, and suppliers? If so, please provide samples of such purchase order terms and conditions and/or subcontracts.
- ☐ No.
- ☐ Yes.

161. Has your company had a government contract terminated for default in the last three (3) years?
- ☐ No.
- ☐ Yes.

162. Has your company made a mandatory disclosure to the Office of Inspector General in the last three (3) years? If so, please provide a copy of the mandatory disclosure and related correspondence.
- ☐ No.
- ☐ Yes.

163. Has your company ever been suspended, proposed for debarment, debarred, or otherwise declared ineligible from federal, state, or local government contracts or threatened with suspension or debarment? If so, what was the nature of the violation(s) and the status of the suspension/debarment/ineligibility?
- ☐ No.
- ☐ Yes.

164. Have there been any Office of Inspector General, Defense Criminal Investigative Service, Naval Criminal Investigative Service, U.S. Attorney, Department of Justice, or any other law enforcement agency investigations or allegations of illegal activity or fraud during the past ten (10) years?

- ☐ No.
- ☐ Yes.

If so, what are the facts and resolution of each case?

165. Has your company been subject to a DCAA, DCMA, GSA, OFCCP or any other government contracts related audit in the last six (6) years? If so, please describe the nature and results of the audit.

- ☐ No.
- ☐ Yes.

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Conflict Minerals

The U.S. Government requires that companies that deal with "conflict minerals" (certain minerals sourced in the Democratic Republic of Congo and neighboring countries) take steps to ensure that the company verifies that it has not purchased minerals that contribute to armed conflict in the region. Although these requirements apply directly to publicly traded companies subject to SEC oversight, the need for these publicly traded companies to conduct due diligence on their suppliers extends the reach of these requirements to private companies that are suppliers in the supply chains of publicly traded companies. These companies are required to put in place due diligence procedures that ensure that they can accurately certify, either directly or indirectly, that they are aware of the sourcing of these minerals and that they are "conflict free."

166. Does your company use any of the "conflict minerals" in the manufacture or contract to manufacture production of its products? Conflict mineral are defined as tin, tantalum, tungsten, or gold or their predecessors.
    - ☐ No.
    - ☐ Yes.

167. If so, does your company have a conflict minerals compliance policy or established procedures to ensure that adequate supply chain due diligence is performed regarding the sourcing of the four conflict minerals?
    - ☐ No.
    - ☐ Yes.

168. If your company used conflict minerals, has it conducted a country-of-origin inquiry to determine whether the products are sourced in the Democratic Republic of Congo or the neighboring countries of Angola, Burundi, the Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia
    - ☐ No.
    - ☐ Yes.

169. Has your company sent out surveys to all suppliers of conflict minerals to gain certifications of the sourcing of such products?
    - ☐ No.
    - ☐ Yes.

170. If so, does your company have procedures to follow up on persons who have either not returned certifications or whose certifications do not appear to be credible?
    - ☐ No.
    - ☐ Yes.

171. As a result of its due diligence and certification process, has your company been able to trace back its use of conflict minerals to either smelters that have been determined to be "conflict free" or to recycled or scrap sources?
    - ☐ No.
    - ☐ Yes.

Customs

Customs & Border Protection regulates the export and import of goods from other countries. Under Customs rules, the importer of record is required to identify the country of origin, determine the Customs classification (harmonized tariff system number), pay the correct duties, establish eligibility for any free trade agreement preferences, and otherwise take responsibility for the import, including paying the correct amount of duties owed. Companies that frequently import should maintain strong compliance measures to ensure that they are appropriately handling all Customs responsibilities.

172. Does your company frequently import from other countries? (If not, skip to the next section)
    - ☐ No.
    - ☐ Yes.

173. If so, does your company frequently act as the importer of record?
    - ☐ No.
    - ☐ Yes.

174. Does your company maintain procedures for

appropriately classifying frequently imported goods?

- ☐ No.
- ☐ Yes.

175. Does your company review Customs broker classifications for high-volume products on a regular basis?

- ☐ No.
- ☐ Yes.

