



# Office of Export Enforcement

## ANATOMY OF AN INVESTIGATION

# ZTE

**October 3 – 5, 2017**  
**Washington, DC**



# What was really happening

## “Report Regarding Comprehensive Reorganization and Standardization of the Company Export Control Related Matters”

**ZTE中兴** 机密 Highly Confidential ▲

中兴通讯股份有限公司文件报批（阅）表

报批（阅）文件标题	关于全面整顿和规范公司出口管制相关业务的报告		文件类型： <input type="checkbox"/> 红头文件 <input type="checkbox"/> 企业制度 <input checked="" type="checkbox"/> 其它文件
附件	《关于全面整顿和规范公司出口管制相关业务的报告》		<input checked="" type="checkbox"/> 急件 <input type="checkbox"/> 普通件
拟制单位	法务部	拟制人	郭建军 日期 2011年8月25日
联系电话	1375147981	密级：	部门意见：报上级审批 <input type="checkbox"/> 阅
文件可阅读、使用人员名单（机密级以上文件适用）： 法务部部长、公司领导			
报批阅文件内容摘要： 随着我司海外业务近几年的突飞猛进，美国出口管制的风险日益加大，根据田总、邱总的指示，公司应立即成立公司出口管制项目组研究、处理和应对公司目前的出口管制风险。			
是否需委员会签： <input type="checkbox"/> 是 <input checked="" type="checkbox"/> 否 会签单位（需会签文件适用）：			
归口管理部门意见	同意，报领导审批。 2011.8.25 报上级审批 阅		
公司主管领导意见（邱总）	19号 同意 8/26/11 报同级审批 阅		
公司主管领导意见（田总）	同意 田总 2011.8.27 报上级审批 阅		
总裁审批	同意 史总 2/9/2011		

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ZTE Corporation Document Submitted for Ratification (Review) Form

Title of the Document submitted for ratification (review)	Report Regarding Comprehensive Reorganization and Standardization of the Company Export Control Related Matters		Document type: <input type="checkbox"/> Red-head document <input type="checkbox"/> Company system <input checked="" type="checkbox"/> Other document
Attachment	« Report Regarding Comprehensive Reorganization and Standardization of the Company Export Control Related Matters »		<input checked="" type="checkbox"/> Urgent document <input type="checkbox"/> Regular document
Drafted by	Legal Department	Draftsman	GUO, Jianjun Date August 25, 2011
Contact phone	13751147981	Classification:	Department suggestion: For higher authorities to <input checked="" type="checkbox"/> ratify <input type="checkbox"/> read
List of people who can read, use the document (apply to secret and above documents): Director of Legal Department, company leaders			
Synopsis of the document: As our overseas businesses have grown rapidly in recent years, so have U.S. export control risks. Following Director TIAN and Director QIU's instructions, our company should immediately form a company-level export control project team to study, handle, and respond to our company's current export control risks.			
Need counter-sign: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Counter-sign by (apply to documents that need counter-sign): Agree Submit to higher authorities for approval			
Responsible department's opinion	GUO, Jianjun [signature] 2011.8.25 For higher-authorities to <input checked="" type="checkbox"/> ratify <input type="checkbox"/> read		
Company leader's opinion (Director QIU)	Agree [QIU's signature] 8/26/11 read For peers to <input type="checkbox"/> ratify <input type="checkbox"/>		
Company leader's opinion (Director TIAN)	Agree TIAN, Wenguo [signature] 2011.8.27 For higher-authorities to <input type="checkbox"/> ratify <input type="checkbox"/> read		
CEO review/approval	Agree SHI, Litong [signature] 2/9/2011		

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Translation



# What was really happening

“Proposal for Import and Export Control Risk Avoidance – YL as an Example”

ZTE中兴 绝密 Highly Confidential\*

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——以 YL 为例  
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ZTE Top Secret Highly Confidential\*

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—— YL as an Example  
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Translation



# ZTE Corporate Documents

- "[C]urrently our company has on-going projects in all five major embargoed countries – Iran, Sudan, North Korea, Syria and Cuba. All of these projects depend on U.S.-procured items to some extent, so export control obstacles have arisen..." (Report Regarding..., page 2)."
- "At present, the biggest risk is Iran's on-going project(s)...At the end of 2010, our company signed a four-party project contract with Iran customer(s), adopting semi cut-off method, i.e., our company provides our self-manufactured equipment to the customer(s) and our company's cooperating company provides sensitive U.S. procured items to the customer(s)" (Report Regarding..., page 2).
- **"Our company's re-exporting, especially in the Iran project(s), can potentially put us at risk of being put on the Blacklist by the U.S. If on the Blacklist, our company may face the risk of losing the supply chain of U.S. products "** (Report Regarding..., page 2).



# ZTE Corporate Documents

- "Our company has already signed many cooperation agreements with the YL [Iran] Client (YL is one of the countries in the Z Group); and now, these agreements have all entered the project execution phase. Semi-Detached [Business] Model is the cooperation model used on these agreements, and the contracts were signed by four parties (YL Client, ZTE, ZTE YL, and 8S). However, in the actual execution process, our company did not strictly follow the requirements of the Semi-Detached [Business] Model during the operation. Instead ZTE directly assumed the rights and obligations of 8S, and ZTE exported controlled-commodities directly to YL ("Proposal for Import..., page 4)."
- "Our company has many technologies and components that come from suppliers in the US... **Once our company violates the relevant US export control provisions [the USG] might carry out civil and criminal punishments against US suppliers,** which will lead to increased difficulty for our company to obtain the relevant US technologies and components later. ("Proposal for Import..." page 2)."





