

Bureau of Industry and Security Imposes Denial of Export Privileges Against ZTE

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Summary and Action Alert

On Monday, April 16, 2018, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) announced that it was imposing a denial of export privileges against Zhongxing Telecommunications Equipment Corporation of Shenzhen, China ("ZTE Corporation") and ZTE Kangxun Telecommunications Ltd. of Hi-New Shenzhen, China ("ZTE Kangxun") (collectively, "ZTE").

The denial order will effectively prohibit all persons worldwide from providing ZTE with U.S.-origin parts, components or technology, even if they have already been exported outside the United States. It also prevents ZTE or other parties from seeking licenses from the Department of Commerce that would permit these exports or transfers to occur. The denial order went into effect immediately upon issuance, with no grace period for transactions planned or pending.

Any U.S. or global suppliers of components, software, or services to ZTE, should immediately ascertain whether their transactions with ZTE are prohibited by the denial order, and act accordingly. All transactions "subject to the Export Administration Regulations" of the United States are prohibited if they involve ZTE. Consequently, distributors, subsidiaries, and agents, wherever located, are covered by this prohibition if the transaction involves U.S.-origin items or items that were exported from the U.S.

Background

The denial order follows ZTE's of \$1.19 billion settlement with U.S. authorities last year for illegally shipping telecommunications equipment to Iran and North Korea, making false statements, and obstructing justice. In addition to the monetary penalties, as part of the settlement, ZTE also agreed to a seven-year suspended denial of export privileges, which could be activated if any aspect of the settlement agreement was not met and/or if ZTE committed additional violations of the Export Administration Regulations (EAR). The settlement agreement also required that during the seven-year probationary period, ZTE make truthful disclosures of any information requested by BIS.

BIS has now uncovered that ZTE violated the settlement agreement by making false statements to BIS during the settlement negotiations in 2016, and even during the probationary period in 2017. Specifically, despite representing that it had taken or would take action against the employees that had engaged in the illegal conduct, in reality, ZTE never issued letters of reprimand to these employees, and paid all but one of the employees a full bonus. ZTE's false statements were only discovered after BIS requested information and documentation showing that employee discipline had occurred.

In activating the suspended denial of ZTE's export privileges under the settlement agreement, the Acting Assistant Secretary of Commerce for Export Enforcement found that ZTE's "provision of false statements to the U.S. Government, despite repeated protestations from the company that it has engaged in a sustained effort to turn the page on past misdeeds, is indicative of a company incapable of being, or unwilling to be a reliable and trustworthy recipient of U.S.-origin goods, software, and technology."

The Effect of the Denial Order

The denial order went into effect immediately, and is very broadly worded. As of Monday, April 16, ZTE can no longer – directly or indirectly – participate in any way in any transaction involving any commodity, software or technology exported or to be exported from the United States that is subject to the EAR. In addition, ZTE may not engage in any activity subject to the EAR, which means it cannot

obtain or apply for any export licenses to seek exceptions to the export denial order.

At the same time, companies and individuals worldwide are prohibited from engaging in any transaction subject to the EAR with ZTE, including:

- Exporting or re-exporting to or on behalf ZTE any item subject to the EAR;
- Taking any action that facilitates the acquisition by ZTE of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States;
- Taking any action to acquire from ZTE any item subject to the EAR that has been exported from the United States;
- Engaging 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 ZTE.

Resources

The full text of the denial order can be found [here](#). Additional information regarding ZTE's settlement with U.S. authorities can be found at the links below:

- [Settlement Agreement with OFAC](#)
- [Settlement Agreement with BIS](#)
- [Settlement Agreement with DOJ](#)

RELATED PRACTICES

- [Trade Sanctions & Export Controls](#)
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