



Know Your Customer - How to Avoid Dealing with Bad Actors

Wednesday, October 17, 2018 | 9:15 am - 10:00 am

Presented by:

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Why Is Know Your Customer (KYC) Compliance So Important?

- Compliance issues can and do arise in this industry
 - Bad actors seeking to acquire aircraft unlawfully
 - Different regulatory requirements for military aircraft
- Compliance issues can arise at different times in different ways
- Vigorous enforcement by U.S. agencies
 - Renewed emphasis on enforcing sanctions
 - 20/20 hindsight of enforcement agencies



There Are Bad Actors Out There

- True bad actors (drug smugglers)
- Parties you cannot deal with (certain Russian oligarchs)
- Middlemen not conscious of diligence risks
- Individuals looking for bribes or side-deals

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BUREAU OF INDUSTRY AND SECURITY
Office of Congressional and Public Affairs
(202) 482-2721

Commerce Department Moves Against Illicit Iran Aircraft Network

WASHINGTON—The U.S. Commerce Department's Bureau of Industry and Security (BIS) has acted against Turkish national Gulnihal Yegane and three affiliated Turkish companies who are involved in illicitly procuring and supplying Iranian airlines with U.S.-origin aircraft engines and spare parts.

Getting Served with a Subpoena Makes for a Bad Day

U.S. DEPARTMENT OF COMMERCE
 BUREAU OF INDUSTRY AND SECURITY
 WASHINGTON, D.C. 20230

SUBPOENA TO APPEAR AND TESTIFY AND TO PRODUCE WRITING, AS SET FORTH HEREIN.



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U.S. DEPARTMENT OF COMMERCE
 BUREAU OF INDUSTRY AND SECURITY
 WASHINGTON, D.C. 20230

TO:

SUBPOENA TO APPEAR AND TESTIFY AND TO PRODUCE WRITING, AS SET FORTH HEREIN.

Reference number: EE/

At the instance of Michael L. Johnson, Special Agent in Charge, you are hereby required to appear before Special Agent Alan Berkowitz of the Office of Export Enforcement, 209 East Las Olas Boulevard, Suite 2090, in the city of Fort Lauderdale, Florida 33301, on the 28th day of October 2007, at 10:00 O'Clock, A.M., of that day, upon presentation of this subpoena, to provide documents and testimony in the matter of an investigation necessary and pursuant to the Export Administration Regulations (15 C.F.R. Parts 730-774 (2004)) ("Regulations"), which are promulgated under the authority of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) hereinafter referred to as "EAA". Although the EAA lapsed on August 21, 2001, the Regulations remain in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706) hereinafter referred to as "IEEPA", Executive Order 13222 of August 17, 2001 (5 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 16, 2007, which continues the Regulations in effect under IEEPA. Both the EAA and IEEPA authorize investigations into violations of regulations issued to implement the authority of the relevant statute.

If you have any questions, please contact Special Agent Alan Berkowitz at (954) 596-7540. The required records may be mailed to the U.S. Department of Commerce, Office of Export Enforcement, 209 East Las Olas Boulevard, Suite 2090, Fort Lauderdale, FL 33301, prior to the appearance date, in lieu of appearance.

and you are hereby required to bring with you and produce at said time and place the following books, records, and other writings, as set forth herein:

Documents made by, for, too, or on behalf of Winter Air Craft, covering October 2002 to the present. These include, but are not limited to, invoices, packing slips, shippers export receipts, bills of lading, and Express Mail or other e-mails, other correspondence and any notes related to the above.

You are not to disclose the existence of this request. Any such disclosure could obstruct or impede the investigation and therefore interfere with the enforcement of the law.

Failure to comply with this subpoena will render you liable to proceedings in a DISTRICT COURT of the UNITED STATES to compel you to appear and testify and produce books, records, and other writings, as set forth herein.

issued under the authority of Section 12(b) of the Export Administration Act of 1979, as amended (50 U.S.C. app. Sec. 2401-2420 (2000)), and Section 203 of the International Emergency Economic Powers Act (50 U.S.C. Sec. 1702), and the Regulations.

