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LLP

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Your Lobbying Information Resource

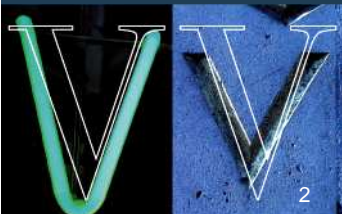
FARA and You: How to Stay Compliant

April 25, 2013



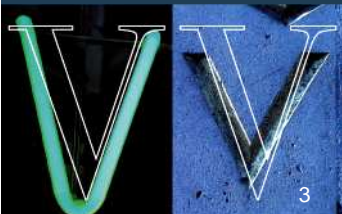
Agenda

- Focus on Foreign Agents Registration Act
 - Background
 - Registration Requirements
 - Practical Issues including intersection with Lobbying Disclosure Act and Federal Election Campaign Act
- Discussion of Additional Legal Areas Implicated by Cross-Border Political Activities
 - Office of Foreign Assets Control
 - Anti-money laundering laws
 - Foreign Corrupt Practices Act
- Examples of Cross-Border Political Activity



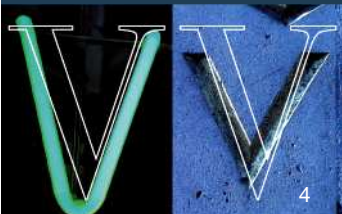
Foreign Agents Registration Act ("FARA")

- Background
- Coverage
- Registration Requirements
 - LDA v. FARA
- Reporting Requirements
- Federal Agency Oversight



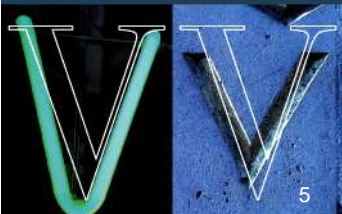
Background of FARA

- Enacted in 1938
- Congress' response to German propaganda agents in U.S.
- Respects Free Speech Rights
- Requires Disclosure of Foreign Principals
- Criminal Statute
- FARA Unit is part of the Counterespionage Section, National Security Division, Department of Justice



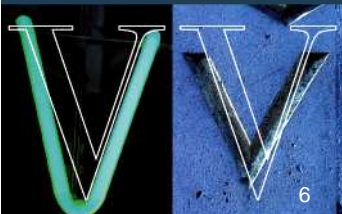
FARA Coverage

- Broad Scope
 - Tension between broad language of statute & requirement that criminal laws be read narrowly
- In general: “Agent of a foreign principal”
 - “Agent”: “any person who acts . . . at the order, request, or under the direction or control of a foreign principal . . .” and engages in certain activities
 - “Foreign Principal”: Foreign government or political party, a person outside the U.S., or an entity organized outside the U.S.
 - Does not include news or press services, *etc.*



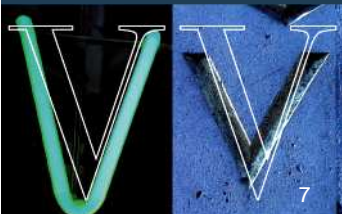
Agent: Political Activity

- “[A]ny activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party”



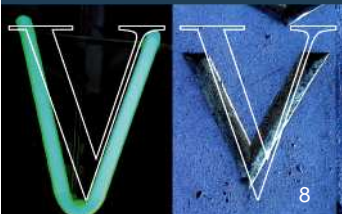
Agent: Public Relations Counsel

- “[A]ny person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party.”
- Note that this is both an “in bound” and “out bound” test.



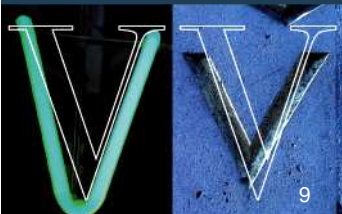
Agent: Money, Representation and Status

- Any person who
 - Collects or disburses anything of value for or in the interests of a foreign principal
 - Represents the interests of a foreign principal before any agency or official of the USG
 - Agrees, consents, purports to act as, or who is or holds himself out to be, regardless of contractual relations, an agent of a foreign principal



