

Commerce Department Extends Huawei General License, Adds More Huawei Affiliates to Entity List

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As we discussed in our prior [blog post](#), on May 21, 2019, the Commerce Department's Bureau of Industry and Security ("BIS") published a [final rule](#) adding Huawei Technologies Co., Ltd. and 68 of its non-U.S. affiliates to BIS's [Entity List](#), effective May 16, 2019, and simultaneously issued a [temporary general license](#) permitting certain exports, reexports, and transfers to Huawei Technologies Co., Ltd. and its listed affiliates to continue through August 19, 2019 (the "[Original GL](#)"). On August 21, 2019, BIS published a final [rule](#), effective August 19, 2019 (the "[Amended GL](#)"), extending the Original GL through November 18, 2019, making certain clarifying changes to the authorized transactions under the Original GL, and amending a certification requirement.

Also on August 21, 2019, BIS published a final rule, effective August 19, 2019, [adding](#) 46 additional non-U.S. affiliates of Huawei Technologies Co., Ltd. to the Entity List. Nineteen of these 46 affiliated entities were added to the existing entry for Huawei Technologies Co., Ltd., while the other 27 entities were added under new, separate entities.¹ According to the Commerce Department, the additional Huawei entities were added to the Entity List because they also pose a significant risk of involvement in activities contrary to the national security or foreign policy interests of the United States.

The Amended GL includes the Huawei affiliates that were added to the Entity List effective August 19 within the scope of the Amended GL.

The Amended GL authorizes the following types of activity through November 18, 2019, the descriptions of which have been revised from the Original GL to improve the public's understanding of what items are eligible:

- Engagement in transactions necessary to maintain and support existing and currently "fully operational networks" and equipment, including software for bug fixes, security vulnerability patches, and other changes to existing versions of the software, subject to legally binding contracts and agreements executed between Huawei and third parties on or before May 16, 2019; provided that such transactions may not enhance the functional capacities of the original software or equipment.
- Engagement in transactions necessary to provide service and support, including software for bug fixes, security vulnerability patches, and other changes to existing versions of the software, to existing Huawei "personal consumer electronic devices"; provided that such transactions may not enhance the functional capacities of the original software or equipment. The term "personal consumer electronic devices" is defined to include phones and other personally-owned equipment, such as tablets, smart watches, and mobile hotspots such as MiFi devices. These authorized transactions include support for personal use of telecommunications hardware known as

¹ For purposes of this memorandum, "Huawei" refers to Huawei Technologies Co., Ltd. and all of its affiliates that have been added to the Entity List.

“Customer Premises Equipment (CPE)”² The authorization is limited to models of Huawei personal consumer electronic devices and CPE that were available to the public on or before May 16, 2019.

- The disclosure to Huawei of information regarding security vulnerabilities in items owned, possessed, or controlled by Huawei when related to the process of providing ongoing security research critical to maintaining the integrity and reliability of existing and currently “fully operational networks” and equipment.

The Amended GL also made changes to the Original GL to:

- Clarify that the scope of the authorization does not include certain exports, reexports, or transfers (in-country) for existing networks, by specifying that:
 - end-devices such as general-purpose computing devices are not considered to be part of an existing and “fully operational network” and that equipment that is not directly related to the support and maintenance of the network is also excluded.
 - transfers of equipment for general business purposes (not in direct support of an existing and “fully operational network”) are excluded. For example, semiconductor production equipment is excluded.
- Clarify that “third parties” do not include any Huawei listed entity or the exporter, reexporter or transferor, but are intended to be parties such as telecommunications providers, and that “fully operational network” refers to a third party network providing services to the third party’s customers.
- Remove a provision in the Original GL that had permitted engagement as necessary for development of 5G standards by a duly recognized standards body, after BIS determined that existing provisions of the Export Administration Regulations (the “**EAR**”) suffice for the purpose of addressing the application of the Entity List-based license requirements in connection with 5G standards bodies.

The Original GL required the exporter, reexporter, or transferor to create a certification statement. The Amended GL requires that the exporter, exporter, or transferor obtain a certification statement and any additional support documentation needed to substantiate the certification statement *from the listed Huawei entity* that is to receive the items. The certification statement must be obtained prior to exporting, reexporting, or transferring (in-country) any item under the Amended GL, and must contained specified information. The Amended GL also adds certain recordkeeping requirements and provides that certification statements may be used for multiple exports, reexports, and transfers (in-country).

BIS indicated in the preamble to the Amended GL that it expects to soon post on its website Frequently Asked Questions and other guidance to answer questions that have broad applicability to exporters, reexporters and transferors.

Importantly, any exports, reexports or in-country transfers of items subject to the EAR to any of the listed Huawei entities continue to require a license, with the exception of transactions explicitly authorized by the Amended GL and eligible for export, reexport or transfer (in-country) prior to May 16, 2019, without a

² The term “CPE” includes items such as network switches, residential internet gateways, set-top boxes, home networking adapters and other personally-owned equipment that enables consumers to access network communications services and distribute them within their residence or small business.

license or under a license exception. BIS will continue to review license applications under a presumption of denial.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

John B. Reynolds, III	202 962 7143	john.reynolds@davispolk.com
Jeanine P. McGuinness	202 962 7150	jeanine.mcguinness@davispolk.com
Will Schisa	202 962 7129	will.schisa@davispolk.com

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