

Cross-Border Money Transfers:
Key Requirements Every U.S.-Based
Nonprofit Needs to Know

January 7, 2015

Venable LLP

Washington, DC

Moderator:

Jeffrey S. Tenenbaum, Esq., Venable LLP

Panelists:

Lindsay B. Meyer, Esq., Venable LLP

Charles K. Kolstad, Esq., Venable LLP



Presentation



Cross-Border Money Transfers: Key Requirements Every U.S.-Based Nonprofit Needs to Know

Wednesday, January 7, 2015, 12:30 p.m. – 2:00 p.m. ET

Venable LLP, Washington, DC

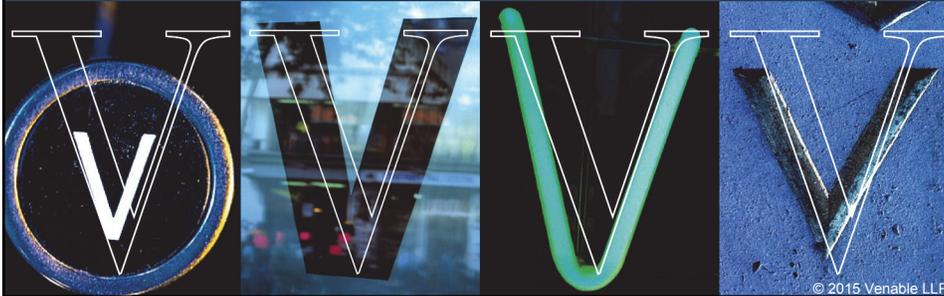
Moderator

Jeffrey S. Tenenbaum, Esq., Venable LLP

Panelists

Lindsay B. Meyer, Esq., Venable LLP

Charles K. Kolstad, Esq., Venable LLP



CAE Credit Information

***Please note that CAE credit is only available to registered participants of the live program.**

As a CAE Approved Provider educational program related to the CAE exam content outline, this program may be applied for **1.5 credits** toward your CAE application or renewal professional development requirements.

Venable LLP is a CAE Approved Provider. This program meets the requirements for fulfilling the professional development requirements to earn or maintain the Certified Association Executive credential. Every program we offer that qualifies for CAE credit will clearly identify the number of CAE credits granted for full, live participation, and we will maintain records of your participation in accordance with CAE policies. For more information about the CAE credential or Approved Provider program, please visit www.whatisciae.org.

Note: This program is not endorsed, accredited, or affiliated with ASAE or the CAE Program. Applicants may use any program that meets eligibility requirements in the specific timeframe towards the exam application or renewal. There are no specific individual courses required as part of the applications—selection of eligible education is up to the applicant based on his/her needs.



Upcoming Venable Nonprofit Events

[Register Now](#)

February 18, 2015 – [One Year Later: Time for Nonprofits to Implement the Super Circular](#)



3

Agenda

- General Concerns for U.S.-Based Nonprofits Operating Abroad
- Understanding U.S. Sanctions and Embargo Programs
- Understanding the Recent Ukraine-Related / Russian Sanctions
- Taxation of Foreign Operations
 - Tax Issues
 - Information Reporting Issues
 - Transfer Pricing Issues
 - Accounting Issues



4

General Concerns for U.S.-Based Nonprofits Operating Abroad

General Considerations and Concerns

- Facing foreign exchange control fluctuations when undertaking business activities overseas
 - Can you contract in U.S. dollars?
 - Are there reinvestment or remuneration limitations?
- Additional banking controls and accountability
 - Ensure proper recordkeeping for all expenditures
 - Heightened risks for cash transactions
 - Challenges to or prohibitions against nonresidents as signatories on bank accounts?
 - Controls over disbursements and “slush” funds
- Accountability: Locally and to U.S. “HQ” entity
 - Implementing a standard, global policy that meets local requirements
 - Implement, train, and audit



New Heightened Scrutiny on Foreign-Based Organizations

- Greater scrutiny on foreign-based entities for taxation, accounting, and foreign funding
 - Requirements for local/domestic entities receiving funding from abroad
 - Reporting required under local law or lose right to receive foreign funds
 - India's Foreign Contribution Regulation Act
 - *E.g.*, India, China, Russia...under the microscope

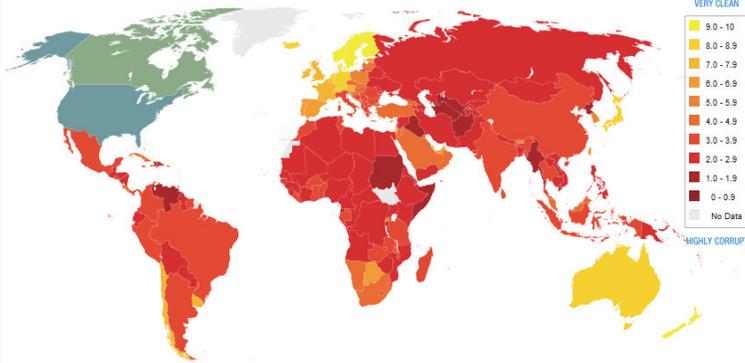


Anti-Corruption and the US Foreign Corrupt Practices Act (FCPA)

- U.S. law enacted by Congress in 1977 to halt rampant bribery of foreign government officials.
- Anti-bribery provisions:
 - Prohibits the paying of, offering, promising to pay (or authorizing to pay or offering) money or “anything of value”
 - With corrupt intent, directly or indirectly
 - To a “foreign government official” or political party official
 - For the purpose of (i) influencing an official act or decision; (ii) causing the official to fail to perform his lawful duty; or (iii) obtaining or retaining business or to secure any improper advantage
- Certain limited exceptions and affirmative defenses exist.



The Global Heat Map: Where Are You Doing Business?



© 2015 Venable LLP

RANK	COUNTRY/TERRITORY	SCORE	RANK	COUNTRY/TERRITORY	SCORE
1	New Zealand	9.5	25	France	7.0
2	Denmark	9.4	26	Saint Lucia	7.0
3	Finland	9.4	27	Uruguay	7.0
4	Sweden	9.3	28	United Arab Emirates	6.8
5	Singapore	9.2	29	Estonia	6.4
6	Norway	9.0	30	Cyprus	6.3
7	Netherlands	8.9	31	Spain	6.2
8	Australia	8.8	32	Botswana	6.1
9	Switzerland	8.8	33	Portugal	6.1
10	Canada	8.7	34	Taiwan	6.1
11	Luxembourg	8.5	35	Slovenia	5.9
12	Hong Kong	8.4	36	Israel	5.8
13	Iceland	8.3	37	Saint Vincent and the Grenadines	5.8
14	Germany	8.0	38	Bhutan	5.7
15	Japan	8.0	39	Malta	5.6
16	Austria	7.8	40	Puerto Rico	5.6
17	Barbados	7.8	41	Cape Verde	5.5
18	United Kingdom	7.8	42	Poland	5.5
19	Belgium	7.5	43	Korea (South)	5.4
20	Ireland	7.5	44	Burmi	5.2
21	Bahrain	7.3	45	Dominica	5.2
22	Chile	7.2	46	Bahrain	5.1
23	Oaxtr	7.2	47	Macao	5.1
24	United States	7.1	48	Mauritius	5.1
49	India	3.1	120	Bangladesh	2.7
95	Kiribati	3.1	120	Ecuador	2.7
95	Swaziland	3.1	120	Ethiopia	2.7
95	Tonga	3.1	120	Guatemala	2.7
100	Argentina	3.0	120	Iran	2.7
100	Benin	3.0	120	Kazakhstan	2.7
100	Burkina Faso	3.0	120	Mongolia	2.7
100	Djibouti	3.0	120	Mozambique	2.7
100	Gabon	3.0	120	Samoa Islands	2.7
100	Indonesia	3.0	120	Armenia	2.6
100	Madagascar	3.0	120	Dominican Republic	2.6
100	Malawi	3.0	120	Honduras	2.6
100	Mexico	3.0	120	Philippines	2.6
100	Sao Tome and Principe	3.0	120	Syria	2.6
100	Suriname	3.0	134	Cameroon	2.5
100	Tanzania	3.0	134	Eritrea	2.5
112	Algeria	2.9	134	Guyana	2.5
112	Egypt	2.9	134	Lebanon	2.5
112	Kosovo	2.9	134	Maldives	2.5
112	Moldova	2.9	134	Nicaragua	2.5
112	Senegal	2.9	134	Niger	2.5
112	Vietnam	2.9	134	Pakistan	2.5
118	Bolivia	2.8	134	Sierra Leone	2.5
118	Mill	2.8	143	Azerbaijan	2.4
143	Belarus	2.4	168	Angola	2.0
143	Comoros	2.4	168	Chad	2.0
143	Mauritania	2.4	168	Democratic Republic of the Congo	2.0
143	Nigeria	2.4	168	Libya	2.0
143	Russia	2.4	172	Burundi	1.9
143	Timor-Leste	2.4	172	Equatorial Guinea	1.9
143	Togo	2.4	172	Guinea	1.9
143	Uganda	2.4	172	Uzbekistan	1.9
143	Tajikistan	2.3	175	Haiti	1.8
143	Ukraine	2.3	175	Iraq	1.8
154	Central African Republic	2.2	177	Sudan	1.6
154	Congo Republic	2.2	177	Turkmenistan	1.6
154	Cote d'Ivoire	2.2	177	Uzbekistan	1.6
154	Guinea-Bissau	2.2	180	Afghanistan	1.5
154	Kenya	2.2	180	Myanmar	1.5
154	Laos	2.2	182	Korea (North)	1.0
154	Nepal	2.2	182	Somalia	1.0
154	Papua New Guinea	2.2			
154	Paraguay	2.2			
154	Zimbabwe	2.2			
164	Cambodia	2.1			
164	Guinea	2.1			
164	Kyrgyzstan	2.1			
164	Yemen	2.1			

© 2015 Venable LLP

Due Diligence on All Involved Parties

- Ensure that any agent, business representative, or independent contractor/service provider performing work on your behalf:
 - Is properly vetted
 - Agrees to abide by your Code of Conduct, the FCPA, and any other applicable anti-corruption laws
- Consider your:
 - Employees
 - Venture partners
 - Service providers
- Remember your other overseas affiliates too!
- Consider all parties with whom you interact overseas



11

© 2015 Venable LLP

Considerations for Your Employees

- Appropriate, risk-based due diligence requires your employees to consider a variety of factors:
 - Is the target country prone to corruption?
 - Does representative have a corrupt/questionable reputation?
 - Are representative's demands for fee/commission excessive or unusual?
 - Does representative have close relationships with foreign officials?
 - Are payment methods questionable?
 - Was representative recommended by government official?
 - Is the role of the representative unclear?
 - Does representative lack the skill, qualifications, or resources to undertake representation of your organization?



