

Securing Sensitive Data: Contract Clauses for AI Integration

May 27, 2025

Artificial Intelligence (AI) is no longer confined to specialized platforms like ChatGPT or other large language models. Everyday business software—including common suites from Microsoft and Adobe—has begun integrating AI-driven features that may process, store, or learn from user input. This evolving landscape creates unique risk considerations regarding how confidential and sensitive data is handled.

Organizations must remain vigilant about the risk that confidential data could be inadvertently retained, analyzed, or shared outside intended boundaries. For example, if a user inadvertently inputs trade secrets into an AI-powered software tool, there is no absolute guarantee that the tool will not use, store, or train on that data, potentially making it accessible for other purposes. Such incidents raise legal and compliance concerns, especially when sensitive or proprietary information is involved.

In response to these concerns, many companies are adopting contract language that addresses the use of AI systems. These clauses aim to prevent the unintentional disclosure of private data and ensure that neither party uses the other's confidential information to develop or enhance any AI models. By including clear guardrails and usage parameters, parties can leverage the benefits of AI tools while maintaining strong confidentiality standards.

Although every contract should be tailored to the specific

circumstances of the parties involved, clauses that are appearing in modern contracts generally read somewhat along the following lines:

“AI System” refers to any Artificial Intelligence software or functionality, whether generative or otherwise, including but not limited to machine learning models, large language models, or embedded tools within third-party platforms. Each Party agrees that no Party shall disclose or provide Confidential Information to an AI System that can be accessed by individuals or entities other than the disclosing Party and the receiving Party, unless expressly authorized in writing. Confidential Information shall not be used to train, develop, fine-tune, or otherwise enhance any AI System, algorithm, or related dataset without prior written consent of the other Party. Furthermore, any AI System utilized must be configured or managed so it does not retain, learn from, or generate future outputs based on the disclosing Party’s Confidential Information unless expressly permitted. Each Party shall implement appropriate technical and organizational measures to ensure that any AI System used in the course of performance under this Agreement cannot inadvertently store, transmit, or share Confidential Information in contravention of this provision.

Such contract language underscores the importance of transparency and proactive protection of sensitive data in an AI-driven environment. As AI technologies become increasingly pervasive, it is prudent to adopt contractual safeguards that help all parties preserve the confidentiality and integrity of proprietary information.

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Katy Perry Has No Savior in Space: A Disastrous Gap in the Space Law Framework

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You probably saw it all over the news last week. Six brave women launched into space aboard Blue Origin's self-flying rocket, NS-31, becoming America's first all-female space crew in more than 60 years.

Katy Perry's rendition of "What a Wonderful World" echoed through the spacecraft. Gayle King reflected on society whilst floating in zero gravity. And Jeff Bezos arguably topped the gift-giving threshold by giving Lauren Sanchez the gift of a trip to space.

But amidst all the glitz and the glam, one extremely important piece of news was missed.

On Friday, 18 April, Transportation Secretary Sean Duffy stated on X:

"The U.S. commercial space industry is an inspiring project

which showcases American ingenuity and exceptionalism. But the last FAA guidelines under the Commercial Space Astronaut Wings Program were clear: Crewmembers who travel into space must have “demonstrated activities during flight that were essential to public safety, or contributed to human space flight safety.”

The crew who flew to space this week on an automated flight by Blue Origin were brave and glam, but you cannot identify as an astronaut.

They do not meet the FAA astronaut criteria. (emphasis added)

Yet it is precisely that missing piece of news – the bureaucratic line between “astronaut” and “passenger” – that should make every space-tourism enthusiast sit bolt upright.

Under the Federal Aviation Administration’s (“FAA”) now retired Commercial Space Astronaut Wings, a would-be spacefarer had to do more than cross the 50-mile line. They had to perform “*activities during flight that were essential to public safety, or contributed to human space-flight safety*” before the coveted wings—and the formal title—could be pinned to their lapel. Those criteria were tightened in July 2021 and, by the end of 2023, the entire wings program was shuttered; today the agency merely lists qualifying individuals on a website, preserving the same “*essential activity*” test in spirit if not in jewelry.

Blue Origin’s New Shepard capsule is almost entirely automated. The crew floated, they filmed, they fell back to Earth—safe, sound, and, in the FAA’s eyes, still civilians.

That hair-split has consequences far beyond bragging rights. At the international level, the 1967 Outer Space Treaty anoints “*astronauts*” as the “*envoys of mankind*,” and its 1968 Rescue Agreement obliges every State Party to “*render all possible assistance*” to any such envoy who lands in distress on its territory—or even splashes down on the high

seas. Those treaty drafters were thinking of government test pilots in pressure suits, not pop icons in custom Dior flight suits. Because the treaties never bothered to define the word they canonized, national regulators now hold the definitional gavel. If Washington declines to call Perry and company “*astronauts*,” Peru, Poland, or Palau are under no treaty duty to fish them out of the jungle or the drink.

Imagine, then, that NS-31 had suffered a guidance glitch and come down in Venezuelan waters. Under the Rescue Agreement, Caracas must “*immediately take all possible steps*” to retrieve and repatriate the astronauts. But if the six women are legally mere “*spaceflight participants*,” Venezuela would face no such black-letter obligation; any rescue would be an act of goodwill, diplomacy, or maybe TikTok optics—but not treaty law. Blue Origin’s insurance actuaries can quantify many risks, yet they cannot force a coastal state to launch a search-and-rescue flotilla for people who, officially, are just very high-altitude tourists.

The gap widens when one looks homeward. Title 51 of the U.S. Code requires commercial operators to obtain the informed consent of every “*space flight participant*” and to certify that the vehicle meets minimum safety standards, but it imposes no federal duty on anyone—NASA, the Coast Guard, or the Air Force—to mount a transoceanic recovery if the capsule drifts outside American jurisdiction. The statutory silence is deafening.

Why does it matter? Because suborbital jaunts are no longer curiosity acts. Blue Origin alone has flown fifty-eight private individuals above the Kármán Line since 2021, and Virgin Galactic is booking seats monthly. The odds of an off-nominal splashdown, however small, compound with every launch. If a mishap strands a celebrity crew on foreign soil, the ensuing diplomatic scramble will expose the ambiguity in real time—and, cynically, in real headlines.

There are fixes. Congress could graft a mandatory-assistance clause onto 51 U.S.C. § 50905, promising U.S. rescue assets to any licensed commercial flight and demanding reciprocal treatment abroad. The Artemis Accords could adopt a side letter clarifying that “*astronaut*” status attaches to any human who crosses into space under an Article VI “*authorization and continuing supervision.*” Or the United States could push a protocol through the U.N. Committee on the Peaceful Uses of Outer Space to extend Rescue-Agreement duties to “*spaceflight participants,*” closing the loophole before it swallows a casualty.

