

Partnering with Terrorists? Are You Sure?

The possibility of partnering with a suspected terrorist is not worth the risk to your brand.

By Lisa J. Sotto and Patrick J. Maslyn

A breaking news report announces that a suspected terrorist organization has been doing business with a prominent American company. The FBI and local police have raided the organization's place of business, seized documents and frozen assets. Handcuffed suspects are photographed as they are stuffed into police cars—this all while your company's name and logo are featured prominently. It would be a nightmare scenario for any franchise system.

Since Sept. 11, 2001, government attention and public sensitivity to the threat posed by terrorism has led to increased scrutiny of legitimate businesses that unwittingly do business with terrorists or suspected terrorists. Various legal requirements that impose due diligence and licensing requirements on U.S. businesses are receiving new attention. But these legal requirements set only a minimum standard of what a company must do to avoid legal liability and reputational risk in the United States.

To avoid the risk—to the extent possible—of seeing your company's logo splattered all over the nightly news, your company must go beyond what is legally required to try to ensure that your business partners are not connected to terrorist enterprises. Although no due diligence program is bullet-proof, there are a number of resources maintained by U.S. and foreign governments and multinational agencies that a franchisor should consult in vetting potential franchisees, vendors or other business partners to help identify risky transactions.

The following lists should be consulted to avoid doing business with persons or entities that are under political scrutiny, in the United States or elsewhere.

U.S. Government Lists

The U.S. Office of Foreign Assets Control administers a series of laws that impose economic sanctions against hostile targets to further U.S. foreign policy and national security objectives. OFAC has adminis-

trative authority under the Trading with the Enemy Act, the International Emergency Economic Powers Act, and the Antiterrorism and Effective Death Penalty Act, among others. Under these statutes OFAC maintains a Specially Designated Nationals & Blocked Persons List, which contains the names of those persons posing a threat to the interests and security of the U.S. If an institution has accounts or does business with any individual or entity on the list, it must block the accounts immediately and stop any business involvement.

OFAC also maintains a list of foreign governmental entities that are subject to U.S. economic sanctions. The OFAC Sanctioned Countries List identifies countries that have been sanctioned by the U.S. through trade embargoes, blocked asset controls, and other commercial and financial restrictions.

The U. S. Department of State Trade Control Debarred Parties List identifies various persons and entities that are barred by the agency from trade transactions that may be detrimental to U.S. global security interests.

The U.S. Bureau of Industry & Security maintains three lists of entities that are subject to export restrictions. The "Unverified Entities" list identifies the names and countries of foreign persons who in the past were parties to a transaction with respect to which BIS could not conduct a pre-license check or a post-shipment verification for reasons outside of the U.S. government's control. Any transaction to which a listed person is a party will be deemed by BIS to raise a "red flag" with respect to such transaction. The "Denied Entities" list identifies foreign end users that have been determined to present an unacceptable risk of diversion to developing weapons of mass destruction or the missiles used to deliver those weapons. This list is meant to assist exporters in determining whether an entity poses proliferation concerns, but it does not relieve exporters of the responsibility to determine the nature and activities of their potential customers

using other BIS guidance. The “Denied Persons” list identifies those persons to whom export privileges are denied by written order of the Department of Commerce.

The FBI maintains three lists of individuals wanted by U.S. law enforcement. The “Most Wanted Terrorists” list identifies alleged terrorists that have been indicted by sitting federal grand juries in various jurisdictions in the United States for the crimes reflected on their wanted posters. Evidence was gathered and presented to the grand juries, which led to their being charged. The indictments currently listed on their posters allow them to be arrested and brought to justice. The “Seeking Information” list identifies individuals for

whom the U.S. government is seeking information regarding identity and whereabouts. The “Ten Most Wanted Fugitives” list identifies the FBI’s most wanted fugitives.

The U.S. Department of the Treasury, the Federal Reserve, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the State Department have issued guidelines for increased awareness of transactions by foreign officials in order to decrease the risk of potential money laundering. As part of the Patriot Act’s required special due diligence, certain institutions must conduct enhanced scrutiny of accounts maintained by “Politically Exposed Persons.”

