

SUBSIDIARY LEGISLATION 365.12**DUAL-USE ITEMS (EXPORT CONTROL)
REGULATIONS**

20th September, 2004

LEGAL NOTICE 416 of 2004, as amended by Legal Notice 425 of 2007.

1. (1) The title of these regulations is the Dual-Use Items (Export Control) Regulations. Citation and scope.

(2) These regulations implement the provisions of Council Regulation (EC) No 1334/2000 of the 22nd June, 2000 setting up a Community regime for the control of exports of dual-use items and technology, as subsequently amended, hereinafter referred to as "the Council Regulation".

2. (1) In these regulations, unless the context otherwise requires: Interpretation.

"Act" means the National Interest (Enabling Powers) Act; Cap. 365.

"basic scientific research" means experimental or theoretical work undertaken principally to acquire new knowledge of the fundamental principles of phenomena or observable facts, not primarily directed towards a specific practical aim or objective;

"Community" means the European Community;

"Community general export authorization" means the export authorization constituted by regulation 6 of these regulations;

"country" includes territory;

"Director" means the director responsible for trade and includes any officer designated or authorised by the Director to act for a purpose or class of purposes of these regulations;

"dual-use items" means any used or unused items, including software and technology, which can be used for both civil and military purposes, and including all goods which can be used for both non-explosive uses and for assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices;

"export", unless the context otherwise requires, means export from Malta, and includes:

- (a) re-export of dual-use items, and
- (b) the transmission of software or technology by fax, telephone or other electronic media (except that oral transmission of technology by telephone is included only where the technology is contained in a document the relevant part of which is read out over the telephone, or is described over the telephone in such a way as to achieve substantially the same result as if it had been so read);

"export declaration" means the act whereby a person indicates in the prescribed form and manner the wish to place dual-use items under an export procedure;

"exporter" means any natural or legal person on whose behalf an export declaration is made, that is to say the person who, at the time when the declaration is accepted, holds the contract with the consignee in the third country and has the power for determining the sending of the item out of the customs territory of Malta. If no export contract has been concluded or if the holder of the contract does not act on its own behalf, the power for determining the sending of the item out of the customs territory of Malta shall be decisive; "exporter" also means any natural or legal person who decides to transmit software or technology by electronic media, fax or telephone to a destination outside Malta;

"import" and "export" in relation to a vessel, submersible vehicle or aircraft includes the taking into or out of Malta of the vessel, submersible vehicle or aircraft notwithstanding that the vessel, submersible vehicle or aircraft is conveying goods or passengers, and whether or not it is moving under its own power; and cognate expressions shall be construed accordingly;

"in the public domain" means available without restriction upon further dissemination (no account being taken of restrictions arising solely from copyright);

"international export control regimes, bodies and treaties" means the Australia Group, Missile Technology Control Regime, Nuclear Supplies Group, Wassenaar Arrangement, Zangger Committee and the Chemical Weapons Convention;

"items in transit" means items which only pass through the territory of Malta, that is those which are not assigned a customs-approved treatment or use other than the external transit procedure or which are merely placed in a free zone or a free warehouse and where no record of them has to be kept in an approved stock record;

"military end-use" means:

- (a) incorporation into military items listed in the military list;
- (b) use of production-, test- or analytical equipment and components therefor, for the development, production or maintenance of military items listed in the military list;
- (c) use of any unfinished products in a plant for the production of military items listed in the military list;

"military list" means the list of military equipment as established in the Military Equipment (Export Control) Regulations, 2001;

"Minister" means the Minister responsible for trade;

"normal commercial journey" means a journey providing transport services in the ordinary course of business;

"person" means any natural or legal person;

"scheduled journey" means one of a series of journeys which are

undertaken between the same two places and which together amount to a systematic service operated in such manner that its benefits are available to members of the public from time to time seeking to take advantage of it;

"surface effect vehicle" means any air cushion vehicle (whether side wall or skirted) and any vehicle using the wing-inground effect for positive lift;

"technical assistance" means any technical support related to repairs, development, manufacturing, assembly, testing, maintenance, or any other technical service, and may take the forms such as instruction, training, transmission of working knowledge or skills or consulting services; technical assistance includes also oral forms of assistance;

"vessel" includes any ship, surface effect vehicle, vessel of small waterplane area or hydrofoil, and the hull or part of the hull of a vessel.

(2) Any reference in these regulations to time after an event is a reference to a period of that length of time beginning on the day after that event.