Until then, the legal safety net stops where the FAA’s definition stops. Katy Perry may have sung Louis Armstrong on the edge of the void, but if the capsule had tumbled into a geopolitical gray zone, the world’s binding duty to save the NS-31 crew would have been—like weightlessness itself—alarmingly thin air.

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Trumpian Duties, Global Disputes: Arbitration Insights for Today’s Tariff Landscape

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Transactional parties facing the newly announced tariffs by President Trump on imports from Canada, Mexico, and China must navigate a web of legal, commercial, and logistical issues. The tariffs, set to go into effect on February 4, 2025, impose an *additional 25% ad valorem duty* on goods from Canada and Mexico and *10%* on products from China. They apply to *all merchandise* imported for consumption in the United States except that certain Canadian energy resources face a lower *10% tariff*. These actions come amid broad hints of further escalation against multiple countries and sectors although on February 3, 2025 it was announced that the Mexico and Canada related tariffs would be paused for one month.

General counsels and corporate executives often assume that their existing free trade agreements or established supply contracts will protect them, only to discover unexpected liabilities. In parallel, the immediate shift in customs policies brings to mind recent arbitral decisions that highlight how a party's contract, its designated Incoterms, and underlying commercial assumptions can determine who ultimately bears the cost or faces liability for failing to deliver goods at the specified price.

Products Covered and Source Market. The White House has indicated that *all articles*, whether industrial, agricultural, or manufactured, coming from Canada and Mexico will face a 25% duty. Canada's "energy or energy resources," including natural gas, oil, coal, uranium, and defined critical minerals, will incur a 10% tariff. Imports from China are subjected to a 10% duty on *all articles* that originate in China and are classified under ISO Country Code CN. This broad net spares only limited personal, charitable, and certain travel-related shipments. E-commerce packages are also affected, as Section 321 customs de minimis entry is suspended, subjecting low-value shipments to the same duties.

Miller Bros v. Recom Insights. The logic and reasoning from **Miller Bros v. Recom** (*Miller Bros, a Division of Wampole-Miller, Inc. v. Recom Corp., Including its Parents, Successors, Affiliates and Assigns, AAA Case No. 01-14-0002-0048*) underscore how tariff risk can abruptly become the centerpiece of a commercial conflict. In that case, Miller Bros insisted on a supply agreement with a fixed price “inclusive of any and all applicable taxes, duties, current or future applicable tariff fees.” When the U.S. Department of Commerce announced new anti-dumping and countervailing duties on Taiwanese solar modules, the seller, Recom, tried to shift the burden of these duties to Miller Bros. That attempt triggered a contractual breach finding by the arbitral panel.

The award recounts that “Recom’s actions constituted a default and breach under the Supply Agreement, and that Recom’s default forced Miller Bros. to procure the solar panels from an alternate source, incurring substantial damages, including the loss of a deposit, higher prices for the new panels, higher costs for installation, and a break-up fee.” This chain of events highlights the primacy of contractual language. Had the Miller Bros-Recom contract been less explicit in designating who bears tariff liability, the outcome might have been different. The tribunal observed that new tariffs on Taiwanese solar products “were entirely foreseeable” and that contractual references to *force majeure* did not excuse non-performance where the tariff risk had been well-known in the industry.

Key Point: Foreseeability. The Miller Bros v. Recom decision emphasized that, when particular duties or trade remedy actions are foreseen or widely publicized, a party cannot readily rely on an unforeseen contingency argument. The award stated: “The evidence adduced with respect to these issues clearly established that Recom was aware of the likely imposition of new tariffs on Taiwanese solar products. The Supply Agreement’s force majeure clause only applies to events

that are 'unforeseeable.' Recom's knowledge of the impending tariffs therefore renders the Supply Agreement's force majeure clause inapplicable."

World Steel Trade v. Rikko Steel Logic. Another instructive arbitral precedent arises from **World Steel Trade v. Rikko Steel** (*World Steel Trade SA v. SC Rikko Steel Srl, ICC Case No. 24921/GR*) The parties concluded a contract requiring steel rebars to be delivered under the CFR Incoterm (2010). When the buyer faced an unexpected 25% import duty in the European Union, it refused to pay the contract price. The tribunal clarified that under CFR, the seller's responsibility "ceases upon delivery of the goods to the vessel." As the arbitrator put it: "The Seller's responsibility in connection with the goods shall cease upon delivery of the goods to the vessel. After delivery the risk of loss or damage to the goods...are transferred from the Seller to the Buyer." That meant the buyer, not the seller, was responsible for taxes and import duties once the goods were onboard.

The tribunal also distinguished between the payment documentation required for performance and additional proofs that the buyer later demanded. Despite the buyer's claims, the arbitrator found that no extra conditions were placed upon the seller under the contract. One excerpt reads: "I do not accept Rikko Steel's argument that WST unduly waited until it resold the Goods to a third party...the Parties were still negotiating for the buyer to take the Goods, and it is only on 18 June 2019 that Rikko Steel unequivocally stated that it could not purchase them." This underscores that if the buyer balks at paying newly imposed duties, it cannot simply suspend payment and demand new terms from the seller, absent a genuine contractual revision.

Incoterms and Commercial Drafting. Drafting or revising supply agreements in the wake of these new Trump tariffs requires clarity about whether the sales terms reflect DDP, CFR, CIF, or other allocations of risk and cost. Under DDP ("Delivered

Duty Paid”), the seller agrees to pay *all* duties, taxes, and charges to deliver the goods to the buyer’s location. If the contract designates something akin to CFR or FOB, the buyer usually must pay import duties. That difference, as shown in the steel dispute, can shift hundreds of thousands of dollars in unanticipated tariffs onto one party.

The new tariff environment could also spawn renegotiation. Some suppliers may insert *force majeure* clauses or disclaimers that if trade remedies or special duties arise, the buyer must shoulder the cost. Others might press for break-up or termination fees to dissuade abrupt cancellations. Yet arbitral decisions are prone to side with a party that negotiated a comprehensive “all-in” fixed price, as with Miller Bros, if the contract language states that any future duties are included in the original price.

Contentious Phase: Breaches, Damages, and Award Enforcement.

