

# Navigating compliance with sanctions and export control regimes for entities operating across the African continent

*Adrian Roux – ENS*

*Peter Feldman – Dentons*

*4 June 2026*

DENTONS

*ens.*

# Agenda

- **Sanctions spillover:** US and allied sanctions are driving overcompliance and de-risking across African financial and trade systems.
- **Trade and supply chain pressure:** Heightened scrutiny on dual-use goods, routing and origin is causing disruption to African import and export flows.
- **Enforcement and opportunity:** Evolving geopolitics is increasing enforcement risk while creating strategic trade and advisory opportunities.
- **Today we will cover:**
  - Why does this all matter to companies operating, in Africa, in particular?
  - Key elements of SA and US trade controls – what do some common terms actually mean?
    - The long arm of US controls, in particular
  - What the authorities expect to manage these risks



# Why are trade controls important to entities operating on the African continent?

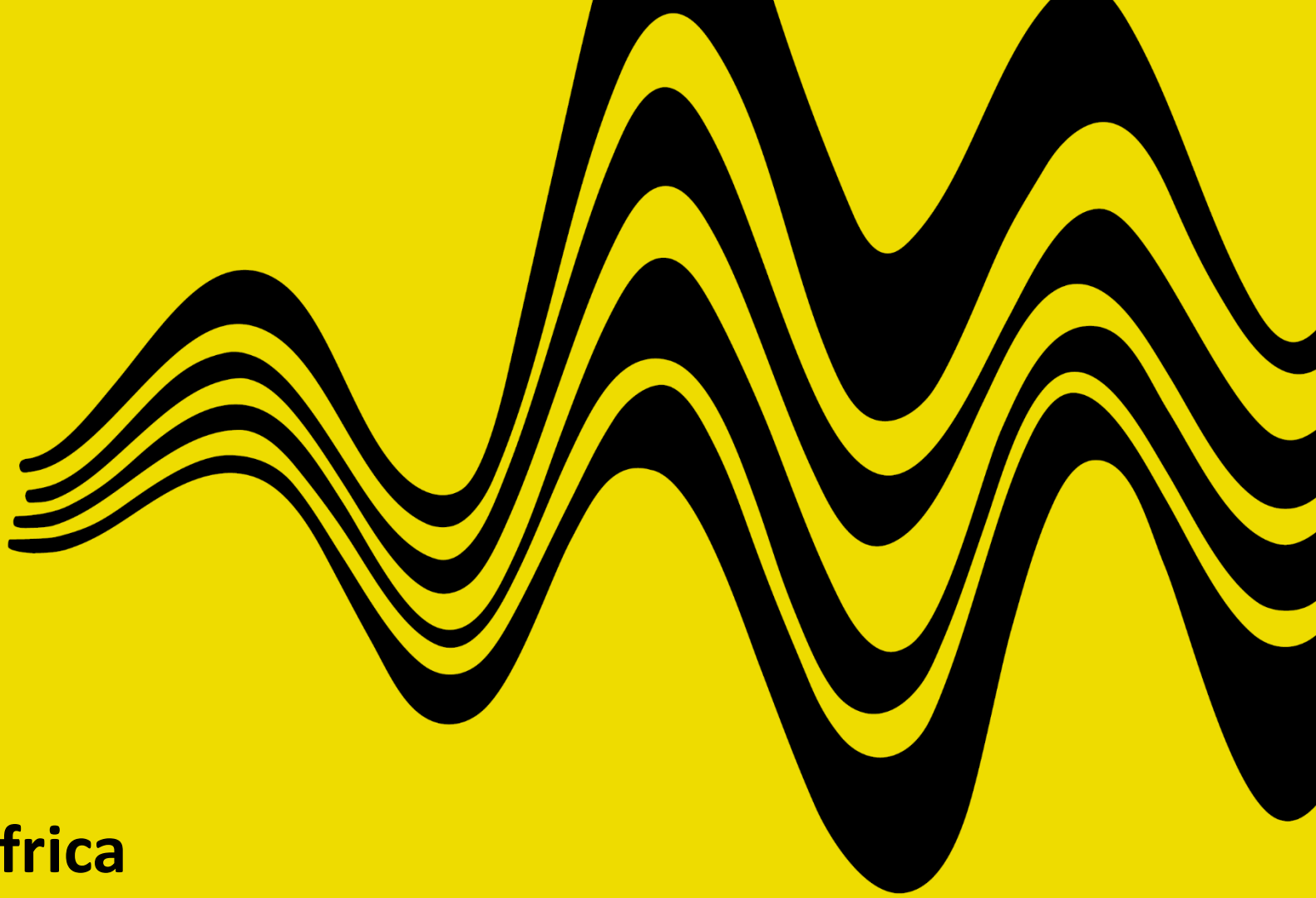
- MNCs operating across the continent often have to consider and comply with laws across multiple jurisdictions.
- US trade controls, in particular, can apply to transactions that occur outside the United States and can have significant consequences for non-US persons.
- US export controls “follow the item”.
- Some sanctions require compliance by foreign companies owned or controlled by a US company.
- All sanctions programs prohibit *indirect* as well as *direct* transactions; causing violations by US persons, etc.
- Commercial and reputational risks are also important.



