

ALERT MEMORANDUM

# BIS Significantly Expands Application of Export Control Restricted Party Lists with New “Affiliates Rule”

October 1, 2025

On September 29, 2025, the U.S. Department of Commerce, Bureau of Industry and Security (BIS) issued a new interim final rule, *[Expansion of End-User Controls to Cover Affiliates of Certain Listed Entities](#)* (the IFR) that, effective immediately, significantly expands the application of the Entity List and Military End-User List (MEU List) restrictions under the Export Administration Regulations (EAR) to foreign entities that are 50 percent or more owned by such listed entities (the Affiliates Rule).

The IFR sets forth – through strict liability under the Affiliates Rule, new Red Flags, and corresponding guidance – an “affirmative responsibility” for parties engaged in activities subject to the EAR to determine the ownership of foreign entities involved in such activities. The Affiliates Rule is intended to address concerns regarding potential diversion of controlled items to restricted end-users and to reduce the administrative burden on BIS to identify and add individual affiliates to the Entity List. Although the Affiliates Rule effectively aligns treatment of restricted end-users with the so-called “50 Percent Rule” imposed by the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC), it also includes certain novel elements that diverge from OFAC practice in important ways. This client alert summarizes the key provisions of the IFR and Affiliates Rule and outlines important compliance considerations for parties engaged in activities subject to the EAR.

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## Application of the Affiliates Rule

Under the Affiliates Rule, any foreign entity that is 50 percent or more owned, directly or indirectly, individually or in the aggregate, by one or more entities on the Entity List, MEU List, or (in some cases) the List of Specially Designated Nationals and Blocked Persons (SDN List) maintained by OFAC as set forth in 15 C.F.R. 744.8(a)(1)<sup>1</sup> will be subject to the same restrictions under the EAR as those listed entities. Guidance contained in the IFR implies that BIS will rely on a similar “light switch” principle as the OFAC 50 Percent Rule, such that restrictions will flow down not only from listed entities directly owning 50 percent or more of a foreign entity, but also from any unlisted entities that are themselves “subject to Entity List or MEU license requirements or other Entity List or MEU restrictions based upon their ownership” pursuant to the Affiliates Rule. As a result, screening for indirect owners may be required to ensure compliance with the Affiliates Rule.

The Affiliates Rule does not apply to other restricted parties, such as parties on the Unverified List or subject to Denial Orders.

BIS may issue exceptions excluding certain affiliates or listed parties from application of the Affiliates Rule on a case-by-case basis, and the IFR introduces a process for impacted entities to apply for such exception. As of the date of the IFR, no entities have yet been excluded from application of the Affiliates Rule.

## Aggregation: Rule of Most Restrictiveness

Where an entity is owned by one or more entities designated across multiple lists, the IFR also adds a new “rule of most restrictiveness” to the EAR. Under the rule, an entity owned 50 percent or more, directly or indirectly, by multiple entities subject to license requirements “pursuant to some combination of the

Entity List, MEU List, or [the specified entities on the SDN List,” will be subject to the “most restrictive license requirements, license exception eligibility, and license review policy applicable to one or more of its owners under the EAR.”

In this sense, the Affiliates Rule is more restrictive than the OFAC 50 Percent Rule (which generally only aggregates sanctions of the same type) and in some cases may require complex technical analysis. For example, a foreign entity in which an Entity List entity holds even a minority ownership interest (e.g., 45% owned by an MEU and 10% owned by an Entity List entity) would be subject to the broadest Entity List restrictions applicable to the 10% owner. Depending on whether the 10% Entity List owner is designated with a footnote on the Entity List, under the IFR transactions with the counterparty also could be subject to the restrictions under the Entity List foreign-produced direct product rules (FDP Rules) at 15 C.F.R. 734.9. This would mean, for instance, that if a counterparty surpasses the 50 percent threshold under the Affiliates Rule, then any ownership – however negligible the interest – by Huawei entities designated with footnote 1 on the Entity List, could result in a foreign-produced item being “subject to the EAR” and requiring a license to that counterparty, even if the Huawei entity is one of multiple minority owners of the counterparty.