FARA Coverage: Exemptions

- While engaged in activities recognized by the State Department as being within “official duties”:
 - Diplomats recognized by State Department
 - Foreign Government officials
 - Embassy staff other than p-r, publicity, *etc.*
- Bona fide trade or commerce activities
- “Other activities not serving predominantly a foreign interest”
- Humanitarian aid solicitation
- Religious, scholastic, academic, scientific
- Presidential exception
- Lawyering, so long as in judicial or agency proceedings



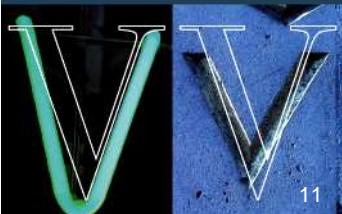
FARA: The LDA Exemption

- Registration under LDA exempts an individual or entity from registering under FARA if the Foreign Principal is:
 - An individual, resident outside the U.S. and not subject to U.S. jurisdiction, or
 - An entity, organized and having its principle place of business outside the U.S.
- This means that if you are an agent of a foreign government or political party, you must register under FARA, even if you register under LDA.
- Burden of establishing exemption is on person claiming it.



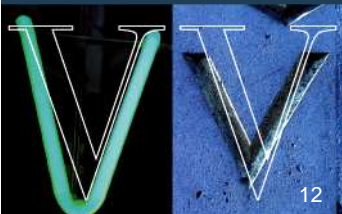
LDA: Reporting Requirements

- Initial Registration (LD-1)
- Quarterly Reporting (LD-2)
 - Amount spent on lobbying
 - Individuals who act as lobbyists
 - Issue areas lobbied
 - Agencies/houses of Congress lobbied
- Semiannual Lobbyist Report (LD-203)
 - Disclose “political” contributions aggregating \$200 or more during the semiannual period given to:
 - Federal candidates
 - Leadership PACs
 - Political parties
 - Organizations with in-house lobbyist must complete form
 - Each registered lobbyist must complete the form
 - Includes certification of Gift Rule compliance



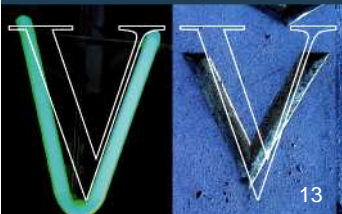
FARA: The LDA Exemption, Qualifier

- Example: Qatar Airways
- State of Qatar owns 50%
- Clearly “an entity, organized and having its principle place of business outside the U.S.”
- Register under LDA or FARA?
 - What is being done for Qatar Airways?
 - Commercial
 - Intersection with USG
 - Intersection of commercial with US foreign policy?



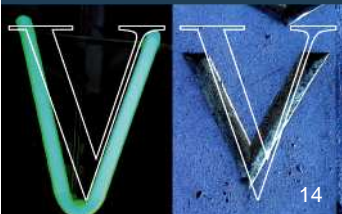
FARA Registration Requirements

- Registration required before any “act” as foreign agent by filing an initial registration through www.fara.gov/efile.html
- Forms Filed
 - Initial Registration Statement (Form NSD 1)
 - 60-day reach back for money received/paid
 - Exhibit A, 1 per foreign principal (NSD 3)
 - Exhibit B, Copy of agreement with foreign principal (NSD 4)
 - Exhibit C, Articles of Incorporation, Bylaws (if applicable) (No Form)
 - Exhibit D, Information on fundraising campaign (if applicable) (No Form)
 - Short-Form Registration for each agent



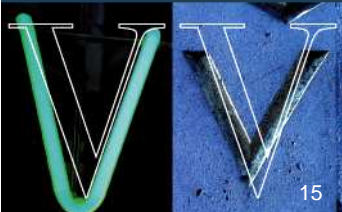
Ancillary Reporting Requirements

- 10-day change notice filed on Amendment to Registration Statement (NSD 5)
- Six month reporting requirement on Supplemental Statement (NSD 2) (Six month period determined by registration filing)
 - Changes (new or dropped foreign principals)
 - Activities (“services” v. political activities listed separately) conducted (list meetings, phone calls, etc.)
 - Money received & disbursed
 - Short forms, Ex. A (foreign principals) & B (representation agreements) changes
- Propaganda (2 person rule) requirements
 - File with FARA Unit, 2 copies, within 48 hours
 - Legend of registration (including websites)