176. Has your company recently (in the last two years) reviewed its HTS classifications to determine if they are current and up to date?

- ☐ No.
- ☐ Yes.

177. Does your company have procedures to review previous entries on a monthly basis to determine if any post-entry adjustments need to occur before liquidation?

- ☐ No.
- ☐ Yes.

178. Does your company have a Customs compliance policy?

- ☐ No.
- ☐ Yes.

179. Does your company maintain a system for determining whether FTA country-of-origin and certificate of origin requirements are tracked and complied with?

- ☐ No.
- ☐ Yes.

180. Does your company review Customs broker classifications for high-volume products on a regular basis?

- ☐ No.
- ☐ Yes.

181. Has your company reviewed its imports to determine which products are subject to antidumping and countervailing duties?

- ☐ No.
- ☐ Yes.

182. Has your company reviewed its imports from China to determine if it is appropriately handling section 301 duties?

- ☐ No.
- ☐ Yes.

183. Has your company reviewed its imports of steel and aluminum products to determine if it is appropriately handling section 232 duties?

- ☐ No.
- ☐ Yes.

184. Has your company taken all needed steps to secure section 232 and 301 exclusions?

- ☐ No.
- ☐ Yes.

185. If so, has your company taken steps to monitor its exclusions to determine that they are being followed and any renewals are timely sought?

- ☐ No.
- ☐ Yes.

186. Does your company maintain “stop, hold, and release” procedures for exporting goods where red flags are identified?

- ☐ No.
- ☐ Yes.

187. Does your company maintain required recordkeeping procedures for all imports and exports?

- ☐ No.
- ☐ Yes.

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Supply Chain Sourcing & Management

188. Does your company have a vendor or supplier code of conduct?
- ☐ No.
- ☐ Yes.

189. Does your company maintain compliance procedures for vendors and suppliers in the areas of forced labor, human trafficking, economic sanctions, FCPA, and export controls, whether in your vendor code of conduct or otherwise?
- ☐ No.
- ☐ Yes.

190. If not, please indicate which areas are and are not covered.

191. Does your company conduct compliance or country-of-origins audits of key suppliers?
- ☐ No.
- ☐ Yes.

192. Does your company source from companies at heightened risk of supply chain failures, including from suppliers in Brazil, China, India, Mexico, Russia, Thailand, or Taiwan?
- ☐ No.
- ☐ Yes.

193. Does your company conduct due diligence on new suppliers?
- ☐ No.
- ☐ Yes.

194. Does your company conduct/renew due diligence on existing suppliers at regular intervals, such as annually?
- ☐ No.
- ☐ Yes.

195. Does your company require suppliers to submit country-of-origin certifications annually?
- ☐ No.
- ☐ Yes.

196. Does your company require suppliers to conduct sub-supplier compliance checks to determine the sourcing of goods from its own suppliers?
- ☐ No.
- ☐ Yes.

197. Does your company provide training for key suppliers regarding the need to comply with U.S. law, including for the FCPA, economic sanctions, and export controls?
- ☐ No.
- ☐ Yes.

198. Has your company been made aware of any red flags in its supply chain in the last five years?
- ☐ No.
- ☐ Yes.

If so, please elaborate

199. Please provide any additional information relevant to due diligence and compliance for your key suppliers

Additional Information

In the remainder of this questionnaire, please provide additional information that will help us evaluate your international regulatory risk profile:

200. Please provide information regarding any governmental inquiries for the laws listed above.

201. Please provide information regarding any recurring red flags for the laws listed above.

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202. Please provide information regarding any internal investigations that you have conducted for the laws listed above.

203. Please provide information regarding any internal control failures that you are aware of that relate to the laws listed above.

204. Please provide information regarding any other concerns that you have related to the laws listed above.

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Gregory Husisian is a partner and litigation attorney with Foley & Lardner LLP. Mr. Husisian is chair of the firm's International Trade and National Security Practice, focusing on both international trade and international regulatory issues. He also is compliance counsel to numerous clients, covering all forms of regulatory risk-management.

Before entering private practice, Mr. Husisian clerked for the Honorable Jerry E. Smith of the Fifth Circuit Court of Appeals.

