

Suspension and Debarment Breakout Session

May 8, 2018

Greg Coss – Grant Specialist, S&D Liaison

Liz Blanch – Assistant Special Agent in Charge,
Office of Export Enforcement

Brief Review of Suspension and Debarment

- Suspension and Debarment is the Government's Way of Making a Business Decision, with the key goal of protecting its fiscal interests
- Suspension and Debarment is not to be used for punishment
- You use suspension when you have immediate need for action
- Typically last one year but depending on legal proceedings can extend to 18 months
- Effective immediately

Brief Review of Suspension and Debarment, Contd.

- Propose debarment with a preponderance of the evidence
- Like suspension, it generally has a set time frame
- Typically it lasts for 3 years but can go longer depending on the severity of the offense
- Respondent has the right to appeal the proposed debarment by requesting in writing within 30 days of receipt of letter
- Usually will ask for a copy of the administrative record in order to prepare their presentation of matters in opposition (PMIO)

Most Common Reasons for Debarment?

- From the lead agency coordination requests in FY17
- Most popular reasons for potential debarment:
 - False Claims
 - Wire Fraud
 - Illegal Use of Grant Funds
 - Bribery
 - Transporting of Illegal Aliens to U.S. for profit (Homeland Security)

All Common Reasons Are Conviction-Based

- At ISDC meetings, some agencies such as USAID and Commerce have asked how to pursue fact-based cases.
- No good answers – the agencies are mostly avoiding them and dealing only with conviction-based cases.
- There are fact-based cases that Commerce can pursue that may not lead to debarment, but other actions can lead to changes in the way the contractors and grantees conduct business, and produce positive results.
- Since the OIG is staying on top of these conviction-based cases, the grant and contract program and administrative offices can pursue actions based on facts.

Details Involved with Fact-Based Cases

- Spoke with Keith Feigenbaum, Senior Trial Counsel at DLA, who worked some procurement fraud cases before returning to litigation
 - Fact-based cases are worth pursuing but pose unique challenges
 - You have to assume that every fact-based proposed debarment will go to a fact-finding hearing
 - The SDO submits disputed facts between the Government and respondent to a designated official, who will conduct these fact-finding hearings. (Sometimes it's the SDO, but for fairness, it's often a neutral fact-finder, normally an attorney, not presently involved with the case)
 - Informal hearing with the goal of establishing the facts to support the evidence of causes for debarment.
 - If the respondent does in fact appeal, two proceedings will be held: one to discuss presentation of matters in opposition, and one for fact-finding (fact-finder will handle the proceedings)
 - The contracting and/or grant officers should be prepared to testify
 - The proceedings require a significant time and resource commitment from the agency and investigative support

Details Involved with Fact-Based Cases, Cont'd.

- The proceedings should remain non-adversarial (generally held in large conference room of the agency conducting the hearings)
- Still, prepare for objections even if the proceedings are of a non-adversarial nature
- Witnesses can testify in person, under oath and can be cross-examined (sworn in by fact-finder)
- Hearings are recorded (through use of a court reporter – hired either through a contract, or online search if under micro purchase threshold. Agencies that do high volume will set up contract)
- The fact-finder determines disputed facts by a preponderance of the evidence
- Consider whether you have all the evidence – if not, ask for everything
- SDO makes the debarment decision based on the administrative record and the proceedings

Other Options Besides Debarment

Administrative Agreements

- Agency trusts that the contractor will comply with terms and conditions of the award
- The agency has decided to give the company a second chance to prove that it is worthy of getting more government funding
- The agreement document measures are taken to prevent reoccurrence and often include outside and independent review/audits by consultants
- These administrative agreements generally last three years and are recorded in FAPIIS (Federal Awardee Performance and Integrity Information System)
- Administrative agreements must be taken seriously. If an executive with the company is indicted and pleads guilty or is convicted, that executive must be removed from the company and can't exercise any control in the business operations or decision-making of the company
- Any actions after agreeing to these terms contradicting the agreement can end up with the company back into proposed debarment status

Other Options Besides Debarment, Cont'd.

Show Cause Notices

- Used when an agency wants to provide the contractor an opportunity to present information before taking action
- Normally comes from the OIG, which states that this is the recipient's opportunity to respond before the OIG makes a debarment recommendation to the SDO
- Will present background on the issue and the reason for the notice
- Requests that within thirty days, the respondent submits a response in writing explaining why they feel a recommendation for debarment is not appropriate or necessary to protect the interests of the Federal Government, and that the respondent is presently responsible.

Suspension and Debarment Actions (FY16-17 Combined)

Agency/Department	Referrals	Suspensions	Proposed Debarments	Debarments	Declinations	Show Cause Notices	Administrative Agreements	Voluntary Exclusions
Department of Commerce	15	0	6	12	0	0	2	0
Department of Energy	22	30	30	17	0	0	0	0
Department of Interior	50	10	49	52	0	1	2	0
Government-wide Total	3,555	718	1,855	1,676	116	160	75	21

Keeping an Eye on Subcontractors

- It is the duty of the prime vendor or grantee to ensure successful monitoring of subcontracts
- However, lately we've had debarments that rose from the sub-contract level
- What can we do to ensure this doesn't happen moving forward?
- Stay active in the Federal Funding Accountability and Transparency Act's Sub-award Reporting System (FSRS) to make sure there are no unusual subcontracts
- There is also FedBid.com, Inc

Working with FedBid.com

- The Department of Commerce has had contracts with FedBid.com since 2012
- As FedBid, Inc. points out, DOC buyers awarded more than \$83.6 million in contracts through FedBid's marketplace from 2012-present
- 93 percent of those went to small business – with some being subcontractors
- FedBid states that this has driven more than \$6.5 million in cost reductions while expanding DOC's supplier base and saving time in the purchasing process

Working with FedBid.com.....