# Why does this matter at a practical level?

- One major legal challenge is determining what laws apply, and why
- For example, consider “Use of proceeds” provisions in credit agreements
- Typical formulation might refer to “use” of proceeds or “lending, contributing or otherwise making available” such proceeds . . . but the variability is most often in the scope of what the restriction catches – and thus requires specific review
- For example, compare the following:
  - *Shall not use to fund any activity with a sanctioned person or in a sanctioned place*
  - *Shall not use to fund any activity if that funding or activity would violate sanctions*
  - *Shall not use to fund any activity if that funding or activity would violate applicable sanctions*
  - *Shall not use to fund any activity if that funding or activity would violate sanctions applicable to lender or borrower*
  - *Shall not use to fund any activity if that funding or activity would violate sanctions applicable to lender or borrower or any person participating (e.g., administrative agent, arranger, issuing bank, lender, underwriter, etc.)*
  - *Shall not use to fund any activity if that funding or activity would create a risk of breach/noncompliance*





## Trade controls across Africa

DENTONS

*ens.*

# Overview of Sanctions Regimes in Africa

**No autonomous sanctions regimes**

**UN Security Council sanctions typically implemented via domestic laws**

**UNSC sanctions primarily target persons involved in activities deemed contrary to international peace and security e.g. terrorism, nuclear proliferation etc.**

**Prohibit transacting with sanctioned persons including the provision of financial or economic support to sanctioned persons**