Multinational Lists

The Organization for Economic Co-Operation and Development (OECD) maintains a list of countries and territories that have critical weaknesses in their anti-money laundering systems which serve as obstacles to international cooperation in this area. This list is called the OECD Non-Cooperative Countries and Territories List. The goal of this list is to reduce the vulnerability of the financial system to money laundering by ensuring that all financial centers adopt and implement measures for the prevention, detection and punishment of money laundering according to internationally-recognized standards.

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Helpful Links

OFAC SDN & Blocked Persons - <http://www.treas.gov/offices/eotffc/ofac/index.html>

OFAC Sanctioned Countries - <http://www.ustreas.gov/offices/eotffc/ofac/sanctions/>

OECD Non-Cooperative Countries and Territories - http://www1.oecd.org/fatf/NCCT_en.htm

Department of State Trade Control Debarred Parties - <http://www.pmdtc.org/debar059.htm>

BIS Unverified Entities - http://www.bxa.doc.gov/Enforcement/Unverifiedlist/unverified_parties.html

BIS Denied Entities - <http://www.bxa.doc.gov/Entities/Default.htm>

BIS Denied Persons - <http://www.bis.doc.gov/dpl/Default.shtm>

FBI Most Wanted Terrorists - <http://www.fbi.gov/mostwant//terrorists/fugitives.htm>

FBI Seeking Information - <http://www.fbi.gov/terrorinfo/terrorismisi.htm>

FBI Ten Most Wanted Fugitives - <http://www.fbi.gov/mostwant//topten/fugitives/fugitives.htm>

Interpol Most Wanted - <http://www.interpol.int/Public/Wanted/Search/Recent.asp>

Bank of England Sanctions - <http://www.bankofengland.co.uk/sanctions/main.htm>

OSFI Canadian Sanctions - http://www.osfi-bsif.gc.ca/eng/publications/advisories/index_supervisory.asp? - DTIbanks

U.N. Consolidated Sanctions - <http://www.un.org/docs/sc/committees/1267/tablelist.htm>

Politically Exposed Persons - <http://www.complinet.com/kyccheck/kyccheck/pep.html>

E.U. Terrorism List - <http://www.statewatch.org/news/2004/jun/01terrlists.htm>

World Bank Ineligible Firms-

<http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>

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The Interpol Most Wanted list identifies those persons wanted by national jurisdictions or the International Criminal Tribunals. Interpol's role is to assist national police forces in identifying or locating these persons with a view to their arrest and extradition.

The United Nations Consolidated Sanctions List identifies individuals and entities belonging to or associated with terrorist groups. The United Nations has requested that all member countries participate in blocking and freezing the assets of named terrorists.

Following the lead of the United Nations, the European Union has created a database of organizations and individuals linked to terrorist activities called the European Union Terrorism List.

The World Bank Ineligible Firms List identifies firms and individuals that are ineligible to be awarded a World Bank-financed contract for the periods indicated because they were found to have violated the fraud and corruption provisions of the World Bank Procurement Guidelines or the World Bank Consultants Guidelines.

Foreign Lists

The Bank of England Sanctions list identifies targets that have been listed by the United Nations, European Union and UK under legislation relating to Al-Qa'ida and Taliban, Burma/Myanmar, Federal Republic of Yugoslavia & Serbia, Iraq, Liberia, Zimbabwe and terrorism.

The Office of the Superintendent of Financial Institutions is a Canadian federal agency established under the Financial Institutions and Deposit Insurance System Amendment Act to supervise all federally-regulated financial institutions. These include all banks, all federally-incorporated or registered insurance, trust and loan companies, cooperative credit associations, and fraternal benefit societies. The OSFI sanctions list identifies individuals and entities subject to sanction by the Canadian government.

Go Beyond the Call

Because the public's positive perception of a franchisor's brand is the key asset to a franchise system, a franchisor has an obligation to protect the brand not only from legal liabilities but also from the

stain of being associated with terrorists or others that are reviled by the public. Consulting the lists noted above before entering into a franchise or supply agreement is a quick and easy way to provide some additional protection. Although there may not be a legal obligation for a franchisor to consult all of these lists, a franchisor would be wise to do so to avoid a potential public relations disaster arising from doing business with a suspected terrorist organization. ■

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