

Customs & Trade in Israel

A Legal Newsletter

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A New Nuclear Era and its Impact Upon Israeli Companies Active in the Global Arena

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In March 2018, the Knesset (Israel's Parliament) passed **the Prevention of Distribution and Financing of Weapons of Mass Destruction Law, 2018** ("the Law"), a move which may be viewed as aligning Israel with the spirit of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).

The Law's objective is to increase Israel's ability to partake in the global efforts to prevent the distribution and financing of weapons of mass destruction (WMD), among others by imposing immediate economic sanctions upon entities that distribute and fund WMD or assist in doing so in countries listed in the addendum to the Law (Iran and North Korea), who were declared as such by the United Nations Security Council (UNSC) or by an Authorized Foreign Body.

The Law intends to introduce procedures to implement UNSC resolutions in a manner that would meet relevant international standards.

The Law defines a "declared element" as one of the following:

- (1) An element declared by the UNSC as assisting Iran, North Korea or an international organization active in these countries in distribution and financing of WMD. The declaration will be automatically valid in Israel for a period of four months, after which the entity will remain a declared element only if the Finance Minister declared it so.
- (2) An element declared by an Authorized Foreign Body, under its power in its jurisdiction, as assisting Iran, North Korea or an international organization active in these countries in distribution and financing of WMD, which was declared by the Finance Minister.

Under the Law, individual violators are subject to 9 years in prison or monetary sanctions amounting to 904,000 ILS. For a corporation the monetary sanctions amounting to 1,808,000 ILS. Corporate position holders are obligated by law to do all in their power to prevent violation of the Law by the corporation or any of its workers, and are subject to a 14,400 ILS fine if they fails to do so.

It should be noted that if a corporation violated the Law and assisted or had commercial activity with a declared element or a related entity, **corporate position holders are presumed guilty unless proven to have done all in their power to prevent the violation**. This is a significant liability placed upon corporate position holders in order to ensure the corporation does not have commercial activity or assist declared elements.

How does the Law define prohibited commercial activity with a declared element? The Law sets a broad definition, including any activity with economic value, whether performed with or without compensation, such as trade, accepting or granting a loan, accepting or granting services (including financial services), transfer of asset ownership or rights to or from a declared element, or granting any economic rights.

Alongside the complete prohibition upon any commercial activity with a declared element or related entities, all existing activity must be immediately ceased, and any suspected activity must be reported to the Israeli police.

The declared elements list is published by the Finance Ministry's "Sanctions Headquarters", which was established under the Law on the Struggle Against Iran's Nuclear Program, 2012. The Sanctions Headquarters regularly updates the declared elements list on its website: <https://mof.gov.il/IsraelSanctions/DeclaredElementsList/>.

(it should be noted that in addition to the declared elements under the Law, there is a complete ban on a conducting any economic activity, directly or indirectly, between the State of Israel and its citizens and Iran and/or Iranian entity, under the Trading With The Enemy Ordinance, 1939)

How does the Law affect Israeli companies active in the global arena?

In an era of global trade and a profusion of Israeli companies with international commercial activity, and in light of the expanded liability of corporate position holders, it is essential to integrate proper procedures to ensure the corporation does not assist or conduct commercial activity with declared element or related entities (except under the conditions set in a Finance Minister permit).

Beyond the immediate actions necessary to verify compliance with the up to date declared elements list, in order to ensure ongoing compliance, Israeli corporations with international commercial activity must implement various precautionary procedures. Among others, these include examining new contracts with foreign entities in order to ensure they are not related to declared elements; keeping track of the declared elements list, which is updated periodically; ensuring employees are aware of their reporting obligation in cases where there is reasonable cause to suspect a certain act may constitute commercial activity with a declared element or related entities; and more.

The above review is a summary. The information presented is for informative purposes only, and does not constitute legal advice.

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