



KPMG SMART PRACTICE

Controlled technologies and third parties: mitigating the risk

In the sanctions context, third-party interactions are among the most significant compliance challenges. As a result, most sanctions programs focus heavily on procedures that enable early identification of high-risk third parties. Although not discussed as often, the same risks are present for companies handling controlled technology. Many sophisticated, high-tech companies seek the brightest minds in their field when developing cutting-edge products. This includes establishing relationships with outside organizations that may have a particular expertise or provide a unique service. Further, in this highly connected world, geography is generally not considered a limitation. Except it is – as many companies in the telecommunications, aerospace and defense, and life sciences industries routinely interact with export controlled technology. These industries (among others) are faced with the challenge of supporting business requirements necessitating the involvement of third parties while developing strong programmatic controls that mitigate the risk of unauthorized exports. For companies with existing third-party relationships, or those considering it, there are a few, common compliance

activities that can help drive export compliance.

1. Third party onboarding

Pressure is eased for both the export compliance team and the business when third parties requiring a license are identified before the collaboration begins. The inverse is also true – when the export compliance team learns that controlled technology is being or will be imminently provided to a licensable party, but a license is not in place, resentment quickly develops if the collaboration is stalled. Embedding the export compliance team into the contract review process can help to prevent this scenario.

Where formal, automated processes already exist, this may mean simply making the export compliance team an additional reviewer before contract execution. Where only informal review processes are in place (e.g., email reviews and negotiations), the export compliance team must work with the relevant parties to ensure they are included in the discussion. In either case, the export compliance team may need to work with the stakeholders to ensure all parties supporting the collaboration are identified with clearly delineated roles.

The end result should enable the export compliance team to assess the proposed relationship, determine if a license is required, and manage expectations with the business before work begins.

2. Information security controls

Equally as important as identifying the third parties is understanding the mediums used to exchange information. Defining the platforms or applications through which technology will be exchanged enables companies to build effective walls around the transmission of controlled technology. This means that it is easier to monitor license management, conduct auditing and access removal once the project ends. It may be necessary to work closely with the business and the IT functions to assess how technology is currently exchanged and existing security controls. Stakeholders can then assess the level of controls required to enable the business to share information while supporting compliance goals though it may be necessary to set up interim procedures so that the business and collaborators can exchange controlled technology within the parameters of the applicable export control regulations.

3. Third party awareness

Third party awareness of responsibilities in receiving and handling export controlled technology is imperative. Careful thought should be given about the specific risks associated with each collaboration. A useful tool is an Export Controls Notice & Acknowledgement addendum that can be included with the contract. It should carefully define the applicable regulations, explain the technology's controls, responsibilities and consequences for failing to properly secure it. This addendum may need to be developed in conjunction with the organization's general counsel, with input from the business around properly messaging it to the third-party. For third-parties that are less experienced with export controls, a short awareness training can be issued to provide context.

Third-party collaborations are an integral part of many businesses. As such, the export compliance team should assess the risk, determine if new controls are required, and determine how to integrate them into the business. ■

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