By: 
 Office of Export Enforcement
 MICHAEL L. JOHNSON

NOTICE TO WITNESS: If claim is made for witness fee or mileage, this subpoena should accompany voucher. Witness fees and mileage shall be paid by the party at whose instance the witness appears.

Failure to comply with this subpoena will render you liable to proceedings in a DISTRICT COURT of the UNITED STATES to compel you to appear and testify and produce books, records, and other writings, as set forth herein.

Recent Paradigm Shift on KYC Diligence

- Changes in how diligence is done and documented
- Differing “benchmarks” as to what is effective compliance
 - Financial institutions versus commercial businesses
 - Aviation transactions may fall outside normal KYC processes
- The role of banks as enforcers of sanctions has grown

Polling Question #1: How Have KYC Issues Affected Transactions?

Have you:

1. Had a wire transfer held up or rejected by a bank for KYC reasons?
2. Refused to enter into a transaction because you were concerned about the identity or activities of counterparty?
3. Received an subpoena or otherwise been investigated by the U.S. Government for business aviation-related transactions?

What Are the Key Laws to Think About?

- Office of Foreign Assets Control (OFAC) Regulations
- Export Administration Regulations (EAR)
- International Traffic in Arms Regulations (ITAR)
- Foreign Corrupt Practices Act (FCPA)
- UK Bribery Act of 2010
- Anti-money laundering (AML) regulations
 - Bank Secrecy Act
 - USA PATRIOT Act
- Consolidated Screening Lists: <https://www.export.gov/csl-search>

What Are the Key Laws to Think About?

- Office of Foreign Assets Control (OFAC) regulations: involves trade sanctions against certain individuals, entities, and foreign government agencies and countries whose interests are contrary to use policy.
 - Financial transactions, very broad and expansive reach
 - Specially Designated Nationals and Blocked Persons List
 - Country regime-based sanctions (e.g., Cuba, Iran, North Korea, Russia, Syria)
- Export Administration Regulations (EAR): focus on trade of property, aircraft, equipment, etc., who is the end-user and purpose, where is it being exported, re-exported. Very broad definitions
 - Entity List
 - Denied Parties List

What Are the Key Laws to Think About?

- UK Bribery Act 2010
 - It is illegal to offer, promise, give, request, agree, receive or accept bribes.
 - Giving someone a financial or other advantage to encourage that person to perform his or her functions or activities improperly or to reward that person for having already done so.
 - Seeking to influence a decision-maker by giving some kind of extra benefit to that person rather than by what can legitimately be offered as part of a tender process.
- U.S. Foreign Corrupt Practices Act
 - It's illegal for companies and their supervisors to influence foreign officials with any personal payments or rewards. Applies to any person who has a certain degree of connection to the U.S. and engages in foreign corrupt practices.
 - Act also applies to any act by U.S. businesses, foreign corporations trading securities in the U.S., American nationals, citizens, and residents acting in furtherance of a foreign corrupt practice whether or not they are physically present in the U.S.

Risks & Penalties

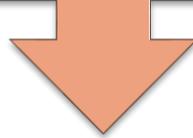
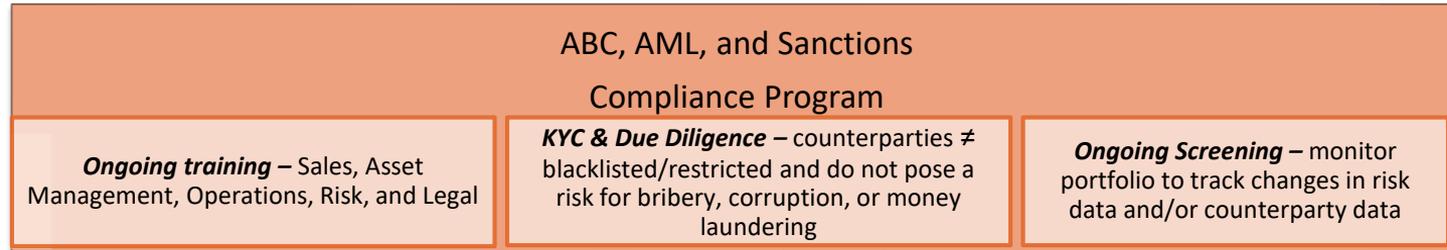
OFAC Violations

- Civil monetary penalties of up to the greater of ~\$295,000 or twice the amount of the underlying transaction may be imposed administratively against any person who violates, attempts to violate, conspires to violate, or causes a violation.
- Upon conviction, criminal penalties of up to \$1,000,000, imprisonment for up to 20 years, or both, may be imposed on any person who willfully commits or attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation.