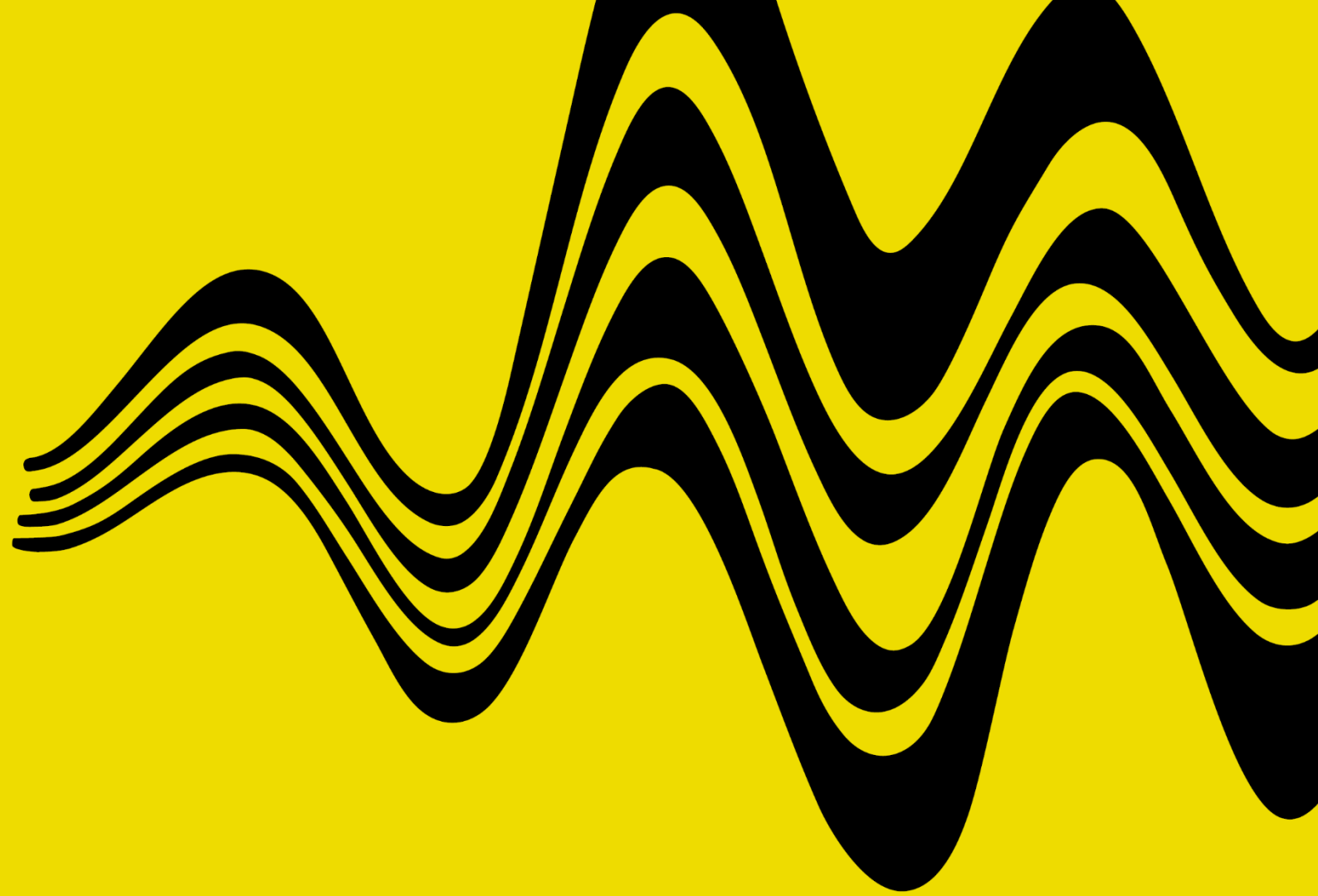
# Overview of Export Control Regimes in Africa

- Designed to protect domestic industries.
- Regional harmonization through certain unions such as the Economic Community of West African States (ECOWAS), the East African Community (EAC), and the Southern African Development Community (SADC).
- General approach = domestic focus, applying with national borders – stark contrast to the US approach.



# US Trade Controls

*Sanctions*



DENTONS

*ens.*

# What are sanctions and where do they come from?

- “Sanctions” are restrictions on trade or other economic activity that the US Federal government imposes against targeted jurisdictions, governments, entities and individuals (and vessels and aircraft!)
- Sanctions are implemented by the President, often through authorities delegated to the Secretary of the Treasury and, in some cases, the Secretary of State
- Imposing sanctions does NOT require any judicial procedure (e.g., notice and hearing not required)
- The Treasury Department’s Office of Foreign Assets Control (“OFAC”) is responsible for administering sanctions, including civil enforcement (all criminal enforcement is handled by the Department of Justice)



# Who is required to comply with US sanctions?

The US maintains dozens of sanctions programs, each of which varies in when, how, and to whom they apply.

## “US Persons” (all programs)

- US citizens and permanent resident aliens (green-card holders), wherever located
- Any person in the United States
- US companies and their foreign **branches**, NOT subsidiaries

## Non-US entity “owned or controlled” by a US Person (ONLY Cuba and Iran)

- “Owned or controlled” defined in the Iran sanctions means a US person “(i) holds a 50 percent or greater equity interest by vote or value in the entity (ii) Holds a majority of seats on the board of directors of the entity; or (iii) otherwise controls the actions, policies, or personnel decisions of the entity.”
- “Owned or controlled” not defined in the Cuba sanctions

