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# THE WORLDECR EXPORT CONTROLS AND SANCTIONS FORUM 2017 LONDON

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# <u>5-6 OCTOBE</u>R, 8 FENCHURCH PLACE, LONDON EC3

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#### Welcome



Tom Blass, Editor, WorldECR This year's Forum events take place against a backdrop of quite extraordinary uncertainty – with many of the issues hitting the headlines of the mainstream press having a direct bearing on the practice of export controls practitioners and their advisers:

- The US administration's relationship with Russia under scrutiny
- Turbulence in the Gulf, and a de facto embargo against the state of Qatar
- The Obama foreign policy legacy, including the JCPOA and Cuba détente, under reconsideration by his successor
- New fears around cybersecurity and the export of intangibles
- The United Kingdom's breakaway from the European Union
- Heightened concern about North Korea's nuclear ambitions and increased pressure on China to assert its influence over president Kim

There is no getting away from the fact that, at a time when business craves policy certainty, the messages from government on key areas such as trade and foreign policy are unclear and sometimes confused, and the multilateral approach to security threats is consequently undermined. If ever there has been a time for industry to demonstrate its potential lead, it is now.

We're bringing together, in Washington and London, presenters and panellists who are at the top of their game, whether as consultants or senior industry compliance professionals. What each has in common is the rich seam of experience that enables critical decision-making and high-level advice, leading from the front on a shifting terrain:

- How can compliance advise on BREXIT in a way that aligns with company goals?
- Iran, Cuba, Russia: full steam ahead or proceed with caution?
- In the light of big-ticket settlements and penalties what lessons can I take away?
- Exporting sensitive cyber products do I need a company-wide strategy?
- Does North Korea pose a threat to the integrity of my trading operations in East Asia?
- The UK's OFSI: Is it the 'mini-OFAC' it's been described as? And should I be revamping my UK compliance programme?

Across the programmes, you'll have the opportunity to hear from and engage with leaders at companies including Arconic, Boeing, Ericsson, Flowserve, Google, Marshall, RUAG, ZTE – a spectrum of experience from a range of industry sectors – as well as leading lawyers and consultants from firms and institutions renowned in their respective jurisdictions and internationally for the quality of the advice they give world-beating companies.

Past attendees of *WorldECR* Forum events know that they provide an unparalleled opportunity to make contacts, learn from peers and mentors, share ideas and concerns, broaden horizons – and take the lead in the increasingly demanding and complex domain of sanctions and export control compliance.

Join us in London and/or Washington. We look forward to seeing you.

As in previous years, you can enjoy an **optional dinner** on the first evening of the Forum, following the drinks reception. To date, this relaxed and informal dinner for speakers, panellists and delegates who are staying over, held in a local restaurant, has proven a great success. It is optional – there is an additional charge – but it can be a fun end to the first day and a great opportunity to build new contacts.

#### Key dates and offers

Please allow me to draw your attention to the following:

If you register by 8 September you can save £200 • Additional delegates from the same organisation can save an additional £100 • *WorldECR* subscribers and past Forum attendees receive a 10% discount.

Tom Blass Editor, WorldECR



# Magnus Nordeus – State of the Art Compliance: the Ericsson approach

What's the best way to structure a trade compliance function? Centralise? De-centralise? On regional or national lines? The answer, of course, depends on the nature of your company, its global footprint, product portfolio and customers – there is no one-size-fits all. But it's always informative to hear from a world-beating company like Sweden's Ericsson about its approach.

Over the course of the past year, Magnus Nordeus, Group Head of Trade Compliance at Ericsson, engaged in a major overhaul of the company's compliance structure: centralising where necessary but also placing greater responsibility with those that need it, utilising technological assistance – but also focusing on the human dimension.

State-of-the art compliance is essential for a company with the global reach, reputation and role of one of the world's most high-profile and recognised telecommunications companies – not least in the light of the overlapping jurisdictions impacting on its activities (Ericsson, HQ'd in Stockholm, is also listed on the New York stock exchange.)

Not everyone faces the same scale of challenge. But Nordeus's presentation promises food for thought for anyone seeking to continually improve their compliance function.



# Lothar Harings and Marian Niestedt – The Reformation in Europe: it's on its way!

Last September, the European Commission finally published its Proposal for the Modernisation of the EU Export Control System – intended to address new threats, new priorities and concerns of industry. Amongst other things, the Proposal

- Aims to 'harmonise' licence applications across the EU
- Introduces new general authorisations including for intra-company transfers, low-value shipments and encrypted products
- Seeks to clarify 'catch-all' and boost information sharing between Member States, and
- Develops new partnerships between the regulators and industry

Much of this will be music to the ears of companies who have been seeking greater consistency and clarity; other changes – such as the introduction of a new 'human security' dimension – have met with a more mixed reception by businesses.