INTERNATIONAL REGULATORY COUNSELING

Mr. Husisian regularly counsels clients regarding international regulatory issues posed by the Office of Foreign Assets Control (OFAC) and other economic sanctions, export controls issues posed by the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR), and anticorruption issues posed by the Foreign Corrupt Practices Act (FCPA) and other anticorruption laws. He also represents companies with national security concerns in acquisitions before the Committee on Foreign Investment in the United States (CFIUS).

As a member of the Foley Government Enforcement Defense & Investigations Practice, the co-chair of the Foley Automotive Team, and a member of the Foley International Team, Mr. Husisian's practice encompasses all aspects of international regulation of exports and international conduct, including counseling, compliance, training, investigations, and enforcement actions/self-disclosures.

Mr. Husisian has authored a guide to international compliance best practices and risk-assessment toolkits designed to help multinational companies identify and manage their international regulatory risk. These items are available on request by emailing Mr. Husisian.

COMPLIANCE & REGULATORY RISK MANAGEMENT

Mr. Husisian regularly counsels clients regarding compliance and regulatory risk-management across the broad range of international and domestic regulatory regimes, including through the conduct of comprehensive risk assessments, the creation of

codes of conduct and compliance policies, the construction of internal controls and standard compliance operating procedures, and the establishment of national and international compliance and risk management departments. Mr. Husisian has conducted compliance audits and training at numerous companies in the United States, South America, Europe, and Asia.

INTERNATIONAL TRADE

Mr. Husisian has more than 25 years of experience representing clients in international trade litigation, including regarding antidumping and countervailing duty proceedings, section 232 national security reviews, and GSP issues before the U.S. Trade Representative. His international trade litigation experience includes many of the largest international trade matters, including numerous carbon, electrical, and stainless steel products; a wide range of chemical and mineral products; and numerous consumer goods. He represents clients in appeals before the Court of International Trade and the Court of Appeals for the Federal Circuit, as well as in cases before NAFTA Panels.

Mr. Husisian also counsels clients regarding Customs & Border Protection classification issues, protests, audits, self-disclosures, and responses to Customs subpoenas and requests for information.

THOUGHT LEADERSHIP

A frequent author, Mr. Husisian is the co-author of the first published treatise on the FCPA and is the author of an in-depth treatise on U.S. Regulation of Exports and International Conduct, published by Thomson/West. The latter treatise is the first comprehensive treatment of the complex regulations that apply to multinational corporations that sell and operate abroad, and includes extensive coverage of dual-use export controls, munitions export controls, economic sanctions, the FCPA, and the antiboycott regulations. He has published or been quoted in more than 200 articles on international trade and international regulatory issues and is the Country Reporter for U.S. trade law for the Journal of International Trade Law & Regulation.

EDUCATION

Mr. Husisian graduated from Cornell University (B.A., double major, economics and government, with honors in law and public policy, 1987). He received his J.D. from Cornell Law School in 1990, where he graduated *magna cum laude* and was elected to the Order of the Coif. He was the managing editor of the *Cornell Law Review* and the national editor of the *Harvard Journal of Law & Public Policy*.

ADMISSIONS

Mr. Husisian is admitted to practice in the District of Columbia, the Court of Appeals for the Federal Circuit, and the Court of International Trade.

EXPERIENCE

INTERNATIONAL TRADE

Mr. Husisian has represented foreign and domestic companies in dozens of major international trade proceedings, including antidumping and countervailing duty matters. A selection of his most recent representations includes:

- **Section 301 China Tariffs.** Represented numerous companies opposing inclusion of HTS tariff lines or seeking exemption.
- **Section 232 National Security Tariffs**. Represented users of various steel and other products opposing imposition of Section 232 tariffs on particular tariff lines or seeking product-specific exclusions.
- **Customs Counseling**. Counseled numerous companies on managing supply chains, sourcing, and measures to minimize liability under section 232 and 301 tariffs.
- **International Trade Commission Investigation**. Lead counsel for Japanese steel producer in the ITC investigations regarding Grain-Oriented Electrical Steel from Japan, successfully achieving a negative determination and no imposition of duties
- **International Trade Commission Investigation**. Lead counsel for importer of Silica Bricks from China in ITC investigation,

successfully achieving a negative determination and no imposition of duties

- **Department of Commerce Investigation**. Represented major Japanese steel company in investigation of hot-rolled steel, achieving low margins that allowed the continued participation of the respondent in the U.S market

