

Client Alert
by Francesca Schroeder

Penalties for Certain Export Control and Sanctions Violations Increased Significantly

On October 16, 2007, President Bush signed into law an amendment to the International Emergency Economic Powers Act (IEEPA), which increased civil penalties for violations of the export control and antiboycott rules in the Export Administration Regulations (EAR) administered by the Commerce Department's Bureau of Industry and Security (BIS) and those economic sanctions programs administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC) that rely on IEEPA for their underlying statutory authority (*e.g.*, the Burma, Iran and Sudan sanctions programs).

Civil penalties have risen from \$50,000 per violation to the greater of \$250,000 per violation or twice the amount of the violating transaction. IEEPA also was amended to clarify that civil penalties may be assessed against those who conspire to violate, or cause a violation of any license, order, regulation, or prohibition. Criminal penalties have risen to \$1,000,000 per violation, with the maximum term of imprisonment (up to 20 years per violation) remaining unchanged. A criminal penalty also is subject to alternate fines available under 18 U.S.C. § 3571, which provides for a fine of twice the gain or loss from the violating transaction.

The increased civil penalties apply to violations with respect to which enforcement action is pending or commenced on or after October 16, 2007 (*i.e.*, the date of enactment). For constitutional reasons, the enhanced criminal penalties apply only to enforcement actions that have been commenced as of the date of enactment. Importantly, however, BIS guidance issued on November 1, 2007 states that BIS generally will not apply enhanced penalties to violations for which a voluntary disclosure was filed prior to October 16, 2007.

Export control regulations apply on a strict liability basis. Knowledge is not a required element of an offense, and any prohibited act can be subject to an enforcement action.

This dramatic increase in civil and criminal penalties highlights the need to make export compliance a top priority. For more information, please contact Francesca Schroeder at schroeder@fr.com or 202-626-7718.

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