In this presentation, Lothar Harings and Marian Niestedt of GvW Graf von Westphalen reflect on EU dual-use reform and related developments – an important session for companies looking to factor change into their compliance programmes.







### Panel Discussion led by Daniel Reisner and Richard Tauwhare – The international regulation of sensitive cyber-products

Sensitive cyber products – encryption tools, surveillance products – are increasingly necessary components of everyday life, commerce and industry but are also potentially open to misuse by criminals, terrorists or intrusive governments. In some respects, they represent the age-defining technologies of the 21st century.

But there is a deficit of understanding about the way that the export of such products is controlled (not surprising perhaps, given confusion within the regulatory community, and the speed of technological change).

So, against the backdrop of a debate around the role of such technologies, the ethics and impact of their use and their fast-changing nature, we're delighted that Richard Tauwhare, of law firm Dechert, and Daniel Reisner, of Herzog Fox Neeman, will be leading this discussion on the international regulation of sensitive cyber products, drawing in voices from delegates, some of whom, perhaps, are still uncertain as to how these issues impact upon a broad swathe of companies, regardless of industry sector.



# Matt Bell – What next for ZTE? New beginnings and a programme for change

Earlier this year, ZTE, the Chinese multinational telecoms company, finally reached an agreement with three US agencies – to the tune of \$1.19bn – to settle allegations of export control and sanctions violations resulting from exports to Iran and other countries.

It had been a long and drawn-out process: The fact that ZTE had been placed on the BIS entity list imposed a huge risk to the company – only mitigated by the novel adoption of a Temporary General License, enabling US businesses to transact with the Chinese company without fear of penalty. (That burden was removed when the company settled.)

Matt Bell, previously at Weatherford, joined ZTE long after the events occurred that had resulted in the penalty. It now falls to Matt to work with an Independent Compliance Monitor and Auditor over the next seven years of probation while also working to implement a programme of change at ZTE, and to ensure world-class compliance in the wake of a series of events and compliance mis-steps that could have had a devastating effect on the multi-billion-dollar company.

We're thrilled that Matt will be at the London Forum to share with delegates the essentials of that change programme – and the lessons that other companies can learn from ZTE's recent history.





#### Alex Parker and Konstantin Bureiko – Pulling the trigger: OFSI's enforcement powers

Last December, a UK government press release carried the headline: 'New Million Pound Penalty For Financial Sanctions Breaches'. Her Majesty's Treasury, it seemed, could scarcely contain its excitement at the powers it had bestowed upon its new Office of Financial Sanctions Implementation or 'OFSI' – modeled, apparently, on the US government's OFAC.

But how much extra muscle does OFSI now possess under the Policing and Crime Act (2017)? And when are we likely to see it in action (and how?)

Alex Parker and Konstantin Bureiko, lawyers at Debevoise & Plimpton who frequently advise clients on the ramifications of the new regime, are on hand to review:

- The nature and scope of the proposed penalties at OFSI's disposal (and current state of play following a December consultation paper)
- The extent of corporate exposure to the penalties
- Thresholds which would trigger the penalties; and
- What further developments OFSI may have up its sleeve.

OFSI, clearly, has shaken up the landscape of compliance, introducing new considerations and emphases – and giving renewed impetus to government's insistence that the private sector plays its role in supporting foreign policy. This will be a valuable session for compliance practitioners both in the financial sector and more generally.



#### Barbara Linney – The Power of OFAC. Is it limitless?

The US Office of Foreign Assets Control – or 'OFAC' – has long been viewed as an opaque agency with broad authority that is impervious to challenge. In the sanctions context, it embodies the 'long arm' of US law, shaping the destinies of companies and individuals that it deigns to 'designate' and sculpting the parameters within which others – both US and non-US – can transact or do business with them.

Rather than challenge OFAC's allegations – incurring the risk of a shattered reputation or penalties if the challenge were to fail – almost invariably companies when presented by the agency's allegations agree to settle, sometimes for eyewatering amounts.

Has fear of OFAC obscured a clear sight of its authority? And does the recent decision of the US Court of Appeals in the Epsilon case represent a chink in OFAC's armour?