- FedBid.com has a network of 93,000 plus sellers and 18,000 plus buyers
- The buyers include the federal government, but also commercial businesses and educational institutions, some of which are prime vendors or grantees with the federal government, looking for subcontractors
- FedBid.com won't police all of these sellers – that's up to the prime awardee or the federal agency giving out the grant or contract funds
- FedBid.com is more reactionary – they will not do business with a debarred company once they check SAM and see that organization listed
- Still, a Government agency has the right to call them and check to see if they've had any complaints about a particular subcontractor
- If FedBid.com says that other agencies have had complaints, an agency can then reach out to those agencies to see what was at issue

To Avoid Going With a Vendor That's Not Presently Responsible

- A recent issue at Department of Commerce was with a small vendor (what would be the size of many subcontractors on other projects) which was supplying phones from the grey market
- The vendor was able to supply the phones at a cheaper price, but were misrepresenting the products. They were not official products of the company (Cisco)
- They also promised 40 phones, but still have only delivered 13 of them. The serial numbers of the phones indicated they were coming from areas of the world where Cisco did not have suppliers
- This particular vendor has contracts with ten different federal agencies.
- Case is still pending
- So doing some investigative work means protecting not only the DOC's fiscal interests, but those of the entire federal government

Selecting Unfit Vendors is a Government-wide Issue

- Naval Sea Systems Command gave presentation at April ISDC meeting on Counterfeit Material Awareness Training
- Urged buying products from authorized suppliers (confirm with manufacturer)
- Be suspicious of abnormally low prices
- Be wary of sales or special deals
- Look for inconsistencies in labels, logos, and serial numbers
- Confirm serial numbers with the manufacturer
- Look for the warranty and license documents and verify with manufacturer
- In 98% of Naval Sea Systems Command's counterfeit material cases, the parts came from an unauthorized supplier (not authorized by the original component manufacturer to buy parts or materials directly from the manufacturer, or that has procured parts or materials from outside the manufacturer's authorized supply chain. Parts provided from unauthorized suppliers typically are not accompanied by manufacturer support and warranty.
- It's very rare, then, that issues arise from the original manufacturer or authorized supplier.

Staying Active in the Suspension and Debarment Community

- Interagency Suspension and Debarment Committee (ISDC) meets on a monthly basis at Department of Interior (Rachel Carson Room), and has a dial in number (1-800-857-0287) and passcode (9745953). Usually it is the second Wednesday of the month from 9:30am-11:30am.
- ISDC also has developed multiple subcommittees (S&D training, ISDC Public Website, SAM, Section 873 Report Drafting, Lead Agency Coordination Portal Project).
- Suspension and Debarment Website for OAM (<https://community.max.gov/display/DOC/Suspension+and+Debarment+Office+of+Acquisiton+Management>)

Bureau Points of Contact

- OS – Greg Coss (gcoss1@doc.gov) or Frank Argenziano (fargenziano@doc.gov)
- NIST – Melissa Schroeder (melissa.schroeder@nist.gov) or Megan Boblitt (megan.boblitt@nist.gov)
- Census – Samantha Brady (samantha.brady@census.gov)
- PTO – Lisa Wade (lisa.wade@uspto.gov)
- NOAA – Justin Cofer (justin.l.cofer@noaa.gov) or Paula Hance (paula.hance@noaa.gov)
- *MBDA – Nakita Chambers (nchambers@mbda.gov)
- *ITA – Brad Hess (brad.hess@trade.gov)
- *NTIA – Michael Dame (mdame@ntia.doc.gov)
- EDA – William Bethel (wbethel@eda.gov)
- OGC – Wilmary Bernal (wbernal@doc.gov) or Sarah Schwartz (sschwartz@doc.gov)
- OIG Hotline – 1-800-424-5197 or Hotline@oig.doc.gov

* Grants Only

Bureau of Industry and Security Office of Export Enforcement

Liz Blanch

Assistant Special Agent in Charge
Washington Field Office



OFFICE OF EXPORT ENFORCEMENT

OEE protects U.S. National Security, Foreign Policy, and Economic Interests by investigating violations, prosecuting violators of export control laws, interdicting illegal exports, and educating parties on how to improve export compliance best practices.





Export Enforcement

OEE accomplishes its enforcement mission with various law enforcement partners, working domestically and internationally, who focus on:

- Certain items, destinations, end-users and end-uses.
- Outreach and Prevention activities
- Pursuing appropriate administrative actions against export violators.
- Pursuing appropriate criminal sanctions against export violators.



“Are you on the list?”



- Denied Persons List (DPL)
- + Temporary Denial Orders (TDO)
- + Entity List (EL)
- + Unverified List (UVL)

CONSOLIDATED SCREENING LIST (CSL)



https://www.export.gov/CSL-search

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Search the Consolidated Screening List

Search [the screening lists](#) at one time by filling in the search boxes below. If you get too many results, try including more information to the additional fields. If you get too few results, try searching one field at a time.

Keyword
Search for words in the name, alternative names (aliases), title of the entity, and additional remarks regarding the entity.

Name
Search for an entity's name or one of its alternative names.

Fuzzy Name
When set to off, the spelling of the Name you search for must be correct to get results. When set to on, the spelling for the Name you search for may be slightly off. Check the score for each result to determine how close a match it is to the entity's name or its alternative names. A score of 100 is an exact match. Results are returned with the highest scores first.

Address
Search for the street address, city, province, and postal code of an entity.

Sources
Choose which of the screening lists that you want to search.

Countries
Choose which countries that you want to search. Note, the Nonproliferation Sanctions and ITAR Debarred lists do not include the country with an entity. If you choose to search for entities by country then you will not be searching these two lists.

SEARCH

5 results.

- Pakistan Atomic Energy Commission (PAEC)
- Pakistan Atomic Energy Commission (PAEC), and subordinate entity National Development Complex (NDC)
- Pakistan Atomic Energy Commission (PAEC), and subordinate entity Pakistan Institute for Nuclear Science and Technology (PINSTECH)
- Pakistan Atomic Energy Commission (PAEC), and subordinate entity National Institute of Lasers and Optronics (NILOP)
- Pakistan Atomic Energy Commission (PAEC), and subordinate entity Nuclear reactors (including power plants), fuel reprocessing and

2:24 PM 5/1/2018



Denial Order Denied Persons List (DPL)

- Administrative sanction imposed under section §764.3(a)(2) of the Export Administration Regulations (EAR).
- No person may, directly or indirectly, do any of the following:
 - Export or reexport to or on behalf of the denied person any item subject to the EAR; Take any action that facilitates the acquisition or attempted acquisition by a denied person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities
 - Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a denied person, or service any item, of whatever origin, that is owned, possessed or controlled by a denied person if such service involves the use of any item subject to the EAR



Who is on the List??