ECONOMIC SANCTIONS

Mr. Husisian represents U.S. and foreign companies in all matters related to economic sanctions, including counseling, licensing, compliance, training, and internal investigations and self-disclosures. Representative recent matters include:

- **OFAC Investigation**. Led large internal investigation for major European insurance company into potential OFAC issues in Cuba, Iran, Sudan, and Syria
- **OFAC Investigation**. Led internal investigation in Mexico for automotive company regarding potential dealings with specially designated persons and related anticorruption issues
- **OFAC Internal Investigation**. Led internal investigation for multinational automotive company into apparent sales into Iran from its foreign subsidiaries, in potential violation of regulations
- **OFAC Licensing**. Secured licenses for a multinational insurance company allowing the provision of global insurance policies, including for persons stationed in Cuba, Iran, and Sudan
- **OFAC Licensing**. Secured licenses for large provider of on-line courses, allowing provision of courses to Iranian students
- **OFAC Compliance**. Prepared economic sanctions compliance policies and internal controls for numerous companies operating in the United States, Europe, Latin America, and Asia to minimize the risk of violations of U.S. and EU economic sanctions regulations

EXPORT CONTROLS (ITAR, EAR, NUCLEAR)

Mr. Husisian represents U.S. and foreign companies in all matters related to the ITAR, EAR, and nuclear controls, including counseling, classification reviews, classification requests, licensing, compliance, training, and internal investigations and self-disclosures. Representative recent matters include:

- **Export Controls Classification Reviews and International Investigation**. Led classification review and investigation into potential EAR violations at large petroleum products supplier
- **Export Controls Classification Reviews**. Led classification reviews to determine export status of ITAR- and EAR-controlled goods, information, software, and technology for numerous manufacturers and software companies
- **Export Controls Internal Investigation and Voluntary Self-Disclosure**. Led internal investigations into the potential unlicensed export of defense articles appearing on the U.S. Munitions List and the Commerce Control List for numerous manufacturers and defense contractors, resulting in the filing of voluntary self-disclosures with the State Department's Directorate of Defense Trade Controls and the Commerce Department's Bureau of Industry and Security
- **Nuclear Export Controls Internal Investigation and Voluntary Self-Disclosure**. Conducted internal investigation and prepared voluntary self-disclosure for exporter covered by the Nuclear Regulatory Commission's nuclear export controls
- **ITAR Compliance**. Prepared export controls compliance policies and technology control plans for defense contractors subject to the International Traffic in Arms Regulations (ITAR)
- **EAR Compliance**. Prepared export controls compliance policies for companies producing and exporting goods covered by the Commerce Control List and subject to controls under the Export Administration Regulations (EAR)

ANTICORRUPTION/FOREIGN CORRUPT PRACTICES ACT (FCPA)

Mr. Husisian represents U.S. and foreign companies in all matters related to the FCPA and other anticorruption regimes, including counseling, compliance, training, and internal investigations. Representative recent matters include:

- **Foreign Corrupt Practices Act Internal Investigations**. Conducted numerous internal investigations into alleged FCPA and anticorruption violations in China and Latin America for multiple automotive companies
- **FCPA Compliance**. Prepared anticorruption, FCPA, anti-kickback, and Gifts, Meals, Entertainment & Travel compliance policies and internal controls for companies operating in the United States, Europe, Latin America, and Asia to minimize the risk of violations of anticorruption laws
- **FCPA DOJ Opinion Release**. Prepared DOJ Opinion Request for multinational company seeking to hire director with ties to foreign government

COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES

- **Represented U.S. and Foreign Companies in CFIUS Proceedings**. Represented numerous companies in CFIUS proceedings, including receiving approval for sale of company engaged in providing firearm ballistics analysis for the U.S., state, and local governments and numerous sales of defense contractors to acquirers in Europe and Asia
- **Represented U.S. Company being acquired by Chinese company in CFIUS Proceedings**. Represented a U.S. defense contractor that produces EAR-controlled, 600-series military goods before CFIUS, receiving first approval of 600-series defense contractor to a Chinese owner

ANTI-BOYCOTT

- **Anti-Boycott Investigation and Voluntary Self-Disclosure**. Conducted an internal investigation into potential violations of U.S. anti-boycott regulations and filed a voluntary self-disclosure with the U.S. Commerce Department's Office of Anti-Boycott Compliance
- **Anti-Boycott Compliance.** Prepared anti-boycott compliance policies for multinational corporations in a variety of industries, including a Fortune 100 energy company, a manufacturer of industrial equipment, and numerous automotive suppliers

PUBLICATIONS

TREATISES, TEXTBOOKS, AND WHITE PAPERS

- Mr. Husisian is the author or co-author of four white papers on the topic of "Coping Strategies for a Changing International Trade Environment." Intended to help clients comply with issues relating to international trade, international regulatory issues, and international mergers, acquisition, and investments, these white papers are available on request from the author and are as follows:
  - *Managing the Trump Administration International Trade War: Coping with Section 232 and 301 Tariffs, International Trade Litigation, Heightened Customs Enforcement, and International Trade Uncertainty*
  - *Managing the Aggressive Enforcement of International Regulations by the Trump Administration: Compliance Best Practices for Companies that Source, Operate, or Sell Abroad*
  - *Managing International Mergers, Acquisitions, and Investments in the Trump Administration*
  - *Coping with Compliance Best Practices for Companies that Sell, Operate, or Source Abroad: An International Compliance Guide for High-Risk Regulations*
- In addition, Mr. Husisian is the author of multiple treatises on international regulatory and international trade issues. These treatises include:
  - *U.S. Regulation of Exports and International Conduct,* in *International Trade: Statutes and Strategies* (Thomson/West). This 2700-page treatise includes chapters covering: "U.S. Export Controls," "U.S. Sanctions," "U.S. Export Controls and Sanctions Risk Management and Compliance," "The Foreign Corrupt Practices Act," "The Foreign Corrupt Practices Act Risk Management and Compliance," and "U.S. Anti-Boycott Regulations."

- *The Foreign Corrupt Practices Act: Coping with Corruption in Transitional Economies (*Oceana Publications*)*
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Bond Rating Agency Liability," 75 *Cornell Law Review* 411

PRESENTATIONS

Mr. Husisian is an experienced speaker who has presented at over 100 conferences and webinars on international regulatory, international trade, and compliance issues, covering topics such as international trade, antidumping and countervailing duty proceedings, President Trump's international trade strategies, export controls, economic sanctions, the FCPA, and general compliance. Some of his most recent presentations include:

- "Managing the International Supply Chain & Sellers: Executing New U.S. Government Expectations for Suppliers & Business Partners" (Chicago, Milwaukee, and Dallas)
- "Does It Satisfy Deemed Export Requirements Under 734.13(b) of the EAR?", *American Conference Institute* (Chicago, Il)
- "International Trade Issues in the Trump Administration," *Tampa Steel Conference* (Tampa, FL)
- "Anticipating and Controlling International Trade Risk under the Trump Administration," *Danish-American Business Forum* (Copenhagen)
- "International Trade & Investment Under the Trump Administration: Risks and Opportunities"
- "Compliance & Risk Management: Best Practices for Operating at Home and Abroad"
- "Changing Landscape of International Trade—Risks and Opportunities" (Chicago, IL and Milwaukee, WI)
- "Coping with U.S. International Regulations," *Danish-American Business Forum* (Copenhagen)
- "Regulation of Exports and International Conduct," *Foro Automotriz Querétaro* (Querétaro Mexico)
- "International Distribution: How (And When) to Conduct an Internal Investigation"
- "Anticipating and Controlling International Trade Risk Under the Trump Administration: Considerations for PE Funds"
- "Navigating the Conflict Minerals Rules"
- "Dealing with Third-Party Risk in International Transactions" (Chicago, IL and Milwaukee, WI)
- "International Regulatory Issues for the Fashion Industry," *Custom-Made Fashion Industry Assoc.* (Miami, FL)
- "The Changing U.S. Cuba Landscape: Managing Risks and Opportunities" (webcast)
- "U.S. Enforcement Trends Impacting Latin American Financial Services Companies" (Miami, FL)
- "Dealing with Third-Party Risk Overseas" (Chicago, IL and Milwaukee, WI)
- "Navigating the Conflict Minerals Rules" (Chicago, IL and Milwaukee, WI)
- "Compliance and Regulatory Risk Management: Coping with the Aggressive Enforcement of U.S. Laws at Home and Abroad," *Original Equipment Suppliers Assoc*. (Troy, MI)
- "Practical Suggestions for Internal Risk Assessment for FCPA, OFAC, and AML" (webcast)
- "The Extra-Territorial Application of U.S. Law: Export Controls, Sanctions, and the FCPA" (Aalborg, Denmark)
- "Webcast Q&A on Practical Suggestions for Internal Risk Assessment for FCPA, OFAC, and AML" (webcast)
- "Coping with International Enforcement Actions: Investigation and Compliance Strategies," *Danish-American Business Forum* (Copenhagen, Denmark)
- "Business Development or Bribery: New Standards, New Challenges Under the FCPA"
- "Surviving OFAC Sanctions: New Rules and Risks for Operating Overseas"
- "Cross-Border Trade Laws: A Strategy for Survival," *ACC Europe and Transparency International* (Vienna, Austria)

- "Export Controls & Economic Sanctions: New Rules, New Risks, New Realities" (Milwaukee, WI)
- "Key Strategies and Considerations for Doing Business in the Americas"
- "Business Development or Bribery: New Standards, New Challenges Under the FCPA" (Milwaukee, WI and Chicago, IL)
- "Export Diversion and End-Use Monitoring," *Automotive Industry Action Group* (Troy, MI)
- "A Twelve Step Program for International Compliance," *Association of Corporate Counsel* (Livonia, MI)
- "FCPA, Export Control, and Economic Sanctions: Enforcement Trends and Compliance," *Original Equipment Suppliers Assoc.* Legal Council (Troy, MI)
- "FCPA and Foreign Export Control Law Update," *Original Equipment Suppliers Assoc. Legal Issues Council* (Troy, MI)
- "Coping with U.S. Regulation of Exports' International Conduct" (Livonia, MI)
- "Strategies for Working with Law Firms on International Compliance and Enforcement Actions," *BDO International Forensics Conference* (New York, New York) (Keynote Speaker)
- "Foreign Corrupt Practices Act: Overview, Developments, and Red Flags" (Chicago, IL and Milwaukee, WI)
- "Regulations, Enforcement Trends and Compliance Practices for Today's Environment: A Focus on NHTSA, Export Controls, Antitrust and FCPA," *Original Equipment Suppliers Assoc.* (Troy, MI)
- "Coping with U.S. Regulation of Exports and International Conduct," *Original Equipment Suppliers Assoc*. (Troy, MI)
- "U.S. Export Controls and Economic Sanctions Compliance" (Livonia, MI, Waltham, MA, and Milwaukee, WI)
- "Key Strategies and Considerations for Doing Business in the Americas: Restrictions on Trade With Cuba and Other Sanctioned Countries" (Miami, FL)
- "The Role of EU Trade Associations in the Initiation and Resolution of Trade Disputes" (Brussels, Belgium)
- "Export Controls for Government Contractors" (Livonia, MI, Boston, MA, and Milwaukee, WI)
- "The Long Arm of U.S. Law: Avoiding FCPA Liability for the Overseas Conduct of Dealers and Franchisees" (Milwaukee, WI and Chicago, IL)
- "Coping with U.S. Export Controls and Sanctions in the Latin American Market" (Miami, FL)
- "Current Trends in FCPA Enforcement and Compliance" (Milwaukee, WI and Chicago, IL)
- "U.S. Export Controls Reform and Free Trade Developments: Prospects for Change in 2011," *Overseas Automotive Council* (Miami, FL)
- "Establishment of an Effective FCPA Compliance Program," *D.C. Bar Assoc*. (Washington, D.C.)
- "The Opportunities of Trade & Challenges of Corruption: Working with Emerging Economies," *George Washington University School of Business* (Washington, D.C.)
- "The Future of U.S. Export Controls and Sanctions," *IDCC*
- "Conducting an Effective Internal Investigation of Suspected FCPA Violations," *American Conference Institute* (New York, New York)
- "FCPA Compliance Strategies for High-Tech Companies," *Practicing Law Institute* (San Jose, CA)
- "FCPA Compliance for Pharmaceutical and Life Sciences Companies," *American Conference Institute* (New York, New York)

