



BERLINER CORCORAN & ROWE LLP

## Export Controls and Economic Sanctions

The Export Controls and Sanctions Practice Group of Berliner, Corcoran & Rowe LLP represents Fortune 50, multinational, medium, small, and startup companies as well as think tanks and individuals in all aspects of compliance with and enforcement of U.S. dual-use, defense, and nuclear export control regulations, as well as U.S. economic sanctions regulations (including extensive experience with Cuba, Iran, Russia/Ukraine and Syria sanctions) and U.S. antiboycott regulations. Our team is among the most experienced in the country, forming a “boutique within a boutique.” Each of the seven core members has between 10 and over 30 years of experience with export controls and sanctions, and our attorneys frequently speak on a wide range of topics at national and international conferences and training programs.

Our lawyers have experience serving in government and industry regulatory advisory groups and committees, trade and professional associations, and private business coalitions, allowing BCR attorneys to influence policy through regular interaction with policymakers, regulators, and enforcement officials. Our attorneys have also testified before Congress and advised the Executive Branch on export control and sanctions legislation and regulations, and are well respected at the political and staff levels at relevant agencies.

Serving a broad clientele has helped BCR develop experience in numerous commercial and defense industry sectors, with particular experience in computers, software, encryption, microelectronics, sensors, night vision, aerospace, automotive, medical, test & measurement, and the civil, commercial, and private exploitation of space. Our attorneys thrive on the challenge of learning new technologies and invest significant time keeping up with and analyzing the rapidly changing landscape of U.S. export controls and sanctions.

Our team advises clients on all aspects of export controls and sanctions, including developing and implementing **compliance programs and training**, assisting with complex **classifications and jurisdiction determinations**, **licensing and agreements**, **investigations and enforcement matters**, **transactional due diligence**, **audits and monitorships**, **litigation/ arbitration expert testimony**, and **export compliance representation**.

### Compliance Systems & Training

BCR prides itself on providing clients large and small cost-effective compliance solutions tailored to each client’s business risk profile. We assist those new to export controls setting up effective internal compliance programs as well as help clients very experienced in export controls/sanctions to fine-tune their established systems.

Berliner, Corcoran & Rowe LLP  
1101 Seventeenth St. NW, Suite 1100  
Washington, DC 20036  
[www.bcrdc.com](http://www.bcrdc.com)



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## **Classifications & Licensing**

Proper classification is the core of effective export control compliance. BCR's team helps clients determine the appropriate export control jurisdiction and classification for their products and technology. Once jurisdiction is established, we assist in obtaining licenses or other export authorizations and advise on the use of license exceptions/exemptions, as well as with registration and reporting requirements.

## **Investigations/Enforcement**

BCR has extensive experience with export control and sanctions investigations and enforcement matters, including assisting clients with:

- Auditing and assessing compliance programs and procedures, identifying gaps and recommending improvements.
- Conducting internal investigations to identify potential export control and sanctions violations.
- Responding to government-initiated inquiries, visits, document requests and subpoenas.
- Preparing effective voluntary or directed disclosures, and advocating for favorable resolutions.
- Defending clients in administrative and judicial proceedings relating to export controls and sanctions violations.
- Developing mitigating and remedial measures and strategies in the wake of violations.
- Serving as an external monitor incident to settlements with government agencies.

## **Transactional/Due Diligence**

Export controls and sanctions can affect everyday business transactions, as well as have a significant impact in mergers and acquisitions, particularly cross-border transactions. BCR attorneys assist clients in this area by:

- Conducting due diligence review of export controls and sanctions compliance in anticipation of a merger or acquisition, preparing any necessary government disclosures, and advising regarding potential liabilities.
- Preparing risk assessments.
- Assisting with SEC disclosures.
- Advising regarding DDTC registration changes incident to mergers and acquisitions.



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## **Litigation/Arbitration Support**

BCR frequently assists clients, including other law firms and lawyers, in complying with export controls and sanctions laws implicated during international arbitration or litigation, including:

- Providing subject matter expertise to other law firms involved in arbitration or litigation relating to export-controlled products or technology.
- Advising other law firms on their own export compliance programs and procedures.
- Reviewing case materials (discovery documents, pleadings, expert reports, etc.) for export-controlled information.
- Assisting with registering and obtaining authorization to export case materials.
- Serving as an expert witness, and providing expert reports/opinions on export controls and sanctions matters.

## **Public Policy**

BCR attorneys invest time and energy keeping up with the rapidly changing landscape of U.S. export controls and sanctions, and help clients contribute to the “Washington process” by:

- Participating in Government and industry advisory groups and committees, trade associations, professional associations, and private business coalitions relating to export controls and sanctions.
- Advising Congress and the Administration on export control and sanctions matters.
- Advising clients on relevant legislative initiatives, and work with clients to influence policy developments by preparing comments on proposed export control rules and regulations, and through our relationships with agency and congressional personnel.

## **Representative Industries**

BCR has extensive experience with a variety of products and industries, including: advanced materials, aerospace, automotive, ceramics, chemical and biological agents and processing equipment, computers and software, defense, electronic test equipment, encryption, security and surveillance, financial and insurance, focal plane arrays/night visions, geophysical instruments, industrial lasers, infrared devices, irrigation equipment, international shipping and logistics, medical devices, machine tools, microelectronics, networking/cloud computing, nuclear, oilfield tools, piezoelectric crystals, pharmaceuticals, satellites/spacecraft, surreptitious listening devices, semiconductors, telecommunications, trade associations, underwater remote operating vehicles, and unmanned aerial vehicles.

