

ALERT

# ZTE Agrees to Pay up to \$1.19 Billion for Violating U.S. Sanctions and Export Control Laws

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March 8, 2017

In a record-breaking agreement with the U.S. Department of Justice (DOJ), the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), and the U.S. Department of Commerce's (DOC) Bureau of Industry and Security (BIS), China-based telecommunications giant ZTE Corporation (ZTE) agreed to enter a guilty plea and pay a combined penalty of up to \$1.19 billion to settle civil and criminal allegations that ZTE violated U.S. sanctions and export control laws by illegally shipping U.S.-origin products to Iran and North Korea. The penalty includes \$430,488,798 in combined criminal fines and forfeitures; a \$100,871,266 civil monetary penalty imposed by OFAC; and a \$661,000,000 penalty payable to BIS, of which \$300,000,000 will be suspended during a seven-year probationary period. The criminal fine represents the largest that the DOJ has ever imposed in a prosecution under the International Emergency Economic Powers Act (IEEPA). ZTE's settlements with BIS and OFAC also represent the largest civil penalty that BIS has ever imposed and the largest civil penalty that OFAC has ever imposed on a non-financial entity. ZTE also agreed to a three-year period of corporate probation, active audit and compliance requirements, and a seven-year suspended denial of export privileges, which would be activated in the event that ZTE were to breach its agreement with BIS.

The conduct occurred between January 2010 and April 2016. As described in U.S. government documents, "ZTE obtained U.S.-origin items – including controlled dual-use goods on the DOC's Commerce Control List (CCL) – incorporated some of those items into ZTE equipment and shipped the ZTE equipment and U.S.-origin items to

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## Practice Areas

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International Trade

customers in Iran” without first obtaining the required export licenses. The shipped items included routers, microprocessors, and servers controlled under the Export Administration Regulations (EAR) for national security, encryption, regional security, and/or anti-terrorism reasons and were used to support projects in Iran involving the installation of cellular and landline network infrastructure. ZTE used third-party “isolation companies” to “purchase the embargoed equipment from suppliers and provide that equipment under the contract in an effort to distance ZTE from U.S. export-controlled products and insulate ZTE from U.S. export violations.” Ultimately, however, “ZTE itself purchased and shipped the embargoed goods,” “packag[ing] the U.S. items with its own self-manufactured items to hide the U.S.-origin goods.” ZTE also “undertook other actions involving 283 shipments of controlled items to North Korea with knowledge that such shipments violated the EAR.”

Once the U.S. government began investigating ZTE’s Iran-related activities following a media report in March 2012, ZTE communicated to the U.S. government that it had wound down and ceased its Iran-related activities. However, “ZTE’s highest-level leadership decided to surreptitiously resume its Iran-related business in 2013, which continued until 2016, when the DOC suspended the company’s export privileges by adding it to the Entity List.” ZTE went so far as to mislead its own outside counsel and a forensic accounting firm that ZTE had retained to assist in the investigation by deleting and concealing data and documents. ZTE took elaborate steps to conceal the prohibited transactions by forming a “Contract Data Induction Team,” consisting of 13 people who “destroyed, removed, or sanitized all materials concerning transactions or other activities relating to ZTE’s Iran business,” “deleted on a nightly basis all of the team’s emails to conceal the team’s activities,” and “required each of the team members to sign a non-disclosure agreement covering the ZTE transactions and activities the team was tasked with hiding.”

The settlement ends a five-year investigation into ZTE’s practices that involved multi-agency collaboration among the DOJ, OFAC, BIS, the U.S. Attorney’s Office for the Northern District of Texas, the Federal Bureau of Investigation, and the U.S. Department of Homeland Security.