10 year
max

Convicted of specified offenses:

- IEEPA International Emergency Economic Powers Act
 - » Dual Use Goods, Embargos & Sanctions (Iran, Syria, DPRK...)
- AECA Arms Export Control Act
 - » Munitions Items
- Espionage

Administrative Order

- Administrative Violations
 - » Settlement Agreement (ZTE)
 - » Trial before an Administrative Law Judge

20 year
max

The Denial Order can be suspended!!



Denial Orders come in Temporary Versions too

- Upon a showing by BIS that the order is necessary in the public interest to prevent an imminent violation of the Export Administration Act or Regulations.
- Imminence is established either in proximity or likelihood. Significant and deliberate violations are more probative of imminence than lesser, “technical” ones.

...Temporary Denial Orders (TDO)



TDO vs. Denial Order

- TDO
 - Ex Parte
 - 180 days
 - Quicker to effect
 - Not a sanction (preventative measure)
 - Can be renewed
- Denial Order
 - Notice to Respondent
 - Max 10-20 years depending on authority utilized
 - Penalty/Sanction
 - Longer Process



Denied Persons List



Entity List – Foreign Parties Only

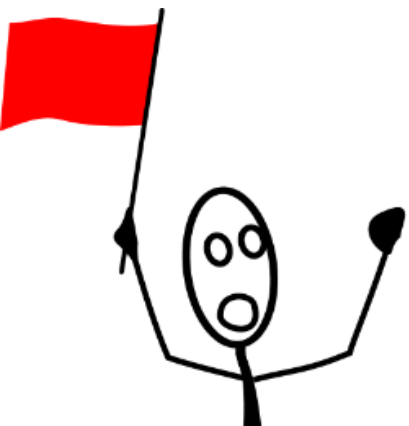
- An entity has been involved, is involved or poses a risk of being involved in activities that are contrary to the national security or foreign policy interests of the United States or is acting on behalf of such an entity.
- Inclusion is not tied to a criminal conviction, but may be associated with an Indictment.
- Creates a License requirement for exports (Less restrictive than D.O.)
 - All Items subject to the EAR
 - Specified, more tightly controlled items on the Commerce Control List only.



Suggested Criteria...

- Supporting persons engaged in acts of terror.
- Actions that could enhance the military capability of, or the ability to support terrorism of governments that have been designated by the Secretary of State as having repeatedly provided support for acts of international terrorism.
- Transferring, developing, servicing, repairing, or producing conventional weapons in a manner that is contrary to United States national security or foreign policy interests or enabling such transfer, development, service, repair or production by supplying parts, components, technology, or financing for such activity.
- Preventing accomplishment of an end use check conducted by or on behalf of BIS or the Directorate of Defense Trade Controls of the Department of State by: precluding access to; refusing to provide information about; or providing false or misleading information about parties to the transaction or the item to be checked.





Unverified List (UVL)

- Foreign persons may be added to the Unverified List if cannot verify the *bona fides* (i.e., legitimacy and reliability relating to the end use and end user of items subject to the EAR) of such persons because an end-use check, such as a pre-license check (PLC) or a post-shipment verification (PSV), cannot be completed satisfactorily for reasons outside of the U.S. Government's control.
 - During the conduct of an end-use check, the subject of the check is unable to demonstrate the disposition of items subject to the EAR.
 - The existence or authenticity of the subject of an end-use check cannot be verified (e.g., the subject of the check cannot be located or contacted).
 - Lack of cooperation by the host government authority prevents an end-use check from being conducted.

Not a license requirement or Sanction



Questions? Discussion...

- Should there be overlap from these BIS lists and the SAM Exclusions list?
- Can the SAM incorporate some or all of the BIS lists?
 - What about convictions under these offenses? Should these be automatic debarments for grants and contracts?
 - What about administrative violations? Can/should they result in debarment?



“We are putting the world on notice: the games are over. Those who flout our economic sanctions and export control laws will not go unpunished – they will suffer the harshest of consequences.”

Secretary of Commerce Wilbur L. Ross, Jr

“Despite ZTE's repeated attempts to thwart the investigation, the dogged determination of investigators uncovered damning evidence.”

Director Douglas R. Hassebrock



Backup Slides



BALLI

TDO Example



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iraviation.com



The Boeing Company
P.O. Box 3707
Seattle, WA 98124-2207

July 11, 2007
1202V-07-WGvA-047



Blue Sky One
Balli Group Plc
c/o Hassan Alaghband
Managing Director
5 Stanhope Gate
London W1K 1LQ
United Kingdom

Subject: United States Export Administration Regulations §746.2, License requirements for re-exports to Iran

The Boeing Company ("Boeing") understands that you own or operate a 747 aircraft serial number 24363. Since this aircraft was manufactured by Boeing, it is subject to the United States (U.S.) Export Administration Regulations (EAR).

Boeing was informed by the U.S. Government that all this 747 aircraft is operating by or for the benefit of an Iranian entity, specifically Mahan Air.

Pursuant to the EAR §746.2, a license must be obtained from the U.S. Government before re-exporting Boeing airplanes to Iran, which is subject to a comprehensive embargo. Any transfer by Blue Sky One of a Boeing aircraft to an Iranian operator, without U.S. Government approval, is in violation of both the embargo and the EAR.

As a result of this information and U.S. export laws and regulations, Boeing is no longer able to support 747 aircraft serial number 24363.