In a much-needed presentation, Barbara Linney of law firm Miller & Chevalier Chartered addresses some all-too-infrequently asked questions:

- Must OFAC provide due process rights?
- Are there any other constitutional limits on OFAC's designation and enforcement powers?
- Do rights and limits differ for US persons and non-US persons?

Note: the answers are NOT to be found on the FAQS section of the US Treasury website!





### Lourdes Catrain and Jamie Rogers – A Great British fog: what does BREXIT mean for export controls and sanctions?

BREXIT may mean BREXIT – but it also means a whole lot of other things too, including a realignment of the United Kingdom's relationship with not just the European Union, but the rest of the world.

Of its impact on export controls and sanctions, much remains uncertain, though the UK government has initiated a consultation on a new framework for imposing sanctions (and there's speculation as to what withdrawing from the EU means for export controls at a time when the EU system itself is about to undergo change).

There are many key questions to be answered:

- Does BREXIT spell the end for a joined-up, pan-European approach to foreign policy and security?
- What does it mean for non-UK companies with UK offices exporting from the UK and for UK companies with distribution operations in the EU?
- Will BREXIT create new compliance requirements for businesses seeking to adhere to UK and EU rules?
- Will the United Kingdom's Export Control Organisation maintain existing EU export control authorisations and mirror forthcoming changes or strike out on its own, in concert with the 'people's will', to claw back 'sovereignty'.

To date, the United Kingdom has been at the forefront of EU export control and sanctions policy; but the ramifications of the referendum are just becoming clear.

Hogan Lovells lawyers Lourdes Catrain and Jamie Rogers will be helping us see through the 'fog' that is BREXIT, dispelling myths and addressing the concerns of EU and soon-to-not-be-EU companies alike.



#### Daniel Moulis – A year of change: Australia's Defence Trade Control Act

In 2016, Australia's Defence Trade Control Act 2015 (ADTCA) came into force, significantly tightening the country's export control regime relating to both dual-use and military products and bringing the Australian system into line with those of other nations.

Not that there were no controls before the legislation's introduction. But until then there were significant gaps, for example, as regarding:

- The transfer of intangible technology
- Brokering of controlled goods for transfer between locations outside of Australia
- Publication of controlled military technology

Introduction of the new controls was met with some controversy – with some concerned, for example, about implications for academic freedoms. So how has the ADTCA bedded in, in practice?

We'll be joined at the London Forum by Daniel Moulis, of Australian boutique trade law firm Moulis Legal, who will bring to bear practical experience of the new Act, its impact on business and trade – while also outlining new challenges and risks. A fantastic opportunity to take stock of a system that has much in common with elements of UK/EU and US export controls but also possesses its own unique characteristics.





# Alex Parker and Konstantin Bureiko – Sanctions in limbo? A global update

The Administration of Barack Obama was determined to revise long-held (arguably entrenched) US foreign policy positions – and to respond to perceived regional threats posed by the United States erstwhile Cold War foe.

Obama's successor, Donald Trump, sees the world through a different lens and has promised to rip up – or at least revisit – much of the Obama legacy. Meanwhile, his camp's relationship with Russia has been very much under scrutiny. To date, little – with regard to sanctions against Iran, Cuba, Russia – has actually changed. (While in the EU, the conversation about Russia is blurred by developments closer to home.) Does this place us in a state of limbo – or is it the calm before the storm?

In their presentation, Alex Parker and Konstantin Bureiko of Debevoise & Plimpton llp help us understand the undercurrents swirling beneath apparently still waters by outlining:

- Key sanctions developments in the US, EU, and further afield
- The current situation as regards US and EU sanctions in Iran
- The current position of the US in light of the Trump administration's stance
- The potential impact of Brexit on the UK's sanctions regime; and
- The development of other emerging sanctions regimes around the world.



# Andrea Berger – The North Korea threat: sanctions, policy and responses. A briefing for business

North Korea remains determined to impress upon the world its willingness and ability to develop weapons of mass destruction – despite the opposition not only of western countries, but the country traditionally regarded as its 'ally', China. In the face of heightened sanctions, Pyongyang has continued to test ballistic missiles and nuclear weapons, operate sophisticated trading networks overseas, and access the international financial system with apparent ease.

How should business 'read' and respond to a developing situation which impacts well beyond the region? What is the trajectory of unilateral and multilateral sanctions on North Korea, and what do they mean for business? And how is North Korea adapting to and evading sanctions in order to facilitate its international trade and finance?

These are some of the issues that Andrea Berger, senior research associate at the Middlebury Institute for International Studies, and a specialist in East Asia and sanctions policy, will be addressing in her presentation to delegates.





