



## U.S. offers limited reprieve for doing business with Huawei

By Zach Rozen, Alexandra Lopez-Casero and David Crosby

On Monday, the U.S. Department of Commerce's Bureau of Industry and Security ("**BIS**") issued a 90-day Temporary General License authorizing four types of transactions with Huawei Technologies Co. Ltd. and sixty-eight of its non-U.S. affiliates (collectively "**Huawei**") through August 19, 2019 (the "**General License**"). The General License is meant to provide "operators time to make other arrangements and the [Commerce] Department space to determine the appropriate long-term measures for Americans and foreign telecommunications providers that currently rely on Huawei equipment for critical services," according to the U.S. Secretary of Commerce Wilbur Ross. The Commerce Department stated that it would evaluate whether to extend the General License beyond 90 days.

The General License grants a narrowly tailored and temporary reprieve to certain Huawei customers and counterparties after BIS published a final rule on May 16, 2019, that added Huawei to its Entity List. The Entity List identifies parties that are prohibited from receiving certain items (or potentially all items) subject to the Export Administration Regulations (the "**EAR**") unless the exporter secures a license. In this case, BIS elected to impose the strictest Entity List requirement. This means that, other than as permitted pursuant to the General License, no item that is "subject to the EAR" may be exported, reexported, or otherwise transferred to Huawei by anyone (whether U.S. or foreign) without a BIS license. BIS imposed its strictest license review policy of "presumption of denial," which generally means that license requests will not be approved. Items are "subject to the EAR" if they are (i) U.S.-origin, or (ii) non-U.S.-origin and either (a) contain EAR Section 734.4(a) content, which is not subject to de minimis exclusions, or (b) contain U.S.-origin content above the 25% de minimis threshold. For example, basic U.S. equipment that is not export-controlled (EAR99) may not be exported or otherwise transferred to Huawei without a license.

The General License authorizes:

- **Continued Operation of Existing Networks and Equipment.** Transactions that are necessary to maintain and support existing and currently fully operational networks and equipment (including software updates and patches), subject to contracts in effect on or before May 16, 2019.

- **Support to Existing Handsets.** Transactions necessary to provide service and support (including software updates and patches) to existing Huawei handsets that were available to the public on or before May 16, 2019.
- **Cybersecurity Research and Vulnerability Disclosure.** Disclosure to Huawei of information regarding security vulnerabilities in items owned, possessed, or controlled by Huawei, when related to providing ongoing security research critical to maintaining the integrity and reliability of existing and currently fully operational handsets, networks, and equipment.
- **Engagements as Necessary for Development of 5G Standards by a Duly Recognized Standards Body** (e.g., IEEE, ISO, ITU, etc.).

Companies should note that with limited exceptions (e.g., cybersecurity vulnerability disclosures and the development of 5G standards), the General License is only meant to authorize exports, reexports, and transfers that are necessary for the maintenance of Huawei equipment and devices that were in service and operational prior to Huawei's inclusion on the Entity List. Other than the narrow exceptions discussed above, all items subject to the EAR are prohibited from being exported, reexported, or otherwise transferred to Huawei, including EAR99 items, as noted above. Furthermore, the General License only authorizes activity prohibited in light of Huawei's inclusion on the Entity List and does not relieve companies of other restrictions and obligations under the EAR (i.e., other licensing requirements). Prior to making an export, reexport, or transfer (in-country) pursuant to the General License, the exporter, reexporter, or transferor must create and sign a certification specifying how the export, reexport, or transfer meets the scope of the General License.

Given the broad and somewhat vague language of the General License, we anticipate that the Commerce Department will issue additional guidance and FAQs in the coming days. If you have any additional questions about the General License or exporting to parties on the Entity List, please reach out to our [Export-Controls team](#), your Nixon Peabody attorney or:

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