

U.S. Commerce Department Adds Dozens of High-Tech Chinese Companies to Entity List

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On December 15, 2022, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) announced that it is adding 36 primarily Chinese entities, including Chinese memory chip maker Yangtze Memory Technologies and surveillance technology firm Tiandy Technologies, as well as nine Russian entities to its Entity List for their involvement, or significant risk of involvement, in activities contrary to the national security and foreign policy of the United States. The moves are being made in concert with BIS's new policy cracking down on foreign governments that prevent end-use checks used to ensure compliance with the Export Administration Regulations (EAR). Notably, and consistent with the new end-use check policy, BIS is also removing 27 entities from its Unverified List (UVL) after verifying their *bona fides*.

BIS's New End-Use Check Policy

BIS conducts end-use checks to verify the legitimacy and reliability of the use and/or end user of items subject to the EAR. In October 2022, BIS announced a new two-step policy to address instances where a foreign government prevents the agency from carrying out an end-use check. Under the new policy, BIS generally will initiate the process to add foreign parties to the Unverified List 60 days after checks are requested but host government inaction prevents their completion. If after 60 more days BIS is still unable to conduct an end-use check due to continued host government inaction, the entity will be added to the Entity List.

To carry out this new policy, BIS amended Section 744.11 of the EAR. As part of the same October 2022 action, BIS added 31 Chinese entities to the Unverified List.

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As a result of an Unverified List designation, a party can no longer benefit from the use of license exceptions under the EAR, and exporters/reexporters must obtain a specific UVL statement (as outlined in Section 744.15 (b) of the EAR) from the listed party for shipments where no license is required, such as exports of EAR99 items. Certain export reporting requirements also apply.

An Entity List designation results in additional, more stringent export restrictions. Exports, reexports, and in-country transfers of items subject to the EAR, including EAR99 commodities, software, and technology (*i.e.*, items controlled at the lowest levels), are generally prohibited to Entity List designees without a license and, for the most part, license applications are subject to a presumption (and, in some cases a policy) of denial.

New Policy in Action?

Roughly 60 days after BIS announced its new end-use policy, the agency released two rules adding several entities, primarily Chinese and Russian companies and organizations, to the Entity List, while removing a number of companies from the Unverified List.

In the first rule, which states that BIS's actions are in accordance with the new end-use check policy, BIS added nine Russian entities to the Entity List and de-listed 26 Chinese companies and one company under the designation of Pakistan from the Unverified List. The Russian entities added to the Entity List are Alliance EG Ltd.; FSUE Rosmorport Far Eastern Basin Branch; Intercom Ltd.; Nasosy Ampika; Nuclin LLC; SDB IRE RAS; Security 2 Business Academy; Tavrida Microelectronics; and VIP Technology Ltd., which are being added due to "long term (60 days or greater) prevention of a successful end-use check conducted by or on behalf of BIS."

The second rule adding 36 China-based companies to the Entity List does not state that the designations are the result of a government's failure to enable end-use checks. Instead, BIS's rationales for adding these entities to its Entity List are as follows:

- Twenty-one entities allegedly are involved in the development of artificial intelligence chips that support the Chinese military and defense industry. These entities also are now subject to the Entity List Foreign Direct Product Rule we summarized in a previous alert, and thus the new export restrictions extend to many foreign-manufactured items that are direct products of certain U.S. software or technology.
- Two entities allegedly are involved in China's military modernization efforts.
- Seven entities allegedly are involved in military modernization "areas of concern," including "hypersonic weapons development, design and modelling of vehicles in hypersonic flight, designing and producing ballistic missile radomes, using proprietary software to model weapons design and damage, and other efforts to support military-civil fusion activities tied to the [People's Liberation Army] Air Force and Navy."
- BIS indicated that four entities pose a significant risk of diverting items to Entity Listed parties. Notably, this includes Yangtze Memory Technologies, China's largest memory chip maker and a company that previously was on the Unverified List, over concerns of diversion to Huawei and Hikvision.

- One entity, Tiandy Technologies, allegedly is involved with the repression of Uyghurs and other Muslim minority groups.
- Two parties were designated for supporting Russia's military. These entities are also being designated as Russian military end users that are subject to the expansive Russia/Belarus-Military End User Foreign Direct Product Rule. More information about this rule can be found in our alert, linked here.
- One entity is being added for supporting drone production in Iran.

It is important to note that, over the past several years, an increasing number of Entity List designations have been prompted by submissions made by the private sector, including policy/national security-oriented think tank organizations. The fact that the U.S. government has been willing to accept these submissions, corroborate the allegations based on its own information (including public and classified intelligence), and then take action is remarkable. This trend is likely to continue and will give rise to additional Entity List designations, especially with respect to Chinese companies, at an accelerated pace similar to the pace over the last few years.

Wiley's National Security team has unparalleled experience and expertise representing a broad range of U.S. and multinational clients in complex export control and sanctions matters. Should you have any questions about this alert, U.S. export controls and sanctions, or any other national security-related matters, please do not hesitate to contact one of the attorneys listed on this alert.