12

© 2015 Venable LLP

What Due Diligence May Be Needed?

- Red flags trigger the need for further inquiry and greater vigilance on the part of your organization. Consider:
 - Third-party due diligence
 - Interviews and physical inspections of offices/facilities
 - Obtaining an opinion from counsel or another reliable source, such as the local U.S. embassy or consulate, about the representative's reputation and qualifications
- Do your documents and agreements put other parties operating with you or on your behalf on notice that you hold them responsible for compliance with FCPA?
 - Establish your first line of defense
 - Think Morgan Stanley
- **Educate, Train, Audit...Repeat**



Additional FCPA Considerations

- Anti-corruption risks follow you overseas:
 - Oversight and Control: Important concepts
 - Successor Liability: Acquiring a problem
 - Consider operations in current “red flag” countries
 - N.B.: Nonprofits are not exempt
 - Who is a “foreign official”? Broadly defined.
 - “Agency” relationship with partners abroad → U.S.-based nonprofit or association can be held liable for the acts of partners abroad under FCPA
 - Provision of “samples” or other incentives
- Recent enforcement efforts of anti-bribery laws
 - Local laws / UK Bribery Act / OECD
 - Joint enforcement is the new trend



Understanding U.S. Sanctions and Embargo Programs

Do U.S. Export Control Laws Impact Our Activities?

- U.S. export controls and economic sanctions
 - Controls on “exports” or release of U.S.-origin goods, technology, and services to certain destinations, entities, and end users
 - Are you exporting computers, technology, or other goods in support of your overseas venture? (Materials for a trade show/ hand-carry items can be subject to controls.)
- U.S. economic sanctions (OFAC)
 - U.S. sanctions are constantly changing and may affect ability to do business in certain countries and with nationals or entities based in those countries
 - Iran, Syria, Cuba, Sudan, North Korea
 - Other “targeted” sanctions
 - Comprehensive sanctions prohibit most transactions with entities, persons, or governmental entities in those countries
 - “Targeted” Sanctions: Specially Designated Persons
 - “Informational Materials” exemption
 - Transactional prohibitions

Understanding U.S. Sanctions and Embargo Programs

- U.S. Dept. of Treasury's Office of Foreign Assets Control (OFAC)
 - Know the scope and reach of jurisdiction
 - U.S. persons/entities – how defined?
 - What activities are covered?
 - Keep current, as not static!
- License authorization required for certain activities
 - Pursue transactions and payments to persons/entities subject to sanctions
 - Exporting/reexporting items for humanitarian support
 - Policy of “denial” typically applies
- Remember: Corresponding jurisdiction by State and Commerce Departments under U.S. export controls



Understanding the Recent Ukraine-Related / Russian Sanctions

Development of the Ukraine-Related Sanctions

- Complex set of Orders, Directives, and General Licenses
 - Executive Orders (EO): 13660 (Mar. 6, 2014); 13661 (Mar. 16, 2014); 13662 (Mar. 20, 2014)
 - International Emergency Economic Powers Act (IEEPA)
 - 31 C.F.R. Part 589 Ukraine-Related Sanctions Regulations
- EO 13662 Directives (as amended Sept. 12, 2014)
 - Directives 1 – 4 each with sectoral focus
 - Sectoral Sanctions Identifications (SSI) List
 - Persons operating in Russian economy identified by Treasury
 - Prohibitions on dealings with SSI list persons/entities
- Particular industry focus within the directives

© 2015 Venable LLP



Recent Sanctions against Russia

- Complex set of Orders, Directives, and General Licenses: Sectoral Sanctions Identifications (SSI)
 - Directive 1: Financial Services – New debt (30 days) & equity
 - Directive 2: Energy Sector – New debt (90 days)
 - Directive 3: Defense & Material Sector – New debt (30 days)
 - Directive 4: Energy Sector – Oil production (directly or indirectly)
 - For prohibited activities of SSI named persons (SDNs too)
 - All now include prohibitions for evasion and conspiracy
- Two General Licenses
 - General License 1A for derivatives prohibited by Directives 1, 2, and 3
 - General License 2 authorizing certain activities prohibited by Directive 4

© 2015 Venable LLP



Unraveling the Complex Ownership Provisions and Presidential Discretion

- Revised guidance (Aug. 2014) by OFAC expands scope
 - Sanctions interpreted to include “Entities owned 50% or more in the aggregate by more than one blocked person.”
 - Blocked property defined to include “any property or interest in property (tangible or intangible) including present, future or contingent interests, as well as those ‘direct or indirect.’”
- Interests Owned by Blocked Persons:
 - Included is any interest in property of an entity in which blocked person owns, individually or in aggregate, directly or indirectly, 50% or more interest.
- Entities Owed by Blocked Persons:
 - Any entity owned 50% or more (in the aggregate, directly or indirectly) is itself a “blocked person.”
- Thus, property and interests in such property are blocked irrespective of whether entity is named in Annex, and OFAC license required
- Ukraine Freedom Support Act of 2014: gives Presidential discretion on imposing New Sanctions

© 2015 Venable LLP



Practical Tips Given New Complex Ownership Provisions

- Due diligence for Russian transactions critical:
 - Understand whether any Listed Person/Entity owns 50% or more of the target
 - Watch out for significant ownership interest of less than 50%
 - Consider whether Listed Person/Entity “controls” by means other than ownership interest
 - Officer, director involvement?
 - Signatory to contracts and agreements?
 - Obtain certification as to ownership and control rights?
 - Not blocking actions: More complex and difficult in practice
- Also, remember BIS restrictions involving Russia
 - Additions to the Entities List
 - Restrictions on military end uses and end-users

© 2015 Venable LLP



Compare and Contrast with Other Country/Regional Sanctions Provisions

- EU Sanctions (Mar. 2014):
 - EU nationals and companies may not buy or sell new bonds, equity, or similar financial instruments with a maturity >30 days, issued by:
 - 5 major state-owned Russian banks, their subsidiaries outside of the EU, and those “acting on their behalf or under their control”
 - 3 major Russian energy and defense companies.
 - Services related to issuance of financial instruments (e.g., brokering) prohibited
 - Loans to 5 major Russian state-owned banks prohibited
 - Embargo on import/export of arms and related material from/to Russia, including all items on EU common military list
 - Prohibits exports of dual-use goods and technology for military use in Russia or to Russian military end-users and exports to 9 mixed defense companies
 - Exports of certain energy-related equipment and technology to Russia subject to prior authorization, with policy of denial for restricted oil projects and exploration
 - Prohibits Services for named oil exploration / production activities

© 2015 Venable LLP



Other Country and Regional Sanctions Programs

- Similar restrictions targeting sectors at issue by Western countries:
 - E.g., Australia, extended to Overseas Territories, Bermuda
 - Don't see 50% ownership provisions
- Some EU member states decline to impose sanctions:
 - Finland, Slovakia
- Sanctions not static and track political developments, stay tuned!

© 2015 Venable LLP



Taxation of Foreign Operations: Tax Issues

Taxation of Foreign Operations

- Choice of entity
 - Foreign corporation wholly owned by U.S. nonprofit entity
 - Separate legal entity
 - Registered with the local governmental authorities
 - Separate board of directors and separate officers
 - Some may be directors and/or officers of the U.S. nonprofit
 - Foreign branch office of the U.S. nonprofit entity
 - Generally registered with the local governmental authorities, but not always
 - Practical issues of not registering



Taxation of Foreign Operations

- U.S. tax issues
 - Foreign operations of a branch office of a U.S. nonprofit should continue to be exempt from U.S. tax if the activities of the branch are consistent with the tax-exempt purpose of the U.S. nonprofit
 - UBTI rules still apply to foreign branches of U.S. nonprofits
 - Subject to U.S. information reporting requirements in addition to Form 990 reporting requirements
 - File Form 5471 for each foreign subsidiary
 - No separate reporting for foreign branches



Taxation of Foreign Operations

- Foreign tax issues
 - Qualification as a nonprofit for U.S. tax purposes may not be respected by the foreign country when conducting operations as a branch office
 - May need different or additional registrations to comply with applicable foreign law requirements
 - Need to consider VAT and GST tax implications as well as possible income tax implications of proposed activities



Taxation of Foreign Operations

- Double taxation agreements (DTAs)
 - The U.S. has entered into DTAs with many countries
 - The purpose of a DTA is to generally reduce the withholding taxes on cross-border payments of dividends, interest, rents, royalties, and other similar payments, as well as the treatment of employees and independent contractors
 - A few DTAs, including Canada and Germany, specifically address the tax treatment of charitable organizations
 - Generally provide for a reciprocal exemption
 - Most DTAs, including China, India, and Russia, do not address the tax treatment of charitable organizations



Taxation of Foreign Operations: Information Reporting Issues

U.S. Compliance

- The U.S. imposes significant information reporting requirements on U.S. taxpayers with overseas operations.
- Those requirements apply to nonprofits just as they do to for-profit entities.
- The IRS and the Department of Justice are very focused on international information reporting, even by nonprofits.



U.S. Compliance

- FinCEN Form 114 (FBAR)
 - Filed if a person has signature authority over, or a financial interest in, one or more foreign financial accounts with a total aggregate balance of more than \$10,000
 - Must be filed, even if the person does not have an actual financial interest in the account(s)
 - For these purposes, the term “person” includes individuals and nonprofits
 - Due electronically by June 30th of each year; a U.S. Treasury Department form, not an IRS tax form



U.S. Compliance

- Form 114 (FBAR) (cont'd.)
 - Considered to have a financial interest if the U.S. person, including nonprofits, owns more than 50% of the equity or other interests in a foreign entity
 - Foreign financial accounts include foreign bank accounts, securities brokerage accounts, mutual funds, hedge funds, private equity funds, and certain insurance contracts
 - Penalty of \$10,000 for each unreported foreign financial account; six year statute of limitations



U.S. Compliance

- Forms 926/5471
 - Filed if the U.S. nonprofit owns at least 10% of the stock of the foreign nonprofit entity
 - Form 926 is filed for the taxable year the foreign nonprofit entity is formed
 - Form 5471 is an annual information reporting form used to report the operations of the foreign nonprofit entity (includes a balance sheet, income statement, and other information)
 - Filed with Form 990



U.S. Compliance

- Form 8938
 - A new IRS tax form that became applicable starting with the 2011 tax year
 - At the moment, only applicable to individuals and not nonprofit entities
 - Report specifies foreign financial assets
 - Includes many assets reported on Form 114, but also includes stock of foreign entities and a broader range of foreign financial assets
 - Not filed with Form 990 until the regulations change



U.S. Compliance

- Other forms
 - Form 8865: Filed to report investments in foreign partnerships
 - Form 8621: Filed to report investments in Foreign Passive Investment Companies



Taxation of Foreign Operations: Transfer Pricing Issues

Transfer Pricing

- U.S. entities are required to deal with their affiliates at arm's length under Section 482 of the U.S. Internal Revenue Code
 - Similar arm's length requirements apply in most foreign countries
 - OECD versus BRIC approaches to transfer pricing
 - Services, financing transactions, licenses of intellectual property, *etc.*, are all transactions subject to transfer pricing rules
 - BRIC countries look very closely at payments by local subsidiaries to their foreign parent companies
 - Payments may be subject to local withholding taxes even though the recipient is exempt from tax in the U.S.