EAR Violations

- Criminal penalties can reach \$1,000,000 and 20 years imprisonment per violation and the administrative penalties can reach the greater of \$300,000 per violation, or twice the amount of the transaction that is the basis of the violation.
- Violators may also be subject to denial of their export privileges. A denial of export privileges prohibits a person from participating in any way in any transaction subject to the EAR. Furthermore, it is unlawful for other businesses and individuals to participate in any way in an export transaction subject to the EAR with a denied person.

What Kind of Due Diligence Are Companies Undertaking?

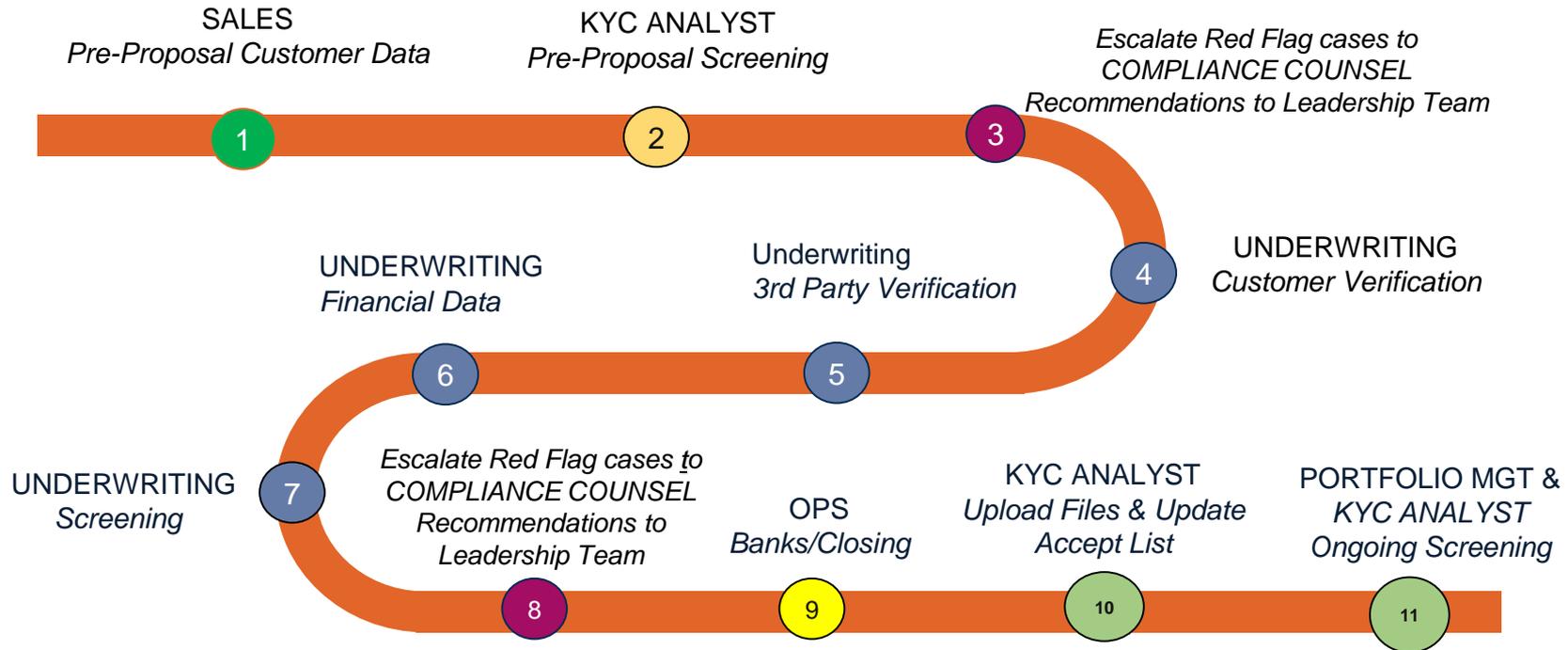


GJC's KYC & Due Diligence includes the following components:

Counterparty identification & verification	Beneficial ownership information	Watchlist screening	Reputational due diligence	Identify PEPs/SOEs	Verification of source of wealth and source of funding	Risk rating	Enhanced DD (high risk)
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What Kind of Due Diligence Are Companies Undertaking? (cont'd)

Counterparty Due Diligence Across Deal Cycle



What Kind of Due Diligence Are Trustees Undertaking?

- Identify Parties to the Agreements (Trustor, Beneficiary, Operator, Lessor, Seller, Buyer, etc.)
 - Requires review of draft documents and completion of Know Your Customer forms
 - Provide time to review and complete internal approvals
 - Provide adequate time for agreements to be approved by the FAA
- Identify Ultimate Owners (25% or greater ownership) and Control Individual
- Risk Factor Analysis (countries involved in the transaction, movement of funds, identification of ultimate owners, etc.)

Polling Question #2: How Are You Screening Counterparties in International Aircraft Transactions?

1. We do not screen but rely on the fact that there are banks, escrow agents, or law firms involved and we assume they are screening parties
2. We check the direct counterparty against the OFAC SDN list and BIS lists
3. We have the counterparty fill out a KYC questionnaire
4. We screen all parties to the transaction, and conduct additional diligence to identify the Ultimate Beneficial Owner (“UBO”)

What Is an Ultimate Beneficial Owner (UBO) and What Are the Legal Requirements?

OFAC:

Financial transactions with a person or entity that is listed by OFAC as an SDN are prohibited

- This also applies to an entity **owned 50% or more**, directly or indirectly, by SDNs
- UBO diligence applies to customers, operators, and third party intermediaries in a financing transaction

FinCEN (Financial Crimes Enforcement Network):

- Customer DD Rule requires financial institutions to identify and verify the identity of UBOs of all legal entity customers with an interest of 25% or greater
- Requires financial institutions to identify and verify at least one individual with significant responsibility over the legal entity customer (e.g., CEO, CFO, COO, VP, etc.).

UBOs must be identified and verified.
UBO forms to be completed.

Why Are Banks Asking So Many Questions About My Transactions?



Recent Enforcement Actions – Key Trends

Company	Penalty	Industry	Year	Penalty Type
United Technology	\$13 M	OEM	2018	SEC/DOJ/Postal Inspection Service
Panasonic Corp.	\$280 M	OEM	2018	SEC/DOJ/FinCEN
Embraer SA	\$205 M	OEM	2018	SEC/DOJ/FinCEN
Rolls-Royce	\$800 M <i>(global)</i>	OEM	2017	DOJ US/Brazil/UK
LATAM Airlines Group	\$22M	Airline	2016	SEC/DOJ
Commerzbank AG	\$1.5B	Financial	2015	FinCEN/OFAC
BNY Mellon Corp (LTRs to Credit Suisse, GS, MS, Citigroup, UBS)	\$14M	Financial	2015	SEC/DOJ/OFAC
BNP Paribas	\$8.9B	Financial	2014	OFAC
Fokker Services BV	\$21 M	Financial	2014	OFAC/DOC
Dallas Airmotive	\$14 M	MRO	2014	SEC/DOJ
NORDAM Group Inc.	\$2 M	MRO	2012	SEC/DOJ
BizJet /Lufthansa Technik	\$12 M	MRO	2012	SEC/DOJ

Examples of “Red Flags” in Aviation Transactions

- What is and is not a Red Flag ?
 - The fact that the buyer wants to assign the aircraft purchase agreement to a newly formed subsidiary is not necessarily a red flag, but . . .
 - A Red Flag ≠ a dead deal
- German seller of corporate jet is linked to Iranian expat
- Middleman asks to change Export Certificate of Airworthiness to Turkmenistan

More Actual Red Flags From Aviation Transactions

- Funding for aircraft purchase comes in from foreign third-party with no apparent link to buyer
- Russian lessee asks for “pro-forma” invoice at less than fair market price
- Foreign broker needs high brokerage fee cash-up front to make sale of aircraft to foreign buyer happen

Do I Need to Include Patriot Act, Sanctions, Export Control Clauses in My Contracts?

