

INTERNATIONAL BUSINESS ALERT

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YUANYOU (SUNNY) YANG

412.235.1484

yyang@porterwright.com

BIS imposes further restrictions on Huawei Technologies and adds an additional 38 affiliates to the Entity List

On Aug. 17, 2020, the U.S. Department's of Commerce published a [press release](#), announcing that the U.S. Bureau of Industry and Security (BIS) has further restricted access by Huawei Technologies and its non-U.S. affiliates on the Entity List to items produced domestically and abroad from U.S. technology and software. The BIS additionally added another 38 Huawei affiliates to the Entity List and modified four existing Huawei Entity List entries. BIS further ended the Temporary General License practice that has been added after Huawei was initially placed on the Entity List in 2019, and imposes license requirements on any transaction involving items subject to commerce export control jurisdiction where a party on the Entity List is involved, such as when Huawei (or other Entity List entities) acts as a purchaser, intermediate or end user. All those actions are effective immediately.

Those restrictions were announced in addition to the BIS amendment to the longstanding foreign-direct product rule in the General Prohibition Three published by the BIS in May 2020. The [Interim Final Rule](#), published by BIS in May, requires companies that ship or transfer foreign-made commodities, software or technology outside the U.S. with "knowledge" that they are destined to any of the designated Huawei entities will need to determine whether the items: (1) were "produced or developed" by any of the designated Huawei entities; and (2) are the "direct product" of software or technology subject to the EAR that is described in ECCN 3E001, 3E002, 3E003, 4E001, 5E001, 3D001, 4D001, 5D001, 3E991, 4E992, 4E993, 5E991, 3D991, 4D993, 4D994 and 5D991. For more information on the May amendment, please visit our previous [law alert](#).

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The rule announced by BIS on Aug. 17 provides further clarifications on the foreign direct product rule amendment specific to Huawei. Under the rule,

the foreign direct product rule applies:

1. Where U.S. software or technology is the basis for a foreign-produced item that will be incorporated into, or will be used in the “production” or “development” of any “part,” “component,” or “equipment” produced, purchased, or ordered by any Huawei entity on the Entity List; or
2. When any Huawei entity on the Entity List is a party to such a transaction, such as a “purchaser,” “intermediate consignee,” “ultimate consignee,” or “end-user.”

This amendment will further restrict Huawei from obtaining foreign made chips developed or produced from U.S. software or technology to the same degree as comparable U.S. chips.

The BIS additionally added 38 new Huawei affiliates to the Entity List to ensure the newly amended rules will be enforced. Those additional Huawei affiliates added to the Entity List include: Huawei Cloud Computing Technology; Huawei Cloud Beijing; Huawei Cloud Dalian; Huawei Cloud Guangzhou; Huawei Cloud Guiyang; Huawei Cloud Hong Kong; Huawei Cloud Shanghai; Huawei Cloud Shenzhen; Huawei OpenLab Suzhou; Wulanchabu Huawei Cloud Computing Technology; Huawei Cloud Argentina; Huawei Cloud Brazil; Huawei Cloud Chile; Huawei OpenLab Cairo; Huawei Cloud France; Huawei OpenLab Paris; Huawei Cloud Berlin; Huawei OpenLab Munich; Huawei Technologies Dusseldorf GmbH; Huawei OpenLab Delhi; Toga Networks; Huawei Cloud Mexico; Huawei OpenLab Mexico City; Huawei Technologies Morocco; Huawei Cloud Netherlands; Huawei Cloud Peru; Huawei Cloud Russia; Huawei OpenLab Moscow; Huawei Cloud Singapore; Huawei OpenLab Singapore; Huawei Cloud South Africa; Huawei OpenLab Johannesburg; Huawei Cloud Switzerland; Huawei Cloud Thailand; Huawei OpenLab Bangkok; Huawei OpenLab Istanbul; Huawei OpenLab Dubai; and Huawei Technologies R&D UK.

Since the Temporary General License (TGL) has expired, going forward, any companies or individuals intending to continue its business with Huawei or Huawei’s affiliates on the Entity List are required to obtain a license, whether Huawei or an affiliate on the Entity List acts as a purchaser, intermediate consignee, ultimate consignee, or end user to an EAR transaction.

Take away

These changes signal the BIS’s increasing efforts to tighten the U.S. export control relating to China during the strained U.S. and China relationship. These actions will have significant implications for U.S. and non-U.S. companies that have business relationships with Huawei and many of its affiliates. Companies in the export business should be aware of the changes and their implications, and vigorously examine their own export compliance program to ensure compliance. If you have questions, contact [Yuanyou Yang](#) or any member of Porter Wright’s [International Business & Trade](#) practice group.