



Export controls and the new Iranian sanctions

What every company needs to know

Export controls and the new Iranian sanctions are compulsory laws and regulations that have the potential to affect all industries and every part of the business supply chain. In order to avoid violations and their subsequent penalties, companies should be aware of these laws and regulations for all relevant jurisdictions and implement comprehensive and effective compliance policies.

What are export controls?

Export controls are regulations that support a country's national security policies, preventing the proliferation of weapons of mass destruction and related terrorist activities. These controls are restrictions imposed by governments on the movements and transfers of activities relating to certain listed goods, software and technology (including technical assistance such as repair, maintenance, installation, etc.) Companies must obtain approval from the relevant national authorities before exporting or trading in these controlled items. Controlled goods, software and technology are controlled either because of the items themselves, what the final end-use of the items will be, who will ultimately receive these items (the end-user), or because of the destination the items are being exported to (i.e. sanctions and embargoes.)

These regulations impact commercial goods, software and technology that may have a sensitive or potential defence-related application. For example, a standard chemical ingredient in paint that is often used to reflect

light can also be used to make a missile invisible to infrared detection. Similarly, analog-to-digital converters used in digital cameras, camcorders and scanners can be used in high-speed data processing for clandestine communications and surveillance equipment, and software used to protect data sent over the Internet could be diverted and used for sending encrypted messages between terrorist groups or attaching communications systems.

For international companies, there is now the increased complexity of potentially being required to remain compliant with multiple jurisdictions simultaneously such as national, European Union and United States controls. The hardening of attitudes by governments and the strengthening of enforcement and penalties for violations has also made it imperative that companies comply with all relevant laws and regulations in order to avoid business and supply chain disruptions, monetary fines, prison sentences and reputational damage.

Internal Compliance Programmes (ICPs)

Companies around the world are recognising the importance of a robust ICP. When establishing or revising an ICP, companies must embed and sustain a culture of excellence which takes into consideration all regulatory obligations.

A comprehensive ICP should include leading best practice foundations. A commitment from Senior Management creates an environment of compliance with all applicable laws and regulations because of a senior directive integrated into the Code of Conduct by which all employees must abide. There should be dedicated, responsible personnel in charge of compliance in each department as well as a designated Trade Compliance Officer (TCO) with oversight of the entire business' compliance. There should be general awareness training for all personnel, related to export controls and sanctions requirements, recurring as needed or determined by senior staff. Bespoke training should also be conducted for each department or functions as it relates to and affects their daily operations.

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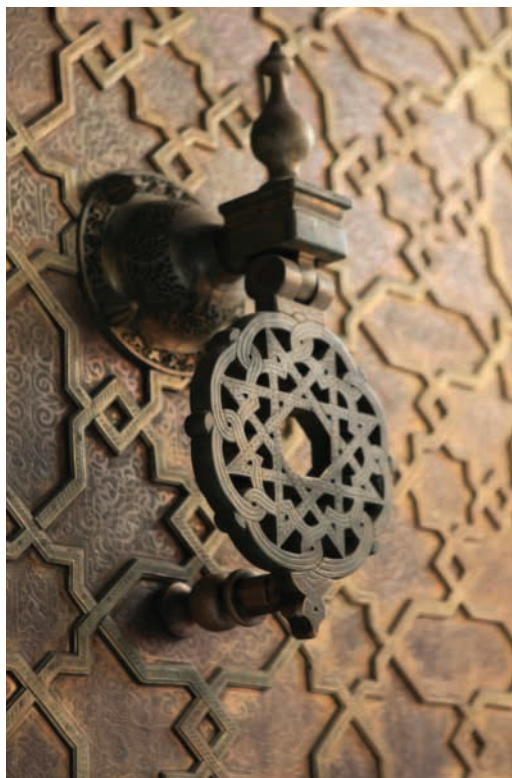
In order to ensure that all personnel are compliant with all laws and regulations, there should be documented and embedded policies and procedures in place. Alongside this best practice are recordkeeping procedures and systems that ensure compliance with all recordkeeping requirements and provide accurate reporting to government authorities. Internal and external reporting and disclosure mechanisms should be implemented, so that in the case of a violation, the proper personnel and government authorities are notified. Lastly, periodic audits should be performed in order to review the business' performance against the procedures and legal requirements. These audits allow for the reassessment of procedures and processes, if necessary, to better ensure compliance.

The new Iranian sanctions

The U.S., E.U., Canada, Australia and Japan have implemented new sanctions against Iran. The significantly tightened restrictions focus around trade and other dealings with Iran.

The U.S. sanctions were written by the U.S. authorities in a way that makes companies choose between doing business either with the U.S. or with Iran. The U.S. sanctions can prohibit companies that deal with the U.S. from having dealings with any affiliate/entity that has ties to the Iranian petroleum industry, investments in the development of Iran's petroleum industry, sales or provision of refined petroleum products to Iran, the provision of goods, services, technology, information or support that could directly and significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products and the export of U.S. goods, services or technology from the U.S. to Iran or by a "U.S. person" wherever located.

The E.U. sanctions contain lists of newly-sanctioned persons and entities, including financial institutions and shipping lines. Companies will be prohibited from selling, supplying, transferring, exporting, providing technical or financial assistance, directly or indirectly, in relation to certain designated goods and technologies to any Iranian person/entity or for use in Iran, including key equipment and technology in relation to the oil and gas industry (i.e. exploration and production of crude oil and natural gas, production of crude oil and natural gas, refining and liquefaction of natural gas.) Certain financial transactions, such as money transfers to and



from Iran, will require authorisation and others, such as the provision of insurance or re-insurance to certain persons and entities, will be prohibited. All goods being brought into, or leaving the E.U. from or to Iran will be subject to pre-arrival and pre-departure information submissions to customs authorities.

Both the U.S. and the E.U. sanctions are extra-territorial in nature and can have a severe impact on companies' global operations. Penalties for violations of the U.S. sanctions can include fines of up to \$1,000,000 and prison sentences of up to 20 years, or both; denial of export licences for exports to the violating company; a ban on all or some imports of the violating company; and prohibition on access to the US banking system. Penalties for violations of the E.U. sanctions will be determined by each Member State.

The impact to companies in the Middle East

These regulatory changes are driving companies in the U.S. and the E.U. to re-evaluate their relationships with business partners and their global business operations. The recent tightening of export regulations in the U.S.,

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E.U. and around the world have led to many U.S. and E.U. companies to demand that key business partners are able to demonstrate their ability to comply with these regulations.

Clearly the issues here are complex and go beyond mere compliance but companies in the Middle East that do choose to enhance their ICP and demonstrate compliance may find it easier to do business with E.U. and U.S. companies, while simultaneously, of course, mitigating the risks of non-compliance in the eyes of the E.U. and U.S.

Conclusion

An increasing focus by governments around the world on new export controls measures and the implementation of the new sanctions against Iran have placed more of an onus on companies to be ever more diligent and compliant with these trade laws and regulations. The new sanctions against Iran are designed to be all-encompassing, imposing ever-strengthening controls over the movement of certain products and technology, and have the potential to impact all areas of business. These regulations and sanctions are compulsory and increasingly enforced around the world. If not complied with, they can lead to major disruptions in the supply chain, significant monetary fines, custodial sentences and denial of export privileges.

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