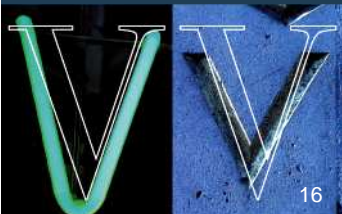
Reporting Issues – Sources of Guidance

- Foreign Agents Registration Act, 28 U.S.C. 611-21
- Regulations, 28 C.F.R. Part 5, Forms, National Security Division (“NSD”):
 - 1, Registration Statement (Filed by US Person)
 - 2, Supplemental Statement (Semi-annual)
 - 3, Exhibit A (Foreign Principal Information)
 - 4, Exhibit B (Agreements with Foreign Principals)
 - 5, Amendment to Registration Statement (Changes)
 - 6, Short-Form Registration Statement (Individuals)
 - Informational Materials “Notice” (not on web site)
 - Exhibit C (Articles of Incorporation, Bylaws) (No Form)
 - Exhibit D (Information on fundraising campaign) (No Form)
 - Short-form Registration Information Sheet (filed with Supplemental Statement)



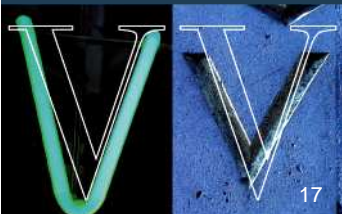
Reporting Issues – Political Contributions

- Political Contributions
 - Any contribution of money or other things of value, directly or indirectly,
 - In connection with an election to any political office, or
 - In connection with any primary, convention, or caucus.
- Note the scope and breadth of this reporting requirement. Includes all electoral political activities at every level of government.



Reporting Issues – Political Activities: Reporting Guidance

- **28 C.F.R. 5.210:** Amount of detail required in information relating to registrant's activities and expenditures:
 - A statement is "detailed" within the meaning of clauses 6 and 8 of section 2 (a) of the Act when it has that degree of specificity necessary to permit meaningful public evaluation of each of the significant steps taken by a registrant to achieve the purposes of the agency relation.
- **NSD 2, Q. 12:** “[I]dentify each such foreign principal and describe in full detail all such political activity, indicating, among other things, the relations, interests and polices sought to be influenced and the means employed to achieve this purpose.”



Political Activities Reporting: Example 1

Daniel J. Edelman Inc., Supplemental Statement, January 31, 2013

SINGAPORE ECONOMIC DEVELOPMENT BOARD

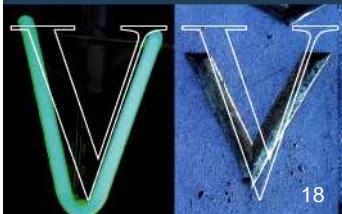
The following outlines Edelman's general public relations activities performed for Singapore EDB:

[Strategy and Planning]

- Developed 2012-2013 strategic PR & communications plan; updated messaging; developed key opinion leader engagement recommendations
- Participated in immersive account onboarding meetings in Singapore, and hosted EDB for mid-year account review meeting
-

[Media Materials and Outreach]

- Press Releases
 - Edelman distributed several press releases during this timeframe for various announcements/issues/events, including:
 - Developed a byline for Medical Design Technology
 - Pitched FedEx announcement and related corporate developments/initiatives pertaining to U.S.-based companies
 - Sent release related to the opening of Gillman Barracks
 - Distributed information about the EDB year in review
- Monitoring and Counsel



Political Activities Reporting: Example 2

Patton Boggs LLP, Supplemental Statement, December 31, 2012

The Transitional National Council of Libya

Registrant counseled the foreign principal on several matters involving the U.S. Government during the reporting period. Registrant advised on developments in the US Government relating to Libya, aid and assistance to Libya, and ways to strengthen cooperation between the US and Libya. Registrant advised on issues related to the assets of the Libyan people that had been frozen by the US Treasury Department pursuant to Presidential Executive Order and UN Security Council Resolutions. Registrant advised on various other U.S. policy developments and their potential impact on the bilateral relationship with the new government of Libya. Registrant also provided legal advice to the foreign principal in a number of areas, including business and investment in Libya, a plan for recovering assets stolen by the former regime and friends and associates of the former regime, frozen funds, unfreezing of funds, immigration status for diplomats and foreign diplomats, litigation claims and judgments against the foreign principal, care for Embassy property and assets and the application of international law to the status of the foreign principal and related entities and instrumentalities.