Transfer Pricing

- Disputes between tax authorities over transfer pricing issues
 - If the U.S. and the foreign country have a double taxation agreement, then disputes are referred to the “competent authority” of both governments
 - If no double tax agreement, then may end up with reduced deductions at the local subsidiary level and a requirement for the U.S. nonprofit to repay the disallowed amounts
- In the case of a U.S. nonprofit, the main concern is payments by the local subsidiary rather than the allocation of expenses by the U.S. nonprofit



Taxation of Foreign Operations: Accounting Issues

Accounting Issues

- U.S. generally requires that financial statements which are audited be prepared in accordance with U.S. Generally Accepted Accounting Principles (GAAP) and Generally Accepted Auditing Standards (GAAS)
- Most other countries require that audited financial statements be prepared in accordance with International Financial Reports Standards (IFRS)



Accounting Issues

- There are significant differences between GAAP and IFRS
 - The Pricewaterhouse Coopers guide to GAAP – IFRS difference runs some 215 pages
 - Differences exist with respect to the balance sheet, the income statement, income recognition, timing of expenses, the statement of cash flows and many other areas
 - There are special GAAP rules for nonprofit entities
 - IFRS rules for nonprofits are not as well developed



Accounting Issues

- Unlike the U.S., many countries require that audited financial statements be prepared for local subsidiaries
 - IFRS standards likely apply
 - Time and expense of such audits can be significant
 - Management representation letters may be required
 - May have to appoint a separate statutory auditor from the accounting firm that audits the U.S. nonprofit



Questions?

Jeffrey S. Tenenbaum, Esq., Venable LLP

jstenenbaum@Venable.com

t 202.344.8138

Lindsay B. Meyer, Esq., Venable LLP

lbmeyer@Venable.com

t 202.344.4829

Charles K. Kolstad, Esq., Venable LLP

ckkolstad@Venable.com

t 310.229.9954

To view an index of Venable's articles and presentations or upcoming seminars on nonprofit legal topics, see www.Venable.com/nonprofits/publications or www.Venable.com/nonprofits/events.

To view recordings of Venable's nonprofit programs on our YouTube channel, see www.youtube.com/user/VenableNonprofits.



Speaker Biographies





Jeffrey S. Tenenbaum

Partner

Washington, DC Office

T 202.344.8138 F 202.344.8300

jstenenbaum@Venable.com

AREAS OF PRACTICE

Tax and Wealth Planning
 Antitrust
 Political Law
 Business Transactions Tax
 Tax Controversies and Litigation
 Tax Policy
 Tax-Exempt Organizations
 Wealth Planning
 Regulatory

INDUSTRIES

Nonprofit Organizations and Associations
 Credit Counseling and Debt Services
 Financial Services
 Consumer Financial Protection Bureau Task Force

GOVERNMENT EXPERIENCE

Legislative Assistant, United States House of Representatives

BAR ADMISSIONS

District of Columbia

Jeffrey Tenenbaum chairs Venable's Nonprofit Organizations Practice Group. He is one of the nation's leading nonprofit attorneys, and also is an accomplished author, lecturer, and commentator on nonprofit legal matters. Based in the firm's Washington, DC office, Mr. Tenenbaum counsels his clients on the broad array of legal issues affecting charities, foundations, trade and professional associations, think tanks, advocacy groups, and other nonprofit organizations, and regularly represents clients before Congress, federal and state regulatory agencies, and in connection with governmental investigations, enforcement actions, litigation, and in dealing with the media. He also has served as an expert witness in several court cases on nonprofit legal issues.

Mr. Tenenbaum was the 2006 recipient of the American Bar Association's Outstanding Nonprofit Lawyer of the Year Award, and was an inaugural (2004) recipient of the *Washington Business Journal's* Top Washington Lawyers Award. He was one of only seven "Leading Lawyers" in the Not-for-Profit category in the prestigious 2012 *Legal 500* rankings, one of only eight in the 2013 rankings, and one of only nine in the 2014 rankings. Mr. Tenenbaum was recognized in 2013 as a Top Rated Lawyer in Tax Law by *The American Lawyer* and *Corporate Counsel*. He was the 2004 recipient of The Center for Association Leadership's Chairman's Award, and the 1997 recipient of the Greater Washington Society of Association Executives' Chairman's Award. Mr. Tenenbaum was listed in the 2012-15 editions of *The Best Lawyers in America* for Non-Profit/Charities Law, and was selected for inclusion in the 2014 edition of *Washington DC Super Lawyers* in the Nonprofit Organizations category. In 2011, he was named as one of Washington, DC's "Legal Elite" by *SmartCEO Magazine*. He was a 2008-09 Fellow of the Bar Association of the District of Columbia and is AV Peer-Review Rated by *Martindale-Hubbell*. Mr. Tenenbaum started his career in the nonprofit community by serving as Legal Section manager at the American Society of Association Executives, following several years working on Capitol Hill as a legislative assistant.

REPRESENTATIVE CLIENTS

AARP
 Air Conditioning Contractors of America
 Airlines for America
 American Academy of Physician Assistants
 American Alliance of Museums
 American Association for the Advancement of Science
 American Bar Association
 American Bureau of Shipping
 American Cancer Society
 American College of Radiology
 American Friends of Yahad in Unum
 American Institute of Architects
 American Institute of Certified Public Accountants

EDUCATION

J.D., Catholic University of America, Columbus School of Law, 1996

B.A., Political Science, University of Pennsylvania, 1990

MEMBERSHIPS

American Society of Association Executives

California Society of Association Executives

New York Society of Association Executives

American Society for Microbiology
American Society of Anesthesiologists
American Society of Association Executives
America's Health Insurance Plans
Association for Healthcare Philanthropy
Association for Talent Development
Association of Corporate Counsel
Association of Fundraising Professionals
Association of Global Automakers
Association of Private Sector Colleges and Universities
Auto Care Association
Biotechnology Industry Organization
Brookings Institution
Carbon War Room
The College Board
CompTIA
Council on Foundations
CropLife America
Cruise Lines International Association
Design-Build Institute of America
Endocrine Society
Ethics Resource Center
Foundation for the Malcolm Baldrige National Quality Award
Gerontological Society of America
Global Impact
Goodwill Industries International
Graduate Management Admission Council
Habitat for Humanity International
Homeownership Preservation Foundation
Human Rights Campaign
Independent Insurance Agents and Brokers of America
Institute of International Education
International Association of Fire Chiefs
International Sleep Products Association
Jazz at Lincoln Center
LeadingAge
Lincoln Center for the Performing Arts
Lions Club International
March of Dimes
ment'or BKB Foundation
Money Management International
National Association for the Education of Young Children
National Association of Chain Drug Stores
National Association of College and University Attorneys
National Association of Manufacturers
National Association of Music Merchants
National Athletic Trainers' Association
National Board of Medical Examiners
National Coalition for Cancer Survivorship
National Council of Architectural Registration Boards
National Defense Industrial Association
National Fallen Firefighters Foundation
National Fish and Wildlife Foundation
National Propane Gas Association
National Quality Forum
National Retail Federation
National Student Clearinghouse
The Nature Conservancy
NeighborWorks America
Peterson Institute for International Economics
Professional Liability Underwriting Society
Project Management Institute
Public Health Accreditation Board
Public Relations Society of America
Recording Industry Association of America

Romance Writers of America
Telecommunications Industry Association
Trust for Architectural Easements
The Tyra Banks TZONE Foundation
U.S. Chamber of Commerce
United Nations High Commissioner for Refugees
University of California
Volunteers of America
Water Environment Federation

HONORS

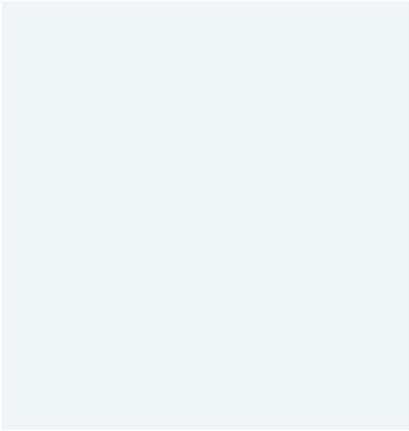
Recognized as "Leading Lawyer" in *Legal 500*, Not-For-Profit, 2012-14
Listed in *The Best Lawyers in America* for Non-Profit/Charities Law, Washington, DC (Woodward/White, Inc.), 2012-15
Selected for inclusion in *Washington DC Super Lawyers*, Nonprofit Organizations, 2014
Served as member of the selection panel for the inaugural *CEO Update* Association Leadership Awards, 2014
Recognized as a Top Rated Lawyer in Taxation Law in *The American Lawyer* and *Corporate Counsel*, 2013
Washington DC's Legal Elite, *SmartCEO Magazine*, 2011
Fellow, Bar Association of the District of Columbia, 2008-09
Recipient, American Bar Association Outstanding Nonprofit Lawyer of the Year Award, 2006
Recipient, *Washington Business Journal* Top Washington Lawyers Award, 2004
Recipient, The Center for Association Leadership Chairman's Award, 2004
Recipient, Greater Washington Society of Association Executives Chairman's Award, 1997
Legal Section Manager / Government Affairs Issues Analyst, American Society of Association Executives, 1993-95
AV® Peer-Review Rated by *Martindale-Hubbell*
Listed in *Who's Who in American Law* and *Who's Who in America*, 2005-present editions

ACTIVITIES

Mr. Tenenbaum is an active participant in the nonprofit community who currently serves on the Editorial Advisory Board of the American Society of Association Executives' *Association Law & Policy* legal journal, the Advisory Panel of Wiley/Jossey-Bass' *Nonprofit Business Advisor* newsletter, and the ASAE Public Policy Committee. He previously served as Chairman of the *AL&P* Editorial Advisory Board and has served on the ASAE Legal Section Council, the ASAE Association Management Company Accreditation Commission, the GWSAE Foundation Board of Trustees, the GWSAE Government and Public Affairs Advisory Council, the Federal City Club Foundation Board of Directors, and the Editorial Advisory Board of Aspen's *Nonprofit Tax & Financial Strategies* newsletter.