In order for Boeing to export to Blue Sky One in support of this 747 aircraft, the following actions must be accomplished:

- (1) Blue Sky One should remove this aircraft from providing services and/or benefits to any Iranian entity, such as Mahan Air. This aircraft should be placed in service/benefit for an entity that is acceptable to the United States Government.
- (2) Blue Sky One should submit a Voluntary Self Disclosure, detailing its violations of the U. S. Export Administration Regulations (EAR), pursuant to Section 764.4 of the EAR, to the following recipient:

July 11, 2007
1202V-07-WGvA-047



Office of Export Enforcement
Bureau of Industry and Security
U. S. Department of Commerce
14th Street and Constitution Avenue N.W.
Room H-4520
Washington, D. C. 20230
Telephone (202) 482-1208
Facsimile (202) 482-0964

(3) Therefore, Blue Sky One should provide a statement of assurance to Boeing that Blue Sky One:

- Has ceased the conduct/activities that violate the EAR
- Has submitted a Voluntary Self Disclosure to the United States Department of Commerce; and
- Is operating or using its Boeing aircraft in accordance with applicable United States laws and regulations.

Upon receipt of the Blue Sky One statement of assurance noted above, Boeing will request written permission from the Department of Commerce to engage in exporting to Blue Sky One in support of your 747 aircraft aircraft. When the Department of Commerce grants this Boeing request, Boeing will so notify Blue Sky One and commence exporting.

You may contact me directly at (425) 234-0552 or (206) 276-0619, if you have any questions.

Respectfully,

William C. van Amerongen
Director - Export Management
Boeing Commercial Airplanes
Office of Internal Governance





UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, D.C. 20230

October 10, 2007

Mr. Neil Poland
Norton Rose LLP
3 Marc London Riverside
London SE1 2AQ
UNITED KINGDOM

Via Fax: 44 (0)20 7283 6500

Dear Mr. Poland:

This is in response to your July 24, 2007 letter to Tom Madigan of the Bureau of Industry and Security's (BIS's) Office of Export Enforcement (OEE) on behalf of Blue Sky One Limited, Blue Sky Two Limited and Blue Sky Three Limited (herein collectively known as Blue Sky)¹ in which you requested that BIS confirm that three (3) Boeing 747 aircraft² owned by Blue Sky and currently leased to Blue Airways, a Armenian company, have not been reexported to Iran in violation of the Export Administration Regulations (EAR). Your letter states that Blue Sky's lease agreement with Blue Airways is in effect until October 12, 2007.

It has come to BIS's attention there is evidence that during this lease agreement Blue Airways operated the three 747 aircraft by or for the benefit of an Iranian entity, specifically Mahan Air. In your July 24, 2007 letter you state that Blue Airways never requested permission from your client (Blue Sky) to reexport the aircraft to Iran. Your letter further states that you were informed by your client that the aircraft were never re-exported to Iran. However, BIS has not received any documentation from the lessee, Blue Airways, that would substantiate your clients' assertions.

BIS has reviewed this matter and determined that, without written assurances from Blue Airways that at no time during their lease agreement with Blue Sky were any of the Boeing 747 aircraft reexported to Iran, we are unable at this time to confirm that no violation of the EAR occurred. BIS will reconsider this position if we receive the required documentation from Blue Airways. If Blue Airways wishes to maintain the position that the aircraft were not reexported to Iran and that no violation of the EAR took place they would need to provide me with a statement which certifies this position. This certification should be on company letter head and signed by an official of Blue Airways. The certification and any supporting documents that Blue Airways wishes BIS to consider in reviewing the certification should be sent to the address provided below.

If however after careful review Blue Airways discovers that a violation of the EAR actually took place they must file a voluntary self-disclosure to the Office of Export Enforcement (refer to Part

¹ The Blue Sky companies are subsidiaries of Balli Group PLC which is also represented by Norton Rose.

² Serial numbers 24383, 24363, and 26879



Mr. Neil Poland
Norton Rose LLP
Page 2

764 of the EAR). At that time, Blue Sky can request authorization from BIS to perform those activities prohibited under Section 764.2(e) of the EAR (e.g., continued use and servicing of the aircraft.)

If BIS's final determination in this matter is to deny your request for service and support as long as Blue Airways remains in possession and control of the three aircraft, Blue Sky or their parent company, Balli Group PLC, can request authorization from BIS for obtaining service and support of the aircraft after the contract with Blue Airways expires. The request should include an assurance from Blue Sky that during the remainder of the lease agreement Blue Airways operated the Boeing 747 aircraft in accordance with applicable United States laws and regulations specifically including, without limitation, those laws and regulations pertaining to exports and reexport of U.S.-origin items to Iran.

Please contact Katherine Everhart at (202) 482-2740 if you have further questions concerning this matter. Correspondence addressed to me should be faxed to Ms. Everhart's attention at (202) 482-3322 or sent to her via e-mail at k-everhart@bis.doc.gov. To ensure expedited handling please ask Blue Airways to copy Ms. Everhart if they submit a voluntary self-disclosure to the Office of Export Enforcement.

Sincerely,

Eileen M. Albanese
Director
Office of Exporter Services
U.S. Department of Commerce
15th Street and Constitution Avenue NW
Washington, DC 20230

cc: William G. van Amerongen, The Boeing Company





UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, D.C. 20230

Vahid Alaghband
Chairman
Balli Group plc
5 Stanhope Gate
London, UK
W1K 1AH

February 22, 2008

Jeff McCarthy
Executive Committee
North America and Asian Regions
1800 St. James Place
Suite 603
Houston, TX, 77056

Attn: Vahid Alaghband and Jeff McCarthy
020-7306-2000 / (713) 627-7310

VIA FAX

RE: Redelivery Order
Balli Group plc
5 Stanhope Gate
London, UK
W1K 1AH

Dear Mr. Alaghband and Mr. McCarthy,

Pursuant to United States Law (the Export Administration Regulations (EAR) Section 758.8(b) (1)), the United States Department of Commerce, Bureau of Industry and Security (BIS), Office of Export Enforcement (OEE) hereby orders Balli Group to deliver the three Boeing 747-400 aircraft (tail numbers N106UA, N192UA and N185UA) to the United States as BIS has reason to believe that these aircraft are subject to the Export Administration Regulations and are destined for Iran through South Korea. The transfer of these aircraft to their final destination will result in a violation of the Export Administration Regulations.

The pertinent information for the aircraft is:

- **Boeing 747-400/ Tail number N106UA (aka EK-74774) and N192UA (aka EK-74781), located in Incheon, South Korea.**
- **Boeing 747-400/ Tail number N185UA, located at Kimhae, South Korea.**

Destination:

- **Iran through South Korea.**

Please contact Special Agent, Joseph Varga, (703) 487-9300, to discuss this matter.

