

L.N. 268 of 2001

**NATIONAL INTEREST (ENABLING POWERS) ACT
(CAP. 365)**

Dual-Use Items (Export Control) Regulations, 2001

BY virtue of the powers vested in him by article 3(3) of the National Interest (Enabling Powers) Act, the Prime Minister has made the following regulations:

Citation and
commencement.

1. (1) The title of these regulations is the Dual-Use Items (Export Control) Regulations, 2001.

(2) These regulations shall come into force on the 1st January, 2002.

Interpretation.

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

“Act” means the *National Interest (Enabling Powers) Act*;

“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;

“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 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;

“the Handbook” means the handbook entitled “List of Dual-Use Items and Technology” which is published in the Gazette and which may be subsequently amended as necessary from time to time by the Director, by notice in the Gazette;

“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, without any 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;

“the National General Export Authorization” means the export authorization constituted by regulation 6 of these regulations;

“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-in-ground 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 sub-regulation is a reference to the sub-regulation 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 Chapter I of the Handbook. Scope.

(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 Chapter I of the Handbook.

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 to these regulations, 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 hereto, 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 Chapter I of the Handbook, 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 Chapter I of the Handbook 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 sub-regulation (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 sub-regulation (1) does not prohibit technical assistance:

(a) where it is provided in a country listed in Part 3 of Chapters II and III of the Handbook;

(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.

6. (1) Without prejudice to sub-regulation (1) of regulation 5, a National General Export Authorization is hereby granted in respect of:

National General
Export
Authorization.

(a) those items for export to those destinations, as specified in Chapter II of the Handbook; and

(b) those items for export to Member States of the European Union, as specified in Chapter III of the Handbook,

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 Chapter II of the Handbook and Part 2 of Chapter III of the Handbook are not covered by these National General Export Authorizations.

(2) The National General Export Authorizations specified in sub-regulation (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.

Dual-use items not listed in Chapter I of the Handbook.

7. (1) An authorization shall be required for the export of dual-use items not listed in Chapter I of the Handbook, 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:

(a) for any of the uses referred to in sub-regulation (1)(b) of regulation 5, 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.

(2) If an exporter is aware that dual-use items which he proposes to export, not listed in Chapter I of the Handbook, are intended in their entirety or in part, for any of the uses referred to in sub-regulations (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.

Imposition of authorisation requirement in particular circumstances.

8. (1) Without prejudice to regulation 7 hereof, the Director may by legal notice prohibit or impose an authorization requirement on the export of dual-use items not listed in Chapter I of the Handbook for reasons of public security or human rights' considerations.

(2) An authorization shall also be required for the export of dual-use items not listed in Chapter I of the Handbook, 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.

(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 sub-regulation (2).

Provision of end-use statement.

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.

Exceptions.

10. (1) These regulations do not apply in respect of:

(a) items in transit; and

(b) the supply of services or the transmission of technology if that supply or transmission involves cross-border movement of natural persons.

(2) Nothing in these regulations prohibits the export of:

(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.

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.

12. (1) For the purposes of obtaining any authorization no person shall:

Misleading
applications for
authorizations etc.

(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 National 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 authorized by the Minister under regulation 14.

(2) A person who has given to the Director written notice of particulars under sub-regulation (1) shall, not later than 30 days after any change in those particulars, give to the Director written notice of the changed particulars.

Record keeping and inspection.

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:

- (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 sub-regulation (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 authorized by the Minister.

(3) Any person authorized 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 sub-regulation (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 sub-regulation (2) are kept in a form which is not legible the exporter shall at the request of the person authorized by the Minister, reproduce such documents or records in a legible form.

Penalties for failure to comply with these regulations.

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 National 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 fifty thousand liri.

(2) No person shall be guilty of an offence under sub-regulation (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 National 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 National 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.

SCHEDULE
Export of Dual-Use Goods
Authorization Application Form

1. EXPORTER Vat No: Name of company: Address: Name of contact person: Tel. No: Fax No:	2. CONSIGNEE Name: Address: Name of contact person: Tel. No: Fax No: e-Mail Address:	
3. AGENT/REPRESENTATIVE Name of Company: Address: Name of contact person: Tel. No: Fax No:	4. END-USER Name: Address: Name of contact person: Tel. No: Fax No: e-Mail Address:	
5. Country of origin	6. Country of consignment	7. Country of final destination
8. Description of the item*: 	9. Commodity Code	10. Control list no.
	11. Currency and Value	12. Quantity of the items
13. End use	14. Contract date	15. Customs export procedure
16. Additional information deemed relevant by the exporter		
17. I hereby apply for an export authorization in respect of the item described above and I declare that all the particulars furnished by me are correct Signature Name in blocks Date		
FOR OFFICE USE ONLY Export authorized: This authorization is valid until:		Reference No:
Signature Stamp Name in blocks Date		

* Technical specifications of the item should be attached to this application form

Note: Boxes 1 to 17 should all be filled. A separate form should be submitted for each item.

