

# Trade Compliance Programs

*Frequently Asked Questions*

As of April 2019

**DELLEMC**  
PARTNER  
PROGRAM

# Disclaimer

Dell EMC is providing this FAQ document to emphasize your obligations to comply with all applicable Export Control and Sanctions laws. It is not intended as and cannot substitute for legal advice. You remain responsible for complying with these laws and implementing appropriate policies and procedures to ensure your compliance, including a trade compliance program. This guidance in no way modifies or negates any of your legal obligations under the Partner Code of Conduct or the respective Partner agreements with Dell EMC.



# What are my trade compliance obligations?

**The following is a summary and reminder of the obligations set forth in the Partner Code of Conduct.**

**The Partner Code of Conduct states that all Dell EMC products, software and services:**

- Are presumed subject to U.S. export control requirements, in addition to any other applicable countries' requirements
- Must not be provided to any sanctioned or restricted persons, countries, or uses unless authorized by the U.S. government

**Partners must:**

- Understand and comply with the U.S. export control laws and regulations applicable to the Dell EMC products, software and services including any special restrictions
- Obtain any required licenses or other government authorizations as needed to the use, transfer, import, export, or re-export of Dell EMC products, software, technology, or services.
- Not cooperate with any restrictive trade practice or boycott that is prohibited or penalized under U.S. or applicable local laws
- Understand and comply with applicable import and export control laws and regulations of other countries

# What are the U.S. export control and sanctions laws that I need to be concerned with as a Dell EMC Partner?

## Export Administration Regulations (EAR)

- Established and enforced by the U.S. Department of Commerce through the **Bureau of Industry and Security (BIS)**
- EAR regulates exports, reexports, and transfers of many commercial items
- Items subject to the EAR include goods, technology, and software, including those that are specifically listed on the Commerce Control List and items that are not specifically listed that are designated as “EAR99”
- Additional resources on the EAR can be found [here](#)

## OFAC Sanctions

- The economic sanctions laws are administered and enforced by the **Office of Foreign Assets Control (OFAC)** of the US Department of the Treasury
- An overview of the OFAC sanctions together with detailed explanations and FAQs can be found [here](#)

# What is prohibited under the U.S. Export laws?

## Prohibited Countries

- Dell EMC products and services **CANNOT** be sold directly or indirectly through a third party to prohibited countries or to a prohibited country's Embassy or Consulate (wherever located) without a US government license or other official authorization.
- The current list includes:



## Prohibited People and Entities

- Specially Designated Nationals and Blocked Persons (“SDN List”)
- Other individuals and entities on other U.S. government screening lists (such as the Entity List)
- Terrorists
- Drug Traffickers
- Proliferators of Weapons of Mass Destruction
- Criminal Organizations

## Prohibited End-Uses

- Nuclear Technology
- Missile Technology – includes space exploration activities and unmanned aerial vehicle (UAV or drone) activities
- Chemical or Biological Weapons
- Maritime Nuclear Propulsion
- Military End Uses
- Weapons of Mass Destruction
- Certain activities related to oil and gas exploration and production (Russian transaction related)

# What are the consequences if I violate these laws or the Dell EMC's Partner Code of Conduct?

- Dell EMC can enforce its contractual and legal rights including termination of our relationship with you
- U.S. civil penalties may exceed \$1 million USD per export or shipment and criminal penalties of \$1 million USD per export or shipment and up to 20 years imprisonment
- U.S. authorities can also ban companies that are suspected of violating these laws from access to U.S. goods and technology, U.S. banks, and U.S. financial markets, block travel to and from the United States, extradite suspected violators for trial, and list suspected violators on various denied parties lists.

# How can you effectively comply with these laws?

- BIS recommends that each exporter, reexporter or other party in a cross-border transaction establish a **Export Compliance Program (ECP)**
- An ECP helps to ensure that you comply with all applicable export control and sanctions laws, including the EAR and OFAC sanctions as well as applicable local laws
- A well-designed ECP can also help you to manage exports and comply with license conditions and can also help mitigate potential penalties in the event of an inadvertent violation
- **Your ECP should be appropriate to the scope of your business, including your export and re-export activities**

# What are the key elements of an ECP?

## 1. Have a Corporate Compliance Statement

- A compliance statement should be communicated to and acknowledged by all employees.
- This statement should include: (a) affirmations of your company's commitment to export compliance and appropriate resources to comply; (b) statements that you and your employees must be familiar and compliant with export controls; and (c) contact information for the persons at the company who are responsible for trade compliance.