Sincerely,

Rick Shimon
Special Agent in Charge
Washington Field Office

CC: Hassan Alaghband
Executive Director
Balli Group plc
5 Stanhope Gate
London, UK
W1K 1AH



Lily Raissi – Dehkordy

5 Hoeroff Avenue
London NW2 2EJ
United Kingdom

Tel: (+44)7867802345
E-mail: lraissi@hotmail.com
Nationality: British

EDUCATION

Kings College University of London, London – England School of Social Sciences and Public Policy, BSc Business Management <i>Classification: Upper second.</i>	2004-2007
Enforex Language School, Marbella – Spain Extended my knowledge of the Spanish language and culture while living and developing contacts in Marbella.	2003-2004
Kings College University of London, London – England School of Physical Science and Engineering, BSc Computer Science with Business Management – 2 semesters	2002-2003
Southbank International School, London – England Graduated spring 2002 with a full International Baccalaureate diploma. <i>Results: 29 points.</i>	1995-2002
Rustam Iranian School, London – England Studying Farsi GCSE (A) and A-level (A).	1995-2002

WORK EXPERIENCE

Balli Group PLC, BlueSky, Balli Trading, Balli Ariyan <u>2007, Balli Trading</u> <ul style="list-style-type: none">Projected feasibility studies for the purchase of jack up rigs within Iran.Research into a proposed oil and gas venture between Balli and the Iranian Offshore Engineering and Construction	2005-2007
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WORK EXPERIENCE

Balli Group PLC, BlueSky, Balli Trading, Balli Ariyan

2005-2007

2007, Balli Trading

- Projected feasibility studies for the purchase of jack up rigs within Iran.
- Research into a proposed oil and gas venture between Balli and the Iranian Offshore Engineering and Construction Company

2006, BlueSky Aviation

Worked with professional members of staff from PK Air finance to obtain a £200m lease to acquire three Boeing 747 airplanes.

- Managed moderating D-checks of three other planes previously purchased.
- Prepared a variety of briefing materials and participated in drafting of the lease agreement between Montrose Global Capital and BlueSky Aviation.
- Acquired in depth knowledge of the aviation industry, gaining an understanding of ‘dry leasing’, ‘wet leasing’ and ‘ACMI’.
- Assisted team members in reaching an agreement with Mahan Airline on dry leasing BlueSky planes.

Computer Skills Microsoft office, SPSS, Dreamweaver, Flash, Fireworks, Adobe Premier, Maya & Adobe Photoshop

Language Skills Fluent in English and Farsi, Elementary in Spanish

Extra Curricular KCL Iranian Society, KCL Squash Society, KCL Tennis Society, KCL Young Entrepreneurs Society, Graphic Design, Website Design, Model United Nations, Varsity Basketball, Piano, Ski, Sixty Plus Charity, Kabrizak Charity.



Violation of the EAR?

- 740.15 AIRCRAFT AND VESSELS (AVS)
- AVS not available to Iran, but BIS had not enforced it against aircraft meeting the AVS criteria.
- The following nine criteria each must be met if the flight is to qualify as a temporary sojourn.
 - (i) Hiring of cockpit crew. Right to hire and fire the cockpit crew.
 - (ii) Dispatch of aircraft. Right to dispatch the aircraft.
 - (iii) Selection of routes. Right to determine the aircraft's routes (except for contractual commitments entered into by the exporter for specifically designated routes).
 - (iv) Place of maintenance. Right to perform or obtain the principal maintenance on the aircraft, which principal maintenance is conducted outside a destination in Country Group E:1 (see Supplement No. 1 to this part), under the control of a party who is not a national of any of these countries. (The minimum necessary in- transit maintenance may be performed in any country).



Violation of the EAR?

- 740.15 AIRCRAFT AND VESSELS (AVS)
- The following nine criteria each must be met if the flight is to qualify as a temporary sojourn.
 - (vi) Place of registration. The place of registration is not changed to a destination in Country Group E:1 (see Supplement No. 1 to this part).
 - (vii) No transfer of technology. No technology is transferred to a national of a destination in Country Group E:1 (see Supplement No. 1 to this part), except the minimum necessary in transit maintenance to perform flight line servicing required to depart safely.
 - (viii) Color and logos. The aircraft does not bear the livery, colors, or logos of a national of a destination in Country Group E:1 (see Supplement No. 1 to this part).
 - (ix) Flight number. The aircraft does not fly under a flight number issued to a national of a destination in Country Group E:1 (see Supplement No. 1 to this part) as such a number appears in the Official Airline Guide.



Iranian Flight Numbers

<http://www.flightstats.com/go/weblet?guid=c228b59beca1b81779c2e...>

(W5) MAHAN AIRLINES 5041

Flight: (W5) Mahan Airlines 5041
Date: March 23, 2008
Status: Unknown
Duration: 2h 00m
Equipment: 744

DEPARTURE

Airport: (IKA) Imam Khomeini Airport
Tehran, IR
Scheduled: 05:30 PM Sun 23-Mar-2008

ARRIVAL

Airport: (DXB) Dubai Airport
Dubai, AE
Scheduled: 07:00 PM Sun 23-Mar-2008

1 of 1

3/23/2008 11:38 PM



TDO Request

- Submitted on March 13, 2008
- 102 pages
- Pattern of Behavior
 - 3 Aircraft Balli leased were in Iran
 - Operating on Iranian Flight Numbers
 - 3 Aircraft in South Korea
 - Information indicates they are destined for Mahan
 - Balli refused to comply with redelivery order



[Federal Register: March 21, 2008 (Volume 73, Number 56)]

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Balli Group PLC, Balli Aviation, Balli Holdings, Vahid Alaghband, Hassan Alaghband, Blue Sky One Ltd., Blue Sky Two Ltd., Blue Sky Three Ltd., Blue Sky Four Ltd., Blue Sky Five Ltd., Blue Sky Six Ltd., Blue Airways, and Mahan Airways

In the Matter of:

