

CLIENT MEMORANDUM

ZTE Penalized \$1.19 Billion for Sanctions and Export Control Violations, a Record Fine Against a Non-Financial Institution

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AUTHORS

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On March 7, 2017, Zhongxing Telecommunications Equipment Corporation (“ZTE”), a Chinese multinational telecommunications equipment manufacturer, reached an agreement with the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”), the U.S. Department of Commerce’s Bureau of Industry and Security (“BIS”), the U.S. Department of Justice’s National Security Division and the U.S. Attorney’s Office for the Northern District of Texas for a combined civil penalty of \$1.19 billion for sanctions and export control violations. This is the largest penalty ever levied by the U.S. government for sanctions violations by a non-financial institution and the largest penalty ever levied for an export control case.

According to the U.S. government, ZTE conspired to build telecommunications networks in Iran using U.S.-origin technology, in violation of U.S. sanctions and export controls. ZTE also made shipments of controlled U.S.-origin equipment, including routers, microprocessors, and servers, to North Korea, in violation of U.S. export controls. Allegedly, ZTE’s most senior executives were aware of the firm’s activities in Iran.

OFAC began its investigation into ZTE’s activity in 2012, when reports of potential sanctions violations appeared in the media. ZTE subsequently halted its activity with Iran. In 2013, according to the government, ZTE’s senior management made the decision to resume the activity and formulated a plan to hide and delete evidence of the violations.

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OFAC found that ZTE willfully and recklessly disregarded U.S. sanctions laws and that senior executives knew of this activity, and that there was a long-term pattern of conduct by ZTE designed to mislead the U.S. government. Other aggravating factors include OFAC's findings that the activity caused significant harm to the U.S. sanctions program and that ZTE is a sophisticated multinational company with a compliance program that was either nonexistent or ignored.

In March 2016, ZTE began to cooperate with OFAC, which was also taken into account in determining the penalty value. ZTE agreed to pay a penalty of \$100,871,266 to OFAC to settle potential civil liability for violations of the Iranian Transactions and Sanctions Regulations. Overall, OFAC uncovered 251 prohibited transactions with a combined value of \$39,622,972.

Additionally, ZTE reached a settlement agreement with BIS for violations of the Export Administration Regulations for shipments of telecommunication equipment to Iran and North Korea. BIS imposed a record-high penalty of \$661 million.

ZTE also agreed to enter a guilty plea and to pay a \$430,488,798 criminal penalty for conspiring to violate the International Emergency Economic Powers Act, obstructing justice and making a material false statement. According to the U.S. government, ZTE went to extreme measures to hide evidence of its transactions with Iran, including the formation of a team inside the company to "sanitize the databases" of all information related to the illegal transactions. ZTE also allegedly hid its activity from its own outside counsel and from a forensic accounting firm hired by outside counsel.

While sanctions and export control laws have changed significantly in recent years and are likely to change further under the new administration, U.S. enforcement efforts have been consistently aggressive. This enforcement action underscores the potential for large fines being levied against non-financial companies in the sanctions and export control space.

If you have any questions regarding this memorandum, please contact David Mortlock (202-303-1136, dmortlock@willkie.com), Nikki M. Cronin (202-303-1203, ncronin@willkie.com) or the attorney with whom you regularly work.

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