The worst-case scenario is a seller who withholds delivery until the buyer covers new tariffs, or a buyer who refuses to pay extra duties. In both Miller Bros v. Recom and World Steel Trade v. Rikko Steel, the tribunals addressed whether the parties’ obligations were discharged or ongoing. One illustration from Miller Bros is the passage: “The undersigned hereby awards in favor of Miller Bros. and against Recom...the sum of \$1,807,834.26 as and for actual damages suffered by Miller Bros. by reason of Recom’s breach of the Parties’ Supply Agreement.” That awarding of deposit recovery, plus additional installation and engineering costs, and the break-up fee underscores the magnitude of potential exposure when a party defaults.

Liability for Additional Fees or Delays. When transacting parties are not aligned on who bears newly imposed tariffs, shipping may stall. The goods could languish in port incurring storage charges, as happened in World Steel v. Rikko Steel. Delay costs, demurrage, and extra handling can mount quickly. The tribunal in that matter wrote: “There is evidence that WST

provided within a few days of request the documents requested by Rikko Steel... On receipt of those documents, Rikko Steel therefore had to pay the Price.” Even so, the goods remained in the port while the buyer refused to pay the new 25% duty on the invoice. Because the Incoterm was CFR, the buyer faced liability for those extended storage fees and the difference in resale price.

Practical Advice for Future Contracts. Contracting parties must heed the possibility of further U.S. tariff hikes, whether aimed at Canada, Mexico, China, or additional countries. A contract that designates the buyer as the importer of record and incorporates Incoterms such as CFR or FOB places the duty burden on the buyer. By contrast, a seller who cites DDP or who commits to an “all-in” sum that includes all present or future tariffs may be forced to absorb that cost. Industry participants who have not reexamined their provisions risk falling into disputes, incurring arbitral proceedings, or shouldering lost deposits if they do not adapt in time.

When dealing with “all articles” coverage, the very broad tariff scope ensures that even staple goods, from automotive parts to packaged consumer electronics, become subject to the additional duty. In some contracts, a *force majeure* clause might attempt to excuse performance due to sudden tariff changes, but the logic in the Miller Bros award reveals that a known or foreseeable risk is rarely deemed an exempt event. The tribunal there wrote: “The undisputed evidence presented at the hearing regarding the foreseeability of new anti-dumping and countervailing duty tariffs on Taiwanese solar panels rendered the force majeure clause inapplicable.” The parallel is self-evident in the present environment, where many have been bracing for new tariffs for months.

Strategies for Dispute Avoidance. Legal counsel and managers can mitigate risk by building in explicit tariff-sharing or price-adjustment clauses. Where a contract is silent, parties

should not assume that force majeure covers newly imposed tariffs. They must also remain mindful of the buyer's or seller's obligations to open letters of credit or to provide certain shipping documents, as any failure in those steps can trigger a separate breach claim. In ephemeral markets for steel, aluminum, electronics, or energy resources, one party might find a contract suddenly uneconomical but cannot freely walk away without incurring significant liability. Arbitrators are inclined to hold them to their bargained-for risks, especially if the new duties are widely anticipated or have been publicly threatened.

Conclusion. Recent U.S. tariff hikes on goods from Canada, Mexico, and China deliver a lesson repeated in both *Miller Bros v. Recom* and *World Steel v. Rikko Steel*: disputes explode whenever parties ignore the precise allocation of responsibility for new duties. Contract terms matter. Incoterms define who is the importer of record, while commercial clauses can either absorb new tariffs into a fixed price or push them onto the buyer. If a party tries to retroactively shift the burden, the risk is an arbitral finding of breach. As in *Miller Bros*, the "scope of 'all-in' pricing was unambiguous, and the foreseeability of the new tariffs ruled out reliance on force majeure."

When drafting or revisiting supply agreements, counsel and executives should adopt robust language specifying how special duties or retaliatory tariffs are handled. In a climate where duties can spike overnight, reliance on broad disclaimers is seldom effective. The ramifications are far-reaching, from lost deposits and condemnation at the port to an arbitral award imposing substantial damages. Parties that proceed on assumptions about stable duty rates may soon find themselves in precarious territory. The prudent approach is to anticipate tariffs as a contractual cost from the start and include detailed terms so that both parties understand their responsibilities if a new round of duties materializes.

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Overhaul of Space Export Controls Announced by US Commerce Department

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In October 2024 the the Commerce Department's Bureau of Industry and Security (BIS) proposed amendments to the Export Administration Regulations (EAR) aimed at updating and streamlining controls on spacecraft and related items. Simultaneously, the Department of State is proposing revisions to the International Traffic in Arms Regulations (ITAR) concerning U.S. Munitions List (USML) Categories IV and XV. These developments are poised to reshape the regulatory landscape for commercial space activities, defense contractors, and international collaborations.

At Wasel & Wasel, we understand the complexities these regulatory shifts introduce. Our global presence and expertise in international disputes and geopolitics position us to provide strategic guidance to entities navigating this new environment.

Understanding the Regulatory Announcements

The BIS's proposed rule, titled "Export Administration

Regulations: Revisions to Space-Related Export Controls, Including Addition of License Exception Commercial Space Activities (CSA),” introduces several critical changes:

1. **Alignment with ITAR Revisions:** The proposed EAR amendments aim to harmonize with the Department of State’s suggested changes to the ITAR. This alignment is crucial for companies that must comply with both sets of regulations, reducing the risk of inadvertent non-compliance.
2. **Introduction of License Exception CSA:** A significant addition is the new **License Exception for certain Commercial Space Activities (CSA)** under § 740.26. This exception is designed to facilitate exports, reexports, and transfers (in-country) of specific items for **official space agency programs and space tourism and research activities.**
3. **Revisions to ECCNs:** The proposed changes affect several Export Control Classification Numbers (ECCNs), particularly:
 - **ECCN 9A515:** Revisions include expanding control parameters to cover additional spacecraft and components, removing unnecessary language for clarity, and explicitly excluding certain items like planetary rovers and in-space habitats.
 - **Addition of ECCN 9C515:** A new ECCN controlling **materials, coatings, and treatments designed to reduce in-orbit signatures** (e.g., radar, optical, ultraviolet, and infrared) of spacecraft.
 - **Amendments to ECCNs 9D515 and 9E515:** These control software and technology related to the newly added items in ECCN 9A515, ensuring comprehensive regulatory coverage.

Practical Implications for Businesses

The proposed revisions carry several practical implications:

1. **Easier International Collaboration:** By streamlining and clarifying regulations, the changes aim to make it easier for U.S. companies to collaborate with international partners. For instance, the new License Exception CSA could reduce licensing burdens for companies participating in programs like NASA's Lunar Gateway.
2. **Regulatory Clarity and Compliance:** The alignment of EAR and ITAR controls reduces compliance complexities. Companies can more confidently navigate export controls without fearing regulatory overlap or conflict.
3. **Enhanced Competitiveness:** By updating control parameters and removing outdated restrictions, U.S. companies may find themselves on a more level playing field with international competitors.
4. **Impact on Licensing Requirements:** BIS estimates an increase of 90 license applications annually due to items moving from the USML to the CCL and a decrease of 100 applications because of the new License Exception CSA. Companies need to reassess their licensing strategies in light of these changes.