Balli Group PLC, 5 Stanhope Gate, London, UK, W1K 1AH;
Balli Aviation, 5 Stanhope Gate, London, UK, W1K 1AH;
Balli Holdings, 5 Stanhope Gate, London, UK, W1K 1AH;
Vahid Alaghband, 5 Stanhope Gate, London, UK, W1K 1AH;
Hassan Alaghband, 5 Stanhope Gate, London, UK, W1K 1AH;
Blue Sky One Ltd., 5 Stanhope Gate, London, UK, W1K 1AH;
Blue Sky Two Ltd., 5 Stanhope Gate, London, UK, W1K 1AH;
Blue Sky Three Ltd, 5 Stanhope Gate, London, UK, W1K 1AH;
Blue Sky Four Ltd, 5 Stanhope Gate, London, UK, W1K 1AH;
Blue Sky Five Ltd., 5 Stanhope Gate, London, UK, W1K 1AH;
Blue Sky Six Ltd., 5 Stanhope Gate, London, UK, W1K 1AH;
Blue Airways, 8/3 D Angaght Street, 376009 Yerevan, Armenia;
Mahan Airways, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way,
Tehran, Iran;
Respondents

Order Temporarily Denying Export Privileges



Investigation Continues

- Present case for criminal prosecution
- Build case against Balli
- Interview Witnesses
- Mahan Air contacts OEE
- Balli challenges renewal of TDO
- Balli violates the TDO



February 5, 2010 Balli pleads guilty

– Count 1

- Beginning in at least October 2007, through July 2008, Balli Aviation Ltd. conspired to export three Boeing 747 aircraft from the United States to Iran without first having obtained the required export license from BIS or authorization from OFAC, in violation of the Export Administration Regulations (EAR) and the Iranian Transactions Regulations.
- Balli Aviation Ltd., through its subsidiaries, the Blue Sky Companies, purchased U.S.-origin aircraft with financing obtained from an Iranian airline and caused these aircraft to be exported to Iran without obtaining the required U.S. government licenses. Further, Balli Aviation Ltd. entered into lease arrangements that permitted the Iranian airline to use the U.S.-origin aircraft for flights in and out of Iran.



February 5, 2010 Balli pleads guilty

– Count 2

- Balli Aviation Ltd. violated a Temporary Denial Order (TDO) issued by BIS on March 17, 2008, that prohibited the company from conducting any transaction involving any item subject to the EAR. Starting in or about March 2008 and continuing through about August 2008, Balli Aviation Ltd. willfully violated the TDO by carrying on negotiations with others concerning buying, receiving, using, selling and delivering U.S.-origin aircraft which went to the Export Administration Regulations.



Penalties

- Balli Aviation Ltd. agreed to pay a \$2 million criminal fine and be placed on corporate probation for five years.
- The \$2 million fine, combined with a related \$15 million civil settlement among Balli Group PLC, Balli Aviation Ltd. represents one of the largest fines for an export violation in BIS history.
- Mahan still remains under TDO!



Largest Civil Penalty in BIS History (at the time)

- Under the terms of the related civil settlement, Balli Group PLC and Balli Aviation Ltd. agreed to pay a civil penalty of \$15 million of which \$2 million will be suspended if there are no further export control violations.
- Balli Aviation Ltd. and Balli Group PLC are denied export privileges for five years, although this penalty will be suspended provided that neither Balli Aviation nor Balli Group commits any export violations and pays the civil penalty.
- Balli Group PLC and Balli Aviation, Ltd. will also have to submit the results of an independent audit of its export compliance program to BIS and OFAC for each of the next five years.



Entity List Example

“Report Regarding Comprehensive Reorganization and Standardization of the Company Export Control Related Matters”

ZTE中兴

ZTE中兴 机密 Highly Confidential

中兴通讯股份有限公司文件报批（阅）表

报批（阅）文件标题	关于全面整顿和规范公司出口管制相关业务的报告		文件类型： <input type="checkbox"/> 红头文件 <input type="checkbox"/> 企业制度 <input type="checkbox"/> 其它文件
附件	《关于全面整顿和规范公司出口管制相关业务的报告》		<input type="checkbox"/> 急件 <input type="checkbox"/> 普通件
拟制单位	法务部	拟制人	郭进军 日期 2011年8月25日
联系电话	13751147981	密级：	部门意见：报上级审批 <input type="checkbox"/> 阅
文件可阅读、使用人员名单（机密级以上文件适用）： 法务部部长、公司领导			
报批阅文件内容摘要： 随着我司海外业务近几年的突飞猛进，美国出口管制的风险日益加大，根据田总、邱总的指示，公司应立即成立公司级出口管制项目组研究、处理和应对公司目前的出口管制风险。			
是否提交会签： <input type="checkbox"/> 是 <input checked="" type="checkbox"/> 否 会签单位（附会签文件适用）			
出口管理部门意见	同意 报领导审批 2011.8.25 报上级审批 <input type="checkbox"/> 阅		
公司主管领导意见（邱总）	同意 2011.8.25 报上级审批 <input type="checkbox"/> 阅		
公司主管领导意见（田总）	同意 2011.8.25 报上级审批 <input type="checkbox"/> 阅		
总裁审批	同意 2011.8.25 报上级审批 <input type="checkbox"/> 阅		

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进出口管制风险规避方案——以YL为例

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1.2 出口国家控制清单	3
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2.2 隔新模式	4
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3.1 隔新公司的运营	8
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3.3.2 积极应对85独立出口禁运物资的中国海关报关问题	20
3.3.3 妥善处理禁止口物资的包装问题	21