# The team in charge of the implementation of Resolution 2231 (2015) – Iran update

16 January 2016 (Implementation Day) made history. It marked, in effect, the termination of United Nations Security Council sanctions against Iran.

BUT: On the same day, new, specific restrictions established by Annex B to Resolution 2231 (2015) came into force, including on nuclear-related, ballistic missile-related and arms-related transfers to or from Iran. Resolution 2231 (2015) also endorsed the establishment of a Procurement Channel through which certain transfers of nuclear or dual-use goods, technology and/or related services to Iran must be approved.

Given that these include, potentially, a broad range of dual-use items, materials, equipment, goods and technology, the Procurement Channel must be of great interest to companies exploring the possibility of engaging or re-engaging with Iranian counterparts.

We are fortunate that we will be joined in London and Washington by representatives of the Security Council Affairs Division of the UN Secretariat, who will outline for delegates:

- The specific restrictions (on nuclear-related transfers, ballistic missile-related transfers and arms-related transfers to or from Iran, assets freeze and travel ban) imposed by Annex B
- The functioning of the Procurement Channel (review process, roles of the Security Council, the Procurement Working Group and the UN Secretariat, procedures for submission of proposals)

Companies will make their own assessments of the merits of re-engaging with Iran (and face restrictions based on domicile and corporate structure). But this presentation is essential background for all export compliance officers and advisers.



#### **Richard Tauwhare – EU controls on encryption and cyber surveillance**

Export controls on encryption are amongst the most complex (mirroring the technology) – while EU proposals to restrict exports of technology that has surveillance capacity have met a mixed reception from those concerned about workability and unintended consequences.

This is a fast-changing, and highly technical area of export control law, always threatened by the need for revision in the light of technological change. But we're delighted that Richard Tauwhare, a Senior Director at the London office of law firm Dechert, will be on hand to narrow our focus to the essentials:

- What is and is not controlled under EU export control regulations?
- How is the Cryptography Note (and other decontrols) best interpreted (and is there variation in interpretation by different Member States)?
- The application of the controls related to intrusion software
- What is definitely changing (revisions agreed and under discussion in the Wassenaar Arrangement)?
- Changes that may be on the cards: the debate on revising the EU Dual Use Regulation and possible changes in UK licensing on encryption (BREXIT-related or otherwise!)

If encryption all sounds cryptic, we're confident you won't think so after Richard's presentation.







How are aerospace and defence companies responding to a changing world and markets? And what are the compliance challenges associated with doing so?

This panel session brings together thought-leaders in aerospace/defence trade controls to discuss the issues on their respective radars against a background of Middle East uncertainty, the JCPOA, security challenges in East Asia, Russia sanctions and BREXIT.

- How does the impact of US export control reform continue to make itself felt?
- How can export controls and sanctions considerations be woven into a comprehensive approach to compliance?
- Given the potential for revised alignment of international agreements (in the light of BREXIT, and new directions in the United States and European Union), what constitutes best practice for undertaking jurisdictional analysis?

These issues and more are likely to be among the topics brought up in conversation with the panellists: Sandra Roberts, Global Trade Specialist – Europe, at Boeing; Joshua Fitzhugh, Vice President and Group Head of Trade Controls at BAE Systems; and Laurence Carey, Group Trade Control Manager at Marshall ADG.





# John Menton – An Irish perspective on EU trade controls: policy and practice

Ireland is the second-largest exporter of software in the world. In his presentation, John Menton, partner at Dublin law firm Arthur Cox, will provide an overview of Irish export controls (with a focus on the export of dual-use goods and controls on exports containing encryption).

John will also be outlining the current practice and procedures of the main Irish export regulator (DJEI), dealing with topics such as voluntary disclosures, potential hidden traps in the transfer of certain encryption products from the US to the EU, and looking at the potential impact of Brexit on exporters from Ireland.



# Daniel Reisner – Israeli export controls and why you should really care

Israel's tech sector is amongst the world's largest and most significant. Understandably, it attracts investment and collaboration from across Europe, the United States and beyond.

At a previous *WorldECR* Forum, Daniel Reisner explained to delegates why there's very good reason to understand (to the extent that's feasibly possible!) the key components of the Israeli export control system, the respective jurisdictions of its agencies. (Israel, it is worth noting, though not a member of the Wassenaar Arrangement implements the WA control list updates simultaneously on their publication – and possesses one of the world's most stringent export control regimes.)

Now is the time to tune in again – because change is on the cards! Amongst a proposed reform programme are exemptions from the infamous requirement for a 'marketing licence' and a major restructuring of the Defence Export Controls Agency.

