

## The BIS 50 Percent Ownership Rule: A Paradigm Shift

SEPTEMBER 30, 2025

Effective September 29, 2025, many thousands of additional non-U.S. entities around the world are now prohibited from receiving U.S. goods, software, and technology (collectively, Items) under an “affiliates” interim final rule (the IFR) published by the Bureau of Industry and Security (BIS) at the U.S. Department of Commerce. The IFR contains two measures that dramatically increase the reach of the Export Administration Regulations’ (EAR) party-based controls—namely, a 50 Percent Ownership Rule and an Entity List “legally distinct” standard. While the emergence of a BIS 50 Percent Ownership Rule is not entirely unexpected, the IFR expands the universe of relationships that automatically impose sanctions on unlisted entities in ways that were potentially unanticipated by many in industry, including ownership by persons on the Military End User (MEU) List and by certain persons on the Specially Designated Persons and Blocked Persons List (SDN List).

As if massive fluctuations in tariffs this year were not enough, trade-compliance teams must now clear their rolls of non-U.S. customers that are *not* positively listed on any sanctions list maintained by the U.S. government but that nonetheless are now subject to a sweeping prohibition on receipt of U.S. Items if the non-U.S. entity is owned, directly or indirectly, 50 percent or greater, by one or more listed individuals and entities (collectively, persons). The IFR states that BIS chose to adopt the same standard that “exporters, reexporters, and transferors have already been using” for compliance with the U.S. Department of the Treasury’s [Office of Foreign Assets Control](#) (OFAC) 50 percent rule. A two-month Temporary General License will be available for some transactions, expiring on **December 1, 2025**. Comments on the IFR must be submitted by **October 29, 2025**.

### THE CORE CHANGES FOR TRANSACTIONS INVOLVING ITEMS SUBJECT TO THE EAR

#### *The 50 Percent Ownership Rule and the “Rule of Most Restrictiveness”*

Effective September 29, 2025, exporters, reexporters, and transferors around the world of Items subject to U.S. jurisdiction under the EAR (subject to the EAR) (collectively, persons sending Items subject to the EAR) are barred from providing such Items to any non-U.S. entity owned 50 percent or greater, directly or indirectly, by one or more entities listed on the

- Entity List at [15 C.F.R. Supplement No. 4 to Part 744](#);
- MEU List at [15 C.F.R. Supplement No. 7 to Part 744](#); and/or

- SDN List under programs related to Belarus/Ukraine/Russia, terrorism, weapons of mass destruction, and narcotics trafficking or criminal networks (collectively, Select SDNs).

The flow of ownership percentage from a parent to an intermediate parent and then to a subsidiary is calculated in the same way as is required under current OFAC guidance for its 50 percent rule.

Under the IFR's related "rule of most restrictiveness," such a "Shadow Affiliate" that is owned by "multiple entities subject to EAR license requirements . . . [is] 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" (emphasis added).

#### *The Entity List Legally Distinct Standard*

Also effective September 29, 2025, persons sending Items subject to the EAR are barred from providing those Items to non-U.S. entities not considered legally distinct from an entity on the Entity List. For example, if an entity on the Entity List, MEU List, or SDN List (collectively, Listed Entities) has branch offices in other countries to facilitate sales, those branch offices are now prohibited from receiving all Items subject to the EAR. Before, this restriction would not have extended to branches of entities on the Entity List or MEU List.

### **ATTENTION, NON-U.S. MANUFACTURERS: THIS RULE EXPANDS THE EXTRATERRITORIAL REACH OF THE ENTITY LIST FOREIGN DIRECT PRODUCT RULES**

As a result of the IFR, non-U.S. manufacturers of Items outside the United States must now incorporate these Shadow Affiliates into their foreign direct product (FDP) rules analysis under the Entity List FDP Rules at 15 C.F.R. § 734.9(e) and the Russia/Belarus–Military End User and Procurement FDP Rule at 15 C.F.R. § 734.9(g). Those rules provide that a transaction involving non-U.S.-origin Items containing even zero U.S. content produced or developed using U.S. software or technology, directly or indirectly, can be subject to the EAR (and would generally be prohibited) where the transaction involves a product in a specified "product scope" and in which a party to the transaction includes a person on the Entity List with a footnote 1, 3, 4, or 5. The Entity List FDP Rules and the Russia/Belarus–Military End User and Procurement FDP Rules now expand to transactions that would involve a Shadow Affiliate.

