

Extension of the “50% Rule” to US (Re-)Export Controls



Trade
Compliance

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On September 29, 2025, the US Bureau of Industry and Security's ("**BIS**") [new interim final rule](#) ("**IFR**") expanding end-user controls to cover affiliates of certain listed entities came into force. Under the IFR, any entity that is at least 50% owned, directly or indirectly, individually or in aggregate, by one or more entities listed on the Entity List, the Military End-User ("**MEU**") List or certain entities listed on the Specially Designated Nationals and Blocked Persons ("**SDN**") List will itself automatically be subject to Entity List / MEU List restrictions. In addition, the IFR lays down additional due diligence requirements.

1. Background

The Entity List and the MEU List are part of the Export Administration Regulations ("**EAR**"). They stipulate export control restrictions if a listed entity is a party to a transaction, *i.e.*, additional license requirements for exports, reexports and in-country transfers as well as non-availability of license exceptions. The involvement of an entity listed on the Entity List or the MEU List will often automatically result in the denial of a license.

Until now, the scope of application of the Entity List and the MEU List was limited to those entities specifically named on them. According to the BIS, this approach enabled diversionary schemes, particularly the creation of new entities to evade Entity List and MEU List restrictions, which in turn increased the administrative burden associated with adding subsidiaries to the Entity List or the MEU List.

2. BIS' Affiliates Rule

To counter such evasive practices, the BIS has now introduced the so-called "Affiliates Rule". It states that the Entity List and the MEU List entries also extend to foreign entities owned 50% or more by one or more entities on the Entity List, the MEU List or by certain entities listed on the SDN List, or by non-listed entities that are subject to restrictions because they themselves are 50% or more owned by listed entities.

The rule resembles the US Office of Foreign Assets Control's ("**OFAC**") 50% Rule which has long been established in sanctions law. As in OFAC's 50% Rule, ownership includes both direct and indirect ownership and it is sufficient that multiple listed entities' ownership interests reach 50% in aggregate. Like OFAC's 50% Rule – and unlike the person-related sanctions of the EU – the Affiliate Rule focuses exclusively on ownership and not on control.

However, BIS' Affiliates Rule goes beyond OFAC's 50% Rule in certain respects. Firstly, the Affiliates Rule allows for aggregation across lists. If, for example, a direct or indirect owner is listed on the Entity List and another direct or indirect owner is listed on the MEU List, and their aggregated ownership in the entity in question reaches 50%, the affiliate is subject to restrictions. Secondly, if the restrictions applying to the listed owners differ, the most restrictive standard applies with regard to the affiliate in question (rule of most restrictiveness).

As a result of the introduction of the IFR, the entity-based Foreign Direct Product Rules ("**FDPR**") were also amended. According to the FDPR, certain products manufactured outside the US that are the direct products of certain "controlled" (*i.e.*, listed on the US Commerce Control List) US technology or software, or that were manufactured in a facility outside the US that is itself the direct product of certain controlled US technology or software, may not be supplied to certain entities listed on the Entity List without a license. The question of which US technology or US software and which resulting foreign-produced goods are covered depends on the footnote (1, 3, 4, or 5) assigned to the list entry. With the introduction of the IFR, the FDPR applicable to an entity listed with a footnote on the Entity List is extended to non-listed entities in which entities listed with a footnote hold any shares, with even a minority shareholding being sufficient if the entity held is owned in total 50% or more by entities on the Entity List, MEU List, or by certain SDNs. For example, if a non-listed entity is owned 20% by an entity listed on the Entity List "subject to footnote 1", 5% by an entity listed on the Entity List "subject to footnote 3" and 25% by an entity listed on the MEU List, the non-listed entity would be subject to both the FDPR for footnote 1 entities and the FDPR for footnote 3 entities.

3. Additional Due Diligence Requirements

According to the newly introduced Red Flag 29 in BIS' "Know Your Customer" Guidance and Red Flags, exporters, reexporters or in-country transferors are obliged to determine the ownership structure of parties to a transaction provided they have reasons to believe that they may be owned by one or more entities listed on the Entity List, the MEU List, or the SDN List or by non-listed entities, which are subject to restrictions because they themselves are 50% or more owned by listed entities.

In practice, it will often not be possible to conclusively determine a party's ownership structure. In that case, exporters, reexporters or in-country transferors must obtain a license from BIS prior to proceeding with the export, reexport or in-country transfer, unless a license exception is available.

In addition, significant minority ownership by, or other significant ties to (e.g., overlapping board membership or other indicia of control), an Entity List / MEU List company is a Red Flag of potential diversion risk to the listed entity, triggering additional due diligence requirements.

4. What Companies Should Do Now

Companies should adjust their internal guidelines and processes to include the Affiliates Rule. All parties to transactions must be screened to identify whether a party is subject to the Affiliates Rule. Unfortunately, relying on the Consolidated Screening List will not suffice anymore since it does not identify non-listed entities subject to the Affiliates Rule. Instead, companies should consider implementing sanctions screening tools which are able to identify whether entities are 50% or more owned by listed entities.

Furthermore, companies should review whether their imminent transactions may be authorized under BIS' new Temporary General License ("TGL"), which is also part of the IFR and expires on November 28, 2025. The TGL particularly authorizes exports, reexports, and in-country transfers to or within any destination in [Country Group A:5 or A:6](#) when a non-listed foreign entity is subject to restrictions under the Affiliates Rule and a party to the transaction. All activities under the authorization of this TGL are subject to recordkeeping requirements.

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