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**OTI MONTHLY RISK MANAGEMENT ALERT**

**January 2008**

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**CHINA (MOC) NVOCC REGISTRATION UPDATE.** Since June, 2007, registration of U.S. NVOCCs (with an FMC China bond rider) with the Ministry of Communications has proceeded somewhat smoothly. The MOC has made known additional requirements (from those in its written rules) on a case by case basis. **The most significant new requirement, not in MOC's rules, is that the definition of "Carrier" in the bill of lading terms and conditions must specifically and exclusively identify only the NVOCC being registered.** Definitions which include the vessel, the vessel owner, the charterer, etc., as most definitions do, will hold up the registration process. Our firm, through our Shanghai counsel, has confirmed that this is an MOC policy that was taken at the highest levels. The MOC will accept variations of the term so long as the definition they want applies in the China trades. Otherwise the registration process for U.S NVOCCs require: 1) FMC Certified/authenticated FMC license and bonds; 2) Authenticated corporate documents by the state of incorporation; 3) the above authenticated by the U.S. State Department; 4) the above authenticated by the Chinese Embassy; 5) The following are Chinese documents that must also be filed: Application; Agent agreement; Feasibility Study; Power of Attorney; and Introduction of Agent. Contacts: Henry Gonzalez [gonzalez@rorlaw.com](mailto:gonzalez@rorlaw.com); Carlos Rodriguez [rodriguez@rorlaw.com](mailto:rodriguez@rorlaw.com); Zheng Xie [zxie@rorlaw.com](mailto:zxie@rorlaw.com).

**FOREIGN BRIBERY: MULTI-NATIONAL LOGISTICS COMPANIES IN THE CROSS-FIRE**

The FBI has recently devoted five agents in DC solely to enforce the Foreign Corrupt Practices Act ("FCPA"). Recent focus has been on the energy sector with special focus on activities in Nigeria, Kazakhstan, Saudi Arabia, Russia, China and other countries importing drilling equipment on a significant scale. The FCPA Blog reports that Panalpina "is exiting the Nigeria logistics and freight forwarding market for all oil and gas services customers, at least a dozen of which have been contacted by the DOJ about Panalpina's customs

clearance practices in Nigeria and other countries." Panalpina has confirmed that it is producing documents and other information related to its business, its services to certain customers and its services in Nigeria, Kazakhstan and Saudi Arabia. Proper responses to FCPA environments include: Voluntary Disclosures, which must be carefully evaluated before undertaking; establishing of sufficiently credible Compliance Guidelines with appropriate accounting and operations red flag procedures that would be recognized by the Dept. of Justice as viable mitigation; and alternative cooperation procedures available under current Justice practices. While the establishment of a compliance program can reduce the chances of FCPA violations, no one can guarantee that a violation will never happen. **However, according to the U.S. Sentencing Guidelines, a proper compliance program can reduce potential penalties against a company by up to 95%.** Contact: Carlos Rodriguez [rodriguez@rorlaw.com](mailto:rodriguez@rorlaw.com).

**OFAC AND EAR PENALTIES UP.** As of October 16, 2007, the International Emergency Economic Power's Act was amended to increase civil penalties from \$50,000 to \$250,000, and criminal penalties from \$50,000 to \$1,000,000. Additionally, incarceration sanctions were raised from 10 years to 20 years. There is clearly an enhanced enforcement effort underway. In addition to other regions, there appears to be a special regulatory focus on unlicensed export shipments to Iran, or for shipments which are transhipped to Iran from intermediate points. **Of special interest are certain consignees in Dubai and other European points in Germany and the Netherlands which are now considered red flags for shipments that ultimately end up in Iran.** Forwarders and NVOCCs that become aware of this possibility only after the shipment is underway, in view of the new penalty framework, should consider bringing the shipment back to the U.S. Depending on the circumstances, an NVOCC or indirect air carrier (IAC) may be able to assert liens on that cargo to recoup its costs. Contact: Carlos Rodriguez [rodriguez@rorlaw.com](mailto:rodriguez@rorlaw.com)

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