## Non-US Persons generally not required to comply, HOWEVER ...

- US has jurisdiction over transactions involving a US nexus (e.g., US-origin services and, in some cases, goods or technology, payments via the US financial system, etc.)
- Secondary sanctions (including “material support”/derivative designations) can be imposed regardless of whether there is there is a US person or US nexus



# Primary and Secondary Sanctions

- Sometimes, sanctions are described as “primary” or “secondary.” *Neither term is defined in relevant regulations.* Rather, they are terms commonly used to identify the following concepts:
- **Primary sanctions** is used to refer to sanctions *prohibitions* that *require compliance* by “US persons” or when there is an activity involving the United States. Violations can be subject to civil enforcement or criminal penalties.
- **Secondary sanctions** is used to refer to sanctions *designation* authorities that allow the United States to impose restrictive measures (such as asset blocking or visa prohibitions) on persons who engage in certain activities, regardless of whether a US person or US nexus is involved, and regardless of whether the activities violated US law.



# What is a “violation” of sanctions?

- A violation occurs when there is both (i) jurisdiction AND (ii) breach of an applicable restriction or requirement
  - The US always has sanctions jurisdiction over “US persons” – therefore any breach by a US person would be a violation of sanctions
  - The US does NOT always have sanctions jurisdiction over NON-US persons – thus, the US would need to establish jurisdiction (e.g., by finding a US nexus) for there to be a “violation”
- A “violation” is NOT the same as engaging in activity that may make someone subject to sanctions (e.g., “secondary sanctions”)