Date	Type	Office	Met with	Issue
11/30/2012	Meeting	Senator John McCain	Senator John McCain and Ambassador Aujali	Developments and key talking points regarding Libya
10/23/2012	Meeting	Senator Harry Reid	Jessica Lewis	Security in Libya
10/18/2012	Phone call	Subcommittee on Oversight of Government Management	Eric Tamarkin	Senate Hearing
10/17/2012	Email	Senator Blumenthal	Ethan Saxon	Bilateral Relations
10/17/2012	Email	Senator Lieberman	Vance Serchuk	US-Libya relations
10/02/2012	Phone call	State Department	Alex Abdallah	Security Matters



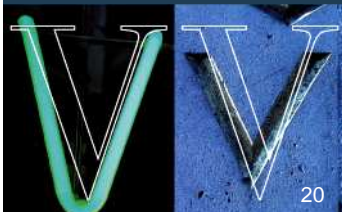
Political Activities Reporting: Example 3

**Venable (Registration No. 5931)
Supplemental Statement for Six Month Period Ending 10/31/10**

Foreign Principal:
Hong Kong Trade Development Council

Short Form Registrant
Powell Moore

Date	Contact Name	Position	Type of Contact	Subject matter
6/8/2010	Alice James	Scheduler, Senator Lindsey Graham	Telephone call	Schedule telephone call
6/30/2010	Teresa Ervin	Deputy Chief of Staff, Senator Saxby Chambliss	Telephone call	Schedule telephone call
7/14/2010	Saxby Chambliss	Senator	Telephone call	Economic ties between Hong Kong and Georgia



Political Activities Reporting: Example 4

Van Scoyoc Associates, Supplemental Statement, December 31, 2012:

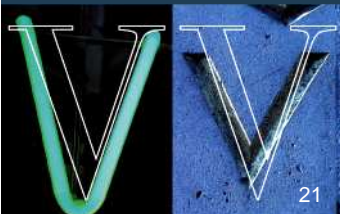
Attachment A – Section III Activities, Question 12

Activities on behalf of the Rongelap Atoll Local Government

July through December 31 2012

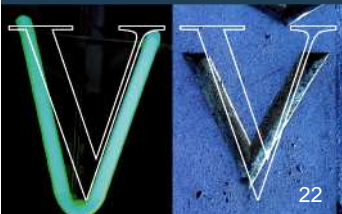
9/20: Communicated with Faride Kraft of the Department of Interior (OIA), Technical Assistance office to discuss a pending RALGov Technical Assistance applications submittal.

10/10: Communicated with Faride Kraft of the Department of Interior (OIA), Technical Assistance office to ensure that the office received the Rongelap Technical Assistance application and to discuss OIA timeline for reviewing next round of TA grants.



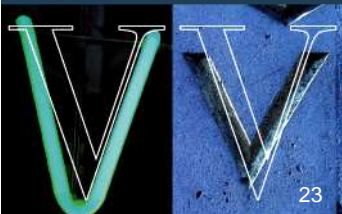
Reporting Issues – Propaganda

- Also known as “Informational Materials”
- Requirements:
 - Informational materials for or in the interests of a foreign principal;
 - To two or more people or for circulation among two or more people;
 - “Conspicuous statement that the materials are distributed by the agent on behalf of the foreign principal”; and
 - Filing with FARA Unit with 48 hours of distribution.