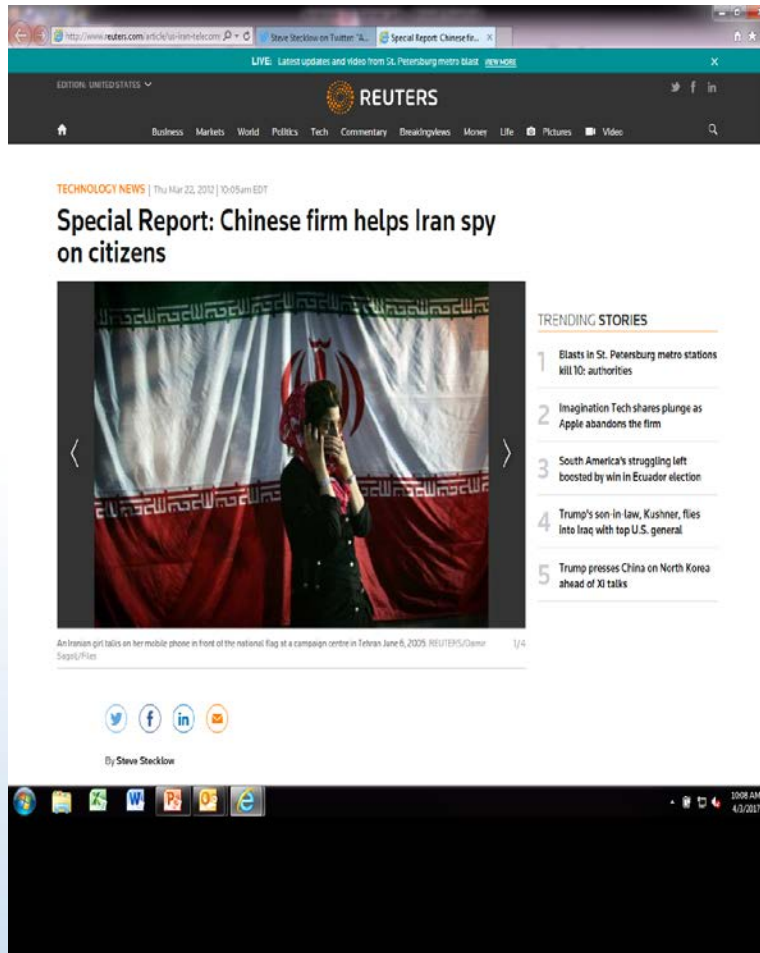
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ZTE 中兴

- ZTE is the second largest telecommunications firm in China...
- The largest publically traded telecommunications firm in China...
- The fourth largest telecommunications firm in the world.
- ZTE sells cell phones, cellular equipment and cellular related computer networks





- March 22, 2012: “The ZTE-TCI documents also disclose a backdoor way Iran apparently obtains U.S. technology despite a longtime American ban on non-humanitarian sales to Iran - by purchasing them through a Chinese company.”
- OEE Investigation initiated March 23rd, 2012 and served ZTE with an administrative subpoena.



False cooperation

- ZTE first response is to try to deceive investigators
- Hired an outside investigative accounting firm, but presented the firm with doctored records to audit
- False audit results were presented to USG as true
- Company tried to deceive, delay or derail the investigation for the next four years



What was really happening

“Report Regarding Comprehensive Reorganization and Standardization of the Company Export Control Related Matters”

ZTE中兴
机密 Highly Confidential ▲

中兴通讯股份有限公司文件报批（阅）表

报批（阅）文件标题	关于全面整顿和规范公司出口管制相关业务的报告		文件类型： <input type="checkbox"/> 红头文件 <input type="checkbox"/> 企业制度 <input checked="" type="checkbox"/> 其它文件
附件	《关于全面整顿和规范公司出口管制相关业务的报告》		<input checked="" type="checkbox"/> 急件 <input type="checkbox"/> 普通件
拟制单位	法务部	拟制人	日期
联系电话	13751147981	密级	2011年8月25日
部门意见：报上级审批 <input type="checkbox"/> 阅			
文件可阅读、使用人员名单（机密级以上文件适用）： 法务部部长、公司领导			
报批阅文件内容摘要： 随着我司海外业务近几年的突飞猛进，美国出口管制的风险日益加大，根据田总、邱总的指示，公司应立即成立公司级出口管制项目组研究、处理和应对公司目前的出口管制风险。			
是否需要会签： <input type="checkbox"/> 是 <input checked="" type="checkbox"/> 否		会签单位（需会签文件适用）	
出口管制部门意见	同意，报上级审批。 郭建军 2011.8.25 报上级审批 <input type="checkbox"/> 阅		
公司主管领导意见（邱总）	19号 8/26/11 报上级审批 <input type="checkbox"/> 阅		
公司主管领导意见（田总）	同意 田文 2011.8.27 报上级审批 <input type="checkbox"/> 阅		
总裁审批	100 2/9/2011		

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ZTE
Secret Highly Confidential ▲

ZTE Corporation Document Submitted for Ratification (Review) Form

Title of the Document submitted for ratification (review)	Report Regarding Comprehensive Reorganization and Standardization of the Company Export Control Related Matters		Document type: <input type="checkbox"/> Red-head document <input type="checkbox"/> Company system <input checked="" type="checkbox"/> Other document
Attachment	« Report Regarding Comprehensive Reorganization and Standardization of the Company Export Control Related Matters »		<input checked="" type="checkbox"/> Urgent document <input type="checkbox"/> Regular document
Drafted by	Legal Department	Draftsman	GUO, Jianjun
Contact phone	13751147981	Classification:	Date August 25, 2011
Department suggestion: For higher authorities to <input checked="" type="checkbox"/> ratify <input type="checkbox"/> read <input type="checkbox"/>			
List of people who can read, use the document (apply to secret and above documents): Director of Legal Department, company leaders			
Synopsis of the document: As our overseas businesses have grown rapidly in recent years, so have U.S. export control risks. Following Director TIAN and Director QIU's instructions, our company should immediately form a company-level export control project team to study, handle, and respond to our company's current export control risks.			
Need counter-sign: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Counter-sign by (apply to documents that need counter-sign):		
Responsible department's opinion	Agree Submit to higher authorities for approval		
	GUO, Jianjun [signature] 2011.8.25 For higher-authorities to <input checked="" type="checkbox"/> ratify <input type="checkbox"/> read		
Company leader's opinion (Director QIU)	Agree [QIU's signature] 8/26/11 For peers to <input type="checkbox"/> ratify <input type="checkbox"/>		
Company leader's opinion (Director TIAN)	Agree TIAN, Wenguo [signature] 2011.8.27 For higher-authorities to <input type="checkbox"/> ratify <input type="checkbox"/> read		
CEO review/approval	Agree SHI, Lirong [signature] 2/9/2011		

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Translation



What was really happening

“Proposal for Import and Export Control Risk Avoidance – YL as an Example”

