



## KPMG SMART PRACTICE

# Risk assessments: managing the changing regulatory landscape

The genesis of today's export controls is rooted in the Cold War when allied countries wanted to limit the export of certain "dual-use" items. However, the demise of the Cold War introduced a new, and long, period where industry argued for de-control with the notion that export controls were too restrictive. Governments began lifting regulations and easing export-control requirements. Both industry and government became accustomed to a permissive, export-forward environment.

That period is coming to an end. China's investment in technology has prompted the US government to tighten export-control restrictions. Simultaneously, the furious pace of innovation is pushing governments to determine if and how emerging technology will be controlled without undermining industry.

As the trade wars play out, we can anticipate more individuals and companies to be placed on restricted party lists and, similarly, more export controls. The best way to mitigate these risks is through a risk assessment. The goal is to benchmark the risk drivers that may lead to a violation, identify

their root causes and propose mitigation solutions. The structure of a risk assessment is unique to the company undergoing it, although typically there are common elements. At the outset, the company must determine if it will conduct a sanctions risk assessment, export controls or both.

A sanctions risk assessment focuses on the touchpoints with the outside world, as described in the US Department of the Treasury, Office of Foreign Assets Control's ("OFAC's") "Framework for OFAC Compliance Commitments." The primary point of interest is on the ways the company interacts with, does business with, or otherwise touches third parties. This typically includes an analysis of:

- Touchpoints with counterparties and third parties;
- Geographies and likelihood of higher sanctions risks;
- OFAC compliance screening gates;
- Restricted party and country screening processes; and
- Risk mitigation strategies

A successful sanctions review provides visibility into the entity's

inherent risk, mitigation controls and aggregate risk. It can then take targeted action to mitigate specific risks.

Export control risk assessments are fundamentally different, and more complex, than sanctions reviews. They involve not only the touchpoints with the outside world, but also those exclusively within the company itself. This requires an assessment of the entire business function within the context of the specific industry risk. In addition to stakeholder discussions, the following key areas will be tested:

- Product life-cycle including the technology roadmap, research and development, product servicing and end-of-life processes
- Customer life-cycle
- Sales and order fulfillment
- Workforce and visitor management (including deemed exports)
- Vendor relationships and management
- Shipping and delivery, as well as returns and repairs
- Use of export licenses, license exceptions/exemptions, or other government authorizations.

At the conclusion of an export control risk assessment, the company has quantified and qualified its level of potential compliance exposure based on its business profile and specific activities. It can then assess how best to promote compliance without impeding business.

The risk assessment provides a roadmap to strong export compliance. Typical follow-on actions include: process enhancements, improvement of systems and data issues and resource allocation assessments. Depending on the results, additional transactional testing may be necessary to clarify an issue. Occasionally, the company may need to take corrective actions.

As we move into an era of fast-paced regulatory and technological change, understanding the best approach to managing risk will be key. Through a risk assessment, the parameters of potential compliance challenges are identified. These are then used to establish a clear roadmap that will assist the enterprise in navigating these complex regulations. ■

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