## Laws and Regulations

- The Export Administration Regulations (EAR) administered by the Commerce Department's Bureau of Industry and Security (BIS)
- The International Traffic in Arms Regulations (ITAR) administered by the State Department's Directorate of Defense Trade Controls (DDTC)
- U.S. Munitions Import List (USMIL) controls regulated by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
- U.S. and multilateral sanctions programs administered by the Treasury Department's Office of Foreign Assets Control (OFAC), the United Nations, and the European Union
- Nuclear trade controls administered by the Department of Energy (DOE) and the Nuclear Regulatory Commission (NRC)
- Antiboycott regulations administered by BIS and the Department of the Treasury.
- The Foreign Trade Regulations (FTR) administered by the Commerce Department's Census Bureau
- U.S. and multilateral export control regimes, including the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, the Missile Technology Control Regime (MTCR), and the Biological Weapons Convention (BWC)

## Export Controls and Sanctions Team

- [Ben Flowe](#) established BCR's Export Controls and Sanctions Practice. He authored the comprehensive Export Compliance Guide (1995, condensed update available), is a member of the Commerce Department's Regulations and Procedures Technical Advisory Committee since 1993 (Chairs Enforcement and Compliance Encryption Working Groups), chaired the ABA's Export Controls and Economic Sanctions Committee for ten years, and Co-Chaired TechAmerica's Export Controls Committee in 2003.
- [John Ordway](#) has practiced for over 25 years in the areas of export control on Munitions List items and government procurement law. He was a Co-Chair of the ABA International Section's International Procurement Committee. He advises major U.S. and foreign corporations on a variety of ITAR compliance, licensing, and enforcement matters, and counsels other international law firms in connection with satellite procurements and international disputes arising out of satellite failures.
- [Dan Fisher-Owens](#) focuses on compliance, licensing, and enforcement matters relating to U.S. export controls, economic sanctions, and antiboycott regulations. He has expertise in controls governing defense articles, infrared sensors, oilfield tools, encryption and information technology, technology transfers to foreign nationals, as well as the FCPA, import, and anti-money laundering laws. He is based in San Francisco, California.

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- [Babak Hoghooghi](#) counsels clients on U.S. economic sanctions laws and regulations, with particular expertise on the Iranian Transactions and Sanctions Regulations. He has had extensive experience on compliance, licensing and enforcement matters relating to U.S. economic sanctions.
- [Perry S. Bechky](#) started his career in the OFAC legal office and he has handled all aspects of economic sanctions, including civil penalty proceedings, compliance, counseling, expert testimony, internal investigations, interpretative rulings, licensing, and securities disclosure. His experience with sanctions extends beyond OFAC regulations to include such statutes as the Helms-Burton Act, the Iran Sanctions Act, and the Sudan Accountability and Divestment Act, as well as international measures like UN Security Council resolutions and foreign “blocking statutes.”
- [Ray Gold](#) has years of experience in counseling, licensing, regulatory, and enforcement matters re export controls and sanctions, focusing on information technology, aerospace, computer, software, telecommunications, and semiconductor industries. He was Counsel, Export Controls and Government Contracts (top U.S. export control official) for Thales North America, Inc., the North American headquarters of the Thales Group, a leader in defense, aerospace, and information technology.
- [Michelle Turner Roberts](#) has broad experience in various areas of international trade law, including exports of military and dual use goods and technologies, economic sanctions, imports, and related trade regulatory matters before the Departments of State, Commerce, Treasury and Homeland Security. She has advised clients in defense, telecommunications, actuation and instrumentation, life sciences, and finance industries. She assists clients in internal compliance as well as representing them before agencies.
- [Jason McClurg’s](#) primary practice is export controls, white collar and transnational criminal defense, and government investigations. He counsels clients on the ITAR, the Export Administration Regulations, sanctions, international extradition, the FCPA, and other matters. He previously worked on legal issues involving human rights and international development in Africa for the U.S. Agency for International Development (USAID), The Carter Center, and Survivors' Rights International.

## **Other attorneys involved in this practice include:**

- [Tim Corcoran](#) is a former Assistant U.S. Attorney and specializes in litigation on international law issues. He has represented clients in U.S. District Court cases, challenging OFAC rulings and actions, with quite successful results. He also has advised and counseled clients on voluntary disclosure matters.
- [Bruce Zagaris](#) has over thirty years of experience in international law and especially international criminal law matters. He has worked on criminal cases involving export control charges. In one case he has served as counsel to petitioners who have, as a result of abduction by the U.S. Government in export control cases, brought a petition to the Inter-American Human Rights Commission.
- [Clemens Kochinke](#) is both a German and a U.S. licensed lawyer who has actively developed export control blacklist strategies and preventive compliance programs for

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computer companies. He has spoken and written frequently on export control matters. His principal clients are governments, computer and software companies, medical and transportation device manufacturers, and studios. His primary product focus is software, involving the international distribution of high technology products and services.

- [Bill Coffield](#) has been successfully representing corporations, corporate directors and officers of major foreign and multinational corporations, and public sector officials, including the White House and the United States Congress, for over twenty years. His experience includes defending criminal cases involving alleged violations of U.S. export control and economic sanctions.