In his presentation, Daniel, a former head of the international law department for the Israeli Defence Force (and an adviser to five of his country's prime ministers) will be looking at recent developments in controls, including, critically, on encryption and 'cyber' products, and the direction of travel of future changes.

Anyone who has previously attended one of Daniel's presentations will know that they are not only engaging, but stimulate discussion around issues that extend well beyond national boundaries.

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### Kala Anandarajah – Nightmare in Asia? A multijurisdictional case study

When an Anglo-Swedish drone manufacturer seeks new markets and cheaper manufacturing in South East Asia, it seems its only real concern is to ensure compliance with US export controls as the finished drones feature some controlled parts.

Waking up one Monday morning, however, the compliance team are stunned as

- An incriminating Youtube video emerges, showing the company's drones firing into demonstrators
- A change in the classification of key US components occurs
- A key business partner is placed on the OFAC SDN list

Presented by Kala Anandarajah, a partner at leading Singapore law firm Rajah & Tann, this high-octane case study works through some hypothetical but all-toopossible export control and sanctions challenges to a modern supply chain, inviting delegates to share their experience and exercise their judgement and decisionmaking capability.

Delegates will be presented with the full case study in advance of the Forum, and invited to draw from the scenario described their own thoughts as to how a conscientious compliance officer or lawyer would best approach the myriad challenges.

# Further sessions to be announced

# The 2016 WorldECR Forum: snapshots













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De-risking is reshaping finance...















# THE WORLDECR EXPORT **CONTROLS & SANCTIONS FORUM**

### 5-6 October 2017, 8 Fenchurch Place, London EC3

## **REGISTRATION FORM**

Please register the following delegate(s) for The WorldECR Export Controls and Sanctions Forum 2017

Delegate 1	Delegate 2
NAME	NAME
POSITION	POSITION
Conference only Conference + dinner (please tick)	Conference only Conference + dinner (please tick)
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1) 🛛 I will pay by card on line: please go to www.worldecr.com/conference-payment

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Please email your completed registration form to mark.cusick@worldecr.com

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I have enclosed a cheque made payable to D.C. Houghton Ltd for  $\pm$ Please send your completed registration form with cheque to: D.C. Houghton Ltd, Suite 17271, 20-22 Wenlock Road, London N1 7GU, England

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#### **\*\* PAYMENT OPTIONS FOR NON-UK DELEGATES**

Non-UK-based delegates may be able to avoid paying VAT. For further details - or if you prefer to pay in a different currency - please email mark.cusick@worldecr.com

#### Terms and conditions

Please note, by registering for this event you accept the terms and conditions below.

#### **Registration Fee**

Your fee includes the attendance at both days of the conference: morning. mid-morning and afternoon coffee and pastries, and lunch on both days: drinks reception on day 1; programme materials.

#### **Registration policy**

Delegates may not 'share' a registration without the organiser's authorisation.

#### Payment policy

Payment must be received in full by the conference date. 'Additional delegate' prices are only available to delegates from the same organisation as the original full-fee delegate.

#### **Cancellations and Refunds**

You must notify the conference organiser 48 hours before the conference if you wish to change the delegate.

If you wish to cancel your registration, you can do so incurring the following charges:

Cancellation more than 28 days before the event - full refund less 33% admin fee.

Cancellation between 27 and 6 days before the event - full refund less 50% admin fee.

Cancellation between 5 days before and the day of the event - no refund.

#### Change of venue

The organisers reserve the right to change the venue should attendance numbers so demand.

#### Change of speaker and presentation

The organisers reserve the right to change speakers and/or presentations.

### **The Venue**

### THE VENUE – AND GETTING THERE

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The Venue for the WorldECR Export Controls and Sanctions Forum 2016 is ETC Venues' 8 Fenchurch Place, a state-of-the art conference, exhibition, meeting and training venue next to Fenchurch Street Station.



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### Hotels

# **HOTEL CHOICES**

The area around Fenchurch Street is well served by hotels.

We have negotiated a special reduced rate with the 5-star **Grange Tower Bridge hotel**, 45 Prescot Street, London, E1 8GP. This hotel is just a few minutes' walk from the venue.

To take advantage of the special rate when booking, call **020 7959 5000** or email **towerbridge.reservations@grangehotels.com** quoting group **ID 051017YF**.

Alternative hotels nearby include: Guoman Tower Hotel; Doubletree by Hilton; Apex City of London Hotel; and The Chamberlain Hotel.