## New Red Flag Warranting Heightened Due Diligence

Separately under the IFR, BIS also introduced a new “Red Flag” setting forth additional compliance expectations on exporters when dealing with foreign parties owned—even under 50 percent—by entities on the Entity List, MEU List, or SDN List.

Specifically, BIS added a Red Flag to supplement no. 3 to part 732 of the EAR indicating that “if an exporter, reexporter, or transferor cannot determine the

<sup>1</sup> Specifically, the restrictions will apply to SDNs designated on the SDN List with any of the following identifiers under 15 C.F.R. 744.8: (i) Related to Russia’s invasion of Ukraine: [BELARUS-EO14038], [BELARUS], [RUSSIA-EO14024], [UKRAINE-EO13660], [UKRAINE-EO13661],

[UKRAINE-EO13662], or [UKRAINE-EO13685]; (ii) Terrorism-related: [FTO], or [SDGT]; (iii) WMD-related: [NPWMD]; (iv) Related to narcotics trafficking or other criminal networks: [ILLICIT DRUGS-EO14059], [SDNT], [SDNTK], or [TCO].

ownership percentage of a foreign entity that is an entity owned by one or more listed entities on the Entity List or the MEU List, it must resolve the Red Flag prior to proceeding...submit a license application to BIS, or identify an available license exception” that may apply to the listed party. As context for the new Red Flag, the IFR states that “foreign parties with significant minority ownership by, or other significant ties to (e.g., overlapping board membership or other indicia of control)” an Entity List entity, an MEU List entity, or a covered SDN, are considered to present a “Red Flag” of potential diversion risk, and warrant heightened due diligence, for example, to confirm that ownership does not exceed 50 percent and that any such exports would not raise a diversion risk.

The IFR also includes specific guidance, included as Annex 1 to this Alert Memo, describing the application of the Affiliates Rule based on the type of entity. The guidance states that a license is required if a Red Flag exists that cannot be (or is not) resolved by the exporter before proceeding with the transaction. Notably, for companies that historically may have performed screening on counterparties that resulted in identification of ownership or other ties to entities on the MEU List, Entity List, or SDN List (even if a minority interest and therefore previously not prohibited under the EAR), prior screening records could conceivably give rise to the relevant “knowledge” warranting further enhanced due diligence prior to proceeding with a new transaction involving the same counterparty. Failure to do so could result in a violation of the EAR.

### Temporary General License

BIS also issued a Temporary General License (TGL) that authorizes, for a period of 60 days (expiring December 1, 2025), limited exports, reexports, or transfers to non-listed foreign affiliates that are owned 50 percent or more by entities on the Entity List or MEU List.

The TGL authorizes two types of transactions with a non-listed foreign entity directly or indirectly owned

50 percent or more by listed entities: (1) exports, reexports, or transfers to or within Country Group A:5 or A:6<sup>2</sup>; and (2) exports, reexports, or transfers to or within any country (other than Cuba, Iran, North Korea, or Syria) to a joint venture with a non-listed entity headquartered in the United States or a country in Country Group A:5 or A:6 (that is also not owned 50 percent or more by listed entities or unlisted entities covered by the Affiliates Rule).

### Recommended Actions

To ensure compliance with the Affiliates Rule and other provisions of the IFR, parties may consider the following:

1. Review Pending Transactions: Assess whether any pending transactions may be affected by the Affiliates Rule and, if so, determine whether they would qualify for the TGL or any license exceptions under the EAR.
2. Re-screen Existing Customers: Review existing customer databases to identify any entities that may be directly or indirectly owned by any combination of parties on the Entity List, MEU List, or relevant SDNs. Parties also should consider any other ties to such parties (such as shared leadership).
3. Update Compliance Procedures: Revise export compliance procedures to incorporate the Affiliates Rule and Red Flag indicators, and enhance risk-based due diligence procedures as appropriate for transactions involving entities with any ownership or ties to restricted parties.
4. Consider Effectiveness of Screening Solutions: Evaluate whether current screening tools can adequately identify ownership relationships or if additional resources are needed.
5. Record Retention: Maintain all records related to screening and transactions involving such entities for a period of at least five years, pursuant to 15 C.F.R. Part 762 of the EAR.

