

## SOME RED FLAGS

Most compliance practitioners have heard the term “Red Flags.” These are generally defined as circumstances which could place a reasonable person on notice that illegal or improper conduct has occurred or is likely to take place. A Red Flag does not mean that an action or transaction should immediately be terminated. It does mean that you should engage in an appropriate level of additional due diligence and investigation before moving forward. If a Red Flag cannot be cleared, at that point you may need to terminate your action or transaction.

Our colleague, **Howard Sklar**, has spoken of “compliance convergence” or the merging of control programs such as anti-bribery and anti-corruption with anti-money laundering. Inspired by Howard’s blog yesterday entitled “*On Anti-Money Laundering*”; this post will list some possible Red Flags that you should look out for in three control areas; anti-bribery and anti-corruption; anti-money laundering; and with a nod towards the daily changing economic sanctions being levied against Libya, Red Flags regarding international economic sanctions.

### *I. Anti-Bribery and Anti-Corruption*

1. Doing business in a country that is perceived as being corrupt or high-risk.
2. Allegations that a party has made or has a propensity to make Prohibited Payments or Facilitation Payments to Government Officials.
3. Refusal to warrant past or future compliance with the (a) business principles set out in your Company compliance and ethics program; (b) the requirements and prohibitions of the FCPA, the UK Bribery Act (*assuming it ever becomes effective*) and the anti-money laundering and anti-terrorism laws and regulations of the United States and any other relevant local laws.
4. Refusal or reluctance to answer questions during the due diligence.
5. Providing insufficient, inaccurate or suspicious information in response to due diligence questions.
6. Allegations related to integrity; or allegations concerning or reputation for illegal, improper, or unethical conduct.
7. Existence of investigations by relevant law enforcement authorities or prior conviction.
8. Any suggestion that laws or regulations or Company compliance and ethics policies need not be followed.
9. Any suggestions that otherwise illegal conduct is acceptable because it is the norm or custom in a particular country.
10. Failure to have in place an adequate compliance program or code of conduct or refusal to adopt one.

11. Use of shell companies.
12. Relationship or close association with a Government Official.
13. Owners, major shareholders or executive managers who are Government Officials.
14. Refusal to identify a principal or beneficial owner.
15. A Government Official requests, urges, insists or demands that a particular party, company or individual be selected or engaged.
16. Refusal to execute a written contract, or a request to perform services without a written contract where one is sought.
17. Lack of experience with the product, service, field or industry.
18. Lack of adequate facilities or qualified staff.
19. Requirement of an unusually high commission.
20. Insistence on payment in cash or cash equivalent.
21. Insistence on payment outside of the country in which services are to be performed or where the company is headquartered.
22. Insistence on payment to a third party or intermediary.
23. Request for advance payment or bonuses.
24. Sharing of compensation with others whose identities are not disclosed.
25. Refusal to provide adequate invoices or providing suspicious ones.
26. Offering to provide or providing false invoices.

## ***II. Anti-Money Laundering***

1. Named on lists of Designated Parties, Specially Designated Nationals, or other similar lists maintained by the US or UK government or the United Nations, or association with such individuals or entities.
2. Connection to or financial dealings in countries either identified as being non-cooperative with international efforts against money laundering by the Financial Action Task Force, or against whom the U.S. Treasury Department has issued an advisory.
3. Association with any party publicly identified by any government or the United Nations as a sponsor or promoter of terrorism.
4. Refusal to disclose or to provide documentation concerning identity, nature of business, nature and source of assets.

5. Providing false, misleading or inaccurate information and documentation.
6. Refusal to identify a principal or beneficial owner.
7. A party appearing to be acting as an agent for an undisclosed principal or beneficial owner, who is reluctant to provide information, or is otherwise evasive, regarding the identity of the principal or beneficial owner.
8. A shell company whose representative refuses to disclose the identity of the beneficial owner.
9. Company address is a post office box.
10. Engaging in transactions structured to avoid appropriate reporting requirements.
11. Concern about compliance with government reporting requirements.
12. Lack of concern regarding risks or transaction costs.
13. Offering to engage in a transaction that lacks business sense, economic substance or apparent investment strategy.
14. Assets well beyond a party's known income or resources.
15. A request that funds be transferred to an unrelated third party or to a jurisdiction other than the one in which the party is located.
16. A request that a transaction be structured or described in a particular manner in order to avoid or create an advantage under existing tax laws.
17. The existence of formal or informal allegations (including in the reputable media) regarding possible criminal, civil or regulatory violations of laws or regulations.
18. Allegations regarding the party's integrity.

### ***III. International Economic Sanctions***

1. Connection to a jurisdiction subject to United States or United Nations sanctions or embargoes, including the SDN, Denied Persons, Entity, Unverified and Debarred Lists.
2. Request that goods and services be exported to countries listed on the US Treasury Department List of Countries Requiring Cooperation with an International Boycott.
3. Inaccuracies in shipping documentation and invoices, including: value of equipment, description of equipment, country of origin, country of destination, end use, and end user.
4. Abnormal packing, marking or routing of goods or equipment.

5. Inconsistency between goods or services offered or acquired and the party's usual business.
6. A party declines routine installation, training or maintenance services.
7. Promised delivery dates for the equipment are vague, or deliveries are planned for out of the way destinations.
8. A freight forwarding firm is listed as the product's final destination.
9. The shipping route is out of the ordinary for the product and destination.
10. The packaging, and information on it, is inconsistent with the stated method of shipment or destination.

As no one list of Red Flags can be exhaustive or final, you may wish to add Red Flags more specific to the risks appropriate to your company, such as those based upon the industry in which you conduct business, the locations where your company does business or other risk factor. If there are any additional ones you feel our readers should be aware of please list them in the Comments Section.

*This publication contains general information only and is based on the experiences and research of the author. The author is not, by means of this publication, rendering business, legal advice, or other professional advice or services. This publication is not a substitute for such legal advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified legal advisor. The author, his affiliates, and related entities shall not be responsible for any loss sustained by any person or entity that relies on this publication. The Author gives his permission to link, post, distribute, or reference this article for any lawful purpose, provided attribution is made to the author. The author can be reached at [tfox@tfoxlaw.com](mailto:tfox@tfoxlaw.com).*

© Thomas R. Fox, 2011