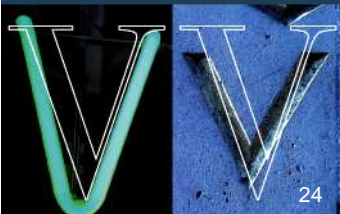
FARA Oversight

- Audits also used as compliance outreach forums.
- Ignore FARA obligations at your peril.
 - June 2010 the DOJ arrested 12 Russian spies under FARA for failing to register as foreign agents.
 - July 2010 the DOJ obtained a guilty plea from a former U.S. congressman for failing to register as a foreign agent of an Islamic charity and for obstructing justice.
 - July 2011 the DOJ charged two individuals with failing to disclose their affiliation with the Pakistani government in connection with efforts to influence the U.S. government's position on Kashmir.



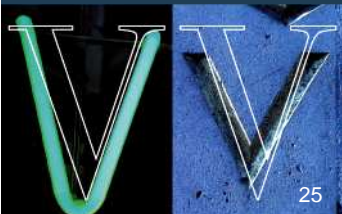
Additional Legal Areas Implicated by Cross-Border Lobbying Activities

- Representation of foreign principals does not take place in a vacuum.
- Cross-border political activities implicate other U.S. laws
 - Office of Foreign Assets Control
 - Anti-money laundering laws
 - Foreign Corrupt Practices Act



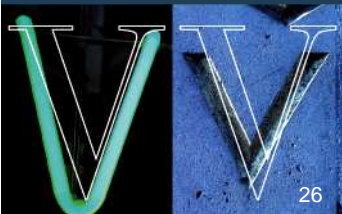
OFAC: What & Where

- *Who?*
 - Office of Foreign Assets Control (“OFAC”)
- *What?*
 - “Economic Warriors” who enforce economic sanctions programs against countries or foreign groups or persons which or who “pose a threat to the National Security of the United States”
- *Scope?*
 - All U.S. persons and entities, wherever located
 - Anyone in the U.S.
 - Property in the U.S. or under U.S. control if property involves anyone on the “Specially Designated Nationals List”



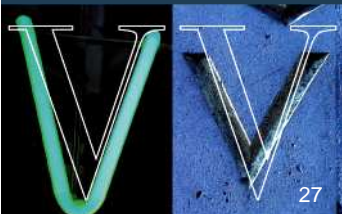
OFAC: Programs

- Multiple Sanctions Programs
 - 14 Federal Statutes
 - Each Program Unique
- Five Categories
 - Country Programs (16)
 - Anti-Terrorism Sanctions (3)
 - Counter Narcotics Trafficking (2)
 - Non-proliferation (2)
 - Diamond Trading Sanctions
- SDN List
 - List of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries, as well as persons designated under programs that are not country-specific
- Significant Civil and Criminal Penalties



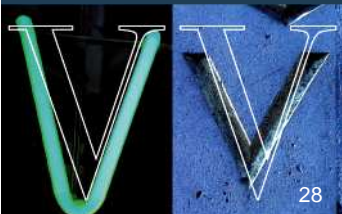
OFAC: Private Sector Responsibilities

- Private Sector as Government Agent
- SDN List
 - “Specially Designated Nationals List”
 - Frequent Amendments (Over 150 in 2008)(25 through 3/15/11)
- SDN List only a start
- Civil and Criminal Fines, Jail Terms
- Publicity and related crimes



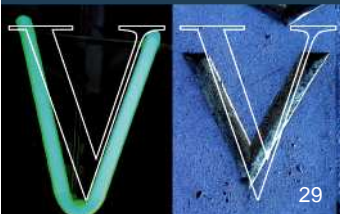
OFAC Best Practices

- Develop Compliance Program
 - Written policies
 - Designated Compliance Officer
- Pre-Transaction Screening
 - Identify every supplier, counterparty, customer, *etc.*
 - Design and implement pre-transaction automated screening procedures
 - Routine batch processing for existing accounts
 - Procedures to govern checking “hit” resolution, compliance structure, governance issues through senior management
- Monitoring
 - Internal Audits to check screening procedures, governance procedures
 - Greater Board Attention
 - Swift, Accurate Reporting to OFAC
 - Lack of Electronic Systems at Company’s Peril



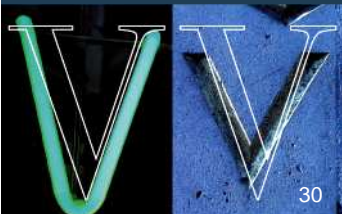
OFAC Best Practices (cont.)