Detailed Analysis of Affected Items

To fully grasp the impact, it is essential to understand the specific items affected by the Final Rule, Interim Final Rule, and Proposed Rule.

Final Rule and Interim Final Rule Highlights

- **Remote Sensing and Space-Based Logistics:** Adjustments have been made to controls on items related to remote sensing and space logistics. This facilitates collaboration with allies like Australia, Canada, and the United Kingdom, expanding market opportunities.
- **Spacecraft Components:** Certain components previously under stringent controls may now have revised licensing requirements. This includes parts and technologies that

are no longer considered critical to national security under the updated guidelines.

Proposed Rule Specifics

1. ECCN 9A515 Revisions:

- **Expanded Control Parameters:** The control parameters now include spacecraft performing **remote proximity operations, life-sustaining functions, or debris removal**. Companies in these sectors must assess how these changes affect their products.
- **Exclusions Clarified:** Items such as **planetary rovers and in-space habitats** are explicitly excluded from ECCN 9A515. This clarification helps companies correctly classify their items and determine the appropriate licensing requirements.

2. Addition of ECCN 9C515:

- **Control of Signature Reduction Materials:** Materials, coatings, and treatments designed to reduce in-orbit signatures are now controlled under this new ECCN. Companies producing these materials need to adjust their compliance programs accordingly.

3. Amendments to ECCNs 9D515 and 9E515:

- **Software and Technology Controls:** The amendments ensure that software and technology associated with the new items are adequately controlled. This includes **Space Situational Awareness (SSA) software** used for modeling and simulation.

4. License Exception CSA Details:

- **Eligible Programs:** The exception applies to specific programs, including **NASA's Lunar Gateway, Mars Sample Return, Nancy Grace Roman Telescope, The Orion spacecraft, Commercial Low Earth Orbit Development program, and Habitable Worlds Observatory**.

- **Conditions for Space Tourism and Research:** The exception allows exports of manned spacecraft and related components for **suborbital flights** for **tourism or fundamental research**, with stringent conditions to prevent misuse.

Strategic Considerations for Businesses

Companies must take proactive steps to adapt to these regulatory changes:

1. **Review Product Classifications:** Re-examine your products to determine if their ECCN classifications have changed. Misclassification can lead to compliance violations and penalties.
2. **Update Compliance Programs:** Revise internal export control compliance programs to reflect the new rules. This includes training staff on the changes and updating procedures.
3. **Assess Licensing Needs:** Determine if the new License Exception CSA can be utilized for your activities. This may streamline processes and reduce the need for individual licenses.
4. **Monitor International Collaborations:** With the emphasis on facilitating collaboration with allies, explore opportunities in countries like Australia, Canada, and the United Kingdom, where regulatory hurdles may be reduced.
5. **Stay Informed on ITAR Changes:** Since the EAR revisions align with ITAR changes, ensure you are also up to date on the Department of State's proposed amendments to avoid gaps in compliance.

How Wasel & Wasel Can Assist

Navigating these changes requires expertise and strategic insight. Wasel & Wasel offers:

- Our team is well-versed in international export controls

and can provide detailed advice tailored to your specific circumstances.

- We assist in creating or updating compliance programs to ensure they meet the latest regulatory requirements.
- We conduct thorough assessments to identify potential compliance risks and develop strategies to mitigate them.
- In cases where regulatory changes lead to disputes, our seasoned experts can effectively represent your interests.
- With our experience advising governments on critical geopolitics matters, we can offer insights into how regulatory changes align with broader geopolitical trends.

Case Studies and Practical Examples

Consider a U.S. company involved in developing components for the Nancy Grace Roman Telescope. Under the new License Exception CSA, exports of certain components to international partners may no longer require individual licenses, provided the conditions are met. This reduces administrative burdens and accelerates project timelines.

Another example is a company specializing in materials that reduce spacecraft radar signatures. With the introduction of ECCN 9C515, these materials now have specific controls. The company must adjust its export strategies and ensure that any international sales comply with the new regulations.

Conclusion

The proposed revisions to the EAR and ITAR represent a significant shift in space export controls. While they offer opportunities for increased international collaboration and reduced regulatory burdens, they also require careful navigation to ensure compliance.

Wasel & Wasel is committed to guiding clients through this

evolving landscape. Our global expertise and dedication to excellence make us the ideal partner for businesses seeking to capitalize on these changes while safeguarding their operations.

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Flying Fish 1, Mid-East War, Northern Sea Route, and Lessons from the Arctic Sunrise Arbitration

May 27, 2025

The world of maritime trade is no stranger to change, but recent events have stirred the waters in unprecedented ways. The **Flying Fish 1**, a 4,890 TEU container ship, has made headlines as the largest vessel of its kind to traverse the Arctic waters, charting a course from Europe to China. This remarkable journey not only showcases the vessel's capabilities but also signals a significant shift in global shipping routes—a shift that could have profound implications for the industry.

The Arctic Passage: A New Frontier

Setting sail from St. Petersburg on September 3, the Flying

Fish 1 embarked on a voyage that many would have deemed improbable just a decade ago. By September 10, it entered the **Northern Sea Route (NSR)** near Novaya Zemlya. In a historic moment, it crossed paths with another Chinese container ship, marking the first-ever encounter between two large container vessels in the Arctic—just 850 nautical miles from the North Pole. Notably, there was **no sea ice in sight**, a testament to the dramatic changes in Arctic ice conditions over the past 20 years.

Maintaining a steady speed of **16 knots**, the Flying Fish 1 navigated the treacherous waters of the Laptev and East Siberian seas with remarkable ease, deftly avoiding the late-summer ice near Wrangel Island. By September 17, it had exited the Russian Arctic, passing through the Bering Strait near Alaska without the need for icebreaker assistance—only six days after entering Russian waters. When it reaches Shanghai, the journey from the Baltic Sea will total approximately **8,000 nautical miles**, slashing around **4,000 nautical miles** off the traditional Suez Canal route.

A Response to Middle East Instability

The timing of this voyage is no coincidence. The **instability in the Red Sea and broader Middle East** has made the traditional routes through the Suez Canal increasingly precarious. Heightened tensions and the threat of disruptions have forced many shipping companies to divert their vessels around South Africa's Cape of Good Hope, adding another **4,000 miles** to the usual journey to Asia. This detour not only extends transit times but also escalates fuel costs and environmental impact.

