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THE BIS ENTITY LIST: THE U.S. GOVERNMENT'S "NEW" FOREIGN POLICY STICK

Since 2016, BIS has added hundreds of entities and individuals to its Entity List, not just for violations of export control regulations, but also for various threats to U.S. national security and foreign policy. The authors describe BIS's evolving procedures and grounds for adding names to the List, the recent additions of Huawei and its affiliates, new listings for human rights violations, and other reasons for list additions in 2019. They note that BIS officials have stated that the Entity List is the easiest of all the government's tools for restricting trade and will likely remain a favorite tool in 2020 and beyond.

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Until recently, companies paid little attention to the Entity List published by the US Department of Commerce's Bureau of Industry & Security ("BIS"),¹ in contrast to the more well-known and feared Specially Designated Nationals and Blocked Persons List, published by the US Department of Treasury's Office of Foreign Assets Control ("OFAC"). That blissful ignorance is and should be no more.

The BIS Entity List made headlines in 2016 when BIS added the second-largest telecommunications company in China, Zhongxing Telecommunications Equipment Corporation ("ZTE"), in connection with an ongoing investigation of violations of the Export Administration Regulations ("EAR") and OFAC regulations. Since then, BIS has, at a disconcerting pace, added hundreds of entities and individuals. In 2019, it

added 230 entities, not just for violations of the EAR, but for various stated threats to US national security and foreign policy, including human rights violations, and theft of trade secrets. According to recent comments by BIS officials, companies can expect a continued high level of Entity List activity, moving beyond the historical trigger of unauthorized export, reexport, or transfer of items subject to the EAR. There are currently about 1,000 Listed Entities.

Companies operating internationally must understand the Entity List, both to ensure compliance with licensing restrictions imposed on transactions with entities on the list and to prevent being listed themselves.

BACKGROUND AND BASIS FOR INCLUSION IN THE ENTITY LIST

The addition of a company to the Entity List imposes a licensing requirement on the Listed Entity for all items

¹ 15 C.F.R. pt. 744, Supp. 4 (2019), available at https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=15:2.1.3.4.28#ap15.2.744_122.4.

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