



U.S. Export Controls

EXTRATERRITORIALITY-THE LONG ARM OF U.S. LAW

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Extraterritoriality- The Long Arm of U.S. Law

- Traditional Focus of U.S. Export Enforcement
 - U.S. Goods Exported and Re-exported
 - Foreign good containing more than de minimis U.S. components, materials or technology
 - U.S. Persons (including companies incorporated under laws of U.S.) at home or abroad
 - Non-U.S. persons when acting on behalf of U.S. persons
 - Non-U.S. persons while in the U.S.

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- What Is Triggering Change?
 - Nuclear program in Iran
 - Continuing suppression of freedom movement in Syria
 - Increased apprehension of international partners of U.S. towards activities of Iran and Sudan resulting in shared views with U.S. and emboldening of U.S. policies

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- The Extraterritorial Approach- Foreign Subsidiaries
 - Usually, independent legal entities abroad, owned by U.S. may act on their own regarding sanctioned countries and persons abroad
 - Restrictions limited to participation/facilitation by U.S. persons in transactions between foreign subsidiary and 3rd parties
 - Under new approach, prohibitions on doing business with/in Iran extends to activities of companies, regardless of where located, owned or controlled (50% or more) by U.S. persons or majority of seats on Board of Directors
 - Executive Order of October 9, 2012 pursuant to Iran Threat Reduction and Syria Human Rights Act. Codified on December 26, 2012 (US Treasury-Office of Foreign Assets Control Regulations; 15CFR§ 560.215)

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- Extraterritorial Approach- Sanctions on Non-U.S. Persons Engaging in Activity with Syria and Iran
 - Again, traditional U.S. approach would impose restrictions on U.S. persons dealing with nationals and governments of countries that are targets of U.S. Sanctions
 - Increasingly, U.S. export controls seek to impose restrictions on foreign persons engaged in activities that facilitate evasion of Iran/Syria sanction programs

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- Extraterritorial Approach- Sanctions on Non-U.S. Persons Engaging in Activity with Syria and Iran
 - New laws punish those who engage in specified activities with governments of Syria and Iran, as well as their nationals
 - Without having a nexus to USA
 - (In ironic twist, bears striking similarity to the “secondary boycott” practices of Arab League with regard to parties doing business with Israel
 - Secondary boycotts long opposed by U.S. as matter of international policy)

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Specific Activities:

- Extraterritorial Action- Iran's Energy and Petrochemical Sectors (Executive Order 13590 of November 20, 2011)
 - Sanctions persons, wherever located, providing goods or services above a dollar threshold, that contribute to maintenance or enhancement of Iran petroleum development or to maintenance or expansion of Iran's petro-chemical production
 - Include possible sanctions against persons that own, operate control or insure vessels used to transport crude oil from Iran
 - Added provision imposes sanctions of persons participating in joint ventures with Government of Iran relating to mining, production or transport of Uranium

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- Sanctions that may be imposed on persons found to so contribute to Iran’s petroleum or petro-chemical industries can be broad in scope.
- Possible sanctions include:
 - Denial of extension of credit, guarantee, or insurance by Export-Import Bank relating to exports to sanctioned person
 - Denial of any required licenses for export or re-export from the U.S. of goods/technologies to sanctioned persons
 - Prohibition on loans above specified dollar amount to sanctioned person from any U.S. financial institution
 - Prohibit transfers of credit or payment through or between financial institutions subject to U.S. jurisdiction, to extent involving interest of sanctioned person
 - Block all property and interests of property of sanctioned person within the U.S. or within possession or control of U.S. person

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- Extraterritorial Action-Sanctions Based Upon Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (CISADA)
 - Designates foreign financial institutions that are identified as:
 - Facilitating efforts of the Government of Iran to obtain weapons of mass destruction or WMD delivery systems
 - Providing support for foreign terrorist organizations as designated under U.S. law
 - Facilitating the activities of person designated as subject to financial sanctions under various United Nations/Security Council resolutions relating to Iran

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- Engaging in money laundering to carry out the above activities
- Facilitating efforts by Bank of Iran and other Iranian financial institutions to carry out the above activities
- Providing significant financial services for Iran's Islamic Revolutionary Guard Corps, its agents or affiliates, or persons whose assets are blocked in connection with Iran's proliferation of WMDs

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- **CISADA SANCTIONS:**
 - Possible restrictions on U.S. financial institution of a correspondent account or a payable-through account in U.S. with foreign financial institutions identified as engaging in prohibited activities
 - prohibiting or restricting provision of trade finance
 - restricting types of transactions that may be processed through correspondent or payable through account
 - monetary or volume limitations on transactions
 - prohibiting or restricting foreign exchange transactions
 - requiring preapproval by U.S. financial institution for all transactions

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- Additional Extraterritorial Actions (Extensions on Prior Acts):
 - Under National Defense Authorization Act of 2012, further tightening of controls on foreign financial institutions- prohibits the opening of new correspondent or payable-through accounts by third party foreign financial institutions determined to have knowingly conducted financial transactions with the Bank of Iran.
 - Iran Threat Reduction and Syria Human Rights Act of 2012 imposes sanctions on persons providing underwriting and insurance services to National Iranian Oil Company
 - Same Act imposes sanctions on persons providing financial messaging services to Iranian Central Bank and other Iranian financial institutions
 - New restrictions on dealing with persons/entities designated as sanctioned persons under most of the above statutes and regulations:
 - Prohibits U.S. persons from investing in or purchasing debt instruments of sanctioned persons

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- Additional Extraterritorial Actions
 - Restrictions on sanctioned persons
 - Denial of visas and exclusion from travel to non-US persons who are officers, principals or controlling interest shareholders in a sanctioned person
 - Imposition of any additional sanctions as provided above on officers of ISA sanctioned person

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- New Foreign Party Disclosure Requirements to U.S. Securities and Exchange Commission (“SEC”)
 - Requires disclosure of reporting company as to whether it, or any of its affiliates have knowingly engaged in sanctionable activities involving Iran or Iranian entities/nationals.
 - Applicable broadly to parties whose stock is listed on the US national securities exchanges, including American Depositary Receipts (“ADRs”) of non-US issuers (ADRs are negotiable securities of a non-US company that trade in the US financial markets).
 - Specific acts to be disclosed include engaging in activities relating to:
 - Iranian petroleum industry;
 - Iran’s development of WMDs or other military capabilities

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- Acts to be disclosed (activities relating to):
 - Facilitating WMDs, terrorism, money laundering and other violations outlined in CISADA
 - Transfer of weapons and technology used in human rights abuses
 - Transactions with Government of Iran or entities controlled by Government of Iran
- Increases risk that companies subject to SEC filing requirements will be subject to sanctions
- Filing companies, including foreign companies are put in position where they must actively review their activities and those of their affiliates and consider declining business activities that could subject them to exposure to U.S. sanctions

Get More Information

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