

After nearly four years and several round of drafts, China finally published the final regulations on the Export Control of Dual-use Items (ECR), which will take effect from December 1, 2024. The ECR is the first comprehensive regulation to implement the China Export Control Law that took effect on December 1, 2020.

As an implementation regulation of the China Export Control Law, the ECR clarifies the licensing requirements and application procedures, filing and reporting responsibilities, end-use and end-user administration, Controlled Party List management, law enforcement and liabilities. It also creates several new concepts and provisions that are highlighted as follows:

Please refer to our previous article about the [China Export Control Law](#).

Replacing Multiple Existing Regulations

Currently, China's export control legal regime consists of the China Export Control Law and multiple regulations with each regulation administering specific category of items, including nuclear, biological, chemicals and missile related items. Accordingly, a separate control list is published under each respective regulation. The ECR and a comprehensive control list will replace the category-specific regulations and lists. It is expected that the comprehensive control list will be published before the effective date of the ECR.

Application on Foreign-made Items

The ECR expands the scope of application of the China Export Control Law to "foreign made products"; but such application will likely be limited and specific.

Specially, the ECR provides that the Chinese commerce department "may require" a foreign party to be subject to the ECR when transferring to "certain specific" foreign location or foreign parties, "certain specific" foreign made products that incorporates, intermingles or uses "certain specific" China-origin controlled items or technology.

The multiple use of the term "certain specific" suggests that the Chinese government does not intend to use the extraterritorial provision on a regular basis. It is likely to create a legal basis for potential use in the future. It will likely be implemented through specific notice or announcement of the Ministry of Commerce (MOFCOM). Such notice may target specific items, a specific region or even specific foreign parties.

No concept of "de minimis rules" or "foreign direct product rules" under the US Export Control Administration (US EAR) is introduced in the ECR.

Export Certificate (License Exceptions)

Align with the China Export Control Law, the ECR provides that an export license must be obtained to export any controlled items. In addition to detailing the requirements and procedure for license applications, the ECR also created a new concept called an "export certificate" which functions like a license exception under the US EAR.

Specifically, an export may export a controlled item, without a license, through an export certificate by filling out a form in any of the following circumstances:

- Re-export of items that temporarily enter China for maintenance, repair or test to the original end-user at the original location within a reasonable period of time
- Temporary export of items for maintenance, repair or test that will re-enter China within a reasonable period of time
- Items for display at exhibitions in China that will be re-exported immediately after the exhibitions to its original place
- Items for display at exhibitions outside China that will return to China immediately after the exhibitions
- Export of civil aircraft parts and components for maintenance and repair, or export of civil aircraft spare parts
- Other circumstances as stipulated by the competent department of commerce

The license exceptions, however, do not apply to (i) exporters that were criminalized for violation export control laws, (ii) exporters that seriously violated export control laws in the past five years and (iii) the subsidiary of a party on the Controlled Party List (as explained below).

The "Watch List"

The ECL created a new "Watch List" that is similar to the function of the "Unverified List" under the US EAR. Similar to the US EAR, the ECR authorizes the commerce department to conduct verifications of end-users and end-uses of dual-use items. If the commerce department is unable to complete an end-use check because the importer or end user fails to cooperate, such importer or end-user could be placed on the Watch List.

If a party is placed on the Watch List:

- An exporter will not be able to apply for a general license, or an export certificate (as explained above)

- An exporter may still apply for a single license but should (i) submit a risk assessment report regarding the party on the Watch List and (ii) make commitment to comply with the Chinese export control laws and regulations

A party on the Watch List may be removed after the end-use check is completed without finding any violation.

The Controlled Party List

The Controlled Party List was first created under the Export Control Law as a blacklist for foreign importers and end-users. Exporters could be ordered to stop all transactions with parties on the Controlled Party List unless a license is obtained.

The ECR supplements the circumstances (item (d) and (e) below) where a party could be added to the Controlled Party List:

- Violating the commitment of end-user or end-use
- Potentially endangering national security
- Using the controlled items for terrorism purposes
- Using dual-use items in design, development, production or use of weapons of mass destruction and their means of delivery
- Being subject to restrictive measures imposed by the Chinese government (which may include, for example, the Unreliable Entity List, and restrictions imposed under the Anti-Foreign Sanction Laws)

It is worth noting that so far, no company has been placed on the Controlled Party List. It, however, does not mean China will not use it as a tool in the future, especially with the new provision under the ECR cross-referring to other blacklists. The recent threat of Unreliable Entity List by MOFCOM suggests that China is willing and ready to take more proactive reactions. See [here](#).

Proactive Reporting Obligations

The ECR imposes various reporting obligations on exporters, including, among other things, post-shipment reporting of the export, any change of circumstances or statements in the license application documents and reporting any potential risk of end user and use.

The ECR also requires involved parties to report any potential violation of export control laws. Such reporting obligation is imposed not only on exporters and importers, but also agents, freight forwarders, customs broker, logistics service providers, e-commerce platform, financial service providers and other service providers involved in the transaction. It should also be noted that anybody that abets or assists a violation of the ECR will be punished.

Contacts

George N. Grammas

Partner, Washington DC
T +1 202 626 6234
E george.grammas@squirepb.com

Ju (Lindsay) Zhu

Partner, Shanghai
T +86 21 6103 6303
E lindsay.zhu@squirepb.com

Robert MacLean

Partner, Brussels
T +32 2 6277 619
E robert.maclean@squirepb.com

Daniel E. Waltz

Senior Partner, Washington DC
T +1 202 457 5651
E daniel.waltz@squirepb.com

José María Viñals

Partner, Madrid
T +34 91 426 4840
E josemaria.vinals@squirepb.com

Karen R. Harbaugh

Partner, Washington DC
T +1 202 457 6485
E karen.harbaugh@squirepb.com

Matthew Kirk

International Affairs Advisor, London
T +44 207 655 1389
E matthew.kirk@squirepb.com