# Types of Sanctions Programs

## Comprehensive sanctions

- Cuba, Iran, North Korea
- Crimea and LNR/DNR regions of Ukraine

## Significant sanctions

- Russia
- Belarus
- Venezuela\*
- Myanmar

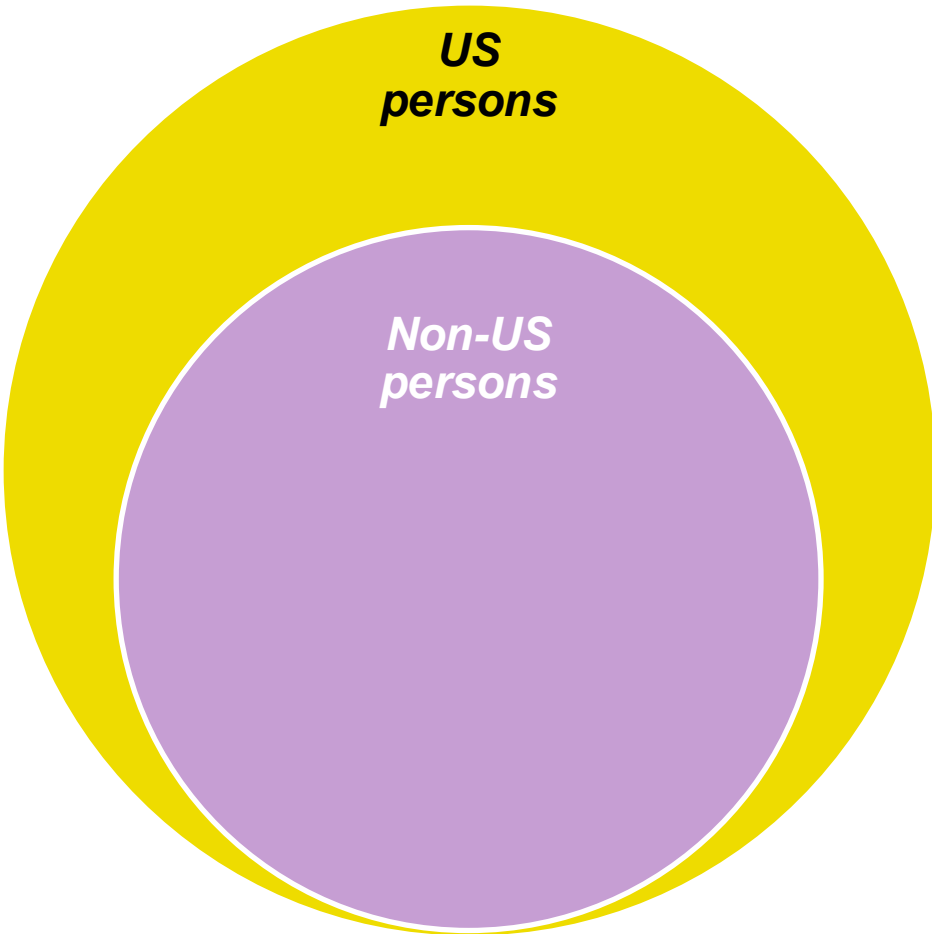
## Limited list-based sanctions

- Afghanistan, Central African Republic, China (CMIC, Hong Kong), DRC, Ethiopia, Iraq, Lebanon, Libya, Mali, Nicaragua, Sudan/South Sudan, Somalia, Yemen, etc.
- Counterterrorism, weapons of mass destruction, human rights abuses, transnational criminal organizations, malign cyber activity, narcotics trafficking, rough diamonds, foreign sanctions evasion, corruption, etc.

**Secondary sanctions – Iran, Russia, Cuba and “derivative designations”**



# Russia Sanctions



No general embargo except for Crimea, LNR and DNR. However, significant number of SDNs, professional services bans, sectoral sanctions, export controls, “Russia adjacent” risk – *Russian ports, rail, commodities transiting Russia*

- Secondary sanctions, e.g.:
- Engaging in “significant” transactions involving SDNs;