The Arctic route, on the other hand, presents a compelling alternative. It's not just shorter by 30% to 40%, but it also bypasses the politically volatile regions altogether. Furthermore, the absence of pirate attacks in these northern waters enhances the safety and reliability of shipments—a

crucial consideration for global trade.

The Northern Sea Route: Challenges and Opportunities

While the NSR offers significant advantages, it's not without its challenges. Currently, shipping services between Europe and Asia via the Arctic are confined to a **3-4 month summer window**. However, as Arctic ice continues to **recede earlier and return later**, this window is expected to widen. The success of the Flying Fish 1 underscores the growing feasibility of this route. It's not just ice-class vessels that are making the journey; an increasing number of non-ice-class ships, including Aframax and container ships, have secured transit licenses from Russia, venturing into Arctic waters for the first time.

Traffic analysis by Norway's Center for High North Logistics indicates that **2024 is on course to surpass last year's record cargo volumes** along the NSR. The surge in interest is palpable, driven by both environmental changes and geopolitical pressures. Companies are recognizing the potential for reduced transit times, cost savings, and the strategic advantage of avoiding hotspots of conflict and piracy.

Lessons from the Arctic Sunrise Arbitration

The expanding use of the NSR brings into focus the **legal and regulatory complexities** of Arctic navigation. The **Arctic Sunrise Arbitration** between the Netherlands and Russia serves as a poignant reminder of the delicate balance between national sovereignty and international maritime law. In that case, Russia detained the Dutch-flagged vessel Arctic Sunrise and its crew following a protest against oil drilling activities. The Permanent Court of Arbitration ultimately ruled that Russia had violated the United Nations Convention on the Law of the Sea (UNCLOS).

This landmark decision highlights the importance of

understanding the **rights of flag states** and the limitations of coastal state enforcement in **Exclusive Economic Zones (EEZs)**. As more vessels, particularly from nations without Arctic coastlines, begin to traverse these waters, the potential for legal disputes increases. It's imperative for shipping companies to navigate not just the physical challenges of the Arctic but also the **legal frameworks** that govern these routes.

Strategic Navigation in Uncertain Times

For the maritime industry, the convergence of geopolitical tensions and environmental change necessitates a strategic reassessment. The success of the Flying Fish 1 is a clear indication that the Arctic route is no longer a theoretical alternative but a practical one. However, companies must exercise due diligence, ensuring compliance with international laws and understanding the regulatory environment of the Arctic nations, particularly Russia.

At **Wasel & Wasel**, we recognize the complexities that our clients face in this evolving landscape. Navigating the Arctic waters requires not just advanced vessels and technology but also astute legal guidance to mitigate risks and capitalize on new opportunities. The shifting tides of global shipping demand a proactive approach, blending operational excellence with strategic legal counsel.

The Future of Global Shipping

The journey of the Flying Fish 1 may well be a harbinger of things to come. As climate change continues to reshape our world, the Arctic is emerging as a pivotal corridor for international trade. The potential benefits are substantial—reduced distances, lower fuel consumption, decreased emissions, and avoidance of geopolitical flashpoints.

However, embracing this new frontier requires collaboration between industry stakeholders, governments, and legal experts.

It's about striking the right balance between innovation and regulation, opportunity and responsibility.

Conclusion

The maritime industry stands at a crossroads. The traditional routes, while familiar, are fraught with increasing risks and uncertainties. The Arctic offers a promising alternative, but one that comes with its own set of challenges. The voyage of the Flying Fish 1 symbolizes both the possibilities and the complexities of this new era.

As we steer into uncharted waters, it's essential to be equipped not just with the right vessels but with the right knowledge and partnerships. The lessons from the Arctic Sunrise Arbitration remind us that legal considerations are as critical as navigational ones. In this dynamic environment, aligning with experienced counsel can make all the difference.

The horizon is broadening, and those who adapt will lead the way in the future of global shipping.

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When Iran Sued NASA: A Lesson in Earnest Money and Space Launch Transactions

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Few cases stand out as starkly as the **Telecommunication Company of Iran (TCI) v. NASA**. The case, heard by the **Iran-US Claims Tribunal (IUSCT)** in 1984 dealt with the often misunderstood concept of “earnest money” within the context of space launch negotiations. The case highlights the critical importance of understanding contractual obligations and the risks inherent in international space agreements.

The Case in a Nutshell

On January 15, 1982, the **Telecommunication Company of Iran** filed a claim against the **National Aeronautics and Space Administration (NASA)**, seeking the return of \$100,000 paid as “earnest money” during negotiations for launching two Zohreh satellites. These satellites were intended to bolster Iran’s domestic communications infrastructure. However, the negotiations fell apart, and no final agreement was reached. When TCI asked for their money back, NASA refused, leading to the arbitration proceedings that followed.

Understanding Earnest Money in Space Transactions

Earnest money is a concept with roots in commercial practice, often used to show a party’s seriousness in negotiations. In the context of this case, the \$100,000 paid by TCI was intended as a **non-refundable deposit** that would either be applied to the first payment of the launch services or retained by NASA if the deal did not come to fruition. This was clearly stated in NASA’s **Management Instruction (NMI) 8610.8**, which governed the terms of such transactions.

TCI’s position was straightforward: they believed that since no agreement was finalized, the earnest money should be returned. However, NASA argued that the payment was meant to cover the costs incurred during the negotiation process, whether or not an agreement was reached. The **Tribunal** accepted the position of NASA, finding that the terms of NMI 8610.8 were clear and unambiguous, and TCI had accepted these terms

when they sent the payment.

The Tribunal's Reasoning

The Tribunal's reasoning in dismissing TCI's claim was grounded in the principle that **earnest money** serves a vital function in such negotiations. When a party like NASA invests substantial time and resources into discussions with a potential customer, it is not unreasonable to require compensation if those discussions do not lead to a contract. The Tribunal emphasized that this practice is not uncommon in commercial transactions, particularly those involving significant investments of time and expertise.

The Tribunal found that the **provisions of NMI 8610.8** were "clear and unambiguous" and that TCI understood and accepted these terms. The \$100,000 payment was not a mere placeholder; it was a firm commitment by TCI, indicating their intention to move forward with the project. Even though the negotiations eventually fell through, this did not change the nature of the payment or NASA's right to retain it.

Master List and Index to NASA Directives

NASA's **Management Instruction (NMI) 8610.8** is part of a broader set of directives that guide the agency's operations. The **Master List and Index to NASA Directives** provides an exhaustive catalog of all NASA management directives in force as of August 1, 1982. This includes major subject headings showing number, effective date, title, responsible office, and distribution code. The directives are comprehensive, covering everything from delegations of authority to management handbooks and safety standards.