# ZTE Corporate Documents

- "When our company launches business in the countries of the "Z" Group, [we will] avoid using the names of our company to directly sign contract(s) with client(s) from the countries of the "Z" Group, our company needs to avoid directly exporting products and providing services to these clients...Such operating method is called "Detached [Business] Model ("Proposal for Import...", page 4)."
- "Under the [Completely Detached Business Model]...7S will purchase parts from the U.S. through Kangxun or on its own, and then, resell [the parts] to 8S; 8S will export all the project equipment from China to Dubai and deliver to 10S, and 10S will then reexport the equipment from Dubai to YL and deliver to the YL Client. 9S can purchase parts from the US outside of China and export the parts to Dubai and deliver to 10S, and then transfer the parts to YL ("Proposal for Import...", page 5)."
- **"The biggest advantage of the Completely Detached [Business] Model is that it is more effective, [because it is] harder for the US Government to trace it or investigate the real flow of the controlled commodities;** and in formality, our company is not participating in doing business with the countries of the Z Group ("Proposal for Import...", page 5)."



# Lesson 1

## Don't lie

- During a series of meetings between on or about August 26, 2014, and at least on or about January 8, 2016, ZTE represented and stated to BIS special agents and/or to other federal law enforcement agents and agency officials, that the company had previously stopped shipments to Iran as of March 2012, and was no longer violating U.S. export control laws.
- In doing so, ZTE acted through outside counsel who was representing ZTE in connection with the U.S. Government's investigation. ZTE's outside counsel was unaware that the representations and statements that ZTE had given to counsel for communication to the U.S. Government were false and misleading. In addition, and in advance of counsel's meetings with the U.S. Government, senior executives or managers at ZTE had reviewed the representations and statements made by defense counsel on the company's behalf and approved them knowing that they were false and misleading.



# Lesson 1

- Don't create false/misleading records
  - ZTE also took other evasive steps... in connection with its Iran transactions, including using "Qatar" as code for "Iran" in documents relating to Iranian transactions, omitting the names of customers from its sales system when those customers were Iranian, and removing or avoiding the use of its logo from or on items, boxes, or documents sent to Iran.





# Lesson 2

- Don't destroy evidence
  - ZTE engaged in an elaborate scheme to prevent disclosure to and affirmatively mislead the U.S. Government, by deleting and concealing documents and information from the outside counsel and forensic accounting firm that ZTE had retained with regard to the investigation. This scheme included forming and operating a 13-member "Contract Data Induction Team" within ZTE between January and March 2016, that destroyed, removed, or sanitized all materials relating to any transactions or other activities relating to ZTE's Iran business that post-dated March 2012; deleting on a nightly basis all of the team's emails to conceal the team's activities



# Lesson 3

- Don't rely on non-disclosure agreements to cover-up crimes
  - ...requiring each of the team members [of the Contract Data Induction Team] to sign a non-disclosure agreement prohibiting any disclosure relating to the ZTE transactions and activities that the team was tasked with hiding, subject to a penalty of 1 million RMB (or approximately \$150,000) payable to ZTE if it determined that a disclosure occurred.



# Lesson 4

- Don't restart your criminal activity during the investigation
  - Despite the views of ZTE's legal team, in November 2013, following a meeting of senior managers chaired by its then-CEO, ZTE made plans to resume transshipments to Iran. The head of the ZTE Parsian office in Iran was directed to find an established third party with a history of selling to Iran that would agree to sign contracts with Iranian entities directly, enter into a separate contract with ZTE, and then act as shipper to Iran at a reasonable price to ZTE.
  - A committee of ZTE employees was formed to find a willing third party. This strategy was designed to enable ZTE to have a low profile in the transactions while resuming its shipments to Iran in violation of U.S. export control laws, including of the U.S.-origin goods without which the ZTE equipment could not function as called for under their Iranian network contracts.



# Lesson 5

- Don't create a written, approved corporate strategy to systematically violate the law
  - ...a ZTE document entitled “Report Regarding Comprehensive Reorganization and Standardization of the Company Export Control Related Matters” which had been drafted by ZTE Corporation’s Legal Department, was ratified and signed by four high-ranking ZTE Corporation executives, including ZTE Corporation’s CEO, who ratified and signed on or about September 2, 2011.
  - The ratified report described the risks of violating U.S. export control laws in connection with exporting U.S.-origin items to embargoed destinations, including because ZTE had “many technologies and components that came from suppliers in the U.S., [and] therefore, when our export or re-export involves technologies and products of the U.S., they are all monitored and restricted by the U.S. Government” and require that export or reexport licenses be sought and obtained from the U.S. Government.



# Lesson 5

- Don't create a written, approved corporate strategy to systematically violate the law (cont.)
  - The report specifically discussed the risks of large civil penalties against ZTE, prison sentences for high-level managers, and placement “on the Blacklist and be[ing] banned from purchasing U.S. products directly or indirectly for a period of time,” and even included specific examples of Chinese companies that had been placed on the “Blacklist” and a Chinese corporate executive who had been sentenced to a long jail term in the U.S. for violating U.S. export control laws.
  - The report then laid out a ZTE “response plan” to, *inter alia*, further standardize the operation of its Iran projects and manage potential risks, including the creation of a number of cross-department project teams or committees with regard to its embargoed projects... The plan also established an award of 400,000 Renminbi (“RMB”), or approximately \$64,000, to encourage team members to successfully complete project assignments.



“We are putting the world on notice: the games are over. Those who flout our economic sanctions and export control laws will not go unpunished – they will suffer the harshest of consequences.”

Secretary of Commerce Wilbur L. Ross, Jr

“Despite ZTE's repeated attempts to thwart the investigation, the dogged determination of investigators uncovered damning evidence.”

Director Douglas R. Hassebrock

