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## DDTC Levies \$42 Million Fine for Export Control Violations

Even if you export defense articles, technical data, or defense services pursuant to contracts with the U.S. government or military, don't assume that you are free from the usual export control requirements that apply to those items, or that the U.S. Government will "look the other way" regarding other aspects of your exporting operations. Making such a mistake may prove extremely costly.

That message was delivered emphatically by the Department of State, Directorate of Defense Trade Controls ("DDTC" through a \$42 million settlement with private security contractor Xe Services, LLC ("Xe Services"), formerly known as Blackwater, for numerous alleged violations of the International Traffic in Arms Regulations ("ITAR"). Several important lessons can be taken from the settlement Xe Services reached with DDTC.

### When you contract with the U.S. Government or military, export controls apply

Xe Services provides a myriad of defense articles, technical data, and defense services to a number of government agencies, including the Departments of State and Defense. Much of its contract work is regulated by the Arms Export Control Act and the ITAR.

Over the course of an investigation that explored six years of Xe Services' business operations, DDTC alleged that the company was guilty of a host of export control violations which had "significant" ITAR implications, including:

- export of defense articles without a license;
- export of technical data without a license;
- provision of defense services without a license;
- employment of unauthorized foreign nationals;
- discussion of business opportunities with a proscribed country; and
- violations involving administrative and record-keeping requirements.

In total, DDTC identified 288 violations of the ITAR between 2003 and 2009. In the words of DDTC, the scope and breadth of the violations reflected "a significant lack of commitment to comply with the ITAR by Xe Services."

### Voluntary disclosures to DDTC can mitigate, but may not eliminate, the problem

The investigation resulted in a \$42 million penalty, as well as substantial remedial measures against Xe Services. This massive penalty was imposed despite the submission by Xe Services of 31 voluntary disclosures to DDTC from 2007 to 2009, which acknowledged and admitted to certain violations of the ITAR. It is probable, however, that had Xe Services failed to make such disclosures to DDTC the penalty amount may have been even greater.

### Settlement with DDTC may involve more than monetary penalties

In the wake of DDTC's investigation, DDTC also mandated that Xe Services undertake significant actions to improve its capacity for export control detection and compliance in an effort to prevent future violations, including:

- replacement of certain senior management personnel;
- establishment of an Independent Export Compliance Committee to oversee future compliance

efforts;

- revisions and improvements to the company's compliance program;
- enhanced ITAR training to responsible employees; and
- completion of a targeted ITAR audit to review the company's current overall state of compliance.

Interestingly, DDTC did not impose debarment on Xe Services as part of its immediate settlement terms, which would have prevented the company from participating directly or indirectly in any defense trade or services for which a U.S. export license or other U.S. government approval is required. DDTC did, however, reserve the right to impose debarment on the company pending its full compliance with the terms of its settlement agreement.

#### **Don't let this happen to you**

ITAR violations pose the risk of substantial penalties and remedial obligations. However, these can be avoided with a focus on compliance that identifies and eliminates problem areas before they result in violations. Whether your company requires assistance navigating extensive U.S. export control laws and regulations, building up and/or modernizing its internal export compliance program, or a review of its U.S. exports and reexports, Venable can help.

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***For more information regarding U.S. export controls and compliance issues for U.S. companies, please contact a member of Venable's [International Trade and Customs team](#).***

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