ZTE中兴 绝密 Highly Confidential

进出口管制风险规避方案
——以 YL 为例
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1.1 出口商品控制清单	2
1.2 出口国家控制清单	3
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ZTE Top Secret Highly Confidential

Proposal for Import and Export Control Risk Avoidance
—— YL as an Example
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Translation



ZTE Corporate Documents

- "[C]urrently our company has on-going projects in all five major embargoed countries – Iran, Sudan, North Korea, Syria and Cuba. All of these projects depend on U.S.-procured items to some extent, so export control obstacles have arisen..." (Report Regarding..., page 2)."
- "At present, the biggest risk is Iran's on-going project(s)...At the end of 2010, our company signed a four-party project contract with Iran customer(s), adopting semi cut-off method, i.e., our company provides our self-manufactured equipment to the customer(s) and our company's cooperating company provides sensitive U.S. procured items to the customer(s)" (Report Regarding..., page 2).
- **"Our company's re-exporting, especially in the Iran project(s), can potentially put us at risk of being put on the Blacklist by the U.S. If on the Blacklist, our company may face the risk of losing the supply chain of U.S. products "** (Report Regarding..., page 2).



ZTE Corporate Documents

- "Our company has already signed many cooperation agreements with the YL [Iran] Client (YL is one of the countries in the Z Group); and now, these agreements have all entered the project execution phase. Semi-Detached [Business] Model is the cooperation model used on these agreements, and the contracts were signed by four parties (YL Client, ZTE, ZTE YL, and 8S). However, in the actual execution process, our company did strictly follow the requirements of the Semi-Detached [Business] Model during the operation. Instead ZTE directly assumed the rights and obligations of 8S, and ZTE exported controlled-commodities directly to YL ("Proposal for Import..., page 4)."
- "Our company has many technologies and components that come from suppliers in the US... **Once our company violates the relevant US export control provisions [the USG] might carry out civil and criminal punishments against US suppliers,** which will lead to increased difficulty for our company to obtain the relevant US technologies and components later. ("Proposal for Import..." page 2)."



ZTE Corporate Documents

- "When our company launches business in the countries of the "Z" Group, [we will] avoid using the names of our company to directly sign contract(s) with client(s) from the countries of the "Z" Group, our company needs to avoid directly exporting products and providing services to these clients...Such operating method is called "Detached [Business] Model ("Proposal for Import...", page 4)."
- "Under the [Completely Detached Business Model]...7S will purchase parts from the U.S. through Kangxun or on its own, and then, resell [the parts] to 8S; 8S will export all the project equipment from China to Dubai and deliver to 10S, and 10S will then reexport the equipment from Dubai to YL and deliver to the YL Client. 9S can purchase parts from the US outside of China and export the parts to Dubai and deliver to 10S, and then transfer the parts to YL ("Proposal for Import...", page 5)."
- **"The biggest advantage of the Completely Detached [Business] Model is that it is more effective, [because it is] harder for the US Government to trace it or investigate the real flow of the controlled commodities;** and in formality, our company is not participating in doing business with the countries of the Z Group ("Proposal for Import...", page 5)."



March 8, 2016

- Pursuant to § 744.11 of the EAR, the ERC determined that Zhongxing Telecommunications Equipment Corporation (“ZTE Corporation”), located at ZTE Plaza, Keji Road South, Hi-Tech Industrial Park, Nenshan District, Shenzhen, China, be added to the Entity List under the destination of China for actions contrary to the national security and foreign policy interests of the United States. Specifically, the ZTE Corporation document “Report Regarding Comprehensive Reorganization and Standardization of the Company Export Control Related Matters” (available at <http://www.bis.doc.gov>) indicates that ZTE Corporation has reexported controlled items to sanctioned countries contrary to United States law. The ZTE Corporation document “Proposal for Import and Export Control Risk Avoidance” (available at <http://www.bis.doc.gov>) describes how ZTE Corporation also planned and organized a scheme to establish, control, and use a series of “detached” (*i.e.*, shell) companies to illicitly reexport controlled items to Iran in violation of U.S. export control laws.
- Pursuant to § 744.11 of the EAR, the ERC determined that three entities located in China and one in Iran should be added to the Entity List for actions contrary to the national security or foreign policy interests of the United States.



New Era of Cooperation

- **Addition of Temporary General License – 3/24/2016**

“This final rule amends the EAR by adding Supplement No. 7 to Part 744 to create a Temporary General License that returns until June 30, 2016 the licensing and other policies of the EAR regarding exports, reexports, and transfers (in-country) to Zhongxing Telecommunications Equipment (ZTE) Corporation and ZTE Kangxun to that which was in effect just prior to their having been added to the Entity List on March 8, 2016. For example, the authority of NLR or a License Exception that was available as of March 7, 2016, may be used as per this temporary general license. The temporary general license is renewable if the U.S. Government determines, in its sole discretion, that ZTE Corporation and ZTE Kangxun are timely performing their undertakings to the U.S. Government and otherwise cooperating with the U.S. Government in resolving the matter.”




ZTE signs contract with Iran's Tamin/Rightel on November 22, 2010 to build a 2G/3G and 4G ready cell network

Beijing 8 Star is a party to the contract.

رایتل
Rightel





ZTE signs contract with
Telecommunication Company of Iran
(TCI) on December 28, 2010 for
“Network Optimization Project”

Beijing 8 Star is a party to the contract.



In May 2012 ZTE suspends shipments to Iran



December, 2013, ZTE Corporation started scheme to restart Iranian business using Far East Cable as cutout.



Final Resolution

- **\$1.19 Billion total combined penalty**
 - Commerce: \$661,000,000 with \$300,000,000 suspended
 - Justice: Criminal fines and forfeiture: \$430,488,798
 - Treasury: \$100,871,266
- **7 year suspended denial order (if activated, it would prohibit any person from any transaction related to Commerce controlled items)**
- **Admission of liability**
- **Monitor and audit requirements for 6 years**
- **Record keeping requirement**
- **Cooperation with investigations**



Final Resolution

- On March 29, 2017, ZTE was removed from the Entity List and its former CEO Shi Lirong was added