Understanding these directives is crucial for any entity engaging in transactions with NASA. They offer a roadmap of the agency's internal processes and expectations, ensuring that parties entering into negotiations are fully informed of their obligations. This comprehensive indexing underscores

NASA's commitment to transparency and operational consistency, essential elements when dealing with complex projects like satellite launches.

Considerations for Dispute Resolution in Space-Related Transactions

Notwithstanding that this arbitration was under the specifically designed **IUSCT (Iran-US Claims Tribunal)**, the **Telecommunication Company of Iran v. NASA** case provides valuable insights into how parties involved in space-related transactions should formulate dispute resolution options. **Arbitration** offers a neutral and structured forum for resolving disputes that arise from these highly technical and often international agreements.

When drafting contracts for space-related transactions, parties should carefully consider the forum for dispute resolution. Arbitration can be advantageous due to its flexibility, confidentiality, and the ability to select arbitrators with specific expertise in space law and related fields. Moreover, the enforceability of arbitration awards across borders under treaties like the New York Convention provides an added layer of certainty in international dealings.

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The Regulatory Void: Why

Space Flight Suppliers Face Heightened Risks

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As the commercial space flight industry continues to expand, the nature of liability within this domain presents challenges that are distinctly different from those faced in more established industries. While certain principles, such as the need for robust contracts and clear indemnification clauses, are universal, the specific hazards, regulatory requirements, and the sheer novelty of space operations introduce a level of complexity that demands a closer examination.

The Distinct Nature of Space Flight Liabilities

Space flight is not merely an extension of aviation; it is a radically different environment with its own set of risks and unknowns. Unlike traditional industries where the liabilities are well-defined and governed by decades of regulatory precedents, the space flight industry operates at the cutting edge of technology and human endeavor. This inherently experimental nature of space travel means that the risks are not only higher but also less predictable.

One of the most significant differences lies in the **absence of a mature regulatory framework**. Unlike the aviation industry, where safety standards and liability norms are well-established, the space flight industry is still developing its regulatory backbone. The FAA's regulations for commercial space flight, while comprehensive, are designed to evolve as the industry matures. This creates a fluid environment where liability standards can shift rapidly, depending on technological advancements and legislative changes.

Informed Consent and the Assumption of Risk

One of the cornerstones of liability management in the space flight industry is the concept of informed consent. Space flight participants, unlike passengers on a commercial airline, must explicitly acknowledge the high-risk nature of their journey. This goes beyond the typical waivers found in other industries; participants must understand that they are embarking on a venture where the government itself has not certified the safety of the vehicles involved. This recognition of risk is not just a legal formality but a fundamental aspect of managing liability in space operations.

For third-party suppliers, this means that the traditional safeguards—such as product liability insurance—might not offer the same level of protection as they would in other industries. Suppliers must account for the fact that their components will be used in an environment where failure rates, even if minimal, can have catastrophic consequences. **The standard of care required** in the space industry is therefore significantly higher, and the consequences of a breach are more severe.

Regulatory Requirements and the Chain of Liability

Another unique aspect of the space flight industry is the way regulatory requirements interact with the supply chain. In most industries, liability tends to be concentrated at the end of the supply chain—typically with the manufacturer or service provider directly interacting with consumers. However, in the space flight industry, the **regulatory obligations extend throughout the supply chain**. This means that even subcontractors and component suppliers can be directly impacted by regulatory actions.

For instance, FAA regulations may require that specific safety standards be met not just by the space flight operator but by all entities involved in the construction and operation of the spacecraft. This creates a situation where third-party suppliers could be held liable for regulatory non-compliance,

even if their products are only a small part of the overall system. The interconnectedness of space flight operations means that liability is often shared, and a failure in one component can lead to legal repercussions across the entire supply chain.

The International Dimension of Space Liability

The space flight industry is inherently international, with operators, suppliers, and customers often spread across multiple jurisdictions. This global nature introduces additional layers of complexity to liability management. Different countries have varying regulatory standards, and there is no unified international framework for space flight liability akin to what exists in maritime or aviation law.

For third-party suppliers, this means navigating a patchwork of national regulations, each with its own approach to liability and indemnification. **Jurisdictional conflicts** can arise, particularly in cases where an incident leads to legal actions in multiple countries. Suppliers must therefore ensure that their contracts account for these international dimensions, incorporating choice of law and jurisdiction clauses that clearly define where and how disputes will be resolved.

Insurance and Risk Transfer in Space Operations

Traditional insurance models also struggle to adapt to the unique risks of space flight. The high cost of space missions, combined with the potential for catastrophic losses, makes insuring these operations a challenge. While insurance products are available, they often come with high premiums and significant exclusions, particularly concerning third-party liabilities.

Suppliers must be aware that the **insurance coverage for space flight operations** may not fully protect them from liability. This necessitates a more proactive approach to risk

management, where suppliers not only rely on insurance but also on comprehensive contractual protections. This might include obtaining additional coverage, negotiating higher limits on existing policies, or requiring the space flight operator to bear a greater share of the risk.

Conclusion: A New Paradigm in Liability Management

The space flight industry is pushing the boundaries of what is possible, but with this comes a need for a new approach to liability management. For third-party suppliers, the traditional models of risk transfer and liability protection may not be sufficient. Instead, they must engage with the unique challenges of space flight—ranging from the evolving regulatory landscape to the international nature of operations—and develop strategies that are as innovative and forward-thinking as the industry itself.

As space flight becomes more commonplace, the lessons learned today will shape the liability frameworks of tomorrow. Third-party suppliers have a critical role to play in this evolution, and by understanding and adapting to the unique liabilities of the space flight industry, they can help ensure not only their own protection but also the safety and success of future space missions.

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Impact of the U.S. Supreme

Court overturning of the Chevron Doctrine on Commercial Space Regulation

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In 1984, the **Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.** decision established the **Chevron Doctrine**, a cornerstone of administrative law in the United States. This doctrine directed courts to defer to federal agencies' reasonable interpretations of ambiguous statutes. Its influence extended across various sectors, including emerging fields like **commercial space**, where regulatory frameworks were still evolving or absent.

However, the regulatory landscape underwent a seismic shift on **June 28, 2024**, when the U.S. Supreme Court handed down a landmark decision in **Loper Bright Enterprises et al v. Raimondo, Secretary of Commerce, et al**, effectively overturning the **Chevron Doctrine**. This decision marked a departure from decades of judicial precedent, asserting that courts must independently evaluate whether agencies acted within their statutory authority. No longer bound by automatic deference to agency interpretations, courts now wield enhanced oversight over regulatory decisions.

