

MOMENTUM'S A.C.E.S. COMPLIANCE SUMMIT – ANTI-CORRUPTION, ANTI-BRIBERY, EXPORT CONTROLS AND SANCTIONS

SANCTIONS MASTER CLASS: THE LATEST DEVELOPMENTS FOR 2019 AND BEYOND

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HOT BUTTON ISSUES

- ❖ Additional Sanctions under the Chemical and Biological Weapons Control and Warfare Elimination Act
- ❖ Russia Sanctions Bill: Defending American Security from Kremlin Aggression Act (DASKA)
- ❖ Russia Sanctions Bill: Defending Elections from Threats by Establishing Redlines Act (DETER)
- ❖ Overuse of the sanctions tool?



RECENT OFAC ENFORCEMENT ACTIONS

- ❖ e.l.f. Cosmetics, Inc.: \$996,080 settlement
- ❖ Kollmorgen Corp.: \$13,381 settlement
- ❖ AppliChem GmbH: \$5,512,564 civil penalty
- ❖ ZAG IP, LLC: \$506,250 settlement
- ❖ Stanley Black & Decker, Inc.: \$1,869,144 settlement
- ❖ Standard Chartered Bank: \$657,040,033 settlement + other regulators
- ❖ Acteon Group Ltd.: \$441,366 settlement

SCENARIOS

- ❖ Producing a big budget Hollywood movie in Cuba in 2016 (*Fast & Furious 8*)
 - Unique set of legal and practical challenges
 - Used GL authorizing US travel for activities directly incident to professional productions of “Informational Materials” (e.g., films, TV shows)
 - Technical needs extreme: licenses required for certain equipment (e.g., pyrotechnics, cameras, helicopters)
 - Close coordination w/US & Cuban gov’t (“ICAIC”) for licenses, visas, permits, approvals
 - No infrastructure to support big budget productions (no Internet, no credit cards)
 - Everything needed to be shipped in, from cars to catering – hired barge in Florida
 - Use of local 3rd parties (e.g., customs brokers, production cos.) raises improper payment

SCENARIOS

- Could it be done today in light of 2017 re-imposition of certain Cuba sanctions?
 - Advance planning critical to assess project feasibility, license requirements, budget, etc.
 - Retain US outside counsel w/close OFAC contacts and US consultant w/Cuba gov't relationships
 - Obtain necessary contractual reps & warranties in all third party contracts
 - Designate, train sr. production staff to be responsible for all equipment security
 - Pre-screen all counterparties (e.g., hotels, production cos.) against OFAC Cuba Restricted List

SCENARIOS

- ❖ Russia sectoral sections case study: navigating the “50% Rule”
 - Can we do business with Russian company not on SSI List, using standard credit terms, that may be 50%+ owned by an entity on SSI List?
 - Legal considerations under current US sanctions regime viz Russia:
 - Sanctions imposed on specific persons, groups and companies connected to various Ukraine activities (“SDNs”) – assets blocked, US companies barred from doing business with them or any entities of which they own 50%+
 - “Sectoral” sanctions impose more limited restrictions (*e.g.*, offering credit over 14 days) on specific businesses, operating in certain sectors of Russian economy, as identified on SSI List
 - Sectoral sanctions also bar US persons from doing business with companies 50% or more (in aggregate) owned by one or more persons/companies on SSI List
 - Practical considerations: opaque, complex Russian ownership structures make compliance with 50%+ rule very challenging – sanctions screening not enough!



SCENARIOS

- How to handle:
 - Ensure contract has specific representations and warranties, including (1) confirmation of counterparty's ownership; (2) representations regarding compliance with US sanctions; (3) immediate notice if ownership changes; (4) immediate exit rights if representations inaccurate, ownership changes and SSI-listed part-owner gets 50%+ stake
 - Designate local business owner to "own" relationship, conduct regular monitoring of counterparty ownership
 - Conduct monthly sanctions screening of counterparty



SCENARIOS

A U.S. bank is deciding whether to process a payment involving INSTEX SAS for a French company's exportation of bottled drinking water from France to Iran.

What are relevant considerations?



SCENARIOS

A U.S. company is deciding whether to do business with a Russian construction company that has some construction business in Iran, one SDN director, and a non-SDN director who is on the list of Russian oligarchs under § 241 of CAATSA.

What are relevant considerations?



QUESTIONS