- Don't forget about anti-money laundering risks
- Bank Secrecy Act and Patriot Act
 - Intended to monitor movement of currency in/out of US through currency transaction reporting
 - Later amendments increased compliance requirements and strengthened sanctions for money laundering
- Incorporate AML concepts into OFAC compliance policies and procedures to monitor for
 - Unusual payment methods
 - Unwillingness to provide complete contact or financial information
 - Attempt to maintain unusual degree of secrecy
 - Unusual purchases or sales



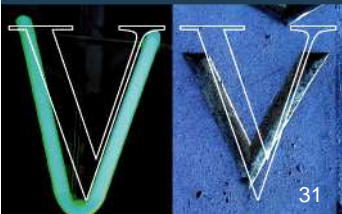
Anticorruption

- The FCPA was enacted by Congress in 1977 to halt bribery of foreign government officials
 - (1) Criminalizes offering anything of value to obtain or retain business from a foreign government
 - (2) Requires public companies to maintain accurate books and records
- Development of Multilateral Agreements
 - Organization for International Cooperation and Development (OECD)
 - Organization of American States
 - United Nations
- Home and Host Country FCPA-type Requirements



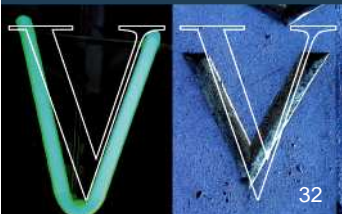
Anticorruption: Prohibitions

- FCPA prohibits the making of:
 - (1) Any payment, offer or promise to pay, or gift of anything of value
 - (2) With corrupt intent
 - (3) To a foreign official, political party, or candidate for public office
 - (4) For the purpose of
 - Obtaining or retaining business, or
 - Securing an improper advantage



Anticorruption: Coverage

- The FCPA applies to all U.S. Citizens, wherever located, and all persons in the U.S.
 - Includes real persons and corporations
 - Includes subsidiaries, unless no U.S. control
- Companies subject to FCPA jurisdiction are held responsible for actions of their:
 - Employees, agents, sales representatives, independent distributors, *etc.*
 - Service providers, and
 - Joint venture partners when acting on the company's behalf



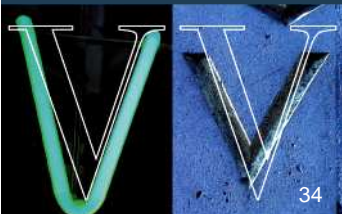
Anticorruption: Key Concepts

- Payment of “Anything of Value,” which includes both monetary payments and other financial benefits
 - Travel or lavish dinners
 - Golf, gambling or free tickets to events
 - Charitable contributions
- “Foreign Official” includes any officer or employee of a foreign government at **any** level
- “Retaining or obtaining business” is interpreted very broadly, and includes avoidance of taxes, customs clearance, or accelerated reimbursements by a government
- Referral Fees
 - May violate FCPA if channeled back to government



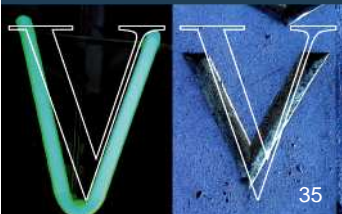
Anticorruption: Penalties

- Criminal Penalties:
 - Up to \$2 million per violation for corporations or twice the pecuniary gain, whichever is higher
 - 5 years imprisonment and a fine of up to \$100,000 per violation or twice the pecuniary gain, whichever is higher
- Civil Penalties:
 - Disgorgement, and Fine of \$10,000 per violation (additional fines from SEC for public corporations)



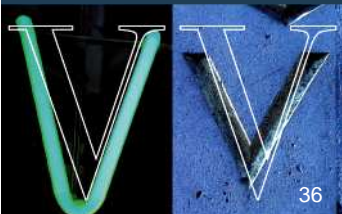
Anticorruption: Best Practices

- Global Implementation
 - Compliance Programs must apply not only to the entity and its employees, but also to agents, consultants, distributors, joint venture partners, or other business affiliates, in all countries in which it is doing business
- Frequent Training and Oversight
 - Educate managers and employees about the FCPA
 - Conduct annual training
- Mandatory Due Diligence
 - Assess risk of doing business in each country
 - Check applicable anti-bribery conventions and local national law
 - Consult with U.S. embassy / Third-party risk consultants
 - Match degree of due diligence to risk
- Accurate and contemporaneous accounting records