  - Material assistance or financial, material, or technological support for, or goods or services in support of, SDNs
  - “Operating in” specified sectors of Russian economy (e.g., engineering or transportation)

**Policy on specific licenses**  
Case-by-case review of specific licenses requests and priority for license applications and other requests for guidance related to humanitarian activity (see [guidance](#))



# Common Root Causes for Compliance Issues

Lack of a formal OFAC sanctions compliance program (**SCP**)

Misinterpreting, or **failing to understand** the applicability of, OFAC's regulations

**Facilitating** transactions by non-US Persons

Exporting or re-exporting US-origin goods, technology, or services to **OFAC-sanctioned persons or countries**

**Utilizing the US financial system**, or processing payments to or through US financial institutions, for commercial transactions involving OFAC-sanctioned persons or countries

Sanctions **screening software or filter faults**

**Improper due diligence** on customers/clients

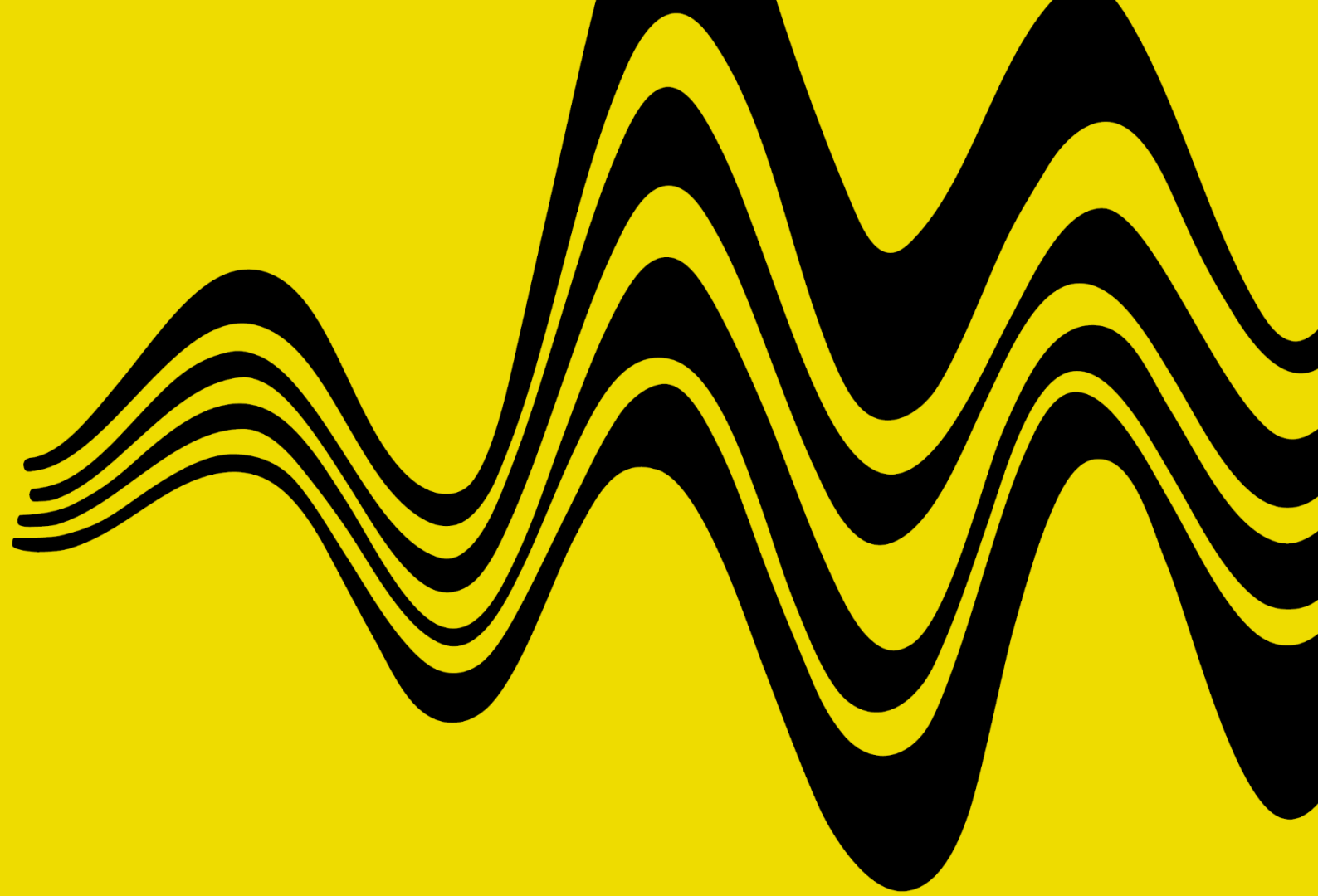
De-centralized **compliance functions** and inconsistent application of an SCP