## 2. Risk Assessment

- Identify the export risks that make your company vulnerable.
- Know your customer or end-user, the exported item and its use.

## 3. Screening of Parties and End Use

- Exports, reexports, and transfers to certain restricted parties or for certain end uses may be prohibited or require a license.
- All parties in an export transaction should be screened against a consolidated list of restricted parties.
- Screening may be done manually or by professional software.

## 4. Export License Determination

- License requirements may be product based, destination based, end user based, or end use based.
- It is your responsibility to know your customer and identify red flags related to the transaction.

## 5. Training

- All employees who are involved in export-related functions, as well as top management, contractors, consultants should understand export compliance responsibilities.
- You should provide your employees with sufficient training in order to ensure they possess a working knowledge of current export control regulations as well as the specific requirements of the organization's ECP.

## 6. Record Keeping

- In addition to local recordkeeping requirements, the U.S. Government requires that organizations keep export related documents for a minimum of 5 years from the date of any known export, reexport, or transfer.



# Where can I find guidance on ECPs?

- Guidance on establishing an effective [Export Compliance Program can be found here](#)
- This guidance is provided by BIS and is designed to help organizations comply with EAR and other U.S. export regulations
- You are also responsible for complying with local customs and export control laws. Consult your local legal counsel for advice on compliance with these laws

# Who is responsible for screening and identifying Red Flags?

- Dell EMC Partners are expected to screen their customers or end-user to identify any red flags or potentially restricted circumstances. This screening will be an important part of your ECP.
- A red flag is any circumstance in a transaction that indicates the sale or export may be destined for a restricted end-use, end-user, or to a restricted destination: **Place, Purpose, Product and People**
- The Consolidated Screening List (**CSL**) is a list of parties for which the U.S. Government maintains restrictions on certain exports, reexports or transfers of items. It includes the export screening lists of the Departments of Commerce, State and the Treasury and may be used as an aid to industry in conducting electronic screens of potential parties to regulated transactions. The tools are found [here](#).
- **Knowing your customer or end-user is essential!**
- BIS “Know Your Customer Guidance” is located [here](#).

# What are some of the Red Flags?

## People – Who is involved in the transaction?

- Any involvement with a person on a government denied party list, or a person in a prohibited country (e.g. Iran), or a prohibited country bank.
- Customer:
  - name contains wording of a prohibited country within the name (e.g., Syrian Airlines).
  - wants to use a government bank of a prohibited country (e.g. Bank of Saderat's Paris branch office).
  - is willing to pay cash for a very expensive item when the terms of sale would normally call for financing.
  - asks to omit or change information from invoices.
  - requests anonymity or is unwilling to provide documents to verify identity.
- Routine installation, training, or maintenance services are declined by the customer.

