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Due Diligence from the Corner

By L Burke Files, CDDP, President, Financial Examinations & Evaluations, Inc (01/10/2012)

Sometimes due diligence is not as easy as one would like to think and compliance requires a bit more creativity.

A client of ours works in many African countries. Their primary focus is in agricultural supplies for farmers, they also have a small division that purchases specialty crops such as fruits - dried and fresh, spices and feedstock items for the perfumery industry. Actually their business and business model is truly fascinating of how one can profit very handsomely in the trade of nonstandard goods in thin and inefficient markets. To maintain these margins and the loyalty of their customers and suppliers they must also excel in their knowledge of the counterparties to each and every transaction and to insure the quality of goods they buy and sell to be ‘top shelf’. Thus, they maintain an excellent network of casual and professional intelligence sources to keep them informed of changes in markets as well as the whims of nature and politics. They also have deployed many small mobile labs to both demonstrate the quality of their goods and asses the quality of those items they are buying. These are real knowledge workers.

The first real problem they ran into was when they were trying to comply with sanctions against different nations in Africa, Cote de Ivore, Sudan, etc... They had both customers and clients in these countries. The company, so as to be complaint with the ever-shifting sanctions was submitting applications for licenses with the US and EU regulatory bodies so they could continue and/or commence commercial activities with parties in these sanctioned nations. The problem arose when ‘a good faith discussion’ of the nature of the clients and customers, as required in the application for the permits to trade with parties within these sanctioned nations, required more in-depth knowledge. The only way to possess this ‘in-depth knowledge’ of the counterparties within these sanctioned nations was to hire an investigator in these nations - a sanctionable event in its self. I told them they had a real Catch-22 problem. They, not being as old as I am had no idea what the referent was so I bought several copies of the old book and sent them off. More importantly than solving antique referents was solving the information problem.

We polled several of the experts we rely on for understanding such sanctions measures and were told we had a real Catch-22 (thanks we knew this). There were several rounds of “but what if we did this” only to be shot down time and time again. It was not until we got the regulators themselves on the phone that a solution, at least in part, was proffered. I paraphrase the hint of a suggestion from regulators never to be named...

If one was in need of information in a sanctioned nation, and it is prudent that

when seeking a license to work within a sanctioned nation that this is done, and if this information is not in the public domain, as most information in these nations is not, it would be wise to hire a 3rd party to retrieve this information only if that third party is itself not in one of the sanctioned nations. Further, it should remain as unclear how the applicant received this information from this third party as the applicant seeking this information can not be seen as sending money in a quid pro quo that will end up in or is destined for a party within the sanctioned nation.

A Kafkaesque recommendation if ever there was one. Yet this is the world in which we exist where we are required to launder information so as to insure we do not work with money launders or sanctioned parties.

Retrieving this information was not easy, it was difficult. There are few if any

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investigators in these nations. Once located there was not a clear understanding by the 'researchers' of the quality and care of research that was required. It might also be added that these nations, if they do possess computerised databases of any sort - are not generally available to the public or a researcher. Access, if available, would require some form of emolument be passed for access, yet another example of prohibitions being overlooked so compliance is not.

It reminds me of the old Soviet phrase "That is not permitted, but may be possible." It came from a place in time where there were so many overlapping laws and prohibitions that they made life in compliance a farce...

We do business for ourselves and on behalf of our clients all over the world, in all sorts of industries. I find it humourous that to insure our client's compliance we have to take actions and craft transactions to harvest information in such a manner as to be left standing in a corner with our fingers in our ears, our eyes closed, and humming so we can neither see or hear what is needed to be done to be compliant.

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