Utilizing **non-standard** payment or commercial practices



# US Trade Controls

*Export Controls (EAR)*

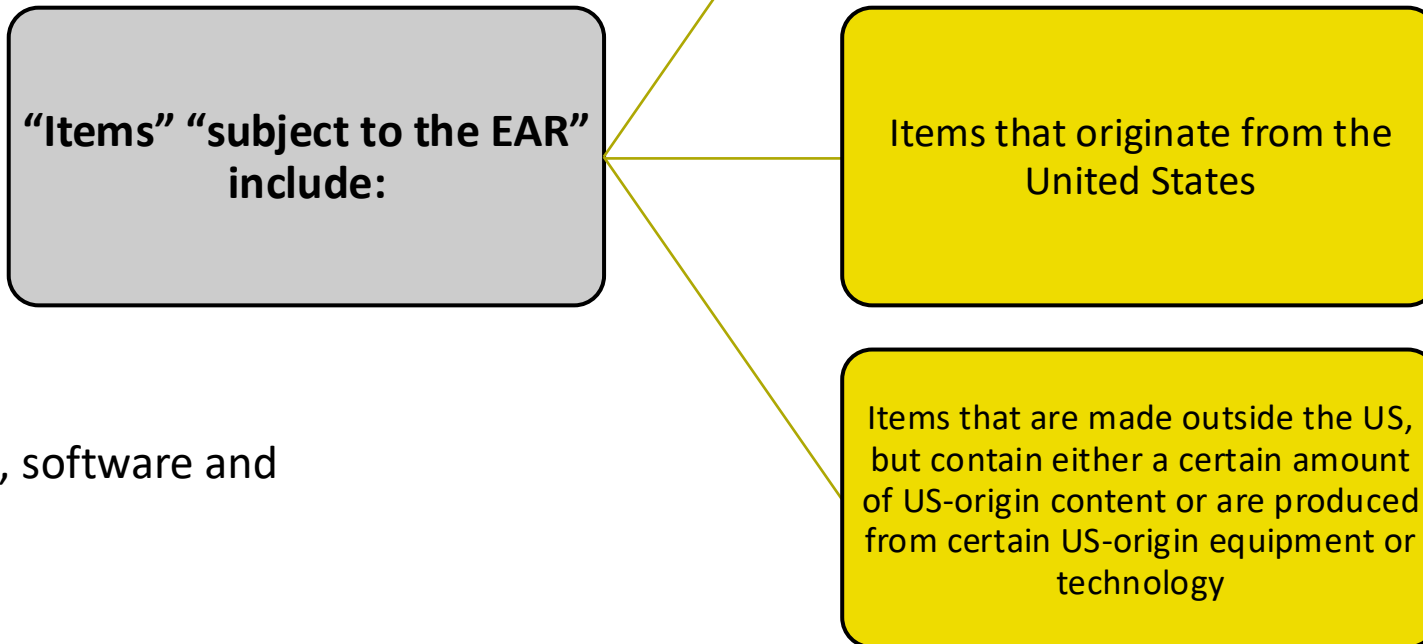


DENTONS

*ens.*

# The Export Administration Regulations govern items “subject to the EAR” . . .

The US has several export controls programs – the “EAR,” administered by the Commerce Department’s Bureau of Industry and Security (“BIS”) is the most widely applicable to commercial goods



“Items” = commodities, software and technology



## ... and certain actions involving those items

### Export

❖ to send, take or carry a good, product or service across a border

### Re-export

❖ export of an item imported into a country again to a third country

### Transfer

❖ in-country change in end-use or end-user

### Deemed export or re-export

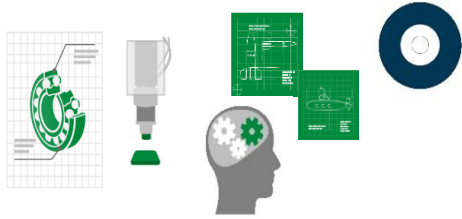
- ❖ release of "technology" or certain "software" to a foreign national in the US is a "deemed export"
- ❖ release of "technology" or certain "software" to a national of a third country outside the US is a "deemed re-export"



# Basic Framework for EAR Analysis

## What is the item?

- Jurisdiction and classification



Classification  
(USML, CCL)

Controls on the items

## Where is it going to?

- Destination



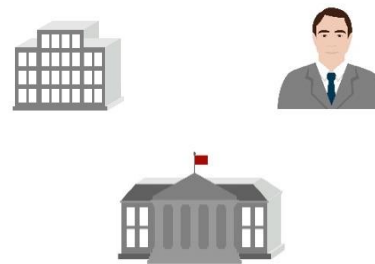
- Nationality of the recipient



License Requirements,  
Embargo / Sanctions

Controls on the destination

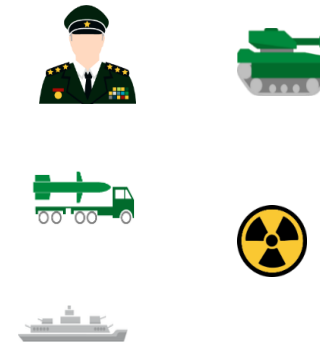
## Who is receiving it and who is the end user?