(3) In these regulations, except where the context otherwise requires, any reference to -

- (a) a numbered regulation is a reference to the regulation in these regulations which is so numbered;
- (b) a numbered subregulation is a reference to the subregulation which is so numbered in the regulation where the reference occurs.

3. (1) An authorization shall be required for the export of the dual-use items listed in Annex I of the Council Regulation. Authorization.

(2) Pursuant to regulation 7 or regulation 8, an authorization may also be required for the export to all or certain destinations of certain dual-use items not listed in Annex I of the Council Regulation.

(3) An authorization shall also required for intra-Community transfers of dual-use items listed in Annex IV of the Council Regulation.

4. (1) The Director may grant authorizations for the export of dual-use items as specified in these regulations. Granting and revocation etc., of authorizations.

(2) Any authorization granted by the Director in pursuance of these regulations or having effect as if so granted may be:

- (a) either individual, global or general;
- (b) limited so as to expire on a specified date unless renewed;
- (c) subject to or without conditions, and any such condition may require or prohibit any act before or after the export of items under that authorization;
- (d) annulled, suspended, modified or revoked by the

Director.

(3) An individual export authorization may be granted to an individual exporter, upon application on a form as set out in the Schedule, for the export of a specified dual-use item to a specified consignee up to the quantity specified in the authorization.

(4) A global export authorization may be granted to an individual exporter, upon application on a form as set out in the Schedule, for the export of specified dual-use items up to the quantities specified in the authorization, to specified consignees in one or more specified countries.

(5) When applying for an export authorization, exporters shall supply the Director with all the relevant information required for their applications.

Exports of dual-use items.

5. (1) Subject to the provisions of these regulations -

(a) no person shall make any export of items specified in Annex I of the Council Regulation, to any destination except under and in accordance with an authorization as specified in regulation 4;

(b) no person shall export to any destination any dual-use items whether or not listed in Annex I of the Council Regulation which that person has grounds for suspecting that the items are or may be intended, in their entirety or in part, for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons, unless that person has made all reasonable enquiries as to their proposed use and is satisfied that they will not be so used;

(c) no person shall make to any destination any export consisting of the transmission by fax, telephone or other electronic media of dual-use items in the form of software or technology if:

(i) that person has been informed by a competent authority that the software or technology are or may be intended, in their entirety or in part, for any of the uses referred to in paragraph (b); or

(ii) that person is aware that the software or technology are intended, in their entirety or in part, for any of the uses referred to in paragraph (b); or

(iii) that person has grounds for suspecting that the software or technology are or may be intended, in their entirety or in part, for any of the uses referred to in paragraph (b), unless that person has made all reasonable enquiries as to their proposed use and is satisfied that they will not

be so used; and

- (d) no person shall provide technical assistance in any destination, if that assistance is intended, or the provider is aware that it is intended, in its entirety or in part, for any of the uses referred to in paragraph (b).

(2) Paragraphs (b) and (c) of subregulation (1) do not prohibit the export of any items in relation to which an authorization in writing has been granted by the Director, provided that all conditions attaching to the authorization are complied with.

(3) Paragraph (d) of subregulation (1) does not prohibit technical assistance -

- (a) where it is provided in a Member State of the European Union or in a country listed in Part 3 of Annex II of the Council Regulation;
- (b) where it takes the form of transferring information that is in the public domain, or consists of basic scientific research; or
- (c) where it is in oral form and not related to items required to be controlled by one or more of the international export control regimes, bodies and treaties.

(4) The provisions of these regulations apply also to items in transit and items which are transboarded from one vessel or aircraft onto another.

6. (1) Without prejudice to regulation 5(1) and (4), a Community general export authorization is hereby granted in respect of those items for export to those destinations, as specified in Annex II of the Council Regulation, subject to the conditions and requirements set out therein and to any additional conditions and requirements as may be imposed by the Director. The items listed in Part 2 of Annex II of the Council Regulation and Part 2 of Annex IV of the Council Regulation are not covered by this Community general export authorization.

Community
general export
authorization.

(2) The Community general export authorization specified in subregulation (1) cannot be utilised if the exporter knows at the time of export that the final destination of those items is outside the specified countries and no processing or working is to be performed on those items in those countries to which they are to be exported.

7. (1) An authorization shall be required for the export of dualuse items not listed in Annex I of the Council Regulation, if the exporter has been informed by a competent authority that the items in question are or may be intended, in their entirety or in part:

Dual-use items not
listed in Annex I of
the Council
Regulation.