Justice Kagan, in dissent joined by **Justices Sotomayor and Jackson**, criticized this shift, arguing that it empowers courts excessively at the expense of agency expertise and Congress's intent in delegating interpretive discretion.

The **Chevron Doctrine** operated under a straightforward two-step framework: first, determining if **Congress** explicitly addressed the issue; if not, agencies' interpretations of ambiguous

statutes were upheld if deemed reasonable.

For **commercial space regulation**, this decision holds profound implications. Agencies such as the **Federal Communications Commission (FCC)**, **Federal Aviation Administration (FAA)**, and **National Oceanic and Atmospheric Administration (NOAA)**, responsible for overseeing satellite communications, space tourism, and environmental monitoring in space, face a new and more restrictive regulatory environment. Without the **Chevron deference**, agencies' flexibility to adapt regulations to technological advancements and evolving industry practices is diminished. Courts now play a pivotal role in scrutinizing and potentially challenging agency decisions, which could lead to increased litigation and regulatory uncertainty.

The removal of **Chevron deference** not only alters the dynamics of regulatory authority but also impacts **judicial review**. Courts will now take a more active role in interpreting statutes, ensuring closer alignment with legislative intent but potentially lacking the specialized knowledge and nuanced understanding of technical issues that agencies traditionally provided.

The implications extend to **regulatory certainty**. While clearer **legislative mandates** might offer stability, the absence of **Chevron deference** introduces uncertainty. This uncertainty could deter investment in the **commercial space sector**, where rapid technological innovation and global competitiveness are paramount. Companies may hesitate to innovate or expand operations in an unpredictable regulatory climate where agency decisions are subject to judicial second-guessing.

Real-world examples illustrate these challenges vividly. The **FCC**, for instance, faces heightened scrutiny over its regulation of **satellite constellations** and the burgeoning **space tourism industry**. Previously, the FCC enjoyed significant latitude in adapting regulations to accommodate technological advancements and new market entrants. Now, each

regulatory decision is subject to judicial review, potentially slowing down approvals and stifling innovation critical for industry growth. This also has potential implications vis-à-vis the FCC's assumed power to regulate space debris given the FCC's "statutory authority" – as per the Communications Act of 1934 – is the regulation of interstate and international communications.

Similarly, the **FAA's** oversight of **commercial human spaceflight** is now under increased judicial scrutiny. Safety standards and operational guidelines, which previously evolved in tandem with industry advancements, may now face delays or inconsistencies due to judicial interpretation of agency actions.

Furthermore, **mission authorization and supervision** now face significant obstacles, hindering industry efforts to achieve streamlined processes for mission authorization. The lack of specific **congressional action** has the potential to further complicate the authorization and supervision by the executive branch of new commercial space ventures. **Article 6 of the Outer Space Treaty** requires State signatories to conduct continuing authorization and supervision of its national space activities, including commercial activities.

In November 2023, the **Commercial Space Act of 2023** was introduced in Congress and outlines a certification process for mission authorization under the ambit of the Department of Commerce. A few days later, the White House published a proposal to split mission authorization under the **Department of Commerce and the Department of Transportation**. Simultaneously, the National Aeronautics and Space Administration (NASA) has consistently emphasized the need for their agency to maintain mission authorization.

Looking ahead, the post-**Chevron era** demands precise **legislative guidance** to navigate these complexities effectively. Congress must play a proactive role in providing

clear and detailed statutes that empower regulatory agencies while ensuring accountability and alignment with national priorities. Harmonizing **U.S. regulations** with international standards, including obligations under treaties like the **Outer Space Treaty**, becomes more challenging without the deference framework that previously guided agency discretion.

The evolving **space regulatory landscape** also underscores the need for adaptive governance structures that balance the expertise of regulatory agencies with the oversight of the judiciary. This balance is crucial to fostering an environment that supports innovation, safety, and responsible growth in the **commercial space sector**.

In conclusion, the Supreme Court's decision to overturn the **Chevron Doctrine** represents a watershed moment in **U.S. administrative law** and **regulatory policy**. As **Wasel & Wasel** continues to monitor these developments closely, we are committed to assisting clients in navigating the evolving **space industry** landscape. For guidance on understanding and navigating the complexities of **U.S. space industry**, please contact **Abdulla Abu Wasel**, Deputy Managing Partner at (awasel@waselandwasel.com).

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U.S. LNG Exports: A Catalyst

for Geopolitical Shifts and Terminal Agreement Disputes

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The U.S. LNG Export Boom: A New Energy Landscape

The U.S. has become the largest exporter of liquefied natural gas (LNG), driven by significant infrastructure development and advances in natural gas extraction. This growth has led to debates about environmental sustainability, economic effects on communities, and how this aligns with U.S. climate goals. The CP2 LNG project, in particular, has faced criticism from environmental groups concerned about its fit with climate objectives.

The unexpected rise in domestic shale gas production, due to technological and market developments, has shifted the U.S. from an expected LNG importer to a major exporter. This shift was initially met with concerns about potential increases in domestic gas prices affecting consumers and industries. However, studies by the U.S. Department of Energy from 2012 to 2018 suggested that LNG exports would have minimal impact on domestic prices under certain conditions. Indeed, despite the growth in LNG exports, domestic gas prices have remained stable, supported by increased production in areas like the Marcellus Shale and the Permian Basin.

Yet, the projected doubling of LNG export capacity by 2028 prompts questions about future domestic gas prices and the impact on other industries. The significant use of U.S. natural gas for LNG exports could potentially affect prices and supply.

Legal Challenges in the Shifting Energy Market

The transition in the energy market raises important questions about contractual risks and the predictability of such major changes. The situation with the Pascagoula Facility in the *Eni v. Gulf LNG* arbitration (ICDR Case No. 01-16-0000-7065) originally designed for LNG import but underused due to the domestic gas surplus, highlights the legal and economic issues arising from the shale gas boom. The *Eni v. Gulf LNG* arbitration case underscores the need to consider foreseeability within the broader context of contractual risk allocation, reflecting the parties' initial intentions and expectations.

The shale gas boom has complicated contractual arrangements, particularly Terminal Use Agreements (TUAs), by altering traditional views on supply, demand, and pricing. This has implications not only in the U.S. but also in international energy markets, where U.S. LNG exports have contributed to global energy security and changed trade dynamics.

Companies should be cognizant of supervening events (such as the shale gas revolution) that lead to frustration of the principal purpose of a TUA.