- Absolutely, because the civil and criminal penalties for non-compliance are severe.
- **OFAC/EAR Compliance.** Neither Purchaser nor any of its affiliates nor any of their respective officers, directors, or employees, is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of OFAC (including those named on OFAC's Specially Designated Nationals and Blocked Persons List) or by the United States Department of Commerce on the Entity List, the Denied Persons List or under the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism or is engaged in any dealings or transactions or is otherwise associated with such persons or entities or is included on any other United States Governmental list of prohibited or restricted parties. There exists no prohibition under the laws of the United States on the transaction contemplated by this Agreement related to the identity, citizenship, location or business of Purchaser or the purpose for which Purchaser will use the Aircraft. Should any of the representations in this paragraph be incorrect, either as of the Effective Date or as of the Closing Date, Seller shall be entitled, on or before the Closing Date, to terminate this Agreement and the Purchaser Default provisions shall apply to such termination.

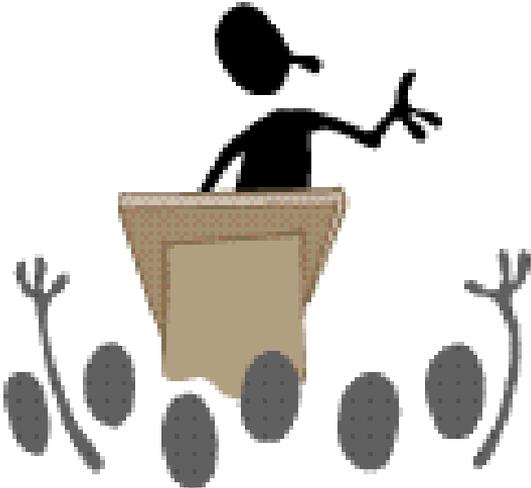
Do I Need to Include Patriot Act, Sanctions, Export Control Clauses in My Contracts?

End-Use/User Confirmation. Purchaser will submit a completed End User Certification within thirty (30) calendar days of execution of this Agreement. If this Agreement is executed within thirty (30) calendar days of anticipated Aircraft delivery, Purchaser will submit the completed End User Certification prior to Aircraft delivery. This certification must identify the (i) end-user of the Aircraft, (ii) end-use of the Aircraft, and (iii) country(s) where the Aircraft will be registered and operated. If this information changes prior to Aircraft delivery Purchaser will submit an updated End User Certification.

Do I Need to Include Patriot Act, Sanctions, Export Control Clauses in My Contracts?

ITAR-modified Aircraft. If, after Aircraft delivery by Seller, Purchaser installs equipment controlled by the United States International Traffic in Arms Regulations (“ITAR”) on the Aircraft, Purchaser will immediately notify Seller. Seller’s written limited aircraft warranty, if any, will be null and void, and other manufacturers’ warranties, if any, may also be null and void. Seller and associated service providers (collectively “Service Providers”) will comply with all ITAR regulations in providing service and support for ITAR-modified Aircraft, including prohibitions against dealing with embargoed countries. Without prior U.S. government authorization, which may be granted or denied in the U.S. government’s sole discretion and may take several months to obtain, Service Providers may not be able to service ITAR-modified Aircraft. Purchaser will provide information requested by Service Providers to support applications to export parts and services. If Purchaser fails to provide such information or Service Providers fail to obtain required U.S. government authorizations for reasons beyond their control (even though Service Providers have no obligation to seek such authorization), then Service Providers will not have any further obligation to support Purchaser’s ITAR-modified Aircraft.

Wrap-Up and Questions





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