- (a) for any of the uses referred to in regulation 5(1)(b), or,
- (b) for use as parts or components of military equipment listed in the military list, which was previously exported without authorization or in violation of an authorization requirement.

	<p>(2) If an exporter is aware that dual-use items which he proposes to export, not listed in Annex I of the Council Regulation, are intended in their entirety or in part, for any of the uses referred to in subregulations (1)(a) and (1)(b) and regulation 8, he must notify the Director, who will decide whether or not it is expedient to make the export concerned subject to authorization.</p>
Imposition of authorization requirement in particular circumstances.	<p>8. (1) Without prejudice to regulation 7, the Director may prohibit or impose an authorization requirement on the export of dual-use items not listed in Annex I of the Council Regulation for reasons of public security or human rights considerations.</p> <p>(2) An authorization shall also be required for the export of dual-use items not listed in Annex I of the Council Regulation, if the purchasing country or country of destination is subject to an arms embargo decided by a common position or joint action adopted by the Council of the European Union or a decision of the Organisation for the Security and Co-operation in Europe or an arms embargo imposed by a binding resolution of the Security Council of the United Nations and if the exporter has been informed by a competent authority that the items in question are or may be intended, in their entirety or in part, for a military end-use.</p> <p>(3) An authorization shall also be required for the provision of technical assistance relating to a military end-use, if that assistance is provided in countries of destination subject to an arms embargo referred to in subregulation (2).</p>
Provision of end-use statement.	<p>9. Any authorization granted as set out in these regulations may be subject, if appropriate, to certain requirements and conditions, such as an obligation to provide an end-use statement.</p>
Exceptions.	<p>10. (1) These regulations do not apply in respect of the supply of services or the transmission of technology if that supply or transmission involves cross-border movement of natural persons.</p> <p>(2) Nothing in these regulations prohibits the export of:</p> <ul style="list-style-type: none"> (a) any aircraft on a scheduled journey; (b) any aircraft the immediately preceding import of which was on a scheduled journey and which is intended for further scheduled journeys; (c) any vessel which is departing temporarily from Malta on trials; (d) any vessel proceeding on a normal commercial journey.
Customs procedures.	<p>11. When completing the formalities for the export of dual-use items at the customs office responsible for handling the export declaration, the exporter shall furnish proof that any necessary export authorization has been obtained.</p>
Misleading applications for authorizations etc.	<p>12. (1) For the purposes of obtaining any authorization no person shall:</p> <ul style="list-style-type: none"> (a) make any statement or furnish any document or information which to that person's knowledge is false

in a material particular; or

- (b) recklessly make any statement or furnish any document or information which is false in a material particular.

(2) Any authorization which may have been granted by the Director in connection with an application for which a false statement was made or a false document or information was furnished shall be void as from the time it was granted.

13. (1) Not later than thirty days after any person makes an export for a first time by virtue of an authorization granted by the Director, or the Community general export authorization, that person shall give to the Director written notice of the following particulars:

Registration and provision of information.

- (a) the name of the person; and
- (b) the address at which copies of the records referred to in regulation 14 may be inspected by any person authorised by the Minister under regulation 14.

(2) A person who has given to the Director written notice of particulars under subregulation (1) shall, not later than thirty days after any change in those particulars, give to the Director written notice of the changed particulars.

14. (1) Exporters shall keep detailed registers or records of their exports. Such registers or records shall include in particular commercial documents such as invoices, manifests and transport and other dispatch documents, containing sufficient information to allow the following to be identified:

Record keeping and inspection.

- (a) the description of the dual-use items;
- (b) the quantity of the dual-use items;
- (c) the name and address of the exporter and of the consignee;
- (d) in so far as it is known to that person, the end-use of the items and the name and address of the end-user.

(2) The records referred to in subregulation (1) shall be kept for at least three years from the end of the calendar year in which the export took place, and the person concerned shall permit any such records to be inspected and copied by any person authorised by the Minister.

(3) Any person authorised by the Minister may, on producing if required to do so a duly authenticated document showing his authority, at any reasonable hour enter, for the purpose of subregulation (2), the premises of which the address has most recently been notified to the Director under regulation 13.

(4) Where any documents or records referred to in subregulation (2) are kept in a form which is not legible, the exporter shall at the request of the person authorised by the Minister, reproduce such documents or records in a legible form.

Offences and penalties.
Amended by:
L.N. 425 of 2007.