<sup>2</sup> See Annex 2 to this Alert Memo.

Parties seeking to provide comments to BIS concerning the IFR must ensure that they are received by BIS no later than October 29, 2025.

## **Conclusion**

The IFR and Affiliates Rule represents a significant expansion of export controls for companies engaged in the international trade of items subject to the EAR.

In addition to re-screening existing customers or counterparties that will receive items subject to the EAR, companies should consider the appropriateness of updated compliance policies and due diligence on a risk-based and going-forward basis. Given the potential, in some situations, for certain foreign-produced items to become subject to new license requirements, companies should also consider due diligence surrounding ownership of customers and counterparties for transactions involving certain sensitive foreign-produced items that would not ordinarily be “subject to the EAR.”

For more information or assistance with compliance with these new requirements, please contact Cleary Gottlieb’s Foreign Investment and National Security team.

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## Annex 1

| Types of Entities  | Application Notes   |
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| <p><b>Listed entities.</b> A foreign entity listed on the Entity List, MEU List, or in SDN designations in § 744.8(a)(1), including any branch or sales office that is not legally distinct from the listed entity.</p>  | <ul style="list-style-type: none"> <li>— These entities are currently subject to Entity List, MEU List, and § 744.8 restrictions under the ‘legally distinct’ standard and will continue to be subject to such restrictions under the Affiliates rule.</li> <li>— These requirements applied to all addresses of these entities located in the destination under which the entities were listed.</li> <li>— Prior to this IFR, there were three entities on the Entity List that were subject to a worldwide license requirement.</li> <li>— Because of the changes made in this IFR, the requirements for all listed entities on the Entity List, MEU List, and the requirements in § 744.8 will now apply to all foreign countries.</li> <li>— For example, an entity listed on the Entity List under China has a sales office in Malaysia. Prior to this IFR, the sales office in Malaysia of the listed Chinese entity was not included within the scope of the Entity List license requirements, unless BIS listed that Chinese sales office in Malaysia also on the Entity List or there was information that the item was intended for the listed Chinese entity.</li> </ul> |
| <p><b>Foreign affiliates of listed entities that meet the Affiliates rule.</b> Foreign affiliates of listed entities owned 50 percent or more, directly or indirectly, by one or more listed entities on the Entity List, MEU List, or an SDN identified in § 744.8(a)(1) or by one or more entities subject to restrictions based upon ownership.</p> | <ul style="list-style-type: none"> <li>— These entities meet what is described in this IFR as the Affiliates rule and are subject to the license requirements and other restrictions under the Entity List, MEU List, or § 744.8.</li> <li>— This is an expansion of the Entity List, MEU List, and § 744.8 license requirements that is needed to protect U.S. national security and foreign policy interests because of the diversion concerns with these entities.</li> <li>— These requirements apply to all foreign countries regardless of under which destination the listed entity or entity’s owners are listed.</li> <li>— These requirements apply to all foreign countries regardless of under which destination</li> </ul>   |