## Product – What product is being requested?

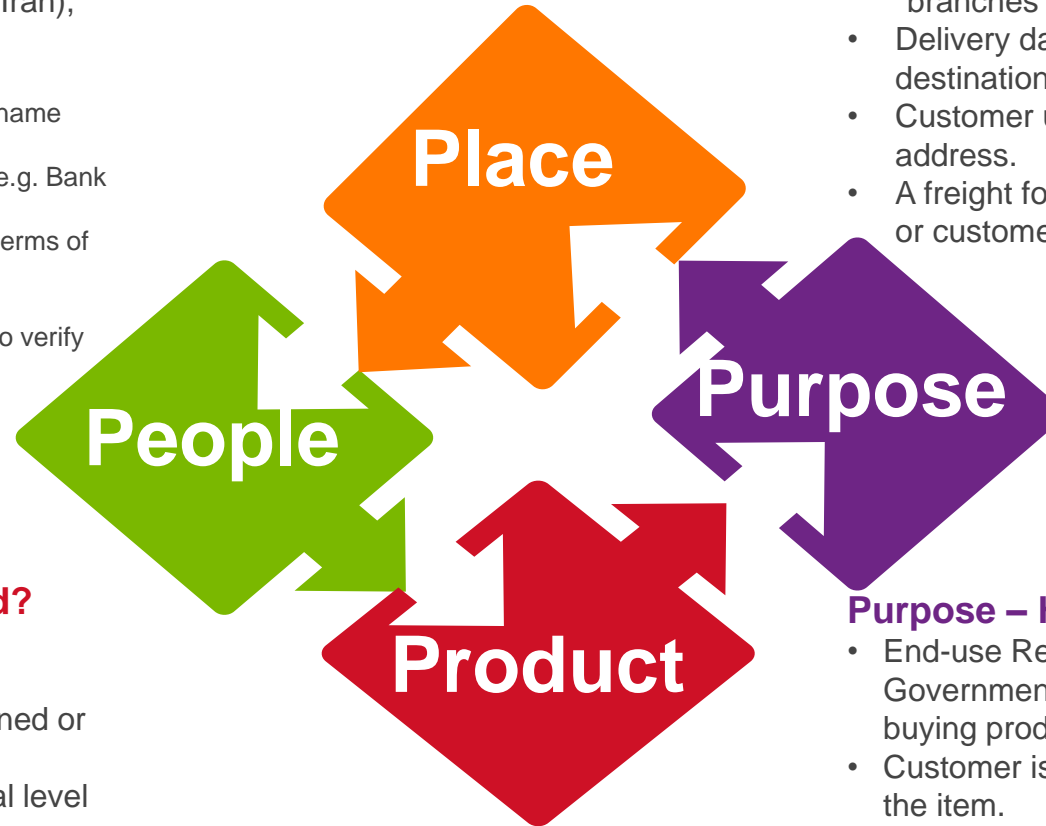
- Some of Dell's products require **export or import licenses**. They include products with advanced encryption capabilities or products specially designed or modified for aerospace/defense end-use.
- The item ordered is incompatible with the technical level of the country to which it is being shipped, such as semiconductor manufacturing equipment being shipped to a country that has no semiconductor industry.

## Place – Where is products going?

- Companies headquartered in a prohibited country or branches located abroad in a non-prohibited country.
- Delivery dates are vague, shipping routes are circuitous, final destination is a traditional transshipment point.
- Customer uses a PO Box or UPS Store as their delivery address.
- A freight forwarder is listed as the product's final destination or customer has indicated they will use a freight forwarder.

## Purpose – How will our products be used?

- End-use Restrictions –An export license issued by U.S. Government may be required for sales to individuals or entities buying products or services for any of the prohibited end-uses.
- Customer is reluctant to offer information about the end-use of the item.
- Product's capabilities do not fit the buyer's line of business.
- Customer is a freight forwarder or general trading company located in a traditional transshipment point.



# Key Concepts and Takeaways

- Dell EMC complies with all applicable export control and sanctions laws and our Partners are contractually bound and expected to do the same.
  - Including compliance with the U.S. prohibitions on doing business in or with sanctioned countries (including Cuba, Iran, North Korea, Syria and the Crimea region) and with sanctioned individuals and entities.
  - It also includes end user, end use, and end destination controls under applicable Export Control laws.
- You are responsible for taking all appropriate steps to ensure your compliance with these laws.
  - An ECP is an essential compliance element.
- You are responsible for knowing your customer or end-user as well as taking appropriate steps to ensure that you do not do business with sanctioned individuals and entities.
  - This includes screening all parties to a transaction against the various sanctioned persons lists [found here](#)
- Failure to abide by your compliance obligations can lead to your termination as a Dell EMC Partner and other appropriate action, including civil and criminal penalties.

The Dell EMC logo is centered within a white rectangular border. It features the word "DELLEMC" in a white, sans-serif font. The "D" is a solid block letter, while the "E" is a stylized, multi-lined graphic element. The "LLEMC" portion is in a standard sans-serif font.

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