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Jenlain Scott is an associate with Foley & Lardner LLP. She is a member of the firm's Business Litigation & Dispute Resolution Practice. *Jenlain is admitted to practice only in Maryland. She is practicing under the supervision of a member of the D.C. Bar.*

Ms. Scott has worked on a variety of international regulatory and trade matters. She regularly counsels clients regarding international issues, including antidumping proceedings, Customs issues, and CFIUS national security matters.

Prior to joining the firm, Jenlain worked as a summer associate in Foley's Washington, D.C., office, where she worked on the SCOTUS case for *Oil State v. Green's Energy*. As a law student, she interned with the International Prisoner Transfer Unit of the Department of Justice and Transparency International. She also worked as a law clerk at a prominent law firm in Washington and as a research assistant at Georgetown Law's *Annual Review of Criminal Procedure*. In addition, Jenlain has served as a public policy intern for the Western Hemisphere Bureau of the U.S. Department of State.

EDUCATION

Jenlain earned her law degree from Georgetown University Law Center (J.D., *cum laude*, 2018). During this time, she served at *Georgetown Journal of Gender and the Law*, Women's Legal Alliance, and was a guest presenter at the ACCE High School.

Jenlain received her undergraduate degrees in international affairs and geography, with a minor in Spanish, from George Washington University (B.A., *summa cum laude*, 2014), where she also earned a master's certificate in geographic information systems. She was a member of Gamma Theta Upsilon and Order of Omega honor societies and Delta Gamma fraternity. She studied abroad at Oxford University, Catholic University of Argentina, and Latin University of Costa Rica.

COMMUNITY ENGAGEMENT

Jenlain was a member of the Georgetown Law International Women's Human Rights Clinic, where

she drafted a brief for the Zimbabwe Constitutional Court challenging women's custody rights under Zimbabwean law.

ADMISSIONS

Jenlain is admitted to practice only in Maryland. She is practicing under the supervision of a member of the D.C. Bar.

PUBLICATIONS

Jenlain writes frequently on international trade, international regulatory, and compliance issues. Her authored and co-authored works include multiple white papers and presentations providing practical compliance advice to companies impacted by international trade and regulatory issues. These include:

- "Managing the Trump Administration International Trade War: Coping with Section 232 and 301 Tariffs, International Trade Litigation, Heightened Customs Enforcement, and International Trade Uncertainty" (2019) (available upon request)
- "Managing the Aggressive Enforcement of International Regulations by the Trump Administration: Compliance Best Practices for Companies that Source, Operate, or Sell Abroad" (2019) (available upon request)
- "OFAC Emphasizes Need for Supply Chain Due Diligence and International Compliance: Compliance Guidance for Multinational Organizations" (2019)
- "Strategies for Coping with and Mitigating Costly Section 232 and 301 Tariffs" (2019)
- "Growing Lasting Business Relationships: Managing the United States Trade War" (2019)
- "In-House: SEC Enforcement Actions Against Compliance Officers" (chapter in *Storming the Gatekeepers: When Compliance Officers and In-House Lawyers Are at Risk 2017* (2017)).

LANGUAGES

Jenlain is proficient in Spanish.