Supervening Events and TUA Contract Frustration

Defining the Supervening Event

The "supervening event" that could potentially disrupt the main purpose of a TUA needs precise definition. Various interpretations include the disappearance of the U.S. import market or technological advancements that led to increased domestic shale gas production. The event is best understood as a combination of factors resulting in the market shifts known as the "shale gas revolution" and its impact on the contractual relationship.

Nature of Changes and Legal Implications

The distinction between "evolutionary" and "revolutionary"

changes does not critically influence the identification of the supervening event. The legal doctrine of frustration is not confined to isolated, instantaneous events but also applies to developments that unfold over time with significant impacts. Both sudden events and gradual developments can usually be recognized as supervening events under the applicable law.

Impact of the Shale Gas Revolution

The shale gas revolution, brought about by several converging factors, has transformed the supply and demand dynamics of the U.S. natural gas market, rendering LNG importation economically unviable. This shift from a net importer to a net exporter of natural gas has fundamentally questioned the economic viability of importing LNG into the U.S. market, leading to the underutilization of infrastructures like the Pascagoula Facility.

Substantial Frustration of the TUA

The shale gas revolution's impact on the contract was unprecedented, structural, and permanent, rendering the economic rationale of the TUA completely senseless. This situation could not have been reasonably anticipated by the parties at the contract's inception, indicating a substantial frustration of the TUA's principal purpose.

Future Directions for Terminal Use Agreements

The shale gas revolution necessitates a reevaluation of TUAs, challenging old assumptions about risk, supply, and demand. As environmental issues become increasingly important in energy discussions, TUAs need to incorporate sustainability and emissions reduction more prominently. This involves creating agreements that are economically viable and flexible, yet also environmentally responsible.

The impact of the U.S. shale gas boom on TUAs highlights the

global implications of domestic energy developments. It emphasizes the need for TUAs to be adaptable and innovative, capable of handling market volatility and the interconnected nature of global energy networks. This shift underscores the importance of evolving contractual frameworks to meet the challenges of today's dynamic energy landscape.

The profound impact of the shale gas revolution on the contractual landscape of the energy sector, particularly affecting TUAs, highlights the need for companies to be aware of supervening events that could lead to the frustration of a contract's principal purpose. This necessitates a reevaluation of existing agreements and careful consideration of future contractual frameworks in the dynamic energy market.

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Biden's Executive Order on Israel / West Bank Sanctions: Global Business Compliance Considerations

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On February 1, 2024, President Joe Biden's executive order introduced sanctions targeting individuals and entities that contribute to instability in the West Bank, notably through violence or threats against civilians. This directive, with

its broad implications, mandates a closer examination of how businesses worldwide engage with Israel and the West Bank, especially given the region's significant contributions to the global technology sector.

The sanctions bring to the forefront the issue of indirect liability, a concept that extends a business's accountability to its wider network of partnerships and supply chains. This complexity is particularly pronounced in today's globalized economy, where the multifaceted layers of production and distribution can obscure the ultimate destination or use of products and services. As a result, businesses utilizing Israeli innovations, for instance, may inadvertently find themselves supporting sanctioned activities, highlighting the need for thorough due diligence.

On February 1, 2024, the State Department invoked the executive order to impose sanctions on individuals for a range of disruptive conduct in the West Bank. This included leading violent riots, attacking civilians and activists, with actions such as arson and physical violence. The executive order, particularly under section 1(a)(i)(B)(2), casts a wide net, sanctioning those "responsible for or complicit in, or to have directly or indirectly engaged or attempted to engage in" these activities.

Financial institutions and companies across sectors must now intensify their scrutiny of transactions and relationships connected to Israel and the West Bank to ensure compliance with the new sanctions. This increased vigilance could have far-reaching effects on international trade and investment, potentially deterring engagement with the region due to the heightened risks and compliance requirements.

The executive order's broad scope may also spark legal debates over its interpretation, particularly concerning actions that "threaten the peace, security, or stability" of the West Bank. This ambiguity adds a layer of complexity to international

business operations, requiring careful navigation to avoid unintended consequences.

Drawing from historical precedents, such as sanctions against Iran and Russia, the potential for these new measures to impact global business and economic landscapes is significant. The sanctions could disrupt supply chains, particularly in industries dependent on resources from the region, and complicate international trade relations. Moreover, the potential for reduced foreign investment could have a profound effect on the region's economic development and necessitate a reevaluation of existing trade agreements and partnerships.

In response, businesses must adopt a multifaceted strategy to mitigate risks and adapt to the evolving landscape. This includes:

- 1. Enhanced Due Diligence:** Corporations must strengthen their due diligence processes to identify and assess any direct or indirect connections to entities or activities that might be targeted under the new sanctions regime. This involves a comprehensive review of partners, suppliers, and customers within the region to ensure they are not involved in activities undermining stability in the West Bank.
- 2. Reevaluation of Business Relationships and Investments:** Companies may need to reevaluate their business relationships, investments, and operations in the region. This could involve restructuring agreements, divesting from certain ventures, or seeking alternative suppliers and partners that comply with the new regulations.
- 3. Strengthening Compliance Infrastructure:** Investing in robust compliance infrastructure is essential. This includes technology systems that can monitor transactions and relationships for potential sanctions violations and platforms that facilitate the reporting and management of compliance issues. Automation and

artificial intelligence can play a significant role in enhancing the efficiency and effectiveness of these systems.

4. **Open Communication with Regulators:** Establishing and maintaining open lines of communication with relevant regulatory bodies, such as the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) and the State Department, is vital. This ensures that corporations are up-to-date with any changes or updates to the sanctions list and understand the regulatory expectations.
5. **Contingency Planning:** Developing contingency plans to address potential disruptions to operations or supply chains resulting from the sanctions is critical. This includes identifying alternative markets, suppliers, and logistics routes to ensure business continuity in the face of sanctions-related challenges.
6. **Contractual Compliance Review:** A thorough examination of all contractual documents, both current and forthcoming, is imperative to ensure alignment with sanctions regulations to embed specific provisions that mandate adherence to sanctions laws. Such clauses are crucial as they afford the legal groundwork for altering or dissolving agreements in the event a business partner falls under the ambit of the sanctions. This proactive legal safeguarding is essential for maintaining operational integrity and legal compliance in the face of the evolving sanctions landscape.
7. **Stakeholder Engagement:** Engaging with stakeholders, including investors, customers, and business partners, to communicate the steps being taken to comply with the executive order and manage risks is essential. Transparency in these efforts can help maintain trust and mitigate reputational risks associated with potential sanctions violations.

By embracing a proactive and comprehensive approach to

compliance and strategic planning, businesses can navigate the complexities introduced by the Israel / West Bank sanctions, safeguarding their operations and maintaining their strategic objectives in the face of these new challenges.

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