### **BIS FORCES EXPORTERS'/REEXPORTERS' HAND WITH RED FLAG AFFIRMATIVE DUE DILIGENCE REQUIREMENT**

Under the IFR, when a person sending Items subject to the EAR has "knowledge" that that a party to the transaction has "one or more [direct or indirect] owners that are listed on the Entity List or the MEU List . . . , it has an affirmative duty to determine the percentage of ownership by those 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 owner or owners of that foreign entity, unless a license exception is available." This affirmative duty kicks in when the person sending Items knows there is ownership but does not know how much. If the percentage ownership in the aggregate turns out to be 50 percent or greater, then the elevated prohibitions of the BIS 50 Percent Ownership Rule are triggered. If the ownership percentages by all Listed Entities cannot be "determined," then the person sending Items subject to the EAR must choose between

- proceeding without that ownership-percentage determination by using a license exception available to the owner of the non-U.S. entity subject to the most restrictive controls (an exceedingly narrow and often nonexistent option); or
- applying for a specific license.

In other words, proceeding to send Items subject to the EAR to a non-U.S. entity that exporter, reexporter, or transferor knows has Listed Entity ownership – but does not know how much – is prohibited. Guidelines issued as part of the IFR also note that persons sending Items subject to the EAR should exercise caution and undertake due diligence where they "know" the ownership level is less than 50 percent but where the ownership percentage is nonetheless "significant."

### **AVAILABLE RELIEF**

The Temporary General License (the TGL) is available until its expiration **December 1, 2025** for exports, reexports, and transfers to or within any jurisdiction in

1. Country Group A:5 or A:6; or
2. Country Group E:1 or E:2 (currently Cuba, Iran, North Korea, and Syria) where a Shadow Affiliate that is a joint venture with an unlisted (and non–Shadow Affiliate) entity headquartered in the United States or in a jurisdiction in Country Group A:5 or A:6 is a party to the transaction.

Note that transactions including parties that are Shadow Affiliates of the Select SDNs are not eligible for the TGL (nor would anything in the IFR overcome license requirements imposed elsewhere in the EAR, by OFAC sanctions programs, or by other U.S. laws or regulations).

For more permanent relief, Shadow Affiliates themselves can also submit a petition to the End-User Review Committee (ERC) asking for exclusion from application of the 50 Percent Ownership Rule, which would require a regulatory change before it could be effective, if the ERC approves. The petition would be subject to standard ERC procedures, including requiring unanimous consent of the ERC members (representing Commerce [the chair], Defense, Energy, State, and where appropriate, the Treasury) for the requested modification.

## NEXT STEPS

Persons sending Items subject to the EAR should do the following:

- Review their customer lists to confirm whether the BIS 50 Percent Ownership Rule or the Entity List “legally distinct” standard might apply to any of their non-U.S.-entity customers. Customers that have signed end-user / end-use certificates may, depending on your policies, have been more likely according to your firm’s due diligence to be related to a Listed Entity and should be reviewed especially closely.
- Document the factors or thresholds that cause a non-U.S. customer to be considered for elevated due diligence and apply them consistently. For example, BIS buried in the preamble to the IFR (but did include any textual changes) a statement that non-U.S. entities “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 [one of the Select SDNs] present a Red Flag of potential diversion risk to the listed entity.” This is relevant because language in the EAR, such as at 15 C.F.R. Supplement No. 3 to Part 732, indicates that a failure to resolve a red flag can serve as the basis for a violation.
- Subject to a risk-based approach, request updated ownership information from non-U.S. customers that receive Items subject to the EAR.
- Keep all ownership records collected from non-U.S. customers for at least five years from the conclusion of the transaction.

If you would like assistance in complying with the BIS 50 Percent Ownership Rule or in submitting comments in response to the IFR, please reach out to the authors or your Winston relationship attorney.

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