

## BIS issues frequently asked questions to clarify the military end use/user rule

8 July 2020

On 29 June 2020, the [final rule](#) expanding the military end user/user controls (MEU) issued by the Bureau of Industry and Security (BIS) went into effect. On 26 June 2020, BIS issued an [FAQs](#) guidance document that provides certain helpful clarifications for companies seeking to understand the scope of the MEU rule.

Key guidance includes the following:

- **Definition of military end users.** The MEU rule defines "military end user" to include national armed services (army, navy, marine, air force, or coast guard), the national guard and national police, government intelligence or reconnaissance organizations, and any other end user whose activities are intended to support "military end uses."
  - BIS clarified that provincial and municipal police departments, as distinct from the national police, would not generally be considered military end users.
  - BIS also clarified that any "other end users whose activities are intended to support military end uses" include foreign national governmental organizations, state-owned enterprises (SOEs), and other entities that develop, produce, maintain, or use certain military items. BIS defined SOEs as entities over which national governments can or do exercise "significant direction or control" over the entity's operations through supervision, financing, subsidization, or ownership, including significant minority ownership. Exporters, therefore, should review the ownership and government affiliations of companies in China, Russia, and Venezuela to determine whether they would be considered SOEs engaged in activities involving development, production, maintenance, or use of certain military items.
  - BIS indicated that exporters should engage in due diligence to determine whether a "military hospital" is a "military end user," including evaluating the actual relation of the "military hospital" to the country's national armed services, the patient population served by the hospital, or whether the military hospital develops, produces, maintains, or uses military items. Such due diligence is recommended, for example, if an exporter needs to provide an ECCN 4A994 computer to service a previously exported EAR99 medical device to a military hospital in China.

- Exporters should also engage in due diligence to determine whether a university that belongs to, or is funded by, the army but provides general university academic training to members of the public, is a "military end user." This includes situations where the exporter sells to one university department for civil research but has knowledge that another part of the same university conducts research for the military.
- **Definition of military end use.** The MEU rule expands the definition of "military end use" to include any item that "supports or contributes to" the operation, installation, maintenance, repair, overhaul, refurbishing, development, or production of certain military items. BIS clarified that an item that "supports or contributes to" such activities means an item that provides "direct facilitation" of the specified activities related to the defined military items, such as installation, inspection, or test equipment and related software and technology.
- **Expectations regarding due diligence.** The FAQs indicate that BIS expects companies to conduct diligence to determine whether a specific end user's activities involve "military end uses," even where the specific export at hand is intended for civil end use. The determination of whether an entity is engaged in "military end uses" is highly fact-specific, and there is no threshold volume for military end use activities that would trigger a licensing requirement. For example, the FAQs indicate that for subordinate entities of China's Ministry of Defense, such as finance, human resources, or administrative offices, the analysis would depend on whether these specific entities are considered part of the armed forces or develop, produce, maintain, or use military items.
- **Licensing policy.** BIS applies a presumption of denial for license applications to export items subject to the MEU rule to military end users or for military end uses. However, BIS states in the FAQs that the presumption of denial can be overcome "when applications demonstrate exclusive civil end use, consistent with U.S. national security interests."

Overall, the FAQs indicate that BIS expects companies to exercise a high level of due diligence and recognize any red flags with regard to potential MEU entities in subject countries. Companies should implement procedures to conduct robust due diligence, including screening tools and checklists, and seek certifications as appropriate from end users in order to mitigate risk. In addition, companies may be able to supplement existing restricted party screening tools and procedures to help flag parties of concern, such as creation of proprietary screening lists for identifying known military end users that are separate from published U.S. government restricted party lists. In sum, the new MEU rule imposes significant new licensing obligations on companies operating in China, Russia, and Venezuela, and as a result, companies will need to adjust their compliance policies and procedures to mitigate risk associated with these markets.

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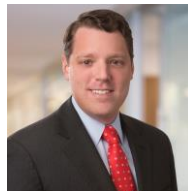
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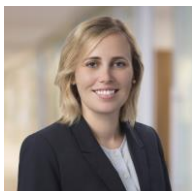
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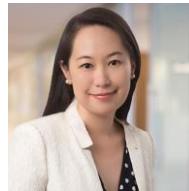
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