

EXPORT COMPLIANCE PERSONNEL

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1.0 PURPOSE

An export compliance program is only as good as the personnel who implement that program. Accordingly, a company must ensure that it dedicates sufficient and appropriately skilled personnel to the export compliance function and locates them, both organizationally and geographically, to best effect.

A “best practices” standard for evaluating export compliance personnel includes three elements:

- Compliance personnel must be of sufficient quantity to perform critical functions;
- Compliance personnel must be of sufficient quality to ensure competent performance; and
- Compliance personnel must be in the proper location to effectively implement export objectives.

2.0 QUANTITY OF PERSONNEL

Management should ensure that a sufficient quantity of personnel is dedicated to the export compliance function. First, a single person should be designated in a leadership role with overall responsibility for the export compliance function. Next, in support of the function leader, management should designate knowledgeable support and back-up personnel that can maintain the compliance structure and function on a day-to-day basis and in the temporary absence of key personnel.

To assess the quantity of personnel required to properly staff the export compliance function, management should consider the personnel required to address critical areas such as technical classification reviews, license applications, license implementation, party screening, internal security and control procedures, training, recordkeeping, audits and counselling. The determination of how many personnel should make up this function is best based upon an analysis of the company’s overall export activities. Specifically, that analysis should include the following company information: volume of controlled commodities, software and technology the company exports; the volume of export control licenses required; the geographic scope of its international operations; the company’s merger and acquisition activity; and added complexity of any activities subject to economic sanctions and antiboycott regulations. With these details the company will be best positioned to quantify the number of personnel required to best manage the applicable export compliance requirements handled by the function.

3.0 QUALITY OF PERSONNEL

The company should study carefully the complexities of its export compliance activities when evaluating the quality of personnel required to support the function. Companies with complex export activities should consider hiring seasoned, external personnel with sufficient background in export compliance to handle the immediate needs of the function, if such personnel are not already available from within the company. Companies with less complex activities can consider recruiting its export compliance personnel from within the company and providing the requisite training to achieve the appropriate

competency, if needed. A hybrid approach can be most desirable for purposes of fully staffing the function with the appropriate level of substantive expertise and internal company knowledge.

Of equal importance to the qualifications of the personnel is the need to develop plans to increase the desirability of export compliance positions. Historically, export personnel have often not been viewed as the “superstars” of companies. As a result, some highly qualified personnel avoid export compliance positions in favor of more attractive ones. To combat this potential problem, export compliance positions should be viewed as a positive career development at the company, and not merely administrative or clerical in nature. Management should provide incentives to recruit, train, and motivate quality export compliance personnel and should structure pay scales, bonuses, evaluations, and/or promotions accordingly.

Export compliance positions should have sufficient authority and discretion vested in them to garner the necessary respect to ensure compliance. As an obvious corollary, management must provide these individuals with adequate training and the compliance tools necessary to perform their jobs.

Export personnel should be appropriately and regularly trained, both in terms of their professional subject matter knowledge in respect of all jurisdictions by which their area of responsibility is affected, and in terms of product/technology knowledge since effective compliance relies on the correct implementation of systems largely based on a combination of these two facets. External training which is independently accredited by a credible academic, governmental, or other professional bodies is increasingly favored, and in some cases supported by government regulators.

Finally, management should exercise due care to avoid delegating substantial discretionary authority in this area to individuals with a history of past compliance violations¹.

4.0 LOCATION OF PERSONNEL

In general, to avoid perceived conflicts of interest, export compliance personnel should generally be positioned in the company so their sources of salary, bonuses, and evaluations are separate from the businesses they monitor. Similarly, export compliance personnel must be positioned at the appropriate levels in the organization to enforce export compliance in the face of other potentially conflicting business pressures.

Many companies have attempted to ensure the independence of their export compliance personnel at the business unit level by placing them in—or making them report directly to—the general counsel’s office. However, the general counsel is only one of several corporate executives in whom export compliance responsibility might appropriately be placed, depending on the structure and size of the organization and its past history with compliance issues. At the corporate level, for example, it may be more effective to place export compliance responsibility with corporate executives who exercise greater control over the business unit operations or who have greater ability to make necessary changes or allocate resources to the company’s export compliance program. Some companies may choose to centralize the responsibilities for export compliance in a few individuals. Other companies may decentralize export control responsibilities but exercise sufficient corporate oversight to ensure compliance.

In any event, organizational charts should be created that clearly describe the authority, function and duties of key personnel in the day-to-day export operations and compliance efforts of the company. These organizational charts should be consistently updated to reflect personnel changes. Similarly, contact lists should be created that identify the name, title, phone number or other pertinent contact information for all primary and backup export compliance personnel.

These organizational charts and contact lists should be widely distributed throughout the company, including, where available, via the company intranet.

Finally, management must be aware of potential export compliance vulnerabilities during company transitions such as mergers, layoffs, and other legal reorganizations and ensure that the export compliance function is sufficiently flexible and adequately resourced to manage the particular compliance issues often associated with such events.

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