

U.S. Restricts Exports and Reexports to ZTE

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The Department of Commerce's Bureau of Industry and Security ("BIS") issued a final rule on March 8, 2016, adding Zhongxing Telecommunications Equipment Corporation ("ZTE Corporation") and three of its subsidiaries to the Entity List for actions it deemed contrary to the national security and foreign policy interests of the United States. In addition to ZTE Corporation, the following companies were also added to the Entity List: Beijing 8-Star International Co.; ZTE Kangxun Telecommunications Ltd.; and ZTE Parsian.

Under the rule, a license from BIS is required for any transaction—by either a U.S. or non-U.S. company—in which items subject to the EAR are proposed for export, reexport, or transfer (in-country) to any of the four ZTE entities or any other transaction in which the ZTE entities act as purchaser, intermediate consignee, ultimate consignee, or end user of items subject to the EAR. BIS has implemented a license review policy of presumption of denial, which means that BIS will not approve licenses without a compelling reason for the U.S. government to overcome the presumption.

The license requirements apply to items subject to the EAR, which include: (1) all items in the United States; (2) all U.S.-origin items wherever located; (3) certain foreign-made items that incorporate controlled U.S.-origin commodities or comingled with controlled U.S.-origin software in quantities exceeding certain de minimis levels; and (4) certain foreign-made direct products of U.S. origin technology or software. In addition, transfers of covered technology are considered deemed exports and are also subject to this license requirement.

Given ZTE's size and footprint in the international electronics market, this new rule from BIS has the potential to impact many companies in the electronics field. U.S. companies as well as non-U.S. companies that trade in the covered items should carefully review future sales to avoid exports in violation of the license requirement. Companies that have intellectual property license agreements with ZTE should review whether these may involve any export of technology in violation of the new requirements.

Winston's team of professionals is available to assist your business in understanding the new rule, and to develop a program to ensure compliance.

The final rule issued by BIS is available [here](#).

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