PUBLICATIONS

Mr. Tenenbaum is the author of the book, *Association Tax Compliance Guide*, now in its second edition, published by the American Society of Association Executives. He also is a contributor to numerous ASAE books, including *Professional Practices in Association Management*, *Association Law Compendium*, *The Power of Partnership*, *Essentials of the Profession Learning System*, *Generating and Managing Nondues Revenue in Associations*, and several Information Background Kits. In addition, he is a contributor to *Exposed: A Legal Field Guide for Nonprofit Executives*, published by the Nonprofit Risk Management Center. Mr. Tenenbaum is a frequent author on nonprofit legal topics, having written or co-written more than 700 articles.



SPEAKING ENGAGEMENTS

Mr. Tenenbaum is a frequent lecturer on nonprofit legal topics, having delivered over 700 speaking presentations. He served on the faculty of the ASAE Virtual Law School, and is a regular commentator on nonprofit legal issues for *NBC News*, *The New York Times*, *The Wall Street Journal*, *The Washington Post*, *Los Angeles Times*, *The Washington Times*, *The Baltimore Sun*, *ESPN.com*, *Washington Business Journal*, *Legal Times*, *Association Trends*, *CEO Update*, *Forbes Magazine*, *The Chronicle of Philanthropy*, *The NonProfit Times* and other periodicals. He also has been interviewed on nonprofit legal topics on Fox 5 television's (Washington, DC) morning news program, Voice of America Business Radio, Nonprofit Spark Radio, and The Inner Loop Radio.



Lindsay B. Meyer

Co-Managing Partner

Washington, DC Office

T 202.344.4829 F 202.344.8300

lbmeyer@Venable.com

AREAS OF PRACTICE

International Trade and Customs
Foreign Corrupt Practices Act and
Anti-Corruption
Homeland Security
Advertising and Marketing
Consumer Finance
Brand Protection
Regulatory

INDUSTRIES

Transportation and
Transportation Infrastructure
Government Contractors
Consumer Products and Services
Maritime
Life Sciences
Financial Services

BAR ADMISSIONS

District of Columbia
Virginia

COURT ADMISSIONS

U.S. Court of Appeals for the D.C.
Circuit

Lindsay Meyer is Co-Managing Partner of Venable and heads the International Trade Practice, assisting sophisticated companies to efficiently import and export under U.S. laws and regulations. As a licensed U.S. Customs broker, Ms. Meyer has a detailed knowledge of and extensive experience with the regulations of the U.S. Bureau of Customs and Border Protection. She is also co-chair of Venable's FCPA and Anticorruption Practice.

Extensive Trade, Customs and Export Control Experience. For over twenty-five years, Ms. Meyer has provided International Trade and Customs advice at Venable where she heads Venable's International Practice based in Washington, DC. Ms. Meyer concentrates on all aspects of International Trade and Customs matters. She regularly advises companies on their compliance with import and export control laws and regulations, and appears before numerous regulatory authorities such as the U.S. Customs and Border Protection (CBP), International Trade Commission (ITC), Commerce Department's Bureau of Industry and Security (BIS), State Department's Directorate of Defense Trade Controls (DDTC), Treasury Department's Office of Foreign Assets Control (OFAC), and the Committee on Foreign Investment in the United States (CFIUS).

Ms. Meyer has extensive experience counseling companies on compliance with export controls regulated by BIS, DDTC, and OFAC and actively assists companies in their registration and license authorization needs for exports, re-exports and deemed exports. She guides companies through internal Export Control Assessments, helps develop tailored compliance policies and procedures, and performs training on export laws and regulations affecting a company. Additionally, Ms. Meyer has successfully defended exporters facing civil and criminal investigations for alleged violations of U.S. export control laws and embargoes.

Concerning import transactions, Ms. Meyer routinely represents companies during U.S. Customs Focused Assessments, NAFTA Audits, C-TPAT and ISA Programs, and defends clients during detentions, forfeitures, seizures, civil and criminal investigations, and other Customs-related matters. She regularly provides strategic customs and trade counseling to Fortune 100 clients by conducting Pre-Assessment Compliance Reviews including corporate-wide, multi-location assessments and training programs, and by representing companies before CBP, such as in Customs protests and Buy American Act rulings, and on appeal to the U.S. Court of International Trade and U.S. Court of Appeals for the Federal Circuit.

For many years, Ms. Meyer has also successfully represented companies in trade remedy actions alleging infringement of intellectual property rights, as well as antidumping duty and safeguard investigations and reviews before the U.S. Department of Commerce, International Trade Commission, and on appeal.

Ms. Meyer also advises clients on international transactional matters, where she counsels on strategic sourcing, targeted acquisitions Helms-Burton analysis, CFIUS investigations and FOCI reviews; sales and distribution arrangements in the U.S. and

U.S. Court of Appeals for the Federal Circuit
U.S. Court of International Trade

EDUCATION

J.D., George Washington University Law School, 1987

B.S., *cum laude*, University of Connecticut, 1983

Beta Gamma Sigma

National Business Honor Society

Dean's List

Academic Honors Program

Diplôme d'Études Françaises, Université de Rouen, Rouen, France, 1982

MEMBERSHIPS

Virginia Bar Association

District of Columbia Bar Association

LANGUAGES

French

abroad; the use of foreign agents, affiliated offices, joint ventures and teaming agreements; as well as compliance with antiboycott restrictions and anti-bribery laws, such as the U.S. Foreign Corrupt Practices Act (FCPA).

One of the distinctive advantages Ms. Meyer offers is her position as a licensed U.S. Customs broker. Another advantage she offers clients stems from her well-established relationships with counsel around the globe with whom she works on a regular basis. Ms. Meyer brings to her practice extensive years of experience in a multitude of trade matters and the ability to develop innovative solutions to complex legal issues.

REPRESENTATIVE CLIENTS

Ms. Meyer's clients include multinational manufacturers and service providers in the high technology, chemical, petrochemical, oil services, pharmaceutical, automotive, avionic, space control equipment, steel, food, retail industries, and not-for-profit organizations.

SIGNIFICANT MATTERS

Significant recent matters have included counseling to and representation on behalf of several multinational companies before the U.S. and other Customs Services; conducting pre-audit assessments of import and export operations and procedures; developing and conducting compliance programs including corporate-wide, multi-location assessment and training programs; and general counseling on strategic sourcing methodologies. She regularly advised companies in the formation of foreign subsidiaries and representative offices; and conducting trade activities overseas. Other recent matters have included the successful defense of antidumping duty investigations and reviews before the U.S. Department of Commerce and International Trade Commission often resulting in findings of zero or minimal duties.

HONORS

Recognized in *Chambers USA* (Band 3), International Trade: Customs, National, 2012 - 2014

ACTIVITIES

Ms. Meyer is active in business and trade associations related to her profession. She served four terms as Chair of the International Trade and Customs Committee for the American Bar Association's Section of Administrative Law and Regulatory Practice, is a member of the American Association of Exporters and Importers, and is serving in her second term on the Maryland-Washington District Export Council under the appointment of the Secretary of the U.S. Department of Commerce.

PUBLICATIONS

- July 25, 2014, CBP May Be Signaling Renewed Interest In 1st-Sale Rule, *Law360*
- July 18, 2014, Is CBP Signaling a Renewed Enforcement Interest in the First Sale Rule?, *International Trade Alert*
- March 2014, FCPA Snapshot – 2013, FCPA and Anti-Corruption News E-lert
- February 20, 2014, Conducting Operations Overseas: What Every Nonprofit Should Know
- February 2014, BIS Proposes First Rewrite of Routed Export Rules in Over a Decade, *International Trade Alert*
- February 2014, Iran Sanctions Deal Does Not Alleviate Current U.S. Economic Sanctions: "Iran Is Not Open for Business", *International Trade Alert*
- December 2013, Enforcing the New Export Control Regime, *International Trade Alert*
- December 2013, WTO Trade Facilitation Package Will Reform Least-Advanced Customs Administrations, *International Trade Alert*

- October 15, 2013, Rolling Out a New Export Control Regime During a Government Shutdown, International Trade Alert
- September 2013, License Exception Strategic Trade Authorization: Understanding How It May Work for You, International Trade Alert
- September 2013, October 15th Export Control Reform Changes Are Around the Corner: Take Time Now to Understand the Impact on Your Existing Licenses & Authorizations, International Trade Alert
- September 2013, State Department Publishes Long-Awaited Interim Final Rule Amending ITAR Brokering Provisions, International Trade Alert
- August 2013, Quickly Take Your Medicine: FDA's Secure Supply Chain Pilot Program Presents Opportunity for Expedited Imports of API and Finished Drug Products, Client Alerts
- August 22, 2013, Advertising News & Analysis - August 22, 2013, Advertising Alert
- August 2013, New Efforts in Bilateral Brand Protection, Client Alerts
- August 15, 2013, Advertising News & Analysis - August 15, 2013, Advertising Alert
- August 13, 2013, Food for Thought: Understanding FDA's Proposed Rules for Importers of Food and Dietary Supplements and How They May Impact Your Business
- August 8, 2013, Advertising News & Analysis - August 8, 2013, Advertising Alert
- August 2013, Should I Eat That? New Rules Propose Significant Requirements on Importers of Food and Dietary Supplements, *Dietary Supplements Alert*, International Trade Alert
- July 2013, OFAC Expands General License for Export of Basic Medical Supplies to Iran; Provides Additional Guidance, International Trade Alert
- July 2013, DC Court Strikes SEC Rule Requiring Extractive Industries' Reporting of Payments to Foreign Governments, International Trade Alert
- June 2013, Executive Order Targets New Sectors of Iranian Economy for Sanctions: Are You Prepared to Comply?, International Trade Alert
- May 14, 2013, As Nonprofits Expand Their Global Reach, a Special Focus on Tax, Trademarks and the Foreign Corrupt Practices Act
- May 2013, Obama Nominates Key 2nd Term Trade Positions, International Trade Alert
- April 2013, FCPA Snapshot – 2012, *FCPA White Paper*
- March 2013, Fewer Military Controls and Streamlined Licensing for Exporters Are Expected: Are You in Compliance?, International Trade Alert
- March 2013, U.S. Customs Announces Major Changes in Wake of Sequestration Budget Cuts, International Trade Alert
- February 2013, EPA Proposes New Controls for Chemicals Used in Petroleum Refining: Will They Affect Your Operations?, *BIC Magazine*, International Trade Alert
- December 2012, Could Your Affiliate's Activities Subject Your Company to the New Iran Reporting Requirements?, International Trade Alert
- December 2012, Developments in Eastern Congo Highlight Need for Companies to Prepare for SEC Conflict Mineral Rule Compliance, *Law360*
- November 2012, The New Foreign Corrupt Practices Act Resource Guide: An Opportunity to Review Your Nonprofit's Compliance
- October 2012, Do You Import, Manufacture or Distribute Food (Including Dietary Supplements) in the U.S.? FDA's Mandatory Biennial Registration Renewal Period is Now Open for All Domestic and Foreign Food Facilities, International Trade Alert
- October 2012, Time to Check the Entity List: Eleven U.S. and Russian Companies and Individuals Charged in Illegal Export Scheme and 165 Added to BIS' Entity List, International Trade Alert
- September 2012, Dockworkers Union Threatening to Strike October 1, International Trade Alert