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|   | <p>the listed entity or entity's owners are listed.</p> <ul style="list-style-type: none"> <li>— This IFR adds a TGL that temporarily authorizes (i) exports, reexports, or transfers (in-country) to or within any destination in Country Group A:5 or A:6 when a party to the transaction is a non-listed foreign affiliate of a listed entity that is owned 50 percent or more, directly or indirectly, individually or in aggregate, by one or more listed entities on the Entity List or MEU List, or entities subject to Entity List or MEU List restrictions based upon their ownership, and (2) exports, reexports, or transfers (in-country) to or within any destination other than Country Group E:1 or E:2 when a party to the transaction is a non-listed foreign affiliate of a listed entity that is owned 50 percent or more, directly or indirectly, individually or in aggregate, by one or more listed entities on the Entity List or on the MEU List, or entities subject to Entity List or MEU List restrictions based upon their ownership; and such party to the transaction is a joint venture with a non-listed entity headquartered in the United States or Country Group A:5 or A:6 that is not owned 50 percent or more, directly or indirectly, individually or in aggregate, by one or more listed entities on the Entity List or on the MEU List or entities subject to Entity List or MEU List restrictions based upon its ownership. The TGL expires on December 1, 2025.</li> </ul> |
| <p><b><i>Foreign affiliates of listed entities owned by listed entities where percentage of ownership cannot be determined (unresolvable Red Flag entities).</i></b></p> <p>Foreign affiliates of listed entities that have some direct or indirect ownership by listed entities on the Entity List, MEU List, or by SDNs in § 744.8(a)(1), but the exporter, reexporter, or transferor cannot determine whether the listed entity ownership meets the Affiliates rule.</p> | <ul style="list-style-type: none"> <li>— The Entity List, MEU List, and § 744.8 requirements are enforceable on a strict liability basis, so “knowledge” is not required to trigger these end-user requirements under the EAR, although “knowledge” is a factor that is considered when determining penalty calculations for a violation of the EAR.</li> <li>— By adding a requirement to resolve the red flag to §§ 744.11 and 744.21, BIS is informing the public that when an exporter, reexporter, or transferor has “knowledge” that a foreign entity has one or more direct or indirect owners that are listed on the Entity List or MEU List, it has</li> </ul>   |

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|   | <p>an affirmative duty to determine the percentage of ownership of those listed entities and if that is not possible, to obtain a license from BIS if required under the Entity List or MEU List based on the requirements for the listed owner or owners of that foreign entity, unless a license exception is available.</p> <ul style="list-style-type: none"> <li>— Because of diversion concerns to listed entities, including concerns about listed entities obfuscating their ownership stakes in foreign affiliates of listed entities as a method to evade Entity List or MEU List license requirements, this IFR specifies that the exporter, reexporter or transferor must resolve the Red Flag or obtain a license from BIS prior to proceeding with the export, reexport, or transfer (in-country), unless a license exception is available.</li> </ul>  |
| <p><b><i>Foreign companies where there is no “knowledge” that the foreign entity is owned by a listed entity.</i></b></p> | <ul style="list-style-type: none"> <li>— BIS advises exporters, reexporters, and transferors to exercise due diligence as part of their internal compliance programs with such foreign companies because as noted in the previous row, the Entity List, MEU List, and § 744.8 requirements are enforceable on a strict liability basis.</li> <li>— This means that exporters, reexporters, and transferors are responsible if they engage with a foreign entity that is in fact owned 50 percent or more by a listed entity on the Entity List, MEU List, or an SDN designation under § 744.8, or by entities subject to restrictions based upon their ownership.</li> <li>— Accordingly, exporters, reexporters, and transferors have an affirmative responsibility to know the ownership of the foreign companies that are parties to a transaction.</li> <li>— Exporters, reexporters, and transferors must adopt a risk-based compliance program to assist them in complying with these requirements.</li> <li>— Supplement No. 3 to Part 732—BIS’s “Know Your Customer” Guidance and Red Flags is an EAR regulatory resource that assists exporters, reexporters, and transferors in developing their</li> </ul> |

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|  | compliance programs.   |
| <i>U.S. entities owned by listed entities.</i> | — This IFR does not impose restrictions, as the Affiliates rule established in this IFR applies only to foreign companies, nor does it limit any compliance obligations that may exist under other provisions of the EAR or under the regulations of other agencies. |



## **Annex 2: Country Groups A:5 and A:6**

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| Albania        | Korea, South   |
| Argentina      | Latvia         |
| Australia      | Lithuania      |
| Austria        | Luxembourg     |
| Belgium        | Malta          |
| Bulgaria       | Mexico         |
| Canada         | Netherlands    |
| Croatia        | New Zealand    |
| Cyprus         | Norway         |
| Czech Republic | Poland         |
| Denmark        | Portugal       |
| Estonia        | Romania        |
| Finland        | Singapore      |
| France         | Slovakia       |
| Germany        | Slovenia       |
| Greece         | South Africa   |
| Hungary        | Spain          |
| Iceland        | Sweden         |
| India          | Switzerland    |
| Ireland        | Taiwan         |
| Israel         | Türkiye        |
| Italy          | United Kingdom |
| Japan          |                |