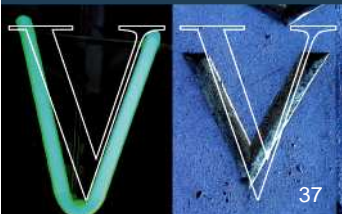
Practical Implications of FARA, OFAC, and Cross-Border Lobbying Issues

- FARA:
 - Lobbying and Reporting
 - Lobbying and Campaign Contributions
 - Offensive Use by the Private Sector
- OFAC: Lobbying for the Wrong Persons
- FCPA: Charitable Contributions at Home and Abroad / Referral Fees
- Anti-Money Laundering: Transparency and reporting



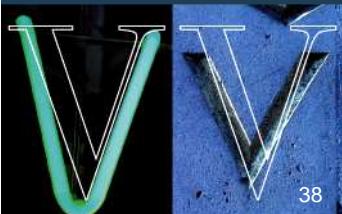
FARA, OFAC and Compliance Risk, or, Ensuring the Risk You Take is the Risk You Want to Take (1)

- Establish and Test Internal Controls
 - Controls commensurate with risk
- Assess Country Risk
 - Status of U.S. relations
 - Volatility of Issues
- Identify and Vet Counterparties
 - Who has represented entity in U.S. before?
 - OFAC List
 - Embassy/Chamber of Commerce Recommendations
 - Private due diligence



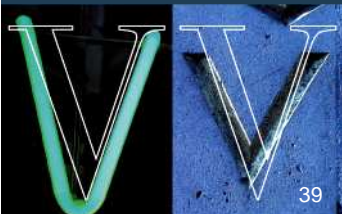
FARA, OFAC and Compliance Risk, or Ensuring the Risk You Take is the Risk You Want to Take (2)

- Assess volatility of transaction or project
 - Separate assessment from country risk
 - Identify source of funds
- Keep good records of
 - actions on principal's behalf
 - money received and payments made
- Know and adhere to licensing and reporting requirements in home and host countries



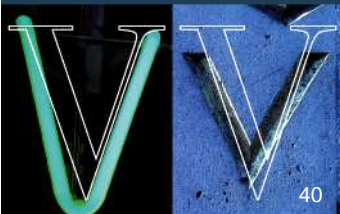
Cross-Border Political Activity Risk – The Broader Picture (1)

- Mid-East / Africa Scramble
 - Syria
 - Representing interests groups that may (or may not) be associated with a government
 - Libya
 - Requests to Represent Libyan Groups
 - Egypt
 - New power players wanting representation
 - Africa
 - Representation of governments / state owned entities on energy / mining / security issues
- Charitable contributions
 - FCPA / OFAC / AML



Cross-Border Political Activity Risk – The Broader Picture (2)

- U.S. Subsidiaries of Foreign Companies
 - FARA and LDA
 - Registration and Reporting
- Foreign Branches of U.S. Companies
 - OFAC
 - Money laundering
 - U.S. reciprocal work



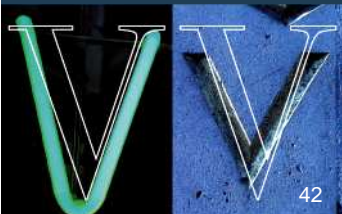
Putting it all together: Examples of Intersection of Cross Border Laws (1a)

- Mexican subsidiary of U.S. company hires a local consultant to lobby Mexican government regarding anti-counterfeiting issues.
 - OFAC: Foreign subsidiary should run consultant against SDN list
 - FCPA: Foreign subsidiary should conduct due diligence on consultant and include FCPA compliance requirements in consultant contract
 - FCPA/AML: US parent should have FCPA policies and procedures and audit mechanisms in place to monitor foreign subsidiary
 - US parent may be liable for subsidiary under FCPA