Screening

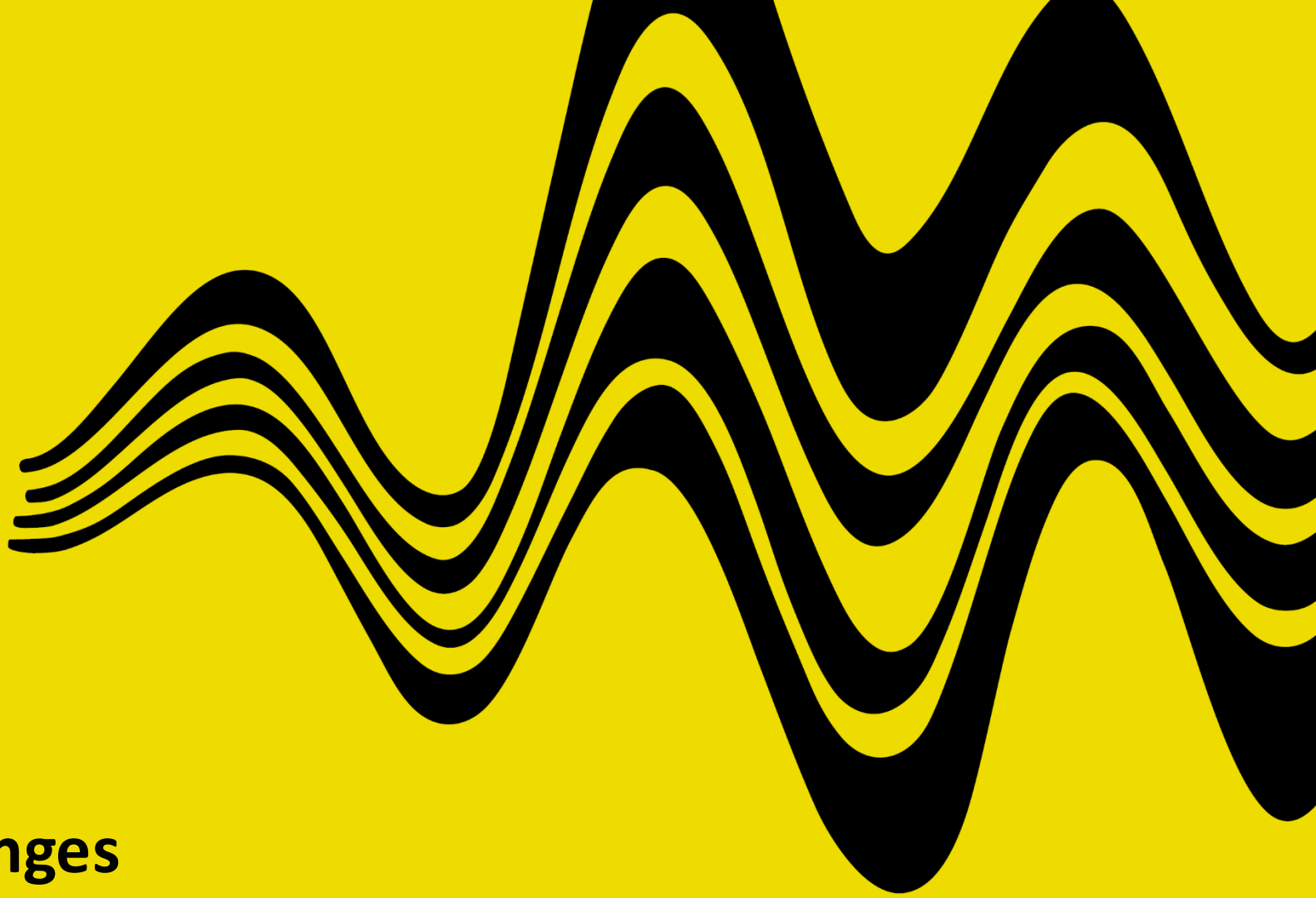
Controls on recipient/end-user

## What is the end use?



Controls on end-use





## Key Compliance Challenges

DENTONS

*ens.*

# OFAC's recommended approach to compliance

- Five “essential components” map to standard compliance program guidance
- Failure to have a compliance program has been considered by OFAC to be an aggravating factor in enforcement actions but is NOT itself a sanctions violation



# BIS's Elements of an Export Control Compliance Program

Management Commitment - Policy Statement

Risk Assessment

Export Authorization

- Jurisdiction and Classification
- Screening
- Technology Controls (e.g., access to systems)

Training

Recordkeeping

Handling Export Violations and Taking Corrective Actions

Auditing

Keep Compliance Program current



# Compliance Challenges for Companies Operating in Africa

- The long-reach of trade controls from the West into Africa can result in clashes with local law or the need to identify and integrate foreign regulations
- This challenge is heightened by
  - the OFAC sanctions 50% Rule
  - the EAR Affiliates Rule (implementation suspended until 10 November 2026)
  - Strict liability for sanctions and most export controls violations
  - EAR General Prohibition 10 (proceeding with transactions with knowledge that a violation has occurred or is about to occur)
  - And, perhaps most critically, the perceived risks and reputational risks for companies with international supply chains, financing, sales or shareholders.





***Thank You***

DENTONS

*eng.*