- July 2012, African Growth and Opportunity Act Fabric Extension Bill is a Win-Win Proposition, International Trade Alert
- July 2012, Nicaragua Falls Short Again: Tariff Preference Level Reduced by 3% for 2012, International Trade Alert
- July 2012, OFAC Issues General Licenses Authorizing Investment and Exports of Financial Services to Burma, International Trade Alert
- July 12, 2012, Advertising News & Analysis - July 12, 2012, Advertising Alert
- July 2012, After Nearly Ten Years Under Review, CBP Revises Its Policy to Allow Post-Import Pricing Adjustments for Related Party Goods, International Trade Alert
- June 2012, FCPA Investigation Follows Allegations of Improper Payments to Customs Officials in Kazakhstan, FCPA and Anti-Corruption News E-lert
- June 2012, What You Need to Know About the Temporary Duty Suspension Process Act of 2012, International Trade Alert
- May 2012, IP Buzz - May 2012, IP Buzz
- May 2012, U.S. Suspends Restrictions on Investment and Exports of Financial Services to Burma, International Trade Alert
- May 21, 2012, U.S. Customs Adopts New Rule to Help Brand Owners Identify Counterfeits, *MARQUES Ltd.*
- April 2012, CBP Adds a New Tool to its Anti-Counterfeit Arsenal: New Rule Brings IP Rights Holders into Pre-seizure Investigative Process, International Trade Alert
- April 2012, Act Now: Clock Starts to Request Duty Reduction or Suspensions, International Trade Alert
- March 2012, FCPA Snapshot 2011, FCPA and Anti-Corruption News E-lert
- March 2012, Korea-U.S. Free Trade Agreement Enters Into Force, *International Trade and International Arbitration Alert*
- March 2012, Will CBP's Proposed New Rules for In-Bond Transportation Affect Your Operations?, International Trade Alert
- February 22, 2012, Overseas Operations: What Every Nonprofit Should Know Before Crossing U.S. Borders
- January 2012, Possible Realignment of Trade Regulatory Agencies Could Impact Global Commerce, International Trade Alert
- November 2011, California Transparency in Supply Chains Act of 2010 (SB 657), Client Alerts
- November 8, 2011, Considering Operations Overseas?: What Every Nonprofit Should Know Before Crossing U.S. Borders
- May 2011, Container Liner Shipping Sector "Dawn Raided" in EU, International Trade Alert
- April 2011, Could the Hospitality Industry be the Latest to Fall Under the FCPA Microscope?, FCPA and Anti-Corruption News E-lert
- April 2011, Trade Association Asks FMC to Reopen NRA Rulemaking, International Trade Alert
- March 2011, Obama Bans Transactions with Libyan Government and its Controlled Entities, International Trade Alert
- March 2011, Frequently Asked Questions & Answers about the Foreign Corrupt Practices Act (FCPA)
- February 2011, FMC's New Rule Exempts Licensed NVOCCs from Tariff Publication Requirements, International Trade Alert
- October 2010, U.S. Trade Representative Seeks Public Comment For List of Markets Notorious for Counterfeiting, Client Alerts
- August 2010, DDTC Levies \$42 Million Fine for Export Control Violations, International Trade Alert
- August 2010, New Financial Sanctions Regulations Target Iranian Business Activities of Non-U.S. Financial Institutions, International Trade Alert
- August 2010, A Lesson in Successor Liability: GE Settles Oil for Food FCPA Allegations, FCPA and Anti-Corruption News E-lert

- August 2010, Proposed DDTC Rule Would Reform Requirements Affecting Dual- and Third-Country National Employees, International Trade Alert
- July 2010, Implementation of U.K. Bribery Act Postponed for Six Months, FCPA and Anti-Corruption News E-Alert
- July 2010, FCPA News and Trends, FCPA and Anti-Corruption News E-Alert
- July 2010, Significant Changes to U.S. Export Control Regulations on Encryption: First Steps to "Mass Market" and "Ancillary" Cryptography Products, International Trade Alert
- June 2010, DoD Contractors and Subcontractors: Are You Complying with the New Flowdown Notice Requirement on U.S. Export Control Laws?, Government Contracts Update
- April 2010, FMC Issues Long-Awaited Proposed Rule on NVOCC Tariff Rules, International Trade Alert
- April 2010, If You Export, Proposed Sweeping Export Control Reforms Will Likely Affect Your Business, International Trade Alert
- March 2010, US Set to Examine Competition Issues in Ocean Transportation Industry, Client Alerts
- March 2010, FMC Votes to Grant NVOCCs Relief from Current Tariff Publishing Requirements, International Trade Alert
- February 2010, U.S. Customs and Border Protection "10 + 2 Initiative": Enforcement Has Begun!, International Trade Alert
- January 25, 2010, DOJ Uses Undercover Sting Operation to Bring Foreign Bribery Case, FCPA and Anti-Corruption News E-Alert
- January 2010, DOJ Targets Pharmaceutical & Life Sciences Companies for FCPA Enforcement, Client Alerts
- November 1, 2009, "You're Being Watched", *Industry Week*
- August 2009, Exporters Beware: Recent BIS Settlements Forewarn Strict Adherence to Heightened Penalties—Even with Voluntary Disclosures!, International Trade Alert
- August 13, 2009, Recent Crackdown on U.S. Export Compliance for Logistics Providers, International Trade Alert
- August 2009, Organization of Economic Cooperation and Development (OECD) Releases Firm Policy Statement on Bribery in International Business Transactions, Client Alerts
- July 2009, Reducing Supply Chain Costs: Eliminating Customs Duties on Imports, International Trade Alert
- March 2009, Consumer Product Safety Improvement Act and Issues for U.S. Importers
- December 2008, "Maritime Security" Co-author, *Benedict on Admiralty, Chapter XV*
- February 8, 2007, BIS Effectively Embargoes North Korea, International Trade Alert
- September 7, 2006, Homeland Security Deskbook: Private Sector Impacts of the War Against Terrorism
- July 14, 2006, BIS Proposes to Tighten Controls on Exports to China, International Trade Alert
- April 2005, House Trade Subcommittee Calls for Introduction of Duty Suspension Legislation, International Trade Alert
- September 2004, Co-author, Trade and Transportation chapter, Homeland Security Deskbook: Private Sector Impacts of the War Against Terrorism, *Published by LexisNexis Matthew Bender®*
- September 2003, Food and Beverage Exporters and Importers to the U.S. Should Begin Compliance Actions Now. Deadlines Approach for FDA Bioterrorism Act Regulations.
- May 2003, Additional FDA Regulations Proposed Under the Bioterrorism Act Regarding Product Detention and Recordkeeping Will Impact Food, Beverage, Transportation Service Providers, Ports, and Related Sectors

- March 2003, The FDA's New Bioterrorism Regulations on Food, Beverage and Related Sectors
- February 2003, Proposed FDA Regulations Under the Bioterrorism Act
- January 2002, Some Resolutions May Not Make for a Happy New Year, *Response Magazine*

SPEAKING ENGAGEMENTS

- January 14, 2015, Cross-Border Money Transfers: Key Requirements Every U.S.-Based Nonprofit Needs to Know
- November 13, 2014, "Ukraine-Related Sanctions: Complex, Costly...and Challenging" Webinar
- September 23, 2014, "Cross-Border Money Transfers: Key Requirements and Pitfalls Every U.S.-Based Nonprofit Needs to Know" Webcast for the Association of Corporate Counsel
- July 15, 2014 - July 16, 2014, Life Sciences Forum on Distributor Audits: "Monitor Internal Processes to Increase Visibility of Distributor Activities, Identify and Assess Risk and Accomplish Operational Integrity"
- April 10, 2014, Government Contracts Symposium
- March 31, 2014, "U.S. Export Controls: Understanding Your Obligations: Practical Tips and Traps" at the American Petroleum Institute's International Trade and Customs Conference
- February 20, 2014, Association of Corporate Counsel Webcast: "Conducting Operations Overseas: What Every Nonprofit Should Know"
- June 18, 2013, "Integration of Tax, Regulation and Global Trade: 'Getting Whipsawed'" at AAEL's 92nd Annual Conference & Expo
- June 13, 2013, "Global Trade: Import/Export Compliance 101" for WESFACCA Chapter
- June 12, 2013, "Year-In-Review: What Triggers Detention and Seizures, and New Approaches to Addressing Counterfeiting Risks, Trademark Protection and Grey Market Goods" at the 8th Annual Import Compliance & Enforcement Conference
- May 15, 2013, "Overseas Operations: What Every Nonprofit Should Know Before Leaving Home" at the 2013 ASAE Association International Conference
- May 14, 2013, As Nonprofits Expand Their Global Reach, a Special Focus on Tax, Trademarks and the Foreign Corrupt Practices Act
- April 17, 2013, Government Contracts Symposium
- February 25, 2013, Are You Compliant With the New Iran Reporting Requirements on Sanctions?
- January 24, 2013, Are You Ready for the February 6th Deadline to Comply with the New Iran Reporting Requirements?
- June 22, 2012, "Managing Focused Assessments from A to Z: A Practical Guide on How to Prepare, Respond and Make It through the Entire Process," ACI National Forum on Import Compliance and Enforcement
- May 6, 2012, Law Enforcement and the Chinese American Event
- February 29, 2012, "Managing Risk in International Operations and Meetings" at Meetings Beyond Borders
- February 22, 2012, Overseas Operations: What Every Nonprofit Should Know Before Crossing U.S. Borders
- November 8, 2011, Legal Quick Hit: "Considering Operations Overseas?: What Every Nonprofit Should Know Before Crossing U.S. Borders" for the Association of Corporate Counsel's Nonprofit Organizations Committee
- November 3, 2011, "Moving Beyond the Basics" at I.E. Canada's Annual Export Conference
- October 21, 2011, "Opportunities and Challenges in Implementing an International Business Strategy"