15. (1) Any person in Malta, or any citizen or permanent resident of Malta, whether in Malta or elsewhere, who -

- (a) exports items from Malta by virtue of an authorization granted by the Director, or the Community general export authorization, and fails to comply with any condition attaching to that authorization, or
- (b) contravenes any of these regulations,

shall be guilty of an offence and liable on conviction to a term of imprisonment not exceeding five years or to a fine (*multa*) not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67).

(2) No person is guilty of an offence under subregulation (1)(a) where:

- (a) as the case may be:
 - (i) the condition in question had been previously modified without that person's consent by the Director;
 - (ii) in the case of the Community general export authorization the condition in question had been previously modified;
 - (b) the alleged failure to comply would not have been a failure had the authorization, or the Community general export authorization not been so modified; and
 - (c) that person proves that the items in relation to which he has failed to comply with the condition had, at the time the condition was modified, already been exported.
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SCHEDULE

(Regulation 4(3) and (4))

Authorization Application Form

Formola ta' l-Applikazzjoni għall-Awtorizzazzjoni

UNJONI EWROPEA
EUROPEAN UNIONEsportazzjoni ta' Ogġetti li għandhom Użu Doppju u Tagħmir Militari
Export of Dual-Use Items and Military Equipment

SERVIZZI TAL-KUMMERĊ, DIVIŻJONI TAL-KUMMERĊ, Valletta, Malta TRADE SERVICES - COMMERCE DIVISION, Valletta, Malta	1. ESPORTATUR EXPORTER Vat Nru / Tax No: Isem il-Kumpannija Name of Company: Indirizz Address: Isem il-persuna li tikkuntattja Name of Contact Person: Tel. Nru / Tel. No: Fax Nru / Fax No:		2. DESTINATARJU / CONSIGNEE Isem: Name: Indirizz Address: Isem il-persuna li tikkuntattja Name of Contact Person: Tel. Nru / Tel. No: Fax Nru / Fax No: e-Mail:		FORMOLA TA' APPLIKAZZJONI - APPLICATION FORM
	3. AGENT / RAPPRESENTANT AGENT / REPRESENTATIVE Vat Nru / Tax No: Isem il-Kumpannija Name of Company: Indirizz Address: Isem il-persuna li tikkuntattja Name of Contact Person: Tel. Nru / Tel. No: Fax Nru / Fax No:		4. UTENT FINALI END-USER Isem / Name: Indirizz Address: Isem il-persuna li tikkuntattja Name of Contact Person: Tel. Nru / Tel. No: Fax Nru / Fax No: e-Mail:		
	5. Pajjiż ta' Oriġini Country of Origin	6. Pajjiż fejn sar isir il-kunsinna Country of consignment	7. Pajjiż tad-destinazzjoni finali Country of final destination		
	8. Stat Membru tal-lokazzjoni preżenti jew futura ta' l-oġġett Member State of current or future location of the item		9. Stat Membru fejn hu ma'sub il jidru l-proceduri tad-Dwana għall-esportazzjoni / Member State of intended entry into the customs export procedure		
10. Deskrizzjoni ta' l-oġġett* Description of the item*:			11. Kodiċi tal-kommodità Commodity code	12. Lista tal-kontrolli Nru: Control list no:	
15. Skop albari ta' użu / End use			13. Punt ta' u valur Currency and value	14. Kwantità ta' l-oġġett Quantity of the item	
16. Data tal-kuntratt Contract date			17. Procedura tad-Dwana dwar l-esportazzjoni Customs export procedure		
18. Tagħrif addizzjonali magħus relevanti mill-esportatur / Additional information deemed relevant by the exporter:					
19. B'tan qiegħed nappika għal awtorizzazzjoni għall-esportazzjoni dwar l-oġġetti imsemmi hawn fuq u niddikjara li l-partikolaritajiet kollha minni forniti huma korretti. I hereby apply for an export authorization in respect of the goods described above and I declare that all the particulars furnished by me are correct.					
Firma / Signature		Isem b'tiri kapitali / Name in Blocks		Nru. ta' l-Identifikazzjoni / I.D. No.	Data / Date
GMALL-UZU TA' L-UFFIĊJU BISS / FOR OFFICE USE ONLY				Nru. ta' Registrazzjoni: Registration No.	
L-esportazzjoni għet awtorizzata, Din l-awtorizzazzjoni tibqa' valida sa: Export authorized. This authorization is valid until:					
Firma Signature					
Isem b'tiri kapitali Name in blocks					
Data Date			Timbru Stamp		

* - jekk nappika b'tiri kapitali ta' l-oġġetti għandhom idu mehmuza ma' din il-formola ta' applikazzjoni.