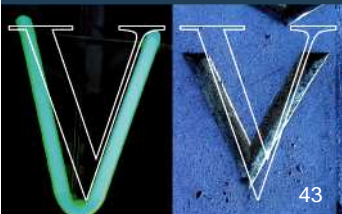
Putting it all together: Examples of Intersection of Cross Border Laws (1b)

- Consultant makes progress with Mexican government, but learns that US law/policy may impact scope of work. Mexican subsidiary directs consultant to hire a U.S. lobbyist to contact members on the Hill regarding U.S. anti-counterfeiting legislation.
 - Need for U.S. lobbyist to register under FARA? LDA Exemption?
 - Caution on Federal Election Campaign Act (“FECA”)



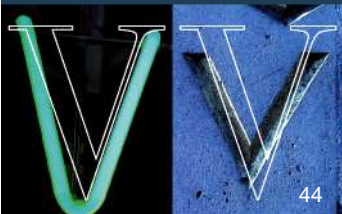
Putting it all together: Examples of Intersection of Cross Border Laws (2)

- U.S. law firm approached by former partner who has opened his own consulting office in Indonesia. The former partner states that the Government of Indonesia is looking to hire a lobbyist in Washington D.C. The former partner requests that he be paid a referral fee of 10% of monthly billings for bringing in the work.
 - Payment of referral fee appropriate?



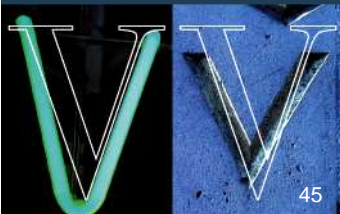
Putting it all together: Examples of Intersection of Cross Border Laws (3)

- U.S. company hires local consultant to lobby UAE government officials regarding oil leases in UAE. To gain access to foreign official, consultant donates to foreign charity managed by official's sister.
 - FCPA: Sufficient nexus between effort to obtain oil lease and payments to charity?
 - OFAC/AML: Charity receives funding from Government of Iran and provides services to persons in Syria.



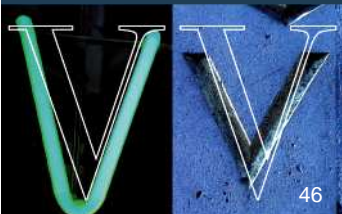
Putting it all together: Examples of Intersection of Cross Border Laws (4a)

- U.S. government requests that a U.S. lawyer meet with influential CEO of Algerian company to gather information on political unrest in Libya. The CEO provides information and in return requests that the U.S. lawyer contact U.S. officials to discuss industry tax breaks that would benefit the U.S. subsidiary of the Algerian company. In addition, to maintain positive relationship with CEO, the lawyer facilitates the payments of bribes by the U.S. subsidiary in a third country.
 - FARA/LDA: Is the lawyer an agent of the U.S. government or the foreign company? LDA exemption available?
 - FCPA/OFAC: Violation of the FCPA?



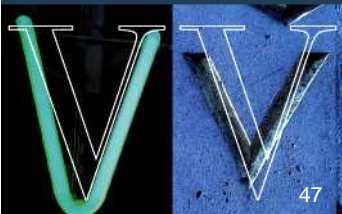
Putting it all together: Examples of Intersection of Cross Border Laws (5a)

- The China Medical Trade Development Association approaches a U.S. public relations firm to promote medical trade opportunities in China. The Association receives 15% of its funding from the Chinese government. The U.S. public relations firm launches print, TV, and radio ads and reaches out to industry.
 - FARA/LDA: Must the U.S. public relations firm register? Commercial Exception? LDA Exception? What if no intent to influence U.S. policy? Legend all public communications?



Putting it all together: Examples of Intersection of Cross Border Laws (5b)

- A U.S. medical device company responds and tries to build brand reputation by donating samples to Chinese hospitals (which are state-run). One of the local hospitals is impressed with the samples and requests additional samples for a clinic it runs in Darfur, Sudan.
 - FCPA: Are U.S. medical company's samples payments to government officials to obtain business?
 - OFAC: Does use of U.S. medical samples by clinic in Sudan violate OFAC embargo?



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