- October 11, 2011, "International Collaborations: Negotiations and Compliance" for NCURA TV
- July 14, 2011, Impact of the U.K. Bribery Act on U.S.-Based Businesses
- February 25, 2011, "FDA Food Safety Modernization Act: What you should know about its impact on imported foods," hosted by Venable
- June 25, 2010, "Corruption - The New Global Landscape" Breakfast Seminar at Venable LLP
- June 10, 2010, "Corruption - The New Global Landscape" Breakfast Seminar at Field Fisher Waterhouse LLP
- April 9, 2010, Foreign Corrupt Practices Act (FCPA) Assessing Risk and Maintaining Compliance Webcast
- February 2010, Western Canada 7th Annual Conference - Customs and Trade
- December 12, 2008, Breakfast Round Table Discussion: Anticipating The Year of Change and the Impact of New Legislative and Regulatory Initiatives on Business
- September 26, 2007, Venable to Host "Investing in India" Breakfast Seminar
- July 18, 2004 - July 20, 2004, Toy Industry Association's 2004 Multi-Discipline Conference
- March 4, 2003, The FDA's New Bioterrorism Regulations on Food, Beverage and Related Sectors
- "Section 337: Unfair Practices in Import Trade into the United States" to the China Chamber of Commerce for Machinery and Electronics at the Guangzhou Trade Fair



Charles K. Kolstad

Counsel

Los Angeles, CA Office

T 310.229.9954 F 310.229.9901

ckkolstad@Venable.com

AREAS OF PRACTICE

Tax and Wealth Planning
Tax Controversies and Litigation
Corporate
International Tax
Business Transactions Tax

INDUSTRIES

Nonprofit Organizations and
Associations
Entertainment Industry
Professionals
New Media, Media and
Entertainment

BAR ADMISSIONS

California
New York

COURT ADMISSIONS

U.S. Tax Court

EDUCATION

J.D., University of Notre Dame,
1979
M.B.A., Columbia University, 1978

Charles Kolstad focuses his practice on international tax, corporate, and partnership matters. He assists clients in tax and corporate planning relating to the acquisition, disposition and restructuring of businesses, corporations and partnerships both domestically and internationally. Charles also advises foreign individuals moving to the U.S. on pre-immigration, income, gift and estate tax planning opportunities.

In addition, he advises actors and actresses, musicians, songwriters, producers, directors and financiers, both domestic and foreign, on a wide range of individual and corporate tax issues, specific to the entertainment industry. Charles has written several articles and given many presentations on entertainment tax issues.

He has advised over 130 clients with unreported foreign financial accounts, foreign trusts, and other foreign investments, on the filing of FBARs and other information returns, and whether participating in the IRS's various offshore voluntary disclosure programs is appropriate. Charles has written and lectured on the extensive information reporting requirements for U.S. taxpayers with international business operations.

In addition, Charles has extensive experience in representing clients during audits by the IRS or the California Franchise Tax Board, as well as in front of the IRS Appeals Office or IRS Collection.

Mr. Kolstad was formerly Senior Counsel in the Business & Tax Group at Reish, Luftman, Reicher & Cohen. Previously, he was a partner at Coopers & Lybrand; Brand Farrar Dziubla Freilich & Kolstad; and Ernst & Young, LLP.

PUBLICATIONS

- October 2014, United States chapter, *Getting the Deal Through– Outsourcing 2014*
- September 22, 2014, Cross-Border Money Transfers: Key Requirements and Pitfalls Every U.S.-Based Nonprofit Needs to Know
- May 2014, Estate and Tax Guidance for Artists and Collectors, *Los Angeles Lawyer*
- April 2014, Regulatory and Tax Issues Posed By Convertible Virtual Currencies
- 2014, United States chapter, *Getting the Deal Through – Outsourcing 2014*
- December 10, 2013, Your Nonprofit Has Gone Global: Now What Are Your U.S. and Foreign Tax Compliance and Reporting Obligations?
- November 22, 2013, Time to Revisit Foreigner Investing in U.S. Real Estate, *Law360*
- May 2013, How the Health Care Act Affects the Taxation of Loan-Out Corporations, *Los Angeles Lawyer*
- May 14, 2013, As Nonprofits Expand Their Global Reach, a Special Focus on Tax, Trademarks and the Foreign Corrupt Practices Act
- April 2012, Top 10 FATCA Facts You Should Know, *Tax Bulletin*

- March 2012, United States Supreme Court Raises the Stakes for Tax Disclosure by Green Card Holders and Other Resident Aliens, Tax Bulletin
- March 13, 2012, FATCA and NFFEs, *Economic Daily News (Taiwan)*
- February 2012, FATCA – Overview of Proposed Regulations Issued by the IRS, Tax Bulletin
- January 2012, 2011 Tax Filing Season – Important Reporting Information for CPAs, Tax Bulletin
- January 2012, FORM 8938 – Expansion of International Tax Reporting Requirements, Tax Bulletin
- September 2011, Next Up – The California Tax Amnesty Initiative, Tax Bulletin
- August 2011, 2011 Offshore Voluntary Disclosure Initiative – August Update!, Tax Bulletin
- August 8, 2011, The IRS' Amnesty Program for Foreign Account Holders: What You Need to Know, *The Wrap*
- March 2011, California's New Tax Law Vastly Extends Its Taxing Reach, Tax Bulletin
- March 24, 2011, International Reporting Requirements for CPAs and Their Clients, *Accounting Today*
- February 2011, 2011 Offshore Voluntary Disclosure Initiative – Mainly Good News But Some Bad News Too, Tax Bulletin
- February 14, 2011, Comments on the Foreign Account Tax Compliance Act ("FATCA"), *ABA Section of Taxation*
- February 2011, New Regulations on Debt Instruments – They Give a Little and Take a Little, Tax Bulletin
- January 2011, 2010 Tax Filing Season – International Information Reporting Requirements for CPAs to Remember, Tax Bulletin
- November 2010, Before You Say Yes and Move Abroad - Six Legal Issues to Consider, *Financier Worldwide - Global Reference Guide: Employment & Human Resources 2010*
- June 2010, Proposed Carried Interest Legislation: Traps for the Unwary, Tax Bulletin
- April 2010, Tax Issues Associated with Carbon Trading Assets and the Impact of Proposed Legislation, *ABA Carbon Trading and Energy Finance Committee Newsletter*
- April 2010, HIRE Act Takes a Higher Toll on Foreign Entities, Tax Bulletin
- April 2010, HIRE Act = Higher Withholding Tax for Foreign Entities, Tax Bulletin
- March 2010, HIRE Power: New Reporting Requirements and Penalties for Holders of Offshore Bank Accounts, Tax Bulletin
- March 2010, Navigating the New Reporting Requirements and Penalties for Holders of Offshore Bank Accounts, Tax Bulletin
- February 2010, 2011 Budget Greatly Expands Reporting Requirements and Penalties for Holders of Offshore Bank Accounts, Tax Bulletin
- December 2009, Kerry-Boxer Climate Change Bill – Tax Issues & Implications
- December 2009, Tax Bulletin - December 2009, Tax Bulletin
- August 17, 2009, IRS Announces September 16 Deadline for Initial Allocation of Credits for Clean Energy Property Manufacturing Facilities
- August 2009, Update - Investments in Private Investment Funds: Subject to FBAR Reporting by June 30, 2009 or Not?, Tax Bulletin
- June 2009, Investments in Private Investment Funds: Subject to FBAR Reporting by June 30, 2009 or Not?, Tax Bulletin
- May 2009, Section 181 Offers Incentives to Curb Runaway Productions, *Los Angeles Lawyer magazine, 25th Annual Entertainment law issue*
- 2008, Use of LLC's in Merger & Acquisition Transactions, *USC Major Tax Planning*
- May 2007, Unresolved Issues in the Income Forecast Method of Accounting, *Los Angeles Lawyer magazine, Entertainment Law issue*

SPEAKING ENGAGEMENTS

Mr. Kolstad is a frequent speaker at seminars, including the California CPA Foundation and the USC Tax Institute. He is on the part-time faculty at California State University Northridge, where he teaches a class on International Business Law.

- January 7, 2015, Cross-Border Money Transfers: Key Requirements Every U.S.-Based Nonprofit Needs to Know
- November 19, 2014, "Fundamentals of Foreign Trust Administration," a Lorman Webinar
- November 5, 2014, "Form 8865: Reporting Foreign Partnership Income," a Stafford Publications Webinar
- September 23, 2014, "Cross-Border Money Transfers: Key Requirements and Pitfalls Every U.S.-Based Nonprofit Needs to Know" Webcast for the Association of Corporate Counsel
- September 13, 2014, "Bitcoin: Legal Fee or Foe?" at the State Bar of California 87th Annual Meeting
- August 21, 2014, "Pre-Immigration Tax Planning for Foreign Clients" for Wells Fargo
- July 7, 2014, "International Information Reporting: CFCs, PFICs, FBARs & Beyond" at the LA Business Managers Discussion Group
- May 29, 2014, State Taxation of Income From Foreign Affiliates
- February 12, 2014, "Engaging Accountants and Tax Attorneys in Various Jurisdictions" at the Tax for Entertainers & Sports Stars Conference
- December 10, 2013, Legal Quick Hit: "Your Nonprofit Has Gone Global: Now What Are Your U.S. and Foreign Tax Compliance and Reporting Obligations?" for the Association of Corporate Counsel's Nonprofit Organizations Committee
- November 13, 2013, "Form 8865 – Foreign Partnership Income," Stafford Webinar
- November 8, 2013, "International Programs and Activities: Compliance Issues," National Association of Colleges and Universities of America (NACUA)
- May 14, 2013, As Nonprofits Expand Their Global Reach, a Special Focus on Tax, Trademarks and the Foreign Corrupt Practices Act
- May 23, 2012 - May 24, 2012, "Foreign Account Tax Compliance Act – How Does It Affect NFFEs and Individuals" at Chien Yeh Law Offices in Taiwan
- February 8, 2012, "Foreign Tax Reporting: FBARs & Beyond" at Singer Lewak
- February 10, 2011, "Copyrights and Wrongs" at King, Holmes, Paterno & Berliner, LLP
- February 7, 2011, "Federal Tax Update," Los Angeles Business Managers Discussion Group
- November 24, 2010, "US - European Mergers & Acquisitions Transactions: Overview of US Tax Issues," hosted by Field Fisher Waterhouse
- October 19, 2010, "Form 5472 - What Everyone Should Know," Knowledge Congress webinar
- June 16, 2010, 2010 Entertainment Industry Conference, presented by CalCPA Education Foundation
- May 18, 2010, "Copyrights and Wrongs" at The Motion Picture and Television Fund / Professional Advisory Network's quarterly luncheon
- February 22, 2010, Taxation of Foreign Operations - Rules and Planning Opportunities
- December 2009, Taxation of Cross Border Mergers & Acquisitions Transactions
- September 10, 2009, "Tax Incentives for the 'Green' Industry"

Additional Information



ARTICLES

October 29, 2014

ACTIVE OVERSEAS? WHAT EVERY NONPROFIT NEEDS TO KNOW AND DO TO MINIMIZE THE RISK OF TERRORIST FINANCING

If your nonprofit operates outside the United States, you now have additional reasons to worry about your organization being associated with – and abused by – terrorists or terrorist groups. Absent additional internal controls and heightened due diligence, your nonprofit is at risk of not only government-imposed fines and penalties, but also private sector lawsuits and damages.

From the government side, the additional pressure comes from the renewed focus the Financial Action Task Force (FATF)¹ is placing on the risk to nonprofits of terrorist abuse. Earlier this year, FATF published an extensive study listing the threats to nonprofits from terrorist entities, the drivers of the threats, and the complexities facing stakeholders (nonprofits, governments, and others). This study was a follow-up to one of FATF's original 2001 recommendations:

Nonprofit organisations are particularly vulnerable [to abuse for the financing of terrorism], and countries should ensure that they cannot be misused: (a) by terrorist organisations posing as legitimate entities; (b) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freeze measures; and (c) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.²

Why should a non-U.S., multilateral organization's study concern U.S. nonprofits? Almost every major development in U.S. anti-money laundering (AML) and counter-financing of terrorism (CFT) in the last ten years has come from FATF recommendations and studies.

The Financial Crimes Enforcement Network (FinCEN), the arm of the U.S. Treasury that oversees and enforces U.S. AML laws, recognizes FATF as "the global standard setter for combating money laundering and the financing of terrorism and proliferation."³ FATF conducts independent reviews of member countries' (including the United States') AML/CFT systems and compliance with FATF recommendations, publishing its findings in FATF public compliance reports.⁴

The most recent example of FATF's influence on U.S. law is FinCEN's "beneficial ownership" rulemaking.⁵ The rulemaking arose from FATF's *Customer Due Diligence* (CDD) recommendations, and subsequent FATF Reports, stating that a country's CDD measures must require:

Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner...For legal persons and arrangements this should include financial institutions understanding the ownership and control structure of the customer.⁶

We can, therefore, expect that the "nonprofit organization" recommendation will be incorporated into U.S. law in the near future. This will result in additional governmental oversight and, as to potential civil liability, will place heightened standards and obligations on nonprofits to police themselves to ensure they are neither supporting nor being used by terrorist organizations.

The second factor comes from the private sector and is illustrated by the September 22, 2014, U.S. district court decision that Arab Bank Plc., by doing business with Hamas leaders, is responsible for funding terrorist acts in violation of the U.S. Anti-Terrorism Act (ATA).⁷ This is a private action brought by U.S. victims of attacks and, in some cases, their surviving relatives. The decision will be appealed and a separate trial held on damages.

The ATA gives a private right of action for treble damages to any U.S. national injured "in his or her

AUTHORS

D. E. Wilson, Jr.
Andrew E. Bigart
Jeffrey S. Tenenbaum

RELATED PRACTICES

Foreign Corrupt Practices Act and Anti-Corruption
International Trade and Customs

RELATED INDUSTRIES

Nonprofit Organizations and Associations
International Operations for Nonprofits
Financial Services

ARCHIVES

2015 2011 2007
2014 2010 2006
2013 2009 2005
2012 2008

person, property, or business by reason of an act of international terrorism." 18 U.S.C. § 2333(a). The theory of the case is that U.S. law prohibits persons from knowingly (defined to include "being deliberately indifferent to") providing material support to a terrorist organization.

The confluence of (1) a nonprofit's current obligations under U.S. economic sanctions laws; (2) the probable increase in internal control requirements based on the FATF recommendation; and (3) the likelihood of private lawsuits based on aid provided to any designated terrorists organization, increases the threat of liability from governmental or private action. The failure of a nonprofit to meet a potentially heightened internal control standard based on the FATF recommendation and study will make it easier for a private litigant to prove liability under the ATA.

In sum, nonprofits now face higher compliance obligations with regard to U.S. economic sanctions and, similarly, higher threats of civil and criminal fines and penalties. Nonprofits cannot, however, have tunnel vision in this field. They must remain aware of developments with regard to a number of closely related laws:

- . Anti-corruption laws of (a) the United States (such as the Foreign Corrupt Practices Act [FCPA]); (b) countries in which an organization carries out charitable activities; and (c) any other country in which an organization has a presence (such as the United Kingdom, which has a relatively new, and broad, anti-bribery act).
- . Anti-money laundering and economic sanctions laws of the countries in which a nonprofit either has a presence or carries out its mission.
- . New foreign bank account reporting rules for U.S. organizations (such as the Foreign Account Tax Compliance Act [FATCA], in addition to the more familiar Foreign Bank Account Report [FBAR] rules).
- . Anti-boycott compliance and reporting requirements administered by the U.S. Departments of Commerce and Treasury.

Carrying these standards into practice requires careful thought and planning by a nonprofit. Initial mitigation steps to reduce the risk of liability include:

- . Follow the AML/CFT rules applicable to financial institutions, particularly if your nonprofit works in unsettled parts of the world that are subject to U.S. economic sanctions.
- . Know your donors and the sources of your donors' funds.
- . Know your recipients and your recipients' projects.
- . Check all funders, staff, board members, suppliers, and recipients against the U.S. Department of Treasury Office of Foreign Assets Control (OFAC) lists.
- . Install, use, and maintain strong internal controls on people, projects, and funds.

Together, these steps can go a long way to help minimize your organization's risk when carrying out its mission abroad.

[1] FATF is an inter-governmental body formed to set operational measures for combating money laundering, terrorist finance, and other threats to the international financial system. It currently is composed of 34 member states, 2 regional organizations, and a number of associates and observers from around the world. Formed in 1989, the FATF Secretariat is located at the Organization for Economic Cooperation and Development (OECD) in Paris, France. www.fatf-gafi.org

[2] FATF Report: *Risk of Terrorist Abuse in Nonprofit Organizations*, June 2014, at 1.

[3] *Customer Due Diligence Requirements for Financial Institutions*, 79 Fed. Reg. 45151 (Aug. 4, 2014) (Notice of Proposed Rulemaking) (Hereinafter, "CDD NPRM").

http://www.fincen.gov/statutes_regs/bsa/pending.html

[4] **FATF Mutual Assessments**

[5] CDD NPRM.

[6] FATF Report at 14 (emphasis supplied). See FATF Report, *Specific Risk Factors in Laundering the*

Proceeds of Corruption (June 2012); *FATF Report Laundering the Proceeds of Corruption* (July 2011)
[7] *Linde v. Arab Bank Plc*, 04-cv-02799, USDC, EDNY (Sept. 22, 2014). 18 U.S.C. § 2331 *et seq.*

ARTICLES

November 2012

THE NEW FOREIGN CORRUPT PRACTICES ACT RESOURCE GUIDE: AN OPPORTUNITY TO REVIEW YOUR NONPROFIT'S COMPLIANCE

On November 14, 2012, the long-awaited U.S. Department of Justice ("DOJ") and Securities and Exchange Commission ("SEC") Foreign Corrupt Practices Act ("FCPA") guidance (the "Guidance") was released. Styled "A Resource Guide to the U.S. Foreign Corrupt Practices Act," this 130-page document represents the DOJ and SEC's effort to answer critics of the Act and to clarify their interpretation of key provisions of the Act and the principles guiding their enforcement efforts. ([Click here](#) to access a PDF copy of the Guidance.)

The FCPA does not distinguish between for-profit corporations and nonprofit organizations with respect to its anti-bribery provisions. Regardless of the type of entity involved, the FCPA prohibits offering to pay, paying, promising to pay, or authorizing the payment of money or anything of value to a foreign government official to assist in obtaining or retaining business. "Business" has been interpreted broadly and would include all activities in furtherance of an organization's nonprofit and tax-exempt purposes.

While the Guidance offers little that is new, it does, however, serve as an excellent resource as to how the DOJ and SEC are likely to enforce the Act, providing useful checklists and hypotheticals that help shore-up the boundaries of what does or does not violate the FCPA, at least in the agencies' opinions. Nonprofits of all sizes and types are doing business in remote corners of the world, often in areas known for government corruption, such as Latin America, Asia, and Africa. Accordingly, nonprofit organizations are well-advised to review the Guidance and determine whether their anti-corruption compliance programs are adequate, especially those organizations with activities or a presence outside the United States.

A few key takeaways for nonprofits from the Guidance:

FCPA Jurisdiction

In Chapter 2 ("The FCPA: Anti-Bribery Provisions"), the DOJ and SEC emphasize the broad sweep of their jurisdiction.

- In addition to corporations that list on U.S. securities exchanges, the Guidance emphasizes that the FCPA also applies to "domestic concerns." Domestic concerns include *any* individual who is a U.S. citizen, national, or resident, or any corporation, partnership, *association*, *unincorporated organization* (such as a nonprofit organization), or sole proprietorship that is organized under U.S. law or that has its principal place of business in the United States.
- Officers, directors, or agents acting on behalf of a domestic concern, including foreign nationals or companies, are also covered.
- The Guidance makes clear that even when a "domestic concern" is not involved, the U.S. will still assert "territorial jurisdiction" if there is any contact with the United States, no matter how small, in furtherance of a corrupt payment. In this way, the U.S. catches many organizations in its jurisdictional net that believe they are beyond the reach of the FCPA.

Foreign Official

Also in Chapter 2, the DOJ and SEC discuss the broad definition of who is a "foreign official" under the FCPA. If your organization has a non-U.S. chapter, or is conducting business or trade shows outside of the United States, chances are it is interacting with persons considered to be foreign officials under the FCPA.

- A foreign official includes "any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization" (such as the United Nations, World Bank, etc.).
- The DOJ and SEC have interpreted this definition to include officials operating through state-owned or

AUTHORS

Lindsay B. Meyer
Carrie A. Kroll

RELATED PRACTICES

Foreign Corrupt Practices Act and Anti-Corruption

RELATED INDUSTRIES

Nonprofit Organizations and Associations

ARCHIVES

2015 2011 2007
2014 2010 2006
2013 2009 2005
2012 2008

state-controlled entities. Thus, business conducted with members of a state-controlled educational organization in China, a doctor in a state-owned hospital in Brazil, or an official acting on behalf of the Ministry of Commerce in Singapore, is *all* business with foreign officials.

Gifts, Travel, Entertainment, and Other Things of Value

The DOJ and SEC provide detailed examples of the types of gifts, travel, entertainment, and other expenses that do and do not violate the FCPA.

- The Guidance makes clear that the giving of things of “nominal value,” such as cab fare, *reasonable* meal and entertainment expenses, and company promotional items, does not in and of itself violate the FCPA. The Guidance uses an organization’s provision of nominal gifts at a “trade show” as an example.
- Where the organization sponsors the trade show or has a booth, and provides free hats, pens, or beverages as a way of promoting business and hospitality, and/or invites current or prospective customers that are foreign officials out to drinks and pays a “moderate bar tab,” these are considered legitimate *bona fide* expenditures made in connection with the promotion and explanation of the organization’s practices and are not in violation of the FCPA.
- By contrast, extravagant gifts, excessive entertainment, and especially travel with no apparent business purpose will likely place an organization or an individual under FCPA scrutiny.
- Reviewing your organization’s existing compliance program to ensure that effective guidelines and controls exist on gifts, travel, and trade show-related expenses, especially in countries or industries where foreign officials will be in attendance, is key.

Charitable Activities Are Not Exempt

The Guidance also makes clear that while it recognizes that U.S. companies and organizations often engage in charitable giving as part of legitimate local outreach, such contributions (whether money or in-kind) are within the scope of the FCPA and must not be used as a pretense to funnel bribes to foreign officials, or otherwise influence them in connection with obtaining or retaining business.

- As stated, the FCPA prohibits the paying of money or “anything of value” to a foreign official to secure an improper advantage.
- Thus, “charity” can be interpreted to mean not only monetary contributions (grants or donations), but also free training, educational services, materials, etc.
- The DOJ emphasizes that proper due diligence and controls are critical for charitable giving and suggests questions to consider, including: (1) the purpose of the payment; (2) whether the payment is consistent with the organization’s internal guidelines; (3) whether the payment is at the request of a foreign official; (4) whether the foreign official is associated with the charity and, if so, could make decisions about your organization’s business in that country; and (5) whether the payment is conditioned upon receipt of benefits to your organization.

Use of Agents

Finally, the DOJ and SEC emphasize that corrupt payments made through third parties or intermediaries are also prohibited.

- An organization cannot outsource its FCPA liability. It will generally be held criminally and civilly liable for the actions of its agents, distributors, service providers, and/or joint venture partners that violate the FCPA.
- Thus, even if a nonprofit’s only “international” operations involve the identification of a trade show forum through an agent, the organization must ensure its partner is acting in compliance with the FCPA. Questions like what is the permitting process in this country are important. Foreign agents can be an invaluable resource for the provision of local advice, and may help facilitate introductions or business transactions, however, there are risks associated with engaging third parties.
- Conducting risk-based due diligence on the agent, his company, proposed fees, and any close affiliations or relations to foreign officials is critical *prior to* engaging with the agent. Setting forth the terms of the engagement in clear contractual language, which includes FCPA compliance, is also necessary.

In sum, while there is nothing new in it, the Guidance serves as an excellent FCPA reference manual for how the DOJ and SEC interpret key provisions of the Act and prioritize their enforcement efforts. And, it is a helpful tool to use when designing, implementing, or updating an anti-corruption compliance program at your nonprofit organization.

If you have any questions concerning the FCPA or how to protect your nonprofit against possible FCPA liability, please contact the authors or other attorneys in Venable’s [Foreign Corrupt Practices Act and Anti-Corruption Group](#).

* * * * *

For more information, please contact **Lindsay B. Meyer** at 202.344.4829 and **lbmeyer@Venable.com**, **William H. Devaney** at 212.307.5500 and **whdevaney@Venable.com**, or **Carrie A. Kroll** at 202.344.4574 and **cakroll@Venable.com**.

This article is not intended to provide legal advice or opinion and should not be relied on as such. Legal advice can only be provided in response to a specific fact situation.

ARTICLES

October 14, 2010

FOREIGN MONEY AND POLITICAL ACTIVITY - THREE THINGS ASSOCIATIONS MUST KNOW

The recent US Chamber experience is a teachable moment for 501(c)6 organizations.

Since the Supreme Court held earlier this year that the First Amendment allows corporations and associations to play a more direct role in the election process, attacks on such participation are on the rise. Whether an association has foreign members or affiliates has now become another front for those attacks, so associations must be prepared to defend themselves.

For example, the Obama administration and its allies recently have attacked the US Chamber for using “foreign money” in its political activities. The charge appears to be based on the premise that the Chamber raises funds from foreign affiliates. The Chamber has denied these allegations, saying that it has procedures in place to segregate funds from foreign sources and that all of its political activity is funded from domestic sources.

Associations can learn three valuable things from this experience:

1. Associations involved in political activity should be aware of the ban on foreign funds being used to influence federal, state, or local elections. Thus, even though associations may fund messages expressly advocating the election or defeat of candidates using their general funds, they may not raise such funds from foreign entities.

2. To be certain that associations are complying with these rules, they should implement accounting procedures to segregate foreign funds from those funds used for political activities. In addition, employees should be trained on the policies and procedures used to segregate the funds; records should be kept showing such training.

3. Even with such procedures in place, political adversaries may try to make an issue of an association’s foreign sources of revenue (as evidenced by the attacks on the Chamber based solely on the fact that the Chamber accepts foreign funds). Thus, associations should be ready to respond to such attacks and be prepared to defend against a complaint filed with the Federal Election Commission. Although an association’s records showing the segregation of foreign money are not public, they should be kept in an easy to understand format should the FEC launch an investigation.

It is hard to defend against spurious allegations of comingling foreign funds, but proper record-keeping and segregation procedures can blunt the attack and help the association defend a possible FEC investigation.

Ron Jacobs heads Venable's political law practice. Contact him at RMJacobs@Venable.com or 202-344-8215.

This article originally appeared in the October 14, 2010 edition of Association TRENDS. It also appeared in the Annual Legal Review section of the March 17, 2011 issue of Association TRENDS. To read the entire section, visit the [Association TRENDS website](#).

AUTHORS

Ronald M. Jacobs

RELATED INDUSTRIES

Nonprofit Organizations
and Associations

ARCHIVES

2015 2011 2007

2014 2010 2006

2013 2009 2005

2012 2008

ARTICLES

August 18, 2010

WHO PAYS YOUR BILLS? WHAT FOREIGN-SUPPORTED NONPROFITS NEED TO KNOW ABOUT THE FOREIGN AGENTS REGISTRATION ACT

Lost in the media frenzy surrounding the arrest of twelve Russian spies by the FBI in June 2010 was the fact that the spies were arrested – not for stealing state secrets or trading technology – but for failing to register with the U.S. Department of Justice (“DOJ”) under the Foreign Agents Registration Act (“FARA,” 22 U.S.C. § 611 *et seq.*). This statute requires U.S. persons to register when they engage in certain political or quasi-political activities on behalf of “foreign principals.” The media’s obsession with Anna “Sexy” Chapman aside, the real lesson from the recent arrests is that U.S. persons – including trade associations, charities and other nonprofits – that engage in political or quasi-political activities on behalf of foreign principals must comply with FARA or risk similar public embarrassment and possibly criminal penalties.

What Is the Foreign Agents Registration Act?

FARA ensures that the U.S. Government and the people of the United States are informed of the identity of foreign persons attempting to influence U.S. public opinion, policy, and laws. The statute requires persons representing foreign principals to register with DOJ for engaging in any of the following: (1) political activities, (2) public relations, (3) political consulting, (4) publicity activities, and (5) information-services. The statute defines the term “foreign principal” broadly to include foreign governments, political parties, individuals, and corporations.

Many nonprofits are surprised to learn that there is no FARA exemption for nonprofit, tax-exempt entities. Rather, FARA provides limited exemptions for raising funds for medical assistance and charity, and activities promoting *bona fide* religious, scholastic, academic, scientific pursuits, or the fine arts. In addition, FARA provides an exemption for persons registered under the Lobbying Disclosure Act of 1995 (this exemption does not apply to the representation of foreign governments or political parties).

Persons required to register must provide DOJ with information on the nature of the relationship with the foreign principal, the work to be performed for the foreign principal, and, on a semi-annual basis, submit a report of the activities performed on behalf of the foreign principal and funds received from, or disbursed on behalf of, that foreign principal. Penalties for failing to comply with FARA can include a fine of \$10,000 or imprisonment for up to five years.

Why Should Nonprofits Worry about FARA?

The recent arrest of the twelve Russian spies under FARA underscores that DOJ will take action against persons who fail to comply with the statute’s requirements. For example, just days after the arrest of the Russian spies, DOJ obtained a guilty plea from a former U.S. congressman who failed to register under FARA for lobbying on behalf of an Islamic charity.

The issue of nonprofits and registration under FARA has become a hot issue in the blogosphere. DOJ has apparently opened an inquiry into whether two U.S. nonprofit organizations, B’Tselem and Americans for Peace Now, have violated FARA by failing to register as foreign agents. The investigation was launched in response to information provided to FARA by a group opposed to the political positions of the two nonprofits. Similarly, there are numerous websites devoted to whether the Council on American-Islamic Relations is a foreign agent that must register under FARA. The list of websites purporting to expose foreign agents goes on and on. In each case, the FARA hook is that the nonprofits receive a substantial proportion of their operational funding from foreign sources or act at the direction of a foreign parent or government entity.

The FARA registration requirements also extend to trade and professional associations that focus primarily on economic – as opposed to political – issues. For example, any trade association or export

AUTHORS

D. E. Wilson, Jr.
Andrew E. Bigart

RELATED INDUSTRIES

Nonprofit Organizations
and Associations

ARCHIVES

2015 2011 2007
2014 2010 2006
2013 2009 2005
2012 2008

council that represents the interests of a foreign person or country may be subject to FARA. In this regard, several large international trade councils – such as the Korea-United States Exchange Council – are registered under FARA. There are, however, many other trade associations and export councils that appear to represent foreign interests that have not registered.

How to Ensure that Your Nonprofit Complies with FARA

Determining the types of activities that trigger the need to register under FARA (or the Lobbying Disclosure Act exemption) is a challenge, made even more difficult by the dearth of DOJ guidance on the subject. To avoid the possibility of criminal sanctions or public embarrassment, U.S.-based trade and professional associations, charities, and other nonprofits that receive funding from foreign sources or that are affiliated with a foreign parent should review their operations and funding to determine whether they qualify as a foreign agent of a foreign principal under FARA. This is especially true for any nonprofit that engages in U.S. political activities or lobbying.

If registration is required, contact legal counsel for guidance on filing the required registration forms.

* * * * *

Mr. Wilson is a partner in the Washington, D.C. office of Venable LLP and a former Treasury official. **Mr. Bigart** is an associate in the Washington, D.C. office of Venable LLP. For more information, contact the authors at dewilsonjr@venable.com, aebigart@venable.com, or 202-344-4000.

This article is not intended to provide legal advice or opinion and should not be relied on as